

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 579

Representative Winburn

**Cosponsors: Representatives Foley, Ramos, Murray, Boyd, Heard, Goyal,
Hagan, R., Fende, Yuko, Budish, Ashford, O'Brien, Letson, Milkovich,
Phillips**

—

A B I L L

To amend sections 125.09, 125.11, 125.112, and 125.56 1
of the Revised Code to specify new criteria for 2
the Buy Ohio Law. 3

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

Section 1. That sections 125.09, 125.11, 125.112, and 125.56 4
of the Revised Code be amended to read as follows: 5

Sec. 125.09. (A) Pursuant to section 125.07 of the Revised 6
Code, the department of administrative services may prescribe such 7
conditions under which competitive sealed bids will be received 8
and terms of the proposed purchase as it considers necessary; 9
provided, that all such conditions and terms shall be reasonable 10
and shall not unreasonably restrict competition, and bidders may 11
bid upon all or any item of the supplies or services listed in 12
such notice. Those bidders claiming the preference for United 13
States and Ohio products outlined in this chapter shall designate 14
in their bids either that the product to be supplied is an Ohio 15
product or that under the rules established by the director of 16
administrative services they qualify as having a significant Ohio 17

economic presence. 18

(B) The department may require that each bidder provide 19
sufficient information about the energy efficiency or energy usage 20
of the bidder's product or service. 21

(C) The director of administrative services shall, by rule 22
adopted pursuant to Chapter 119. of the Revised Code, prescribe 23
criteria and procedures for use by all state agencies in giving 24
preference to United States and Ohio products as required by 25
division (B) of section 125.11 of the Revised Code. The rules 26
shall extend to: 27

(1) Criteria for determining that a product is produced or 28
mined in the United States rather than in another country or 29
territory; 30

(2) Criteria for determining that a product is produced or 31
mined in Ohio; 32

(3) Information to be submitted by bidders as to the nature 33
of a product and the location where it is produced or mined; 34

(4) Criteria and procedures to be used by the director to 35
qualify bidders located in states bordering Ohio who might 36
otherwise be excluded from being awarded a contract by operation 37
of this section and section 125.11 of the Revised Code. The 38
criteria and procedures shall recognize the level and regularity 39
of interstate commerce between Ohio and the border states and 40
provide that the non-Ohio businesses may qualify for award of a 41
contract as long as they are located in a state that imposes no 42
greater restrictions than are contained in this section and 43
section 125.11 of the Revised Code upon persons located in Ohio 44
selling products or services to agencies of that state. The 45
criteria and procedures shall also provide that a non-Ohio 46
business shall not bid on a contract for state printing in this 47
state if the business is located in a state that excludes Ohio 48

businesses from bidding on state printing contracts in that state. 49

(5) Criteria and procedures to be used to qualify bidders 50
whose manufactured products, except for mined products, are 51
produced in other states or in North America, but the bidders have 52
a significant Ohio economic presence in terms of the number of 53
employees or capital investment a bidder has in this state. 54
Bidders with a significant Ohio economic presence shall qualify 55
for award of a contract on the same basis as if their products 56
were produced in this state. 57

(6) Criteria and procedures for the director to grant waivers 58
of the requirements of division (B) of section 125.11 of the 59
Revised Code on a contract-by-contract basis where compliance with 60
those requirements would result in the state agency paying an 61
excessive price for the product or acquiring a disproportionately 62
inferior product; 63

(7) Criteria and procedures to be used by an entity when the 64
entity must demonstrate that the entity will create or retain jobs 65
in Ohio as a result of being awarded a contract under division (B) 66
of section 125.11 of the Revised Code. 67

(8) Such other requirements or procedures reasonably 68
necessary to implement the system of preferences established 69
pursuant to division (B) of section 125.11 of the Revised Code. 70

In adopting the rules required under this division, the 71
director shall, to the maximum extent possible, conform to the 72
requirements of the federal "Buy America Act," 47 Stat. 1520, 73
(1933), 41 U.S.C.A. 10a-10d, as amended, and to the regulations 74
adopted thereunder. 75

Sec. 125.11. (A) Subject to division (B) of this section, 76
contracts awarded pursuant to a reverse auction under section 77
125.072 of the Revised Code or pursuant to competitive sealed 78

bidding, including contracts awarded under section 125.081 of the Revised Code, shall be awarded to the lowest responsive and responsible bidder on each item in accordance with section 9.312 of the Revised Code. When the contract is for meat products as defined in section 918.01 of the Revised Code or poultry products as defined in section 918.21 of the Revised Code, only those bids received from vendors offering products from establishments on the current list of meat and poultry vendors established and maintained by the director of administrative services under section 125.17 of the Revised Code shall be eligible for acceptance. The department of administrative services may accept or reject any or all bids in whole or by items, except that when the contract is for services or products available from a qualified nonprofit agency pursuant to sections 125.60 to 125.6012 or 4115.31 to 4115.35 of the Revised Code, the contract shall be awarded to that agency.

