



S.B. 143

126th General Assembly
(As Introduced)

Sen. Jacobson

BILL SUMMARY

- Imposes contract, record-keeping, auditing, and other requirements on persons that receive money from governmental entities for the provision of services benefiting individuals or the public.
- Provides civil remedies for the recovery of money due to a governmental entity under any contract the governmental entity enters into with a person for the provision of goods, services, or construction.
- Creates the Government Contracting Advisory Council.

TABLE OF CONTENTS

Overview	2
Contracts for the provision of services benefiting individuals or the public	2
Definitions.....	2
Contract requirement.....	3
Terms of the contract	5
Payment under the contract.....	6
Record-keeping requirements	7
Audit and financial review requirements	7
Inspection of records; subcontractors	8
Recovery	10
Limited application of the bill to certain contracts	12
Rule-making requirements	13
Government Contracting Advisory Council	14
Contracts for the provision of goods, construction, and all other services	15
Application.....	15
Definitions.....	15
Recovery	16

CONTENT AND OPERATION

Overview

The bill addresses financial accountability with respect to persons that contract with a state agency or any political subdivision of the state for the provision of goods, services, or construction. The bill distinguishes between two scenarios:

--With respect to persons who receive \$25,000 or more from a governmental entity for the provision of services benefiting individuals or the public (subject to a number of exemptions), the bill imposes contract, record-keeping, auditing, and other requirements. It authorizes civil remedies for the recovery of money received by the person in excess of the contract payment earned. It provides the Attorney General and the Auditor of State with rule-making functions related to the implementation of the bill, and creates the Government Contracting Advisory Council to review those rules and make recommendations regarding their adoption, amendment, or repeal.

--With respect to persons who receive money from governmental entities for the provision of goods, construction, or any other services under contracts to which some or all of the above-described requirements do not apply, the bill authorizes civil remedies for the recovery of any money received by the person that is not earned under the terms of the contract with the governmental entity.

Contracts for the provision of services benefiting individuals or the public

(R.C. 9.23 to 9.239)

Definitions

(R.C. 9.23)

The bill introduces a number of definitions that are instrumental to its application and implementation. These definitions are as follows:

(1) "**Recipient**" means a person that enters into a contract with a governmental entity under the bill.

(2) "**Governmental entity**" means a state agency or a political subdivision of the state. "**State agency**" means any organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state government.

(3) "**Contract payment earned**" means payment pursuant to a contract entered into under the bill for direct costs actually incurred in performing the contract, up to the minimum percentage of money that is to be used to pay for the recipient's direct costs, as specified in the contract, plus allocable nondirect costs associated with those direct costs.

(4) "**Direct costs**" means the costs of providing services that directly benefit a patient, client, or the public and that are set forth in the contract entered into under the bill.

(5) "**Minimum percentage of money that is to be used to pay for the recipient's direct costs**" means the percentage of the total amount of the contract entered into under the bill that, at a minimum, has to be used to pay for the recipient's direct costs in performing the contract in order for the recipient to earn the total amount of the contract.

(6) "**Allocable nondirect costs**" means the amount of nondirect costs allocated as a result of actual expenditures on direct costs. "Allocable nondirect costs" are calculated as follows: direct costs actually incurred for the provision of services pursuant to a contract entered into under the bill, divided by the minimum percentage of money that is to be used to pay for the recipient's direct costs, as specified in the contract, minus the direct costs actually incurred.

(7) "**Contracting authority**" of a governmental entity means the director or chief executive officer, in the case of a state agency, or the legislative authority, in the case of a political subdivision.

(8) A **judgment** is "**uncollectible**" if, at least 90 days after the judgment is obtained, the full amount of the judgment has not been collected and either a settlement agreement between the governmental entity and the recipient has not been entered into or a settlement agreement has been entered into but has not been materially complied with.

Contract requirement

General application (R.C. 9.231(A)(1) and (2)). Generally, the bill prohibits a governmental entity from transferring money totaling **\$25,000 or more** to any person for the provision of services for the primary benefit of individuals or the public--and *not* for the primary benefit of a governmental entity or the employees of a governmental entity--unless the contracting authority of the governmental entity first enters into a written contract with the person.¹ The

¹ *The bill specifies that, with respect to a nonprofit association, corporation, or organization established for the purpose of providing educational, technical, consulting,*

contract must be signed by the person or by an officer or agent of the person authorized to legally bind the person and must embody *all* of the requirements and conditions set forth in the bill. (See "*Limited application of the bill to certain contracts*," below.)

