

By the Committee on Governmental Oversight and Accountability;
and Senator Alexander

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1 A bill to be entitled
2 An act relating to state financial matters; amending
3 s. 216.011, 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; providing an
26 exception for the Department of Transportation;
27 transferring, renumbering, and amending s. 287.0582,
28 F.S.; requiring a state contract to identify the
29 appropriation that funds a contract; expanding the

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30 statement that must be included in state contracts to
31 include grounds for terminating the contract based on
32 budget deficits; requiring the judicial branch to
33 include the statement in its contracts; requiring the
34 agency head, executive director, or chief judge, as
35 appropriate, or a designated senior management
36 employee, to sign contracts that exceed a specified
37 amount; requiring the agency head, executive director,
38 or chief judge to review certain contracts and certify
39 compliance with ch. 216, F.S.; requiring contracts
40 exceeding a specified amount to require written
41 acceptance or rejection of contract deliverables;
42 providing that contracts in violation of these
43 provisions are null and void; providing penalties;
44 amending s. 287.063, F.S.; prohibiting certain lease
45 or deferred-payment purchases by state agencies unless
46 expressly authorized by the Legislature in the General
47 Appropriations Act or by the Legislative Budget
48 Commission; amending s. 287.064, F.S.; prohibiting
49 certain master equipment financing agreements unless
50 expressly authorized by the Legislature in the General
51 Appropriations Act or by the Legislative Budget
52 Commission; amending ss. 376.3075 and 403.1837, F.S.;
53 conforming cross-references; repealing s. 287.056(2),
54 F.S., relating to provisions providing agencies with
55 the option of purchasing services from state term
56 contracts; amending s. 45, chapter 2010-151, Laws of
57 Florida; providing that certain contracts are subject
58 to transaction fees; providing for application;

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59 providing an effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Present paragraph (vv) of subsection (1) of
64 section 216.011, Florida Statutes, is redesignated as paragraph
65 (ww), and a new paragraph (vv) is added to that subsection, to
66 read:

67 216.011 Definitions.—

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

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

74 Section 2. Present subsections (6) through (9) of section
75 216.023, Florida Statutes, are renumbered as subsections (7)
76 through (10), respectively, and a new subsection (6) is added to
77 that section, to read:

78 216.023 Legislative budget requests to be furnished to
79 Legislature by agencies.—

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

83 (a) The name of the vendor.

84 (b) A brief description of the services provided by the
85 vendor.

86 (c) The term of the contract and the years remaining on the
87 contract.

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

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

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

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

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

102 Section 3. Section 216.311, Florida Statutes, is amended to
103 read:

104 216.311 Unauthorized contracts ~~in excess of appropriations;~~
105 ~~penalty.-~~

106 (1) As used in this section and ss. 216.312 and 216.313,
107 the terms "contract" and "agreement" include the initial
108 contract or agreement, any amendment to the contract or
109 agreement, and any extension or renewal of the contract or
110 agreement.

111 (2) ~~(1)~~ Unless specifically authorized by law, an ~~no~~ agency
112 or branch of state government may not enter into any ~~shall~~
113 contract ~~to spend,~~ or ~~enter into any~~ agreement:

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

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

118 (b) That requires the state to pay liquidated damages or
119 early termination fees for a breach or early termination of a
120 contract or agreement by such agency or branch due to an act of
121 the Legislature which provides less than full funding for the
122 contract during the fiscal year.

123 (c) That requires the state to pay interest, other than
124 interest paid pursuant to s. 215.422, to another party because
125 the agency or branch has insufficient budget authority to pay
126 the underlying obligation of the contract or agreement in the
127 current year.

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

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

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

137 (a) In order to implement the work program approved by the
138 Legislature, and in accordance with the comprehensive
139 legislative oversight of the department under chapter 339, the
140 Department of Transportation may enter into contracts and
141 agreements, subject to the requirements of s. 334.30 and chapter
142 339, in lieu of the limitations specified in paragraphs (2)(b)-
143 (e).

144 (b) In order to administer the state group insurance
145 program as provided in s. 110.123, the Department of Management

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146 Services may enter into contracts and other agreements that
147 permit health care providers, health maintenance organizations,
148 preferred provider organizations, and insurers to collect
149 premiums and copayments from participants in the group insurance
150 program.