(B) Prior to awarding a contract under division (A) of this section, the department of administrative services or the state agency responsible for evaluating a contract for the purchase of products shall evaluate the bids received according to the criteria and procedures established pursuant to divisions (C)(1) and (2) of section 125.09 of the Revised Code for determining if a product is produced or mined in the United States and if a product is produced or mined in this state. The department or other state agency shall first remove bids that offer products that have not been or that will not be produced or mined in the United States. From among the remaining bids, the department or other state agency shall select the lowest responsive and responsible bid, in accordance with section 9.312 of the Revised Code, from among the bids that offer products that have been produced or mined in this state where sufficient competition can be generated within this state to ensure that compliance with these requirements will not

result in an excessive price for the product or acquiring a 111
disproportionately inferior product. For purposes of this 112
division, "excessive price" means a price that exceeds by more 113
than five per cent the lowest price bid, except that a price that 114
exceeds the lowest price bid by more than five per cent but not 115
more than ten per cent shall not be considered an excessive price 116
if the entity submitting the bid has demonstrated that the entity 117
will create or retain jobs in Ohio as a result of being awarded 118
the contract. For purposes of this division, "lowest price bid" 119
means the lowest price submitted on a responsive and responsible 120
bid from among the bids that do not offer products that have been 121
produced or mined in this state. 122

(C) Division (B) of this section applies to contracts for 123
which competitive bidding is waived by the controlling board. 124

(D) Division (B) of this section does not apply to the 125
purchase by the division of liquor control of spirituous liquor. 126

(E) The director of administrative services shall publish in 127
the form of a model act for use by counties, townships, municipal 128
corporations, or any other political subdivision described in 129
division (B) of section 125.04 of the Revised Code, a system of 130
preferences for products mined and produced in this state and in 131
the United States and for Ohio-based contractors. The model act 132
shall reflect substantial equivalence to the system of preferences 133
in purchasing and public improvement contracting procedures under 134
which the state operates pursuant to this chapter and section 135
153.012 of the Revised Code. To the maximum extent possible, 136
consistent with the Ohio system of preferences in purchasing and 137
public improvement contracting procedures, the model act shall 138
incorporate all of the requirements of the federal "Buy America 139
Act," 47 Stat. 1520 (1933), 41 U.S.C. 10a to 10d, as amended, and 140
the rules adopted under that act. 141

Before and during the development and promulgation of the 142

model act, the director shall consult with appropriate statewide 143
organizations representing counties, townships, and municipal 144
corporations so as to identify the special requirements and 145
concerns these political subdivisions have in their purchasing and 146
public improvement contracting procedures. The director shall 147
promulgate the model act by rule adopted pursuant to Chapter 119. 148
of the Revised Code and shall revise the act as necessary to 149
reflect changes in this chapter or section 153.012 of the Revised 150
Code. 151

The director shall make available copies of the model act, 152
supporting information, and technical assistance to any township, 153
county, or municipal corporation wishing to incorporate the 154
provisions of the act into its purchasing or public improvement 155
contracting procedure. 156

(F) An entity that has been awarded a contract under division 157
(B) of this section in part by demonstrating that the entity will 158
create or retain jobs in Ohio as a result of being awarded the 159
contract, and that has within a reasonable time following 160
completion of the contract failed to fulfill the obligation to 161
create or retain jobs, is liable to the state for an amount equal 162
to the difference between the entity's bid price and the lowest 163
price submitted on a responsive and responsible bid from among the 164
bids that did not offer products that have been produced or mined 165
in this state. 166

Sec. 125.112. (A) As used in this section: 167

(1) "Agency" means a department created under section 121.02 168
of the Revised Code. 169