If the transfer of money occurs over the course of a governmental entity's fiscal year, rather than in a lump sum, the contracting authority of the governmental entity is required to enter into the written contract with the person at the point during the governmental entity's fiscal year that at least \$25,000 has been transferred by the governmental entity to the person. Thereafter, the contracting authority must enter into the written contract with the person at the beginning of the governmental entity's fiscal year, if, during the immediately preceding fiscal year, the governmental entity transferred to that person an aggregate amount totaling at least \$25,000.

Also, if the money was transferred by or through a state agency to a political subdivision prior to its transfer to the person, the bill requires the contracting authority of the state agency to determine whether it or the contracting authority of the political subdivision will enter into the written contract with the person. If the money was transferred by or through more than one state agency to the person for the provision of services to the same population, the contracting authorities of those agencies are to determine which one of them will enter into the written contract with the person.

Exemptions (R.C. 9.231(B)). This contract requirement does *not* apply if the money is transferred to a person pursuant to a contract with the United States or a governmental entity under any of the following circumstances:

(1) The person receives the money directly or indirectly from the United States, and no governmental entity exercises any oversight or control over the use of the money.

(2) The person receives the money solely in return for the performance of services intended to help preserve public health or safety under circumstances requiring immediate action as a result of a natural or man-made emergency.

(3) The person receives the money *solely* in return for the performance of one or more of the following types of services:

training, financial, or other services to its members in exchange for membership dues and other fees, any of the services provided to a member that is a governmental entity is to be considered, for purposes of this provision, a service "for the primary benefit of a governmental entity or the employees of a governmental entity" (R.C. 9.231(C)).

(a) Medical, therapeutic, or other health-related services provided by a person *if* the amount received is a set fee for each time the person provides the services, is determined in accordance with a fixed rate per unit of time, or is a capitated rate, *and* the fee or rate is reasonable and customary in the person's trade or profession;

(b) Medicaid-funded services provided by a nursing home, hospital, or intermediate care facility for the mentally retarded for which payment is calculated on the basis of the person's cost of providing the services.²

(c) Services, other than administrative or management services or any of the services described in (a) or (b), above, that are commonly purchased by the public at an hourly rate or at a set fee for each time the services are provided, *unless* the services are performed for the benefit of children, persons who are eligible for the services by reason of advanced age, medical condition, or financial need, or persons who are confined in a detention facility (as defined in R.C. 2921.01), *and* the services are intended to help promote the health, safety, or welfare of those parties;

(d) Educational services provided by a school to children eligible to attend that school. (For purposes of this provision, "school" means any school operated by a school district board of education, any community school established under state law, or any nonpublic school for which the State Board of Education prescribes minimum education standards.)

(e) Services provided by a foster home (as defined in R.C. 5103.02);

(f) "Routine business services other than administrative or management services," as that term is defined by the Attorney General by rule adopted in accordance with the Administrative Procedure Act.

Terms of the contract

(R.C. 9.232)

A contract entered into under the bill must, at a minimum, set forth all of the following:

² For purposes of this provision, "Medicaid" has the same meaning as in R.C. 5111.01; "nursing home" means a nursing home or home for the aging, as those terms are defined in R.C. 3721.01, that is issued a license by the Department of Health pursuant to R.C. 3721.02; "hospital" means a facility that meets the operating standards of R.C. 3727.02; and "intermediate care facility for the mentally retarded" has the same meaning as in R.C. 5111.20.

(1) The minimum percentage of money that is to be used to pay for the recipient's direct costs;

(2) The records that a recipient must maintain to document direct costs;

(3) If some of the recipient's obligations under the contract involve the performance of any of the types of services described in (3)(a), (c), or (f), above, the name and telephone number of the individual designated by the governmental entity as the contact for obtaining approval of contract amounts (see "Inspection of records; subcontractors," below);

(4) The financial review and audit requirements established by the bill and by rules of the Auditor of State adopted under the bill;

(5) The provisions established by rules of the Attorney General adopted under the bill;

(6) Permissible dispositions of money received by a recipient in excess of the contract payment earned, if the excess is not to be repaid to the governmental entity.

