

AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

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

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

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

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

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

(c) "Political subdivision" means any county, township, municipal corporation, school district, conservancy district, township park district, park district created under Chapter 1545. of the Revised Code, regional

transit authority, regional airport authority, regional water and sewer district, or port authority. "Political subdivision" also includes any other political subdivision described in the Revised Code that has been approved by the department to participate in the department's contracts under this division.

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

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

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.

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.

(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.

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

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

(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.

(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 material, or is an intermediate ingredient or feedstock.

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

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

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

(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.

(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.

(H) "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.

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

(B) Not later than one hundred eighty days after the effective date of this section, the director shall establish a biobased product preference program, which shall 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 42 U.S.C. 6914b-1 by the administrator of the United States environmental protection agency. The purchase of biobased products under the program shall be consistent with sections 125.01 to 125.11 of the Revised Code.

As part of the program, the director shall 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 7 U.S.C. 8102, except when the director determines that division (C)(1), (2), or (3) of this section applies.

(C) The director may determine that it is not possible for a biobased

product to be purchased in accordance with the biobased product preference program if the director determines that any of the following applies to the product:

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) When purchasing equipment, material, or supplies, a state

institution of higher education shall purchase designated items in accordance with procedures established by the institution.

(H) If, after assessing the functions of designated items, a state agency determines that none of the designated items are functionally capable of meeting a specific need of the agency, the agency shall notify the director of administrative services. If, after assessing the functions of designated items, a state institution of higher education determines that none of the designated items are functionally capable of meeting a specific need of the institution, the institution shall notify both the director of administrative services and the chancellor of the board of regents. The agency or institution then may purchase a nonbiobased product that is functionally capable of meeting that specific need of the agency or institution, as applicable. Such a purchase does not constitute failure to comply with the biobased product preference program or preclude the agency or institution from otherwise participating in the program.

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

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

Sec. 125.093. Not later than September 30, 2010, and the thirtieth day of September each year thereafter, the director of administrative services shall 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 section 125.092 of the Revised Code and the amount of money spent by the department of administrative services and other state agencies for those biobased products.

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

Sec. 3345.692. (A) Not later than September 15, 2010, and the fifteenth day of September each year thereafter, a state institution of higher education shall prepare and submit to the chancellor of the board of regents a report that describes the number and types of biobased products purchased under section 125.092 of the Revised Code and the amount of money spent by the state institution of higher education for those biobased products.

(B) Not later than September 30, 2010, and the thirtieth day of September each year thereafter, the chancellor of the board of regents shall 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 section 125.092 of the

Revised Code and the amount of money spent by state institutions of higher education for those biobased products as that information is provided to the chancellor under division (A) of this section.

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

Sec. 5513.02. (A) Specifications describing the character of the articles that the department of transportation is proposing to purchase, and the conditions governing shipment and delivery, shall be kept on file at the department and open to public inspection throughout the time during which an invitation to bidders is required to be posted. The director of transportation may require bids to be accompanied by a certified check payable to the director in an amount fixed by the director and stated in the invitation to bidders. Persons, firms, or corporations desiring to bid on more than one invitation shall be relieved from furnishing certified checks with their bids provided they first furnish a bond payable to the state, in an amount and with surety approved by the director, conditioned for the faithful performances of all contracts that may be awarded to them, and otherwise conditioned as the director requires. All bids shall be publicly opened and read at the time and place mentioned in the notice. All purchases shall be made by the director from the lowest responsive and responsible bidder for each item in accordance with section 9.312 of the Revised Code, except where the director has established in the bidding documents a provision for multiple awards for the purchase of items such as asphalt, aggregates, machinery parts, and others as the director determines necessary, and except that in the purchase of machinery, equipment, or supplies for which fixed and definite specifications cannot be prepared, the director may purchase the articles meeting the general specifications prescribed and which the director finds are most suitable for the uses intended. Sections 5513.01 to 5513.04 of the Revised Code shall apply to the exchange of machinery and equipment and in force account operations where the director desires to combine in one order the furnishing, hauling, and placing of material. The director may purchase or authorize the purchase without notice, or upon such notice as the director prescribes, of materials that in the director's judgment may be required for the immediate repair of roads or bridges destroyed or damaged by flood, landslide, or other casualty. No person shall place separate orders for the purpose of defeating such sections, and contracts of purchase shall not be valid unless made in conformity with this section.

(B) ~~Division~~ Section 125.092 and division (B) of section 125.11 of the Revised Code ~~applies~~ apply to the purchase of products by the director

pursuant to sections 5513.01 to 5513.04 of the Revised Code.

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

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

(2) "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents that meets the American society for testing and materials specification for biodiesel fuel (B100) blend stock distillate fuels.

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

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

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

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

(7) "Retail dealer" means any person that is a taxpayer under this chapter that owns or operates a retail service station located in this state.

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

(B) For taxable years ending in 2008 and 2009, there is hereby allowed a nonrefundable credit against the tax imposed by section 5747.02 of the Revised Code for a retail dealer that sells alternative fuel. The credit for a dealer's taxable year ending in 2008 shall equal fifteen cents per gallon of alternative fuel sold and dispensed through a metered pump at the retail dealer's retail service station during any part of calendar year 2007 or 2008 included in that taxable year. The credit for a dealer's taxable year ending in

2009 shall equal fifteen cents per gallon of alternative fuel sold and dispensed through a metered pump at the retail dealer's retail service station during any part of calendar year 2008 included in that taxable year, plus thirteen cents per gallon of alternative fuel sold and dispensed in that manner during any part of calendar year 2009 included in that taxable year.

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

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

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

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

~~(F)~~(F) Nothing in this section limits or disallows pass-through treatment of the credit if the retail dealer is a pass-through entity. If the retail dealer is a pass-through entity, references in other divisions of this section to "taxable year" refer to the dealer's taxable year; an equity owner of the retail dealer

that is a pass-through entity may claim the owner's distributive or proportionate share of the credit for the equity owner's taxable year that includes the last day of the entity's taxable year.

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

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 131

128th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____