

By the Committees on Budget; and Governmental Oversight and Accountability; and Senator Alexander

576-03630-11

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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 \$1 million over the term of the lease  
170 or agreement if the term of the lease or agreement exceeds 1  
171 fiscal year unless the project or procurement 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 90  
251 days' written notice if properly procured or 10 days' written  
252 notice if improperly procured, if funding for this contract is  
253 specifically eliminated pursuant to a deficit reduction plan  
254 implemented by:

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

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

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262 deficit will occur with respect to appropriations from a  
263 specific trust fund in the current fiscal year.”

264

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

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

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

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

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

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

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

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

290 287.063 Deferred-payment commodity contracts; preaudit

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291 review.-

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

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

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

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

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320 ~~accounting software, and implementation and project management~~  
321 ~~services.~~

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

324 376.3075 Inland Protection Financing Corporation.—

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

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349 Fund, subject to annual appropriation. ~~In compliance with this~~  
350 ~~subsection and s. 287.0582,~~ The service contract must expressly  
351 include the statements required under s. 216.313. ~~following~~  
352 ~~statement: "The State of Florida's performance and obligation to~~  
353 ~~pay under this contract is contingent upon an annual~~  
354 ~~appropriation by the Legislature."~~

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

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

367 403.1837 Florida Water Pollution Control Financing  
368 Corporation.—

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

377 (a) The service contracts may provide for the transfer of

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378 all or a portion of the funds in the Wastewater Treatment and  
379 Stormwater Management Revolving Loan Trust Fund and the Drinking  
380 Water Revolving Loan Trust Fund to the corporation for ~~use by~~  
381 ~~the corporation for~~ costs incurred by the corporation in its  
382 operations, including, but not limited to, payment of debt  
383 service, reserves, or other costs in relation to bonds issued by  
384 the corporation, for use by the corporation at the request of  
385 the department to directly provide the types of local financial  
386 assistance provided in ss. 403.1835(3) and 403.8532(3), or for  
387 payment of the administrative costs of the corporation.

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

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

404 (d) In compliance with s. 287.0641 and other applicable  
405 provisions of law, the obligations of the department under the  
406 service contracts do not constitute a general obligation of the

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407 state or a pledge of the faith and credit or taxing power of the  
408 state, nor may the obligations be construed as an obligation of  
409 the State Board of Administration or entities for which it  
410 invests funds, or of the department except as provided in this  
411 section as payable solely from amounts available under any  
412 service contract between the corporation and the department,  
413 subject to appropriation.

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

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

429 Section 10. Subsection (2) of section 287.056, Florida  
430 Statutes, is repealed.

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

433 Section 45. Contracts for academic program reviews,  
434 auditing services, health services, or Medicaid services are  
435 subject to the transaction or user fees imposed under ss.

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436 287.042(1)(h) and 287.057(22), Florida Statutes, only to the  
437 extent that such contracts were ~~not~~ subject to such transaction  
438 or user fees before July 1, 2010.

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