151 (c) In order to administer the state Medicaid plan and the
152 Florida Healthy Kids program, the Agency for Health Care
153 Administration may enter into contracts and other agreements
154 that permit health care providers to collect premiums and
155 copayments from participants in the Medicaid plan and the
156 Healthy Kids program.

157 (d) In order to administer the state parks system, the
158 Department of Environmental Protection may enter into contracts
159 and other agreements that require the state to pay liquidated
160 damages or early termination fees as a result of a breach of
161 those contracts or agreements, but only if the vendor makes
162 significant capital improvements to state property and the costs
163 of such improvements is amortized over no more than 3 years.
164 Such contracts are subject to the notice requirements of s.
165 216.312.

166 (4) Notwithstanding any law authorizing an agency to enter
167 into a lease, an agency may not enter into a lease or lease-
168 purchase agreement for tangible personal property which requires
169 the state to pay more than \$500,000 over the term of the lease
170 or agreement if the term of the lease or agreement exceeds 1
171 fiscal year unless such lease or agreement is expressly
172 authorized by the Legislature or the Legislative Budget
173 Commission has approved a transfer of budget authority from a
174 traditional appropriation category to the appropriation category

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175 established for the lease or lease-purchase of equipment.

176 (5) In order to administer the real estate and other
177 investment portfolios as provided in s. 215.47 and to carry out
178 such other duties of the State Board of Administration set out
179 in law, the board may enter into contracts and such other
180 agreements as necessary to carry out the duties of the board.

181 (6) Any contract or agreement in violation of this section
182 is null and void.

183 (7) ~~(2)~~ Any public officer or employee ~~person~~ who willfully
184 enters into a contract or other agreement in violation of this
185 section ~~commits contracts to spend, or enters into an agreement~~
186 ~~to spend, any money in excess of the amount appropriated to the~~
187 ~~agency or branch for whom the contract or agreement is executed~~
188 ~~is guilty of a misdemeanor of the first degree, punishable as~~
189 provided in s. 775.082 or s. 775.083.

190 Section 4. Section 216.312, Florida Statutes, is created to
191 read:

192 216.312 Reporting contract expenditures.—

193 (1) A state agency must provide written notification of the
194 terms and conditions of the contract to the Governor, the
195 President of the Senate, and the Speaker of the House of
196 Representatives at least 30 days before executing a contract, or
197 a series of contracts between the same parties, for the purchase
198 of services or tangible personal property that:

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

201 (b) Requires minimal or no payments by the state during the
202 fiscal year;

203 (c) Authorizes the other party to make expenditures in

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204 anticipation of collecting revenues from a third party,
205 including other state agencies, rather than receiving payments
206 from the state agency executing the contract; or

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

210 (2) The execution of any contract or agreement described in
211 subsection (1) is an action or proposed action subject to s.
212 216.177(2)(b).

213 (3) In lieu of the requirements of this section, and in
214 accordance with the comprehensive legislative oversight of the
215 department under chapter 339, the Department of Transportation
216 shall implement the work program approved by the Legislature by
217 entering into contracts and agreements, subject to the
218 requirements of s. 334.30 and chapter 339. If the department
219 intends to procure a contract pursuant to s. 334.30, it must
220 provide written notification to the Governor, the President of
221 the Senate, the Speaker of the House of Representatives, and the
222 chairs of the legislative appropriations committees at least 30
223 days before advertising for proposals.

224 Section 5. Section 287.0582, Florida Statutes, is
225 transferred, renumbered as section 216.313, Florida Statutes,
226 and amended to read:

227 216.313 ~~287.0582~~ Contract appropriation ~~Contracts which~~
228 ~~require annual appropriation;~~ contingency statement;
229 requirements; penalty.-

230 (1) An executive or judicial branch public officer or
231 employee may not enter into any contract or agreement on behalf
232 of the state or judicial branch which binds the state or its

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233 executive agencies or the judicial branch for the purchase of
234 services or tangible personal property unless the contract
235 identifies the specific appropriation of state funds from which
236 the state will make payment under the contract in the first year
237 of the contract, or unless the Legislature expressly authorizes
238 the agency or the judicial branch to enter into such contract
239 absent a specific appropriation of funds.

