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Winburn, Yuko, Zehringer**

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A B I L L

To amend sections 125.04, 5513.02, and 5747.77 and to 1
enact sections 125.091, 125.092, 125.093, 2
3345.691, and 3345.692 of the Revised Code to 3
require that the Director of Administrative 4
Services establish a program that ensures that 5
supplies composed of biobased products are 6
purchased by the Department of Administrative 7
Services, other state agencies, and state 8
institutions of higher education, and to extend 9
the income tax credit for retail sales of 10
alternative fuel for two additional years. 11

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

Section 1. That sections 125.04, 5513.02, and 5747.77 be 12
amended and sections 125.091, 125.092, 125.093, 3345.691, and 13
3345.692 of the Revised Code be enacted to read as follows: 14

Sec. 125.04. (A) Except as provided in division (D) of this 15
section, the department of administrative services shall determine 16
what supplies and services are purchased by or for state agencies. 17
Whenever the department of administrative services makes any 18
change or addition to the lists of supplies and services that it 19
determines to purchase for state agencies, it shall provide a list 20
to the agencies of the changes or additions. Except for the 21
requirements of section 125.092 and division (B) of section 125.11 22
of the Revised Code, sections 125.04 to 125.08 and 125.09 to 23
125.15 of the Revised Code do not apply to or affect the 24
educational institutions of the state. 25

(B)(1) As used in this division: 26

(a) "Chartered nonpublic school" has the same meaning as in 27
section 3310.01 of the Revised Code. 28

(b) "Emergency medical service organization" has the same 29
meaning as in section 4765.01 of the Revised Code. 30

(c) "Political subdivision" means any county, township, 31
municipal corporation, school district, conservancy district, 32
township park district, park district created under Chapter 1545. 33
of the Revised Code, regional transit authority, regional airport 34
authority, regional water and sewer district, or port authority. 35
"Political subdivision" also includes any other political 36
subdivision described in the Revised Code that has been approved 37
by the department to participate in the department's contracts 38
under this division. 39

(d) "Private fire company" has the same meaning as in section 40
9.60 of the Revised Code. 41

(2) Subject to division (C) of this section, the department 42
of administrative services may permit a political subdivision, 43
county board of elections, private fire company, private, 44
nonprofit emergency medical service organization, or chartered 45
nonpublic school to participate in contracts into which the 46
department has entered for the purchase of supplies and services. 47
The department may charge the entity a reasonable fee to cover the 48
administrative costs the department incurs as a result of 49
participation by the entity in such a purchase contract. 50

A political subdivision desiring to participate in such 51
purchase contracts shall file with the department a certified copy 52
of an ordinance or resolution of the legislative authority or 53
governing board of the political subdivision. The resolution or 54
ordinance shall request that the political subdivision be 55
authorized to participate in such contracts and shall agree that 56
the political subdivision will be bound by such terms and 57
conditions as the department prescribes and that it will directly 58
pay the vendor under each purchase contract. A board of elections 59
desiring to participate in such purchase contracts shall file with 60
the purchasing authority a written request for inclusion in the 61
program. A private fire company, private, nonprofit emergency 62
medical service organization, or chartered nonpublic school 63
desiring to participate in such purchase contracts shall file with 64
the department a written request for inclusion in the program 65
signed by the chief officer of the company, organization, or 66
chartered nonpublic school. A request for inclusion shall include 67
an agreement to be bound by such terms and conditions as the 68
department prescribes and to make direct payments to the vendor 69
under each purchase contract. 70

The department shall include in its annual report an estimate 71

of the cost it incurs by permitting political subdivisions, county boards of elections, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools to participate in contracts pursuant to this division. The department may require such entities to file a report with the department, as often as it finds necessary, stating how many such contracts the entities participated in within a specified period of time, and any other information the department requires.

(3) Purchases made by a political subdivision or a county board of elections under this division are exempt from any competitive selection procedures otherwise required by law. No political subdivision shall make any purchase under this division when bids have been received for such purchase by the subdivision, unless such purchase can be made upon the same terms, conditions, and specifications at a lower price under this division.

