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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Crossman and Hicks-Hudson

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SUMMARY

- Makes two categories of reasons for debarring a state vendor: permissive and mandatory.
- Limits a period of debarment to one to three years.
- Eliminates the ability to modify or rescind a debarment if it was a mandatory debarment.

DETAILED ANALYSIS

Debarment of state vendors

Under continuing law, the Director of Administrative Services, Executive Director of the Ohio Facilities Construction Commission, and Director of Transportation have authority to debar a state vendor. When a vendor is debarred, the vendor is prohibited from participating in any state contract during the period of debarment.¹

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 table below);
- The Director proposes a debarment if the Director reasonably believes that grounds for debarment exist;

¹ R.C. 9.242, not in the bill.

- 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;²
- 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.

The bill modifies this in three ways. First, a debarment must last between one to three years under the bill; current law does not place any restriction on the duration of a debarment. Second, in the case of a debarment that is considered mandatory under the bill, the Director is no longer allowed to rescind or modify; continuing law allows a Director to rescind or modify a debarment that is considered permissive under the bill.

Finally, the bill separates the reasons for debarment into two categories: mandatory and permissive. The table below sets forth the reasons for debarment (first column) and indicates which reasons are available to each Director (second, third, and fourth columns). The table indicates if a reason exists now and continues under the bill (“continuing law”) or if the reason is newly created under the bill (“new under the bill”). And, the table indicates whether the bill classifies the reason as “permissive” or “mandatory.” Where the table says “N/A,” that means the Director does not have authority to utilize that reason to debar a state vendor.³

Reason for debarment	Debarment by Director of Administrative Services	Debarment by Executive Director of the Facilities Construction Commission	Debarment by Director of Transportation
Abused the selection process	Continuing law; permissive	N/A	Continuing law; permissive
Failed to substantially perform a contract	Continuing law; permissive	N/A	Continuing law; permissive

² Chapter 119 of the Revised Code.

³ R.C. 125.25 (DAS), 153.02 (OFCC), and 5513.06 (ODOT).

Reason for debarment	Debarment by Director of Administrative Services	Debarment by Executive Director of the Facilities Construction Commission	Debarment by Director of Transportation
Failed to cooperate in monitoring contract performance, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract	Continuing law; permissive	N/A	Continuing law; permissive
Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director	Continuing law; permissive	N/A	Continuing law; permissive
Had a determination of unresolved finding for recovery by the Auditor of State	Continuing law; permissive	N/A	N/A
Acted in such a manner as to be debarred from participating in a contract with another governmental agency	Continuing law; permissive	Continuing law; permissive	Continuing law; permissive
Attempted to influence a public employee to breach ethical conduct standards (or to influence a contract award)	Continuing law; mandatory	New under the bill; mandatory	Continuing law; mandatory
Colluded to restrain competition by any means	Continuing law; mandatory	New under the bill; mandatory	Continuing law; mandatory
Guilty of a criminal offense related to the application for or performance of any public or private contract	Continuing law; mandatory	Continuing law; mandatory	Continuing law; mandatory
Guilty under state or federal antitrust laws	Continuing law; mandatory	Continuing law; mandatory	Continuing law; mandatory
Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract	Continuing law; mandatory	Continuing law; mandatory	Continuing law; mandatory

Reason for debarment	Debarment by Director of Administrative Services	Debarment by Executive Director of the Facilities Construction Commission	Debarment by Director of Transportation
Guilty under state or federal corruption laws	New under the bill; ⁴ mandatory	New under the bill; mandatory	New under the bill; mandatory
Admitted to a violation of Ohio criminal offense “engaging in corrupt activity”	New under the bill; ⁵ mandatory	New under the bill; mandatory	New under the bill; mandatory
Defaulted on a contract requiring the execution of a takeover agreement	N/A	Continuing law; permissive	N/A
Failed to maintain coverage as required by the Bureau of Workers’ Compensation	N/A	Continuing law; permissive	N/A
Failed to maintain a drug-free workplace program	N/A	Continuing law; permissive	N/A
Failed to maintain required insurance	N/A	Continuing law; permissive	N/A
Misrepresented the firm’s qualifications in the selection process	N/A	Continuing law; permissive	N/A

HISTORY

Action	Date
Introduced	01-18-22

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⁴ Current law may address this under the “guilty of a criminal offense related to the application for or performance of any public or private contract” reason or the “violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director” reason.

⁵ Current law may address this under the “violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director” reason.