Payment under the contract

(R.C. 9.233)

The bill states that a recipient is entitled to the contract payment earned, but is never entitled to *more than* the contract payment earned. The following example illustrates how the "contract payment earned" amount is determined:

Suppose that the Department of Health enters into a \$100,000 contract with Company X for services. The contract, as required by the bill, provides for a minimum percentage of the total amount of the contract that Company X must use to pay for its direct costs in performing the contract, which in this case we will designate as 90%, or \$90,000. Say that Company X actually does spend \$90,000 on the direct costs that are set forth in the contract. So its "contract payment earned" is the sum of Company X's direct costs (\$90,000) plus its allocable nondirect costs associated with those direct costs. Recall that "allocable nondirect costs" is a defined term, calculated by dividing the direct costs actually incurred by the contract's minimum percentage of money that is to be used to pay for the direct costs, and then subtracting the direct costs incurred. In this case, the allocable nondirect costs equal $(\$90,000/0.90)-\$90,000$, which works out to $\$100,000-\$90,000$, or \$10,000. So the contract payment earned is the \$90,000 in direct costs plus \$10,000 in allocable nondirect costs, or \$100,000. But if Company X spent less than \$90,000 on direct costs, the total "contract payment earned" that it could receive would be less than the full \$100,000 amount of the

contract. And if it spent more than \$90,000 on direct costs, it would not receive more than \$100,000 under the contract, because the bill caps the amount of direct costs that can be counted toward the "contract payment earned" at the contract's minimum percentage of the total amount of the contract that is to be used to pay for direct costs.

In order to determine the contract payment earned, all financial books and records open to inspection pursuant to the bill are to be held to standards consistent with generally accepted accounting principles. Recipients are required to repay any money received in excess of the contract payment earned to the governmental entity or, if a different disposition is provided for in the recipient's contract with the governmental entity, dispose of that money in accordance with the terms of the contract.

Record-keeping requirements

(R.C. 9.234(A)(1) and (2))

Generally, the bill requires recipients--with respect to any money received *prior* to the performance of the recipient's obligations under the contract with the governmental entity *and* any money received in excess of the contract payment earned--to keep current and accurate records of the receipt and use of the money in a manner consistent with the contract. With respect to any money received *after* the recipient has performed its obligations under the contract, current and accurate records of the recipient's expenditures on direct costs must be kept.

Audit and financial review requirements

(R.C. 9.234(A)(3) and (B))

Under the bill, recipients must annually provide the contracting authority of the governmental entity with an audit report or financial review, if required under the bill, *or* financial statements, major categories of expenditure of the money, and a summary of the activities for which the recipient used the money.

As indicated by the following chart, the type of financial reporting required is dependent upon the amount of money a recipient receives in a fiscal year pursuant to *one or more* contracts entered into under the bill.³

³ *The references in this part of the bill to fiscal year mean the recipient's fiscal year (R.C. 9.234(C)).*

AMOUNT OF MONEY RECEIVED IN A FISCAL YEAR	TYPE OF FINANCIAL REPORTING REQUIRED	CAN THE REQUIREMENT BE WAIVED?
At least \$100,000 but less than \$300,000	Financial review	Yes, if the contracting authority of each governmental entity from which the recipient received money agrees to the waiver.
At least \$300,000 but less than \$500,000	Financial review	No
\$500,000 or more	Financial audit	No

The bill requires that the financial reviews be performed by an independent public accounting firm and in accordance with the financial review standards of the American Institute of Certified Public Accountants. The financial review contract between the recipient and the firm must provide that the state is an intended third-party beneficiary of the contract.

Financial audits are to be performed according to generally accepted auditing standards by an independent public accounting firm. The audit also must comply with any rules adopted by the Auditor of State under the bill. The audit contract between the recipient and the firm must provide that the state is an intended third-party beneficiary of the contract. The bill states that an audit performed pursuant to the federal "Single Audit Act of 1984" is sufficient if the state is an intended third-party beneficiary of the audit contract.

Inspection of records; subcontractors

(R.C. 9.235)

The bill generally provides that the financial books and records of a recipient, and the financial books and records of any person with which the recipient contracts for the performance of the recipient's obligations under the recipient's contract with the governmental entity (a "subcontractor"), are open to inspection by the governmental entity and by the state from the time the recipient first applies for payment under the contract. If the recipient is paid before the performance of its obligations under the contract, the financial books and records of the recipient and of any subcontractor are open to inspection from the first anniversary of the payment or from any earlier date that the contract may provide.

