

**Corrected Version
As Introduced**

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S. B. No. 131

Senators Gillmor, Cafaro

Cosponsors: Senators Widener, Grendell

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A B I L L

To amend sections 125.04 and 5513.02 and to enact 1
sections 125.091, 125.092, and 125.093 of the 2
Revised Code to require that the Director of 3
Administrative Services establish a program that 4
ensures that supplies composed of biobased 5
products are purchased by the Department of 6
Administrative Services, state agencies, and 7
state-supported institutions of higher education. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 125.04 and 5513.02 be amended and 9
sections 125.091, 125.092, and 125.093 of the Revised Code be 10
enacted to read as follows: 11

Sec. 125.04. (A) Except as provided in division (D) of this 12
section, the department of administrative services shall determine 13
what supplies and services are purchased by or for state agencies. 14
Whenever the department of administrative services makes any 15
change or addition to the lists of supplies and services that it 16
determines to purchase for state agencies, it shall provide a list 17
to the agencies of the changes or additions. Except for the 18

requirements of section 125.092 and division (B) of section 125.11 19
of the Revised Code, sections 125.04 to 125.08 and 125.09 to 20
125.15 of the Revised Code do not apply to or affect the 21
educational institutions of the state. 22

(B)(1) As used in this division: 23

(a) "Chartered nonpublic school" has the same meaning as in 24
section 3310.01 of the Revised Code. 25

(b) "Emergency medical service organization" has the same 26
meaning as in section 4765.01 of the Revised Code. 27

(c) "Political subdivision" means any county, township, 28
municipal corporation, school district, conservancy district, 29
township park district, park district created under Chapter 1545. 30
of the Revised Code, regional transit authority, regional airport 31
authority, regional water and sewer district, or port authority. 32
"Political subdivision" also includes any other political 33
subdivision described in the Revised Code that has been approved 34
by the department to participate in the department's contracts 35
under this division. 36

(d) "Private fire company" has the same meaning as in section 37
9.60 of the Revised Code. 38

(2) Subject to division (C) of this section, the department 39
of administrative services may permit a political subdivision, 40
county board of elections, private fire company, private, 41
nonprofit emergency medical service organization, or chartered 42
nonpublic school to participate in contracts into which the 43
department has entered for the purchase of supplies and services. 44
The department may charge the entity a reasonable fee to cover the 45
administrative costs the department incurs as a result of 46
participation by the entity in such a purchase contract. 47

A political subdivision desiring to participate in such 48
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purchase contracts shall file with the department a certified copy 50
of an ordinance or resolution of the legislative authority or 51
governing board of the political subdivision. The resolution or 52
ordinance shall request that the political subdivision be 53
authorized to participate in such contracts and shall agree that 54
the political subdivision will be bound by such terms and 55
conditions as the department prescribes and that it will directly 56
pay the vendor under each purchase contract. A board of elections 57
desiring to participate in such purchase contracts shall file with 58
the purchasing authority a written request for inclusion in the 59
program. A private fire company, private, nonprofit emergency 60
medical service organization, or chartered nonpublic school 61
desiring to participate in such purchase contracts shall file with 62
the department a written request for inclusion in the program 63
signed by the chief officer of the company, organization, or 64
chartered nonpublic school. A request for inclusion shall include 65
an agreement to be bound by such terms and conditions as the 66
department prescribes and to make direct payments to the vendor 67
under each purchase contract. 68

The department shall include in its annual report an estimate 69
of the cost it incurs by permitting political subdivisions, county 70
boards of elections, private fire companies, private, nonprofit 71
emergency medical service organizations, and chartered nonpublic 72
schools to participate in contracts pursuant to this division. The 73
department may require such entities to file a report with the 74
department, as often as it finds necessary, stating how many such 75
contracts the entities participated in within a specified period 76
of time, and any other information the department requires. 77

(3) Purchases made by a political subdivision or a county 79
board of elections under this division are exempt from any 80
competitive selection procedures otherwise required by law. No 81

political subdivision shall make any purchase under this division 82
when bids have been received for such purchase by the subdivision, 83
unless such purchase can be made upon the same terms, conditions, 84
and specifications at a lower price under this division. 85

