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# COUNTY ADVISORY BULLETIN

**CAB**

*Published by: County Commissioners Association of Ohio*

37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195

Phone: 614-221-5627 • Fax: 614-221-6986 • [www.ccao.org](http://www.ccao.org)

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**Bulletin 2004-01**

**February 2004**

## **DEBT CHECK PROVISION OF HOUSE BILL 95 REQUIRES COUNTIES TO CHECK AUDITOR OF STATE'S FINDINGS FOR RECOVERY DATABASE? BEFORE AWARDING CONTRACTS FOR GOODS, SERVICES, OR CONSTRUCTION**

Effective Date of Debt Check Program; January 1, 2004.

Revised Code Sections Affected: Newly-enacted section 9.24.

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House Bill 95 of the 125<sup>th</sup> General Assembly, the state's two-year budget bill for state fiscal years 2004 and 2005, contains language commonly known as the "debt check provision" or the "findings for recovery" provision. In accordance with the provisions of ORC section 9.24, which was enacted in the bill, Auditor of State Betty Montgomery has now opened the "findings for recovery database" on her Internet website.

Effective January 1, 2004, ORC section 9.24 bars any state agency, county, or other political subdivision from awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, to any person against whom a finding for recovery has been issued by the Auditor of State, if that finding is unresolved.

More information on the database can be found in Auditor of State Bulletin 2003-09, issued on December 23, 2003. A copy of that bulletin is attached to this CAB.

### **What is an unresolved finding?**

The debt check provision states that a finding for recovery is "unresolved," unless **one** of the following criteria apply:

- 1) The money identified in the finding for recovery is paid in full to the state agency or political subdivision to whom the money was owed;
- 2) The debtor has entered into a repayment plan that is approved by the attorney general and the state agency or political subdivision to whom the money identified in the finding for recovery is owed. This repayment may include, but does not have to include, a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the finding for recovery was issued;
- 3) The attorney general waives a repayment plan described in number 2 above for good cause;
- 4) The debtor and state agency or political subdivision to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement;
- 5) The state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the attorney general concurs, that **all** of the following are true: a) essential services the state agency or political subdivision is seeking to obtain from the debtor cannot be provided by any other person but the debtor; and b) awarding a contract to the debtor for the essential services described in a) above is in the best interest of the state; and c) good faith efforts have been made to collect the money identified in the finding for recovery.
- 6) The debtor has commenced an action to contest the finding for recovery and a final determination on the action has not yet been reached.

### **How does the auditor of state's data base work?**

The auditor's data base is designed to provide public offices with a method for verifying and certifying that a person to whom they are planning to award a contract does have an unresolved finding for recovery issued against him or her.

Division (D) of ORC section 9.24 requires the auditor's data base to be updated on a quarterly basis to indicate findings that have been resolved, based on reports received from the attorney general. However, the auditor and the attorney general have agreed

to a process to update the database as soon as possible after a finding has been resolved. A finding for recovery will not be listed in the auditor's database as resolved until written notification of the resolution is received by the auditor from the attorney general.

To access the database, go the auditor's home page and click on the *audits* link, which appears along the thin red band that runs along the top margin of the auditor's home page. The other links along that same thin red band include *news room*, *publications*, *learning center*, and *organization*.

Once you reach the audits page on the website, click on *Finding for Recovery Search*. Popping up on your screen then will be a page explaining the debt check program. You may then click on one of two links at the bottom of the page, either for a certified search or a search that is not certified. Running a certified search will allow you to meet the mandate of ORC 9.24 to check whether your contractors have unresolved findings issued against them.

A non-certified search allows users to be more specific about the person for whom they are searching if that person does in fact have an unresolved finding for recovery issued against him or her. The non-certified search provides additional information about the person and the finding, as well as a link to the audit report in which the finding was issued.

At the end of the certified search process, if none of the search results match the person to whom you plan to award a contract, you can print off a certification page documenting this fact for audit purposes. You may then proceed with the contract with the knowledge that you have met the legal mandate.

Please note that a contract could be declared void if a county does not take the time to verify the provider's status on the findings for recovery list. Under a strict reading of the law, a county's contract could be voided even if the provider is **not** the subject of a listed finding for recovery, if the county did not go through the process to verify that fact under the debt check provision.

In addition to searches by name, the database allows users to obtain a complete listing of all unresolved findings issued since January 1, 2001, even if those findings subsequently have been resolved. The database also will contain, for informational purposes only, the names of all persons against whom findings for recovery have been issued since January 1, 2001, even if those findings have been resolved.

Questions on the database should be directed to the auditor's office at 1-800-282-0370. Questions regarding the status of recovery actions should be directed to the attorney

general's office at 614-644-1234. Questions on the debt check provision also may be directed to Doug Putnam of CCAO at 614-221-5627, 888-757-1904 or [dputnam@ccao.org](mailto:dputnam@ccao.org)