These provisions do not apply, however, to any person that contracts with the recipient solely for the performance of *some* of the recipient's obligations

under the recipient's contract with the governmental entity that directly benefit the recipient's patients or clients, *if* either of the following applies:

(1) The services provided by the person are (a) medical, therapeutic, or other health-related services, (b) services commonly purchased by the public at an hourly rate or set fee, or (c) routine business services other than administrative or management services, that are exempt from the bill's contract requirement (see "Exemptions," above) **and** the full amount of the person's contract constitutes direct costs for the recipient and is reasonable and customary in the person's trade or profession. The amount of the person's contract with the recipient is considered "**reasonable and customary in the person's trade or profession**" if (i) the amount is equal to or less than the maximum amount for those services specified in the recipient's contract with the governmental entity, (ii) the amount was approved by the governmental entity after the recipient entered into the contract with the governmental entity, or (iii) a maximum amount for those services was specified in the recipient's contract with the governmental entity, the recipient's original contract with a person for the performance of those services was subsequently canceled or otherwise unfulfilled, the recipient entered into a replacement contract with another person, and the amount of that contract is not more than 25% above the maximum amount for the services specified in the recipient's contract with the governmental entity.

(2) The services provided by the person are (a) Medicaid-funded services provided by a nursing home, hospital, or intermediate care facility for the mentally retarded, (b) educational services, or (c) services provided by a foster home, that are exempt from the bill's contract requirement (see "Exemptions," above).

Generally, if a recipient contracts with another person for the performance of some or all of the recipient's obligations under the recipient's contract with the governmental entity, the recipient is entitled to claim spending by the subcontractor as direct costs *only* to the extent the subcontractor has spent money on direct costs in the performance of the recipient's obligations and *only* if the subcontractor complies with all of the terms and conditions relating to the performance that the recipient is required to comply with under the contract with the governmental entity. These conditions do not apply, however, with respect to any person described in (1) or (2), above.

The bill states that these provisions cannot be construed as making any record of the receipt or expenditure of nonpublic money a public record.

Recovery

(R.C. 9.236(A))

The bill states that a recipient is liable to repay to the governmental entity any money received in excess of the contract payment earned. To recover this excess, it authorizes civil actions and permits the governmental entity to void certain contracts.

Civil actions (R.C. 9.236(B) and (C)). Under the bill, a governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient. In such an action, any person with which the recipient has contracted for the performance of the recipient's material obligations to a group of beneficiaries under the recipient's contract with the governmental entity may be made a party defendant *if* the governmental entity can prove that the total amount received by the person from the recipient was not expended on direct costs or retained as allocable nondirect costs. In such a case, the person may be made a party defendant and the governmental entity may obtain a judgment against the person.

If a governmental entity obtains a judgment against a recipient in a civil action and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of (1) the unsatisfied amount of the judgment or (2) the total amount received by the person from the recipient minus the total amount spent by the person on direct costs for services actually performed and retained by the person as allocable nondirect costs associated with those direct costs. Additionally, if a governmental entity obtains a judgment against a recipient or against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, that judgment debtor is precluded from contracting with a governmental entity to the extent provided in current law for a debtor against whom a finding of recovery has been issued (R.C. 9.24(A) and (B), not in the bill).

Voided contracts (R.C. 9.236(D) and (E)). In addition to the remedies mentioned above, a governmental entity may void the following contracts:

--*Contracts between a recipient and a subcontractor.* A contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity may be voided by the governmental entity to the extent that the other person has not yet performed its obligations under the contract or cannot demonstrate that the money it received was expended on direct costs or retained as allocable nondirect costs.

--*Contracts between a recipient and an "insider" or other person.* If a recipient is liable to repay money to a governmental entity and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to other remedies described above, and after the governmental entity has obtained a judgment against any necessary third party, the governmental entity may void any of the following contracts:

(1) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if either of the following applies:

(a) The recipient has paid substantial value for property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person is liable to the governmental entity for the full amount the recipient paid for the property; otherwise, the person is liable to the governmental entity only for the market value of the property.