(C) A political subdivision as defined in division (B) of 86
this section or a county board of elections may purchase supplies 87
or services from another party, including a political subdivision, 88
instead of through participation in contracts described in 89
division (B) of this section if the political subdivision or 90
county board of elections can purchase those supplies or services 91
from the other party upon equivalent terms, conditions, and 92
specifications but at a lower price than it can through those 93
contracts. Purchases that a political subdivision or county board 94
of elections makes under this division are exempt from any 95
competitive selection procedures otherwise required by law. A 96
political subdivision or county board of elections that makes any 97
purchase under this division shall maintain sufficient information 98
regarding the purchase to verify that the political subdivision or 99
county board of elections satisfied the conditions for making a 100
purchase under this division. Nothing in this division restricts 101
any action taken by a county or township as authorized by division 102
(B)(1) of section 9.48 of the Revised Code. 103

(D) This section does not apply to supplies or services 104
required by the legislative or judicial branches, the capitol 105
square review and advisory board, the adjutant general for 106
military supplies and services, to supplies or services purchased 107
by a state agency directly as provided in division (A), (B), or 108
(F) of section 125.05 of the Revised Code, or to purchases of 109
supplies or services for the emergency management agency as 110
provided in section 125.023 of the Revised Code. 111

Sec. 125.091. As used in this section and in sections 125.092 112

and 125.093 of the Revised Code: 113

(A) "Agricultural materials" means agricultural-based materials or residues, including plant, animal, and marine materials or residues, used in the manufacture of commercial or industrial nonfood products. 114
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(B) "Biobased product" means a product determined by the United States secretary of agriculture to be a commercial or industrial product, other than food or feed, that is composed, in whole or significant part, of biological products, renewable domestic agricultural materials, or forestry materials, or is an intermediate ingredient or feedstock. 118
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(C) "Biological products" means products derived from living materials other than agricultural or forestry materials. 124
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(D) "Designated item" means a generic grouping of biobased products identified in subpart B, 7 C.F.R. 2902.10 to 2902.42. 126
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(E) "Forest thinnings" means woody materials removed from a dense forest to improve growth, enhance forest health, or remove trees to recover potential mortality. 128
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(F) "Forestry materials" means materials derived from the practice of planting and caring for forests and the management of growing timber, where such materials come from short-rotation woody crops that are less than ten years old, sustainably managed forests, wood residues, or forest thinnings. 131
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(G) "Intermediate ingredient or feedstock" means a material or compound made, in whole or in significant part, from biological products, renewable agricultural materials, or forestry materials that are subsequently used to make a more complex compound or product. 136
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(H) "Sustainably managed forests" means the practice of land stewardship that integrates the reforestation, management, 141
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growing, nurturing, and harvesting of trees for useful products 143
while conserving soil and improving air and water quality, 144
wildlife, fish habitat, and aesthetics. 145

Sec. 125.092. (A) When purchasing equipment, material, or 146
supplies, the department of administrative services, state 147
agencies, and state-supported institutions of higher education 148
shall purchase biobased products in accordance with the biobased 149
product preference program established by the director of 150
administrative services under this section. 151

(B) Not later than one hundred eighty days after the 152
effective date of this section, the director of administrative 153
services shall establish a biobased product preference program, 154
which shall ensure that the department of administrative services, 155
state agencies, and state-supported institutions of higher 156
education purchase biobased products by giving a preference to 157
those designated items that are composed of the highest percentage 158
of biobased content practicable or that comply with regulations 159
issued under 42 U.S.C. 6914b-1 by the administrator of the United 160
States environmental protection agency. The purchase of biobased 161
products under the program shall be consistent with sections 162
125.01 to 125.11 of the Revised Code. 163

As part of the program, the director of administrative 164
services shall adopt one of the following purchasing policies, or 165
a substantially equivalent alternative: 166

(1) A policy that a contract is to be awarded to the vendor 167
offering a biobased product composed of the highest percentage of 168
biobased content practicable, except when the director determines 169
that division (C)(1), (2), or (3) of this section applies; or 170

(2) A policy of setting minimum biobased content 171
specifications for awarding contracts in a manner that ensures 172
that the biobased content of biobased products is consistent with 173

the guidelines issued under 7 U.S.C. 8102, except when the 174
director determines that division (C)(1), (2), or (3) of this 175
section applies. 176

(C) The director of administrative services may determine 177
that it is not possible for a biobased product to be purchased in 178
accordance with the biobased product preference program if the 179
director determines that any of the following applies to the 180
product: 181

(1) The product is not available within a reasonable period 182
of time; 183

(2) The product fails to meet the performance standards set 184
forth in the applicable specifications for the product; or 185

(3) The product is available only at an unreasonable price. 186

(D) For any biobased product offered under the biobased 187
product preference program, a vendor shall certify that the 188
product meets the biobased content requirements for the designated 189
item of which the product is an exemplar. Upon request, a vendor 190
shall provide to the director of administrative services 191
information to verify the biobased content of a biobased product 192
qualifying for purchase in accordance with the program. 193