(C) A political subdivision as defined in division (B) of this section or a county board of elections may purchase supplies or services from another party, including a political subdivision, instead of through participation in contracts described in division (B) of this section if the political subdivision or county board of elections can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through those contracts. Purchases that a political subdivision or county board of elections makes under this division are exempt from any competitive selection procedures otherwise required by law. A political subdivision or county board of elections that makes any purchase under this division shall maintain sufficient information regarding the purchase to verify that the political subdivision or county board of elections satisfied the conditions for making a purchase under this division. Nothing in this division restricts any action taken by a county or township as authorized by division

(B)(1) of section 9.48 of the Revised Code. 104

(D) This section does not apply to supplies or services 105
required by the legislative or judicial branches, the capitol 106
square review and advisory board, the adjutant general for 107
military supplies and services, to supplies or services purchased 108
by a state agency directly as provided in division (A), (B), or 109
(F) of section 125.05 of the Revised Code, or to purchases of 110
supplies or services for the emergency management agency as 111
provided in section 125.023 of the Revised Code. 112

Sec. 125.091. As used in this section and sections 125.092 113
and 125.093 of the Revised Code: 114

(A) "Agricultural materials" means agricultural-based 115
materials or residues, including plant, animal, and marine 116
materials or residues, used in the manufacture of commercial or 117
industrial nonfood products. 118

(B) "Biobased product" means a product determined by the 119
United States secretary of agriculture to be a commercial or 120
industrial product, other than food or feed, that is composed, in 121
whole or significant part, of biological products, renewable 122
domestic agricultural materials, or forestry material, or is an 123
intermediate ingredient or feedstock. 124

(C) "Biological products" means products derived from living 125
materials other than agricultural or forestry materials. 126

(D) "Designated item" means a generic grouping of biobased 127
products identified in subpart B, 7 C.F.R. 2902.10 to 2902.42. 128

(E) "Forest thinnings" means woody materials removed from a 129
dense forest to improve growth, enhance forest health, or remove 130
trees to recover potential mortality. 131

(F) "Forestry materials" means materials derived from the 132
practice of planting and caring for forests and the management of 133

growing timber where such materials come from short-rotation woody 134
crops that are less than ten years old, sustainably managed 135
forests, wood residues, or forest thinnings. 136

(G) "Intermediate ingredient or feedstock" means a material 137
or compound made, in whole or in significant part, from biological 138
products, renewable agricultural materials, or forestry materials 139
that are subsequently used to make a more complex compound or 140
product. 141

(H) "Sustainably managed forests" means the practice of land 142
stewardship that integrates the reforestation, management, 143
growing, nurturing, and harvesting of trees for useful products 144
while conserving soil and improving air and water quality, 145
wildlife, fish habitat, and aesthetics. 146

Sec. 125.092. (A) Except as provided in divisions (G) and (H) 147
of this section, when purchasing equipment, material, or supplies, 148
the department of administrative services, other state agencies, 149
and state institutions of higher education shall purchase biobased 150
products in accordance with the biobased product preference 151
program established by the director of administrative services 152
under this section. 153

(B) Not later than one hundred eighty days after the 154
effective date of this section, the director shall establish a 155
biobased product preference program, which shall ensure that the 156
department of administrative services, other state agencies, and 157
state institutions of higher education purchase biobased products 158
by giving a preference to those designated items that are composed 159
of the highest percentage of biobased content practicable or that 160
comply with regulations adopted under 42 U.S.C. 6914b-1 by the 161
administrator of the United States environmental protection 162
agency. The purchase of biobased products under the program shall 163
be consistent with sections 125.01 to 125.11 of the Revised Code. 164

As part of the program, the director shall adopt a policy of 165
setting minimum biobased content specifications for awarding 166
contracts in a manner that ensures that the biobased content of 167
biobased products is consistent with the guidelines issued under 7 168
U.S.C. 8102, except when the director determines that division 169
(C)(1), (2), or (3) of this section applies. 170

(C) The director may determine that it is not possible for a 171
biobased product to be purchased in accordance with the biobased 172
product preference program if the director determines that any of 173
the following applies to the product: 174

(1) The product is not available within a reasonable period 175
of time. 176

(2) The product fails to meet the performance standards set 177
forth in the applicable specifications for the product. 178

(3) The price of the product is an unreasonable price. As 179
used in division (C)(3) of this section, "unreasonable price" 180
means either of the following: 181

