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Senators Gillmor, Cafaro

**Cosponsors: Senators Widener, Grendell, Schuring, Gibbs, Carey, Faber,
Morano, Fedor, Goodman, Harris, Hughes, Kearney, Miller, D., Miller, R.,
Niehaus, Patton, Sawyer, Schaffer, Seitz, Smith, Stewart, Wagoner,
Schiavoni**

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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, 125.093, 3345.691, and 2
3345.692 of the Revised Code to require that the 3
Director of Administrative Services establish a 4
program that ensures that supplies composed of 5
biobased products are purchased by the Department 6
of Administrative Services, other state agencies, 7
and state 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, 125.093, 3345.691, and 3345.692 of the 10
Revised Code be 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

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A political subdivision desiring to participate in such
purchase contracts shall file with the department a certified copy
of an ordinance or resolution of the legislative authority or
governing board of the political subdivision. The resolution or
ordinance shall request that the political subdivision be
authorized to participate in such contracts and shall agree that
the political subdivision will be bound by such terms and
conditions as the department prescribes and that it will directly
pay the vendor under each purchase contract. A board of elections
desiring to participate in such purchase contracts shall file with
the purchasing authority a written request for inclusion in the
program. A private fire company, private, nonprofit emergency
medical service organization, or chartered nonpublic school
desiring to participate in such purchase contracts shall file with
the department a written request for inclusion in the program
signed by the chief officer of the company, organization, or
chartered nonpublic school. A request for inclusion shall include
an agreement to be bound by such terms and conditions as the
department prescribes and to make direct payments to the vendor
under each purchase contract.

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The department shall include in its annual report an estimate
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.

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(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 sections 125.092 112
and 125.093 of the Revised Code: 113

(A) "Agricultural materials" means agricultural-based 114
materials or residues, including plant, animal, and marine 115
materials or residues, used in the manufacture of commercial or 116
industrial nonfood products. 117

(B) "Biobased product" means a product determined by the 118
United States secretary of agriculture to be a commercial or 119
industrial product, other than food or feed, that is composed, in 120
whole or significant part, of biological products, renewable 121
domestic agricultural materials, or forestry material, or is an 122
intermediate ingredient or feedstock. 123

(C) "Biological products" means products derived from living 124
materials other than agricultural or forestry materials. 125

(D) "Designated item" means a generic grouping of biobased 126
products identified in subpart B, 7 C.F.R. 2902.10 to 2902.42. 127

(E) "Forest thinnings" means woody materials removed from a 128
dense forest to improve growth, enhance forest health, or remove 129
trees to recover potential mortality. 130

(F) "Forestry materials" means materials derived from the 131
practice of planting and caring for forests and the management of 132
growing timber where such materials come from short-rotation woody 133
crops that are less than ten years old, sustainably managed 134
forests, wood residues, or forest thinnings. 135

(G) "Intermediate ingredient or feedstock" means a material 136
or compound made, in whole or in significant part, from biological 137
products, renewable agricultural materials, or forestry materials 138
that are subsequently used to make a more complex compound or 139
product. 140

(H) "Sustainably managed forests" means the practice of land 141

stewardship that integrates the reforestation, management, 142
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, other state 147
agencies, and state institutions of higher education shall 148
purchase biobased products in accordance with the biobased product 149
preference program established by the director of administrative 150
services under this section. 151

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

As part of the program, the director shall adopt a policy of 164
setting minimum biobased content specifications for awarding 165
contracts in a manner that ensures that the biobased content of 166
biobased products is consistent with the guidelines issued under 7 167
U.S.C. 8102, except when the director determines that division 168
(C)(1), (2), or (3) of this section applies. 169

(C) The director may determine that it is not possible for a 170
biobased product to be purchased in accordance with the biobased 171
product preference program if the director determines that any of 172

<u>the following applies to the product:</u>	173
<u>(1) The product is not available within a reasonable period of time.</u>	174 175
<u>(2) The product fails to meet the performance standards set forth in the applicable specifications for the product.</u>	176 177
<u>(3) The product is available only at an unreasonable price. As used in division (C)(3) of this section, "unreasonable price" means any of the following:</u>	178 179 180
<u>(a) If a similar product is not produced in this state and is not biobased, the price of the biobased product exceeds the price of the similar product by more than five per cent.</u>	181 182 183
<u>(b) If a similar product is produced in this state and is not biobased, the price of the biobased product is greater than the price of the similar product.</u>	184 185 186
<u>(c) If a similar product is not produced in this state and is biobased, the price of the biobased product exceeds the price of the similar product by a percentage that is determined by the director in accordance with rules adopted under this section, provided that the percentage shall not exceed five per cent.</u>	187 188 189 190 191
<u>(d) If a similar product is produced in this state and is biobased, the price of the biobased product exceeds the price of the similar product by a percentage that is determined by the director in accordance with rules adopted under this section, provided that the percentage shall not exceed five per cent.</u>	192 193 194 195 196
<u>If the director determines a percentage that is less than five per cent for the purpose of division (C)(3)(c) or (d) of this section, the director shall give strong consideration to the benefits of expanding the use of biobased products.</u>	197 198 199 200
<u>(D) For any biobased product offered under the biobased product preference program, a vendor shall certify that the</u>	201 202

product meets the biobased content requirements for the designated 203
item of which the product is an exemplar. Upon request, a vendor 204
shall provide to the director information to verify the biobased 205
content of a biobased product qualifying for purchase in 206
accordance with the program. 207

(E) The director shall adopt rules in accordance with Chapter 208
119. of the Revised Code that prescribe all of the following: 209
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(1) The procedures the department of administrative services, 211
other state agencies, and state institutions of higher education 212
shall use to give preference to and purchase biobased products in 213
accordance with the program; 214

