



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 131*

128th General Assembly
(As Reported by S. Agriculture)

Sens. Gillmor and Cafaro, Widener, Grendell

BILL SUMMARY

- Requires the Director of Administrative Services, not later than 180 days after the bill's effective date, to establish a biobased product preference program that incorporates specified requirements, and defines "biobased product."
- Requires the Department of Administrative Services, other state agencies, and state institutions of higher education, when purchasing equipment, material, or supplies, to purchase biobased products in accordance with the program, and requires the Director of Transportation and educational institutions of the state to comply with the program even though those entities have purchasing authority separate from the Department of Administrative Services under current law.
- For any biobased product offered under the program, requires a vendor to certify that the product meets the biobased content requirements for the designated item of which the product is an exemplar, and requires a vendor, upon request, to provide to the Director information to verify the biobased content of a biobased product qualifying for purchase in accordance with the program.
- Requires the Director to adopt necessary rules, including procedures that the Department, other state agencies, and state institutions of higher education must use to give preference to and purchase biobased products in accordance with the program.

* This analysis was prepared before the report of the Senate Agriculture Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Authorizes the Director to enter into a pilot contract with a vendor of a biobased product for the purpose of determining if the product is feasible for use by the state, and establishes requirements governing such a pilot contract.
- Exempts the purchase of motor vehicle fuel, heating oil, or electricity from the program's requirements.
- Requires the Director to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report that describes the number and types of biobased products purchased under the program and the amount of money spent by the Department and other state agencies for those biobased products.
- Requires the Chancellor of the Board of Regents to prepare and submit an annual report to the same officials containing the same information with regard to purchases of biobased products by state institutions of higher education, and requires each state institution of higher education to prepare and submit to the Chancellor an annual report that describes the number and types of biobased products purchased under the program and the amount of money spent by the institution for those products.

CONTENT AND OPERATION

The bill requires the Director of Administrative Services, not later than 180 days after the bill's effective date, to establish a biobased product preference program, which must ensure that the Department of Administrative Services, other state agencies, and state institutions of higher education purchase biobased products by giving a preference to those designated items that are composed of the highest percentage of biobased content practicable or that comply with regulations adopted under specified provisions of federal law by the Administrator of the United States Environmental Protection Agency (R.C. 125.092(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 (R.C. 125.091(B)).¹ "Designated item" means a

¹ "Biological products" means products derived from living materials other than agricultural or forestry materials (R.C. 125.091(C)). "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 (R.C. 125.091(A)). "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,

generic grouping of biobased products identified in specified federal regulations (R.C. 125.091(D)). "State institution of higher education" means any state university (including the Northeastern Ohio Universities College of Medicine), community college, state community college, university branch established under the University Branch Districts Law, or technical college (R.C. 125.092(I), by reference to R.C. 3345.011).

The bill then requires the Department of Administrative Services, other state agencies, and state institutions of higher education, when purchasing equipment, material, or supplies, to purchase biobased products in accordance with the program. The purchase of biobased products under the program must be consistent with the State Purchasing Law. (R.C. 125.092(A) and (B) and 3345.691.) Although the Director of Transportation and educational institutions of the state have purchasing authority separate from the Department of Administrative Services under current law, the bill requires those entities to comply with the program (R.C. 125.04 and 5513.02).

As part of the program, the Director must adopt a policy of setting minimum biobased content specifications for awarding contracts in a manner that ensures that the biobased content of biobased products is consistent with the guidelines issued under specified provisions of federal law, except when the Director determines that any of certain conditions applies as follows (R.C. 125.092(B)). The Director may determine that it is not possible for a biobased product to be purchased in accordance with the program if the Director determines that the product is not available within a reasonable period of time, the product fails to meet the performance standards set forth in the applicable specifications for the product, or the product is available only at an unreasonable price. "Unreasonable price" means a price that exceeds more than 5% of the price of a similar product that is not a biobased product. (R.C. 125.092(C).)

For any biobased product offered under the program, a vendor must certify that the product meets the biobased content requirements for the designated item of which the product is an exemplar. Upon request, a vendor must provide to the Director information to verify the biobased content of a biobased product qualifying for purchase in accordance with the program. (R.C. 125.092(D).)

wood residues, or forest thinnings (R.C. 125.091(F)). "Sustainably managed forests" means the practice of land stewardship that integrates the reforestation, management, growing, nurturing, and harvesting of trees for useful products while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics (R.C. 125.091(H)). "Forest thinnings" means woody materials removed from a dense forest to improve growth, enhance forest health, or remove trees to recover potential mortality (R.C. 125.091(E)). "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 (R.C. 125.091(G)).

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that prescribe all of the following:

(1) The procedures that the Department, other state agencies, and state institutions of higher education must use to give preference to and purchase biobased products in accordance with the program;

(2) The purchasing policy the Director adopts under the bill; and

(3) Other requirements or procedures that are necessary to implement the program (R.C. 125.092(E)).

In addition, the Director must maintain a list of products that qualify as designated items under the biobased product preference program (R.C. 125.092(F)).

The bill authorizes the Director to enter into a pilot contract with a vendor of a biobased product that is determined by the Director to be the sole provider of the biobased product for the purpose of determining if the product is feasible for use by the state. For purposes of entering into the contract, the Director may negotiate pricing and the terms and conditions of the contract subject to Controlling Board approval. Pricing for the pilot contract must be based on the fair market value of similar products if those products are available. The term of the pilot contract may be for a length of time determined by the Director, not to exceed one fiscal year, to sufficiently examine and complete testing of the biobased product. The bill authorizes the Director to renew the contract for one additional fiscal year subject to Controlling Board approval. If the Director determines the biobased product to be feasible for use by the state, all additional purchases of that product must be made by competitive selection. (R.C. 125.092(G).)

The bill states that its requirements for the program do not apply to the purchase of motor vehicle fuel, heating oil, or electricity (R.C. 125.092(H)).

The bill requires the Director, not later than September 30, 2010, and September 30 of each year thereafter, to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that describes the number and types of biobased products purchased under the program and the amount of money spent by the Department and other state agencies for those biobased products (R.C. 125.093).

Similarly, the bill requires the Chancellor of the Board of Regents, not later than September 30, 2010, and September 30 of each year thereafter, to prepare and submit a report to the same officials containing the same information with regard to purchases of biobased products by state institutions of higher education (R.C. 3345.692(B)). For

purposes of that report, the bill requires a state institution of higher education, not later than September 15, 2010, and September 15 of each year thereafter, to prepare and submit to the Chancellor a report that describes the number and types of biobased products purchased under the program and the amount of money spent by the institution for those biobased products (R.C. 3345.692(A)).

HISTORY

ACTION

DATE

Introduced
Reported, S. Agriculture

06-03-09

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