(b) The person with which the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and the money was not expended on direct costs or retained as allocable nondirect costs. In such a case, the governmental entity may void the contract to the extent the money was not expended on direct costs or retained as allocable nondirect costs, and the person is liable to the governmental entity for that amount.

(2) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, *if* the employee has direct knowledge of the use of the money that the recipient obtained pursuant to the contract with the governmental entity and either (a) or (b), above, applies.

(3) A contract between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person, to the extent that the other person has not yet performed its obligations under the contract;

(4) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.

Limited application of the bill to certain contracts

(R.C. 9.231(A)(3))

Some contracts between a governmental entity and a recipient that are entered into under the bill are not subject to *all* of the bill's requirements. More specifically, requirements and conditions of the bill relating to "direct costs" or "contract payment earned," including the record-keeping, payment, and recovery provisions described above, do *not* apply with respect to the following:

(1) Contracts to which all of the following apply:

(a) The amount received for the services is a set fee for each time the services are provided, is determined in accordance with a fixed rate per unit of time or per service, or is a capitated rate, and the fee or rate is established by competitive bidding or by a market rate survey of similar services provided in a defined market area. The survey may be one conducted by or on behalf of the governmental entity or an independent survey accepted by the governmental entity as statistically valid and reliable.

(b) The services are provided in accordance with standards established by state or federal law for their delivery, which standards are enforced by the federal government, a governmental entity, or an accrediting organization recognized by the federal government or a governmental entity.

(c) Payment for the services is made after the services are delivered and upon submission to the governmental entity of an invoice or other claim for payment as required by the terms of the contract or any applicable state or federal law.

(2) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that meets all of the following requirements:

(a) The program calculates the reimbursement rate on the basis of the previous year's experience or in accordance with an alternative method set forth in rules adopted by the Department of Job and Family Services.

(b) The reimbursement rate is derived from a breakdown of direct and indirect costs.

(c) The program's guidelines describe types of expenditures that are allowable and not allowable under the program and delineate which costs are acceptable as direct costs for purposes of calculating the reimbursement rate.

(d) The program includes a uniform cost reporting system with specific audit requirements.

(3) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that calculates the reimbursement rate on a fee for service basis in compliance with the U.S. Office of Management and Budget Circular A-87, as revised May 10, 2004.

Rule-making requirements

Attorney General (R.C. 9.237). The Attorney General is required to adopt rules in accordance with the Administrative Procedure Act governing the terms of any contract entered into under the bill. The rules must set forth all of the following:

(1) A definition of permissible components of direct costs, including a list of expenditures that may never be included in direct costs and a nonexclusive list of expenditures that may be included in direct costs pursuant to agreement of the parties;

(2) Permissible methods by which a recipient may keep records documenting direct costs and how long those records must be retained;

(3) Remedies not inconsistent with those provided under the bill (see "**Recovery**," above) in the event of a breach of the contract;

(4) Terms to be included in contracts between recipients and persons other than the governmental entity, including notice of the remedies available to the governmental entity if the money under the contract with the governmental entity is not expended on direct costs or retained as allocable nondirect costs;

(5) Any other provisions the Attorney General considers necessary to carry out the purposes of the bill.

Auditor of State (R.C. 9.238). Under the bill, the Auditor of State is required to prescribe a single form of the financial reviews to be used for all governmental entities. The Auditor of State is permitted to adopt rules in accordance with the Administrative Procedure Act governing the form and content of the audit reports and to prescribe a single form of the report to be used for all governmental entities. Upon request made by a recipient, the Auditor of State must, to the extent possible, require all governmental entities that have entered into a contract with that recipient to accept a particular audit report.

Government Contracting Advisory Council

(R.C. 9.239)

The bill creates the Government Contracting Advisory Council, and requires the Attorney General and Auditor of State to consult with the Council on the performance of their rule-making functions under the bill and to consider any recommendations of the Council.⁴ The Council consists of the following members or their designees:

- (1) The Attorney General;
- (2) The Auditor of State;
- (3) The Director of Aging;
- (4) The Director of Development;
- (5) The Director of Job and Family Services;
- (6) The Director of Mental Retardation and Developmental Disabilities;
- (7) The Director of Rehabilitation and Correction;
- (8) The executive director of the County Commissioners' Association of Ohio;
- (9) The president of the Ohio Grantmakers Forum;
- (10) The president of the Ohio Chamber of Commerce;
- (11) The president of the Ohio State Bar Association;
- (12) The president of the Ohio Society of Certified Public Accountants;
- (13) The executive director of the Ohio Association of Nonprofit Organizations;
- (14) The president of the Ohio United Way;
- (15) One additional member appointed by the Attorney General; and