(2) The purchasing policy the director adopts under division 215
(B) of this section; 216

(3) Procedures and guidelines to be used by the director in 217
determining percentages for purposes of divisions (C)(3)(c) and 218
(d) of this section; 219

(4) Other requirements or procedures that are necessary to 220
implement the biobased product preference program. 221

(F) The director shall maintain a list of products that 222
qualify as designated items under the biobased product preference 223
program. 224

(G) The director may enter into a pilot contract with a 225
vendor of a biobased product that is determined by the director to 226
be the sole provider of the biobased product for the purpose of 227
determining if the product is feasible for use by the state. For 228
purposes of entering into the contract, the director may negotiate 229
pricing and the terms and conditions of the contract subject to 230
the approval of the controlling board. Pricing for the pilot 231
contract shall be based on the fair market value of similar 232
products if those products are available. The term of the pilot 233

contract may be for a length of time determined by the director, 234
not to exceed one fiscal year, to sufficiently examine and 235
complete testing of the biobased product. The director may renew 236
the contract for one additional fiscal year subject to the 237
approval of the controlling board. If the director determines the 238
biobased product to be feasible for use by the state, all 239
additional purchases of that product shall be made by competitive 240
selection. 241

(H) This section does not apply to the purchase of motor 242
vehicle fuel, heating oil, or electricity. 243

(I) As used in this section, "state institution of higher 244
education" has the same meaning as in section 3345.011 of the 245
Revised Code. 246

Sec. 125.093. Not later than September 30, 2010, and the 247
thirtieth day of September each year thereafter, the director of 248
administrative services shall prepare and submit to the governor, 249
the president of the senate, and the speaker of the house of 250
representatives a report that describes the number and types of 251
biobased products purchased under section 125.092 of the Revised 252
Code and the amount of money spent by the department of 253
administrative services and other state agencies for those 254
biobased products. 255

Sec. 3345.691. A state institution of higher education, as 256
defined in section 3345.011 of the Revised Code, shall comply with 257
section 125.092 of the Revised Code regarding the purchase of 258
biobased products. 259

Sec. 3345.692. (A) Not later than September 15, 2010, and the 260
fifteenth day of September each year thereafter, a state 261
institution of higher education shall prepare and submit to the 262
chancellor of the board of regents a report that describes the 263

number and types of biobased products purchased under section 264
125.092 of the Revised Code and the amount of money spent by the 265
state institution of higher education for those biobased products. 266

(B) Not later than September 30, 2010, and the thirtieth day 267
of September each year thereafter, the chancellor of the board of 268
regents shall prepare and submit to the governor, the president of 269
the senate, and the speaker of the house of representatives a 270
report that describes the number and types of biobased products 271
purchased under section 125.092 of the Revised Code and the amount 272
of money spent by state institutions of higher education for those 273
biobased products as that information is provided to the 274
chancellor under division (A) of this section. 275

(C) As used in this section, "state institution of higher 276
education" has the same meaning as in section 3345.011 of the 277
Revised Code. 278

Sec. 5513.02. (A) Specifications describing the character of 279
the articles that the department of transportation is proposing to 280
purchase, and the conditions governing shipment and delivery, 281
shall be kept on file at the department and open to public 282
inspection throughout the time during which an invitation to 283
bidders is required to be posted. The director of transportation 284
may require bids to be accompanied by a certified check payable to 285
the director in an amount fixed by the director and stated in the 286
invitation to bidders. Persons, firms, or corporations desiring to 287
bid on more than one invitation shall be relieved from furnishing 288
certified checks with their bids provided they first furnish a 289
bond payable to the state, in an amount and with surety approved 290
by the director, conditioned for the faithful performances of all 291
contracts that may be awarded to them, and otherwise conditioned 292
as the director requires. All bids shall be publicly opened and 293
read at the time and place mentioned in the notice. All purchases 294

shall be made by the director from the lowest responsive and 295
responsible bidder for each item in accordance with section 9.312 296
of the Revised Code, except where the director has established in 297
the bidding documents a provision for multiple awards for the 298
purchase of items such as asphalt, aggregates, machinery parts, 299
and others as the director determines necessary, and except that 300
in the purchase of machinery, equipment, or supplies for which 301
fixed and definite specifications cannot be prepared, the director 302
may purchase the articles meeting the general specifications 303
prescribed and which the director finds are most suitable for the 304
uses intended. Sections 5513.01 to 5513.04 of the Revised Code 305
shall apply to the exchange of machinery and equipment and in 306
force account operations where the director desires to combine in 307
one order the furnishing, hauling, and placing of material. The 308
director may purchase or authorize the purchase without notice, or 309
upon such notice as the director prescribes, of materials that in 310
the director's judgment may be required for the immediate repair 311
of roads or bridges destroyed or damaged by flood, landslide, or 312
other casualty. No person shall place separate orders for the 313
purpose of defeating such sections, and contracts of purchase 314
shall not be valid unless made in conformity with this section. 315

(B) ~~Division~~ Section 125.092 and division (B) of section 316
125.11 of the Revised Code ~~applies~~ apply to the purchase of 317
products by the director pursuant to sections 5513.01 to 5513.04 318
of the Revised Code. 319

Section 2. That existing sections 125.04 and 5513.02 of the 320
Revised Code are hereby repealed. 321

Section 3. Section 125.04 of the Revised Code is presented in 322
this act as a composite of the section as amended by both Am. Sub. 323
H.B. 562 and Am. Sub. S.B. 268 of the 127th General Assembly. The 324
General Assembly, applying the principle stated in division (B) of 325

section 1.52 of the Revised Code that amendments are to be 326
harmonized if reasonably capable of simultaneous operation, finds 327
that the composite is the resulting version of the section in 328
effect prior to the effective date of the section as presented in 329
this act. 330