(a) The price of the biobased product exceeds the price of a 182
substantially equivalent nonbiobased product. 183

(b) The price of the biobased product exceeds the fair market 184
value of a substantially equivalent nonbiobased product. 185

In accordance with rules adopted under this section, the 186
director may determine a percentage that is up to five per cent by 187
which the price of a biobased product may exceed the price or fair 188
market value of a substantially equivalent nonbiobased product 189
without being considered an unreasonable price for the purpose of 190
division (C)(3)(a) or (b) of this section, as applicable. In doing 191
so, the director shall give consideration to the benefits of 192
expanding the use of biobased products. 193

(D) For any biobased product offered under the biobased 194

product preference program, a vendor shall certify that the 195
product meets the biobased content requirements for the designated 196
item of which the product is an exemplar. Upon request, a vendor 197
shall provide to the director information to verify the biobased 198
content of a biobased product qualifying for purchase in 199
accordance with the program. 200

(E) The director shall adopt rules in accordance with Chapter 201
119. of the Revised Code that prescribe all of the following: 202

(1) The procedures the department of administrative services 203
and other state agencies shall use to give preference to and 204
purchase biobased products in accordance with the program; 205

(2) The purchasing policy the director adopts under division 206
(B) of this section; 207

(3) Procedures and guidelines to be used by the director in 208
determining percentages for purposes of division (C) of this 209
section; 210

(4) Other requirements or procedures that are necessary to 211
implement the biobased product preference program. 212

(F) The director shall maintain a list of products that 213
qualify as designated items under the biobased product preference 214
program. 215

(G) When purchasing equipment, material, or supplies, a state 216
institution of higher education shall purchase designated items in 217
accordance with procedures established by the institution. 218

(H) If, after assessing the functions of designated items, a 219
state agency determines that none of the designated items are 220
functionally capable of meeting a specific need of the agency, the 221
agency shall notify the director of administrative services. If, 222
after assessing the functions of designated items, a state 223
institution of higher education determines that none of the 224

designated items are functionally capable of meeting a specific 225
need of the institution, the institution shall notify both the 226
director of administrative services and the chancellor of the 227
board of regents. The agency or institution then may purchase a 228
nonbiobased product that is functionally capable of meeting that 229
specific need of the agency or institution, as applicable. Such a 230
purchase does not constitute failure to comply with the biobased 231
product preference program or preclude the agency or institution 232
from otherwise participating in the program. 233

(I) This section does not apply to the purchase of motor 234
vehicle fuel, heating oil, or electricity. 235

(J) As used in this section, "state institution of higher 236
education" has the same meaning as in section 3345.011 of the 237
Revised Code. 238

Sec. 125.093. Not later than September 30, 2010, and the 239
thirtieth day of September each year thereafter, the director of 240
administrative services shall prepare and submit to the governor, 241
the president of the senate, and the speaker of the house of 242
representatives a report that describes the number and types of 243
biobased products purchased under section 125.092 of the Revised 244
Code and the amount of money spent by the department of 245
administrative services and other state agencies for those 246
biobased products. 247

Sec. 3345.691. A state institution of higher education, as 248
defined in section 3345.011 of the Revised Code, shall comply with 249
section 125.092 of the Revised Code regarding the purchase of 250
biobased products. 251

Sec. 3345.692. (A) Not later than September 15, 2010, and the 252
fifteenth day of September each year thereafter, a state 253
institution of higher education shall prepare and submit to the 254

chancellor of the board of regents a report that describes the 255
number and types of biobased products purchased under section 256
125.092 of the Revised Code and the amount of money spent by the 257
state institution of higher education for those biobased products. 258

(B) Not later than September 30, 2010, and the thirtieth day 259
of September each year thereafter, the chancellor of the board of 260
regents shall prepare and submit to the governor, the president of 261
the senate, and the speaker of the house of representatives a 262
report that describes the number and types of biobased products 263
purchased under section 125.092 of the Revised Code and the amount 264
of money spent by state institutions of higher education for those 265
biobased products as that information is provided to the 266
chancellor under division (A) of this section. 267

(C) As used in this section, "state institution of higher 268
education" has the same meaning as in section 3345.011 of the 269
Revised Code. 270