⁴ *The bill states that the Council is not subject to the Sunset Review Committee Law (R.C. 101.82 to 101.87).*

(16) One additional member appointed by the Auditor of State.⁵

The Attorney General or the Attorney General's designee is to be the chairperson of the Council. The Council is required to meet at least once every two years to review the rules adopted under the bill and to make recommendations to the Attorney General and Auditor of State regarding the adoption, amendment, or repeal of those rules. The Council must also meet at the request of the Attorney General or Auditor of State.

The bill specifies that (1) the two appointed members are to serve three-year terms, (2) original appointments are to be made not later than 60 days after the bill's effective date, and (3) any vacancies are to be filled in the same manner as the original appointment. The Office of the Attorney General is required by the bill to provide necessary staff, facilities, supplies, and services to the Council. Council members are to serve without compensation or reimbursement.

Contracts for the provision of goods, construction, and all other services

(R.C. 9.241)

Application

This portion of the analysis deals with the bill's recovery provisions that do *not* apply with respect to any contract that (1) is entered into by a governmental entity pursuant to the bill's contract requirements described above (R.C. 9.231) *and* (2) is subject to the recovery provisions included in those requirements (R.C. 9.236).

Definitions

For this portion of the bill, "**recipient**" means a person that enters into or is awarded a contract with a governmental entity for the provision of goods, services, or construction. "**Governmental entity**" and "**a judgment is uncollectible**" have the same meanings as set forth above.

⁵ *If an agency or organization represented on the Council ceases to exist in the form it has on the effective date of the bill, the successor entity is to be represented in its place. If there is no successor entity, or if it is not clear what entity is the successor, the Attorney General is required to designate an agency or organization to be represented in place of the agency or organization originally represented on the Council.*

Recovery

The bill states that a recipient is liable to repay to a governmental entity any money received but not earned under the terms of a contract with the governmental entity. It authorizes civil actions and permits the governmental entity to void certain contracts.

Civil actions. Under the bill, a governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient. In such an action, any person with which the recipient has contracted for the performance of the recipient's material obligations under the recipient's contract with the governmental entity may be made a party defendant *if* the governmental entity can prove that the person received money from the recipient that the person did not earn. In such a case, the person may be made a party defendant and the governmental entity may obtain a judgment against the person.

If a governmental entity obtains a judgment against a recipient in a civil action and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of (1) the unsatisfied amount of the judgment or (2) the total amount received by the person from the recipient minus the total amount earned by the person under the terms of the recipient's contract with the governmental entity. Additionally, if a governmental entity obtains a judgment against a recipient or against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, that judgment debtor is precluded from contracting with a governmental entity to the extent provided in current law for a debtor against whom a finding of recovery has been issued (R.C. 9.24(A) and (B)).

Voided contracts. In addition to the remedies mentioned above, a governmental entity may void the following contracts:

--*Contracts between a recipient and subcontractor.* A contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity may be voided by the governmental entity to the extent that the other person has not yet performed its obligations under the contract.

--*Contracts between a recipient and an "insider" or other person.* If a recipient is liable to repay money to a governmental entity under this portion of the bill and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to the other remedies previously mentioned, and after the governmental entity has obtained a judgment against any necessary third party, the governmental entity may void any of the following contracts:

(1) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if either of the following applies:

(a) The recipient has paid substantial value for property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person is liable to the governmental entity for the full amount the recipient paid for the property; otherwise, the person is liable to the governmental entity only for the market value of the property.

(b) The person with which the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and has used the money other than for the performance of the contract. In such a case, the governmental entity may void the contract to the extent that the person has used the money other than for the performance of the contract, and the person is liable to the governmental entity for that amount.

(2) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, if the employee has direct knowledge of the use of the money that the recipient obtained pursuant to the contract with the governmental entity and either (a) or (b) , above, applies.

(3) A contract between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person, to the extent that the other person has not yet performed its obligations under the contract;

(4) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-04-05	pp. 481-482

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