(2) "Entity" means, whether for profit or nonprofit, a 170
corporation, association, partnership, limited liability company, 171
sole proprietorship, or other business entity. "Entity" does not 172
include an individual who receives state assistance that is not 173

related to the individual's business.	174
(3)(a) "State award" means a contract awarded by the state costing over twenty-five thousand dollars.	175 176
(b) "State award" does not include compensation received as an employee of the state or any state financial assistance and expenditure received from the general assembly or any legislative agency, any court or judicial agency, the secretary of state, auditor of state, treasurer of state, or attorney general and their respective offices.	177 178 179 180 181 182
(B) The department of administrative services shall establish and maintain a single searchable web site, accessible by the public at no cost, that includes all of the following information for each state award:	183 184 185 186
(1) The name of the entity receiving the award;	187
(2) The amount of the award;	188
(3) Information on the award, the agency or other instrumentality of the state that is providing the award, and the commodity code;	189 190 191
(4) Any other relevant information determined by the department of administrative services.	192 193
(C) The department of administrative services may consult with other state agencies in the development, establishment, operation, and support of the web site required by division (B) of this section. State awards shall be posted on the web site within thirty days after being made. The department of administrative services shall provide an opportunity for public comment as to the utility of the web site required by division (B) of this section and any suggested improvements.	194 195 196 197 198 199 200 201
(D) The web site required by division (B) of this section shall be fully operational not later than one year after the	202 203

~~effective date of this section~~ December 30, 2008, and shall 204
include information on state awards made in fiscal year 2008 and 205
thereafter. It shall also provide an electronic link to the daily 206
journals of the senate and house of representatives. 207

(E) The director of administrative services shall submit to 208
the general assembly an annual report regarding the implementation 209
of the web site established pursuant to division (B) of this 210
section. The report shall include data regarding the usage of the 211
web site and any public comments on the utility of the site, 212
including recommendations for improving data quality and 213
collection. The director shall post each report on the web site. 214

(F) Each agency awarding a grant to an entity in fiscal year 215
2008 and thereafter shall establish and maintain a separate web 216
site listing the name of the entity receiving each grant, the 217
grant amount, information on each grant, and any other relevant 218
information determined by the department of administrative 219
services. Each agency shall provide the link to such a web site to 220
the department of administrative services within a reasonable time 221
after ~~the effective date of this section~~ December 30, 2008, and 222
shall thereafter update its web site within thirty days of 223
awarding a new grant. Not later than one year after ~~the effective~~ 224
~~date of this section~~ December 30, 2008, the department of 225
administrative services shall establish and maintain a separate 226
web site, accessible to the public at no cost, which contains the 227
links to the agency web sites required by this division. 228

(G) The attorney general shall monitor the compliance of an 229
entity with the terms and conditions, including performance 230
metrics, if any, of a state award for economic development 231
received by that entity. As necessary, the agency that makes and 232
administers the state award for economic development shall assist 233
the attorney general with that monitoring. The attorney general 234
shall submit to the general assembly pursuant to section 101.68 of 235

the Revised Code an annual report regarding the level of 236
compliance of such entities with the terms and conditions, 237
including any performance metrics, of their state awards for 238
economic development. When the attorney general determines 239
appropriate and to the extent that an entity that receives or has 240
received a state award for economic development does not comply 241
with a performance metric that is specified in the terms and 242
conditions of the award, the attorney general shall pursue against 243
and from that entity such remedies and recoveries as are available 244
under law. For purposes of this division, "state award for 245
economic development" means state financial assistance and 246
expenditure in any of the following forms: grants, subgrants, 247
loans, awards, cooperative agreements, or other similar and 248
related forms of financial assistance and contracts, subcontracts, 249
purchase orders, task orders, delivery orders, or other similar 250
and related transactions. "State award for economic development" 251
includes a contract awarded under division (B) of section 125.11 252
of the Revised Code to an entity that has demonstrated that the 253
entity will create or retain jobs in Ohio. "State award for 254
economic development" does not include compensation received as an 255
employee of the state or any state financial assistance and 256
expenditure received from the general assembly or any legislative 257
agency, any court or judicial agency, the secretary of state, 258
auditor of state, treasurer of state, or attorney general and 259
their respective offices. 260

(H) Nothing in this section shall be construed as requiring 261
the disclosure of information that is not a public record under 262
section 149.43 of the Revised Code. 263

Sec. 125.56. (A) Except as provided in division (B) of this 264
section, all printing under sections 125.43 to 125.76 of the 265
Revised Code, shall be executed pursuant to section 125.11 of the 266
Revised Code. 267

(B) Division (A) of this section does not apply to printing 268
contracts requiring special, security paper of a unique nature if 269
compliance with division (A) will result in an excessive price for 270
the product or acquiring a disproportionately inferior product. 271

(C) As used in this section, "excessive price" ~~means a price~~ 272
~~that exceeds by more than five per cent the lowest price submitted~~ 273
~~on a non-Ohio bid~~ has the meaning defined in division (B) of 274
section 125.11 of the Revised Code. 275

Section 2. That existing sections 125.09, 125.11, 125.112, 276
and 125.56 of the Revised Code are hereby repealed. 277