(E) The director of administrative services shall adopt rules 194
under Chapter 119. of the Revised Code that prescribe all of the 195
following: 196

(1) The products that qualify as designated items under the 197
biobased product preference program; 198

(2) The procedures the department of administrative services, 199
state agencies, and state-supported institutions of higher 200
education shall use to give preference to and purchase biobased 201
products in accordance with the program; 202

(3) The purchasing policy the director adopts under division 203

<u>(B)(1) or (2) of this section;</u>	204
<u>(4) Information to be submitted by vendors to verify the</u>	205
<u>biobased content of a biobased product; and</u>	206
<u>(5) Other requirements or procedures that are necessary to</u>	207
<u>implement the biobased product preference program.</u>	208
<u>(F) This section does not apply to the purchase of motor</u>	209
<u>vehicle fuel, heating oil, or electricity.</u>	210
<u>Sec. 125.093. Not later than September 30, 2010, and the</u>	211
<u>thirtieth day of September each year thereafter, the director of</u>	212
<u>administrative services shall prepare and submit to the governor,</u>	213
<u>the president of the senate, and the speaker of the house of</u>	214
<u>representatives a report that describes the number and types of</u>	215
<u>biobased products purchased under section 125.092 of the Revised</u>	216
<u>Code and the amount of money spent by the department of</u>	217
<u>administrative services, state agencies, and state-supported</u>	218
<u>institutions of higher education for those biobased products.</u>	219
<u>Sec. 5513.02. (A) Specifications describing the character of</u>	220
<u>the articles that the department of transportation is proposing to</u>	221
<u>purchase, and the conditions governing shipment and delivery,</u>	222
<u>shall be kept on file at the department and open to public</u>	223
<u>inspection throughout the time during which an invitation to</u>	224
<u>bidders is required to be posted. The director of transportation</u>	225
<u>may require bids to be accompanied by a certified check payable to</u>	226
<u>the director in an amount fixed by the director and stated in the</u>	227
<u>invitation to bidders. Persons, firms, or corporations desiring to</u>	228
<u>bid on more than one invitation shall be relieved from furnishing</u>	229
<u>certified checks with their bids provided they first furnish a</u>	230
<u>bond payable to the state, in an amount and with surety approved</u>	231
<u>by the director, conditioned for the faithful performances of all</u>	232
<u>contracts that may be awarded to them, and otherwise conditioned</u>	233

as the director requires. All bids shall be publicly opened and 234
read at the time and place mentioned in the notice. All purchases 235
shall be made by the director from the lowest responsive and 236
responsible bidder for each item in accordance with section 9.312 237
of the Revised Code, except where the director has established in 238
the bidding documents a provision for multiple awards for the 239
purchase of items such as asphalt, aggregates, machinery parts, 240
and others as the director determines necessary, and except that 241
in the purchase of machinery, equipment, or supplies for which 242
fixed and definite specifications cannot be prepared, the director 243
may purchase the articles meeting the general specifications 244
prescribed and which the director finds are most suitable for the 245
uses intended. Sections 5513.01 to 5513.04 of the Revised Code 246
shall apply to the exchange of machinery and equipment and in 247
force account operations where the director desires to combine in 248
one order the furnishing, hauling, and placing of material. The 249
director may purchase or authorize the purchase without notice, or 250
upon such notice as the director prescribes, of materials that in 251
the director's judgment may be required for the immediate repair 252
of roads or bridges destroyed or damaged by flood, landslide, or 253
other casualty. No person shall place separate orders for the 254
purpose of defeating such sections, and contracts of purchase 255
shall not be valid unless made in conformity with this section. 256

(B) ~~Division Section 125.092 and division~~ (B) of section 257
125.11 of the Revised Code ~~applies~~ apply to the purchase of 258
products by the director pursuant to sections 5513.01 to 5513.04 259
of the Revised Code. 260

Section 2. That existing sections 125.04 and 5513.02 of the 261
Revised Code are hereby repealed. 262

Section 3. Section 125.04 of the Revised Code is presented in 263
this act as a composite of the section as amended by both Am. Sub. 264

H.B. 562 and Am. Sub. S.B. 268 of the 127th General Assembly. The 265
General Assembly, applying the principle stated in division (B) of 266
section 1.52 of the Revised Code that amendments are to be 267
harmonized if reasonably capable of simultaneous operation, finds 268
that the composite is the resulting version of the section in 269
effect prior to the effective date of the section as presented in 270
this act. 271