Sec. 5513.02. (A) Specifications describing the character of 271
the articles that the department of transportation is proposing to 272
purchase, and the conditions governing shipment and delivery, 273
shall be kept on file at the department and open to public 274
inspection throughout the time during which an invitation to 275
bidders is required to be posted. The director of transportation 276
may require bids to be accompanied by a certified check payable to 277
the director in an amount fixed by the director and stated in the 278
invitation to bidders. Persons, firms, or corporations desiring to 279
bid on more than one invitation shall be relieved from furnishing 280
certified checks with their bids provided they first furnish a 281
bond payable to the state, in an amount and with surety approved 282
by the director, conditioned for the faithful performances of all 283
contracts that may be awarded to them, and otherwise conditioned 284
as the director requires. All bids shall be publicly opened and 285

read at the time and place mentioned in the notice. All purchases 286
shall be made by the director from the lowest responsive and 287
responsible bidder for each item in accordance with section 9.312 288
of the Revised Code, except where the director has established in 289
the bidding documents a provision for multiple awards for the 290
purchase of items such as asphalt, aggregates, machinery parts, 291
and others as the director determines necessary, and except that 292
in the purchase of machinery, equipment, or supplies for which 293
fixed and definite specifications cannot be prepared, the director 294
may purchase the articles meeting the general specifications 295
prescribed and which the director finds are most suitable for the 296
uses intended. Sections 5513.01 to 5513.04 of the Revised Code 297
shall apply to the exchange of machinery and equipment and in 298
force account operations where the director desires to combine in 299
one order the furnishing, hauling, and placing of material. The 300
director may purchase or authorize the purchase without notice, or 301
upon such notice as the director prescribes, of materials that in 302
the director's judgment may be required for the immediate repair 303
of roads or bridges destroyed or damaged by flood, landslide, or 304
other casualty. No person shall place separate orders for the 305
purpose of defeating such sections, and contracts of purchase 306
shall not be valid unless made in conformity with this section. 307

(B) ~~Division~~ Section 125.092 and division (B) of section 308
125.11 of the Revised Code ~~applies~~ apply to the purchase of 309
products by the director pursuant to sections 5513.01 to 5513.04 310
of the Revised Code. 311

Sec. 5747.77. (A) As used in this section: 312

(1) "Alternative fuel" means E85 blend fuel or blended 313
biodiesel. 314

(2) "Biodiesel" means a mono-alkyl ester combustible liquid 315
fuel that is derived from vegetable oils or animal fats, or any 316

combination of those reagents that meets the American society for 317
testing and materials specification for biodiesel fuel (B100) 318
blend stock distillate fuels. 319

(3) "Blended biodiesel" means a blend of biodiesel with 320
petroleum-based diesel fuel in which the resultant product 321
contains not less than twenty per cent biodiesel and meets the 322
American society for testing and materials specification for 323
blended diesel fuel. For taxable years ending in 2010 or 2011, 324
"six per cent" shall be substituted for "twenty per cent." 325

(4) "Diesel fuel" means any liquid fuel that is capable of 326
use in discrete form or as a blend component in the operation of 327
engines of the diesel type. 328

(5) "Ethanol" means fermentation ethyl alcohol derived from 329
agricultural products, including potatoes, cereal, grains, cheese 330
whey, and sugar beets; forest products; or other renewable 331
resources, including residue and waste generated from the 332
production, processing, and marketing of agricultural products, 333
forest products, and other renewable resources that meet all of 334
the specifications in the American society for testing and 335
materials (ASTM) specification D 4806-88 and is denatured as 336
specified in Parts 20 and 21 of Title 27 of the Code of Federal 337
Regulations. 338

(6) "E85 blend fuel" means fuel containing eighty-five per 339
cent or more ethanol, or containing any other percentage of not 340
less than seventy per cent ethanol if the United States department 341
of energy determines, by rule, that the lower percentage is 342
necessary to provide for the requirements of cold start, safety, 343
or other vehicle functions, and that meets the American society 344
for testing and materials specification for E85 blend fuel. 345