240 (2) An ~~Ne~~ executive or judicial branch public officer or
241 employee may not ~~shall~~ enter into any contract or agreement on
242 behalf of the state, which ~~contract~~ binds the state ~~or its~~
243 ~~executive agencies~~ for the purchase of services or tangible
244 personal property ~~for a period in excess of 1 fiscal year,~~
245 unless the following statements are ~~statement is~~ included in the
246 contract:

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

250 (b) "This contract may be terminated by the state upon 10
251 days' written notice if funding for this contract is
252 specifically eliminated pursuant to a deficit reduction plan
253 implemented by:

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

258 2. The Governor or Chief Justice pursuant to section
259 216.221(10), Florida Statutes, or by an act of the Legislature,
260 after a determination by the Chief Financial Officer that a
261 deficit will occur with respect to appropriations from a

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262 specific trust fund in the current fiscal year.”

263

264 This paragraph does not apply to a contract or agreement entered
265 into pursuant to s. 334.30.

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

267 (a) The CATEGORY TWO threshold amount provided in s.
268 287.017 must be signed by the agency head, executive director,
269 or chief judge, as appropriate, or a designated senior
270 management employee.

271 (b) A term of 12 months may not be executed by any
272 executive or judicial branch agency unless the agency head,
273 executive director, or chief judge, as appropriate, or a
274 designated senior management employee, determines that the
275 contract is in compliance with the requirements of this chapter
276 and certifies such compliance in writing within the contract or
277 agreement.

278 (c) The CATEGORY FIVE threshold amount provided in s.
279 287.017 must require the written acceptance or rejection of
280 contract deliverables.

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

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

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

289 287.063 Deferred-payment commodity contracts; preaudit
290 review.—

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291 (4) Beginning July 1, 2011, an agency may not enter into a
292 lease or deferred-payment purchase arrangement for the
293 acquisition of equipment which has a total cost greater than
294 \$500,000 unless the Legislature has expressly authorized such
295 lease or deferred-payment purchase arrangement in the General
296 Appropriations Act or the Legislative Budget Commission has
297 approved a transfer of budget authority from a traditional
298 appropriation category to the special appropriation category for
299 deferred-payment commodity contracts. ~~For purposes of this~~
300 ~~section, deferred-payment commodity contracts for replacing the~~
301 ~~state accounting and cash management systems may include~~
302 ~~equipment, accounting software, and implementation and project~~
303 ~~management services.~~

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

306 287.064 Consolidated financing of deferred-payment
307 purchases.-

308 (9) Beginning July 1, 2011, an agency may not enter into a
309 master equipment financing agreement that has a total cost
310 greater than \$500,000 unless the Legislature has expressly
311 authorized such agreement in the General Appropriations Act or
312 the Legislative Budget Commission has approved a transfer of
313 budget authority from a traditional appropriation category to
314 the special appropriation category for deferred-payment
315 commodity contracts. ~~For purposes of this section, deferred-~~
316 ~~payment commodity contracts for replacing the state accounting~~
317 ~~and cash management systems may include equipment, accounting~~
318 ~~software, and implementation and project management services.~~

319 Section 8. Subsections (4) and (9) of section 376.3075,

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320 Florida Statutes, are amended to read:

321 376.3075 Inland Protection Financing Corporation.—

322 (4) The corporation may enter into one or more service
323 contracts with the department to provide services to the
324 department in connection with financing the functions and
325 activities provided in ss. 376.30-376.317. The department may
326 ~~enter into one or more such service contracts with the~~
327 ~~corporation and provide~~ payment for payments under such
328 contracts pursuant to s. 376.3071(4)(o), subject to annual
329 appropriation by the Legislature. The proceeds from such service
330 contracts may be used for the corporation's administrative costs
331 and expenses after payments as set forth in subsection (5). Each
332 service contract may have a term of up to 20 years. Amounts
333 annually appropriated and applied to make payments under such
334 service contracts may not include any funds derived from
335 penalties or other payments received from any property owner or
336 private party, including payments received under s.
337 376.3071(6)(b). In compliance with s. 216.313 ~~287.0641~~ and other
338 applicable provisions of law, the obligations of the department
339 under such service contracts do not constitute a general
340 obligation of the state or a pledge of the faith and credit or
341 taxing power of the state nor may such obligations be construed
342 in any manner as an obligation of the State Board of
343 Administration or entities for which it invests funds, other
344 than the department as provided in this section, but are payable
345 solely from amounts available in the Inland Protection Trust
346 Fund, subject to annual appropriation. ~~In compliance with this~~
347 ~~subsection and s. 287.0582,~~ The service contract must expressly
348 include the statements required under s. 216.313. ~~following~~

