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# OHIO LEGISLATIVE SERVICE COMMISSION

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134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Frazier and Ray

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### SUMMARY

- Allows the Attorney General to debar a state vendor.
- Allows the Attorney General to request that a court debar a state vendor, as a remedy in a civil action or proceeding between the Attorney General and the vendor.

### DETAILED ANALYSIS

#### Debarment of state vendors

The bill gives the Attorney General the same authority to debar a state vendor as exists under continuing law for the Director of Administrative Services, Executive Director of the Ohio Facilities Construction Commission, and Director of Transportation. The bill also allows the Attorney General to request that a court debar a state vendor, as a remedy in a civil action or proceeding between the Attorney General and vendor. Under continuing law, when a vendor is debarred, the vendor is prohibited from participating in any state contract during the period of debarment (some debarments are permanent).<sup>1</sup>

#### By the Attorney General

Current law provides a separate process for each the Director of Administrative Services, the Executive Director of the Ohio Facilities Construction Commission, and the Director of Transportation to debar a state vendor, generally related to the procurement of goods and services, public improvement projects, or highway projects, respectively. Each process follows these steps:

- Debarment must be for one of several reasons listed in the law (see “**Reasons for debarment**” below);

<sup>1</sup> R.C. 9.242.

- The Director must propose a debarment if the Director reasonably believes that grounds for debarment exist;
- Notice of the proposed debarment is sent to the vendor;
- The vendor may request a hearing to be held under Ohio’s Administrative Procedure Act<sup>2</sup>;
- The Director determines the length of the debarment and may rescind the debarment at any time;
- Notice of an official debarment is sent to the vendor;
- The vendor is prohibited from participating in a state contract during the period of debarment.<sup>3</sup>

The bill specifies the Attorney General’s authority to debar a vendor is concurrent to the continuing authority of the Director; the bill in no way modifies a Director’s authority.

### Reasons for debarment

The bill does not modify the reasons for debarment, which are set forth in this table<sup>4</sup> to show the reasons each Director (and now under the bill, the Attorney General) may debar a vendor.

Reason for debarment	Debarment by Director of Administrative Services (and the Attorney General under the bill)	Debarment by Executive Director of the Facilities Construction Commission (and the Attorney General under the bill)	Debarment by Director of Transportation (and the Attorney General under the bill)
Abused the selection process	✓		✓
Failed to substantially perform a contract	✓		✓
Failed to cooperate in monitoring contract performance, failed to respond to complaints to the	✓		✓

<sup>2</sup> Chapter 119 of the Revised Code.

<sup>3</sup> R.C. 125.25 (DAS), 153.02 (OFCC), and 5513.06 (ODOT).

<sup>4</sup> R.C. 125.25 (DAS), 153.02 (OFCC), and 5513.06 (ODOT).

Reason for debarment	Debarment by Director of Administrative Services (and the Attorney General under the bill)	Debarment by Executive Director of the Facilities Construction Commission (and the Attorney General under the bill)	Debarment by Director of Transportation (and the Attorney General under the bill)
vendor, or accumulated repeated justified complaints regarding performance of a contract			
Attempted to influence a public employee to breach ethical conduct standards or to influence a contract award	✓		✓
Colluded to restrain competition by any means	✓		✓
Been convicted of a criminal offense related to the application for or performance of any public or private contract (embezzlement, falsification or destruction of records, any other offense that directly reflects on the vendor's business integrity)	✓	✓	✓
Been convicted under state or federal antitrust laws	✓	✓	✓
Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract	✓	✓	✓
Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director (or Attorney General, under the bill)	✓		✓

Reason for debarment	Debarment by Director of Administrative Services (and the Attorney General under the bill)	Debarment by Executive Director of the Facilities Construction Commission (and the Attorney General under the bill)	Debarment by Director of Transportation (and the Attorney General under the bill)
Had a determination of unresolved finding for recovery by the Auditor of State	✓		
Acted in such a manner as to be debarred from participating in a contract with another governmental agency	✓	✓	✓
Defaulted on a contract requiring the execution of a takeover agreement		✓	
Failed to maintain coverage as required by the Bureau of Workers' Compensation		✓	
Failed to maintain a drug-free workplace program		✓	
Failed to maintain required insurance		✓	
Misrepresented the firm's qualifications in the selection process		✓	

### By a court

The bill allows the Attorney General to request that a court of common pleas debar a state vendor as a remedy in a civil action or proceeding between the Attorney General and the vendor. In deciding whether to grant the request, the court must consider whether debarment is in the public interest. If the court decides in favor of debarment, the court determines the length of the debarment period and may rescind the debarment at any time. As with any state vendor debarred under the current processes, the vendor is not eligible to bid for or participate

in any state contract during the period of debarment. Finally, the Attorney General must maintain a list of all vendors debarred by a court.<sup>5</sup>

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## HISTORY

Action	Date
Introduced	12-09-21

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<sup>5</sup> R.C. 2323.59.