(7) "Retail dealer" means any person that is a taxpayer under 346
this chapter that owns or operates a retail service station 347

located in this state. 348

(8) "Retail service station" means a location in this state 349
from which alternative fuel is sold to the general public and is 350
dispensed or pumped directly into motor vehicle fuel tanks for 351
consumption. 352

(B) For taxable years ending in 2008 and 2009, there is 353
hereby allowed a nonrefundable credit against the tax imposed by 354
section 5747.02 of the Revised Code for a retail dealer that sells 355
alternative fuel. The credit for a dealer's taxable year ending in 356
2008 shall equal fifteen cents per gallon of alternative fuel sold 357
and dispensed through a metered pump at the retail dealer's retail 358
service station during any part of calendar year 2007 or 2008 359
included in that taxable year. The credit for a dealer's taxable 360
year ending in 2009 shall equal fifteen cents per gallon of 361
alternative fuel sold and dispensed through a metered pump at the 362
retail dealer's retail service station during any part of calendar 363
year 2008 included in that taxable year, plus thirteen cents per 364
gallon of alternative fuel sold and dispensed in that manner 365
during any part of calendar year 2009 included in that taxable 366
year. 367

(C)(1) For taxable years ending in 2010 or 2011, there is 368
hereby allowed a nonrefundable credit against the tax imposed by 369
section 5747.02 of the Revised Code for a retail dealer that sells 370
alternative fuel. Except as otherwise provided in division (C)(2) 371
of this section, the credit for a dealer's taxable year ending in 372
2010 shall equal fifteen cents per gallon of alternative fuel sold 373
and dispensed through a metered pump at the retail dealer's retail 374
service station during any part of calendar year 2009 or 2010 375
included in that taxable year. Except as otherwise provided in 376
division (C)(2) of this section, the credit for a dealer's taxable 377
year ending in 2011 shall equal fifteen cents per gallon of 378
alternative fuel sold and dispensed through a metered pump at the 379

retail dealer's retail service station during any part of calendar 380
year 2010 included in that taxable year, plus thirteen cents per 381
gallon of alternative fuel sold and dispensed in that manner 382
during any part of calendar year 2011 included in that taxable 383
year. 384

(2) In the case of blended biodiesel containing at least ten 385
per cent but less than twenty per cent biodiesel as sold and 386
dispensed through such metered pump, the credit otherwise allowed 387
under division (C)(1) of this section shall equal seven and 388
one-half cents per gallon. In the case of blended biodiesel 389
containing at least six per cent but less than ten per cent 390
biodiesel as sold and dispensed through such metered pump, the 391
credit otherwise allowed under division (C)(1) of this section 392
shall equal three and three-fourths cents per gallon. 393

(D) The credit shall be calculated separately for each retail 394
service station owned or operated by the retail dealer. The credit 395
allowed under this section may not be claimed for alternative fuel 396
sold or dispensed before January 1, 2008, or on or after January 397
1, ~~2010~~ 2012. 398

~~(C)~~(E) The retail dealer shall claim the credit under this 399
section in the order prescribed in section 5747.98 of the Revised 400
Code. The credit shall not exceed the amount of tax otherwise due 401
under section 5747.02 of the Revised Code after deducting any 402
other credits that precede the credit claimed under this section 403
in that order. 404

~~(D)~~(F) Nothing in this section limits or disallows 405
pass-through treatment of the credit if the retail dealer is a 406
pass-through entity. If the retail dealer is a pass-through 407
entity, references in other divisions of this section to "taxable 408
year" refer to the dealer's taxable year; an equity owner of the 409
retail dealer that is a pass-through entity may claim the owner's 410
distributive or proportionate share of the credit for the equity 411

owner's taxable year that includes the last day of the entity's 412
taxable year. 413

Section 2. That existing sections 125.04, 5513.02, and 414
5747.77 of the Revised Code are hereby repealed. 415

Section 3. Section 125.04 of the Revised Code is presented in 416
this act as a composite of the section as amended by both Am. Sub. 417
H.B. 562 and Am. Sub. S.B. 268 of the 127th General Assembly. The 418
General Assembly, applying the principle stated in division (B) of 419
section 1.52 of the Revised Code that amendments are to be 420
harmonized if reasonably capable of simultaneous operation, finds 421
that the composite is the resulting version of the section in 422
effect prior to the effective date of the section as presented in 423
this act. 424