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349 ~~statement: "The State of Florida's performance and obligation to~~
350 ~~pay under this contract is contingent upon an annual~~
351 ~~appropriation by the Legislature."~~

352 (9) The corporation is not a special district for the
353 purposes of chapter 189 or a unit of local government for the
354 purposes of part III of chapter 218. The provisions of chapters
355 120 and 215, except the limitation on interest rates provided by
356 s. 215.84 which applies to obligations of the corporation issued
357 pursuant to this section, and part I of chapter 287, except s.
358 ~~ss. 287.0582 and 287.0641~~, does ~~de~~ not apply to this section,
359 the corporation, the service contracts entered into pursuant to
360 this section, or debt obligations issued by the corporation as
361 contemplated in this section.

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

364 403.1837 Florida Water Pollution Control Financing
365 Corporation.—

366 (5) The corporation may enter into one or more service
367 contracts with the department under which the corporation shall
368 provide services to the department in connection with financing
369 the functions, projects, and activities provided in ss. 403.1835
370 and 403.8532. The department may ~~enter into one or more service~~
371 ~~contracts with the corporation and provide payment for payments~~
372 under those contracts pursuant to s. 403.1835(9) or s. 403.8533,
373 subject to annual appropriation by the Legislature.

374 (a) The service contracts may provide for the transfer of
375 all or a portion of the funds in the Wastewater Treatment and
376 Stormwater Management Revolving Loan Trust Fund and the Drinking
377 Water Revolving Loan Trust Fund to the corporation for ~~use by~~

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378 ~~the corporation for~~ costs incurred by the corporation in its
379 operations, including, but not limited to, payment of debt
380 service, reserves, or other costs in relation to bonds issued by
381 the corporation, for use by the corporation at the request of
382 the department to directly provide the types of local financial
383 assistance provided in ss. 403.1835(3) and 403.8532(3), or for
384 payment of the administrative costs of the corporation.

385 (b) The department may not transfer funds under any service
386 contract with the corporation without a specific appropriation
387 for such purpose in the General Appropriations Act, except for
388 administrative expenses incurred by the State Board of
389 Administration or other expenses necessary under documents
390 authorizing or securing previously issued bonds of the
391 corporation. The service contracts may also provide for the
392 assignment or transfer to the corporation of any loans made by
393 the department.

394 (c) The service contracts may establish the operating
395 relationship between the department and the corporation and must
396 require the department to request the corporation to issue bonds
397 before any issuance of bonds by the corporation, to take any
398 actions necessary to enforce the agreements entered into between
399 the corporation and other parties, and to take all other actions
400 necessary to assist the corporation in its operations.

401 (d) In compliance with s. 287.0641 and other applicable
402 provisions of law, the obligations of the department under the
403 service contracts do not constitute a general obligation of the
404 state or a pledge of the faith and credit or taxing power of the
405 state, nor may the obligations be construed as an obligation of
406 the State Board of Administration or entities for which it

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407 invests funds, or of the department except as provided in this
408 section as payable solely from amounts available under any
409 service contract between the corporation and the department,
410 subject to appropriation.

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

416 (10) The corporation is not a special district for purposes
417 of chapter 189 or a unit of local government for purposes of
418 part III of chapter 218. The provisions of chapters 120 and 215,
419 except the limitation on interest rates provided by s. 215.84,
420 which applies to obligations of the corporation issued under
421 this section, and part I of chapter 287, except s. ss. 287.0582
422 ~~and 287.0641~~, do not apply to this section, the corporation, the
423 service contracts entered into under this section, or debt
424 obligations issued by the corporation as provided in this
425 section.

426 Section 10. Subsection (2) of section 287.056, Florida
427 Statutes, is repealed.

428 Section 11. Section 45 of chapter 2010-151, Laws of
429 Florida, is amended to read:

430 Section 45. Contracts for academic program reviews,
431 auditing services, health services, or Medicaid services are
432 subject to the transaction or user fees imposed under ss.
433 287.042(1)(h) and 287.057(22), Florida Statutes, only to the
434 extent that such contracts were ~~not~~ subject to such transaction
435 or user fees before July 1, 2010.

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436 Section 12. This act shall take effect July 1, 2011, and
437 applies to initial contracts and agreements, amendments to a
438 contract or agreement, and extensions or renewals of a contract
439 or agreement which are executed on or after that date.