



# Ohio Legislative Service Commission

## Final Analysis

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### Sub. S.B. 131

128th General Assembly  
(As Passed by the General Assembly)

- Sens.** Gillmor and Cafaro, Widener, Grendell, Schuring, Gibbs, Carey, Faber, Morano, Fedor, Goodman, Harris, Hughes, Kearney, D. Miller, R. Miller, Niehaus, Patton, Sawyer, Schaffer, Seitz, Smith, Stewart, Wagoner, Schiavoni
- Reps.** Okey, Sayre, J. Adams, R. Adams, Balderson, Beck, Belcher, Blessing, Book, Boose, Brown, Bupp, Celeste, Chandler, Combs, Daniels, DeGeeter, Derickson, Dodd, Domenick, Driehaus, Dyer, Evans, Foley, Garland, Garrison, Goodwin, Goyal, Hackett, Harris, Harwood, Heard, Hite, Koziura, Letson, Luckie, Mallory, McClain, McGregor, Newcomb, Oelslager, Patten, Phillips, Pillich, Pryor, Ruhl, Skindell, Slesnick, Snitchler, Stebelton, Stewart, Uecker, Ujvagi, Wagner, Weddington, B. Williams, Winburn, Yuko, Zehringer

**Effective date:** May 31, 2010

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## ACT SUMMARY

- Requires the Director of Administrative Services, not later than 180 days after the act's effective date, to establish a biobased product preference program that incorporates specified requirements, and defines "biobased product."
- Generally 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 continuing law.
- Authorizes the Director to determine that it is not possible for a biobased product to be purchased in accordance with the program if the Director finds that the product: (1) is not available within a reasonable period of time, (2) fails to meet certain performance standards, or (3) is available only at an unreasonable price, and defines "unreasonable price" for such a purpose.

- 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 and other state agencies must use to give preference to and purchase biobased products in accordance with the program.
- Requires a state institution of higher education to purchase designated items in accordance with procedures established by the institution.
- Authorizes a state agency or state institution of higher education to purchase a nonbiobased product that is functionally capable of meeting a specific need of the agency or institution if none of the designated items are capable of meeting that need, and states that such a purchase does not constitute failure to comply with the biobased preference program or preclude the agency or institution from otherwise participating in the program.
- 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.
- Revises and extends to taxable years 2010 and 2011 the income tax credit for retail service station dealers that sell and dispense E85 blend fuel or blended biodiesel through metered pumps.

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## CONTENT AND OPERATION

### Biobased product preference program

The act requires the Director of Administrative Services, not later than 180 days after the act'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)).<sup>1</sup> "Designated item" means a 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(J), by reference to R.C. 3345.011, not in the act).

The act 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 except as discussed below. 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.)

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<sup>1</sup> "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, 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)).

Although the Director of Transportation and educational institutions of the state have purchasing authority separate from the Department of Administrative Services under continuing law, the act 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 price of the product is an unreasonable price. "Unreasonable price" means either of the following:

(1) The price of the biobased product exceeds the price of a substantially equivalent nonbiobased product; or

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

In accordance with rules adopted under the act, the Director may determine a percentage that is up to 5% 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 purposes of item (1) or (2) discussed above, as applicable. In doing so, the Director must give consideration to the benefits of expanding the use of biobased products. (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).)

The act 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 and other state agencies must use to give preference to and purchase biobased products in accordance with the program;

(2) The purchasing policy the Director adopts under the act;

(3) Procedures and guidelines to be used by the Director in determining percentages for the purposes of determining whether a certain biobased product is unreasonably priced as described above; and

(4) 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)).

Under the act, when purchasing equipment, material, or supplies, a state institution of higher education must purchase designated items in accordance with procedures established by the institution (R.C. 125.092(G)).

The act states that 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 must 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 must 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. (R.C. 125.092(H).)

The act also 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(I)).

The act 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 act 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 act 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)).

### **Alternative fuel income tax credit**

Continuing law establishes a nonrefundable tax credit against the income tax for a retail dealer that owns or operates a retail service station located in Ohio from which alternative fuel is sold to the general public and dispensed through a metered pump. Under law largely retained by the act, "alternative fuel" is defined as E85 blend fuel, which must contain at least 85% ethanol derived from agricultural products, forest products, or other renewable resources,<sup>2</sup> and blended biodiesel, which must contain not less than 20% biodiesel derived from vegetable oils or animal fats. Both E85 blend fuel and blended biodiesel must meet American Society for Testing and Materials (ASTM) specifications. (R.C. 5747.77(A).)

Under continuing law, the tax credit may be claimed for taxable years ending in 2008 or 2009. For a retail dealer's taxable year ending in 2008, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2007 or 2008 included in that taxable year. For a taxable year ending in 2009, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2008 included in that taxable year plus 13¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2009 included in that taxable year. (R.C. 5747.77(B).)

The tax credit must be calculated separately for each retail service station owned or operated by a retail dealer and must be claimed in the order prescribed by continuing law. The credit is allowed only for fuel sold from a station in Ohio. The credit cannot exceed the amount of income tax that is due after deducting all other credits the dealer may claim in that order. Additionally, pass-through treatment of the tax credit is allowed if the retail dealer is a pass-through entity. 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. (R.C. 5747.77(B), (C), and (D) and 5747.98, not in the act.)

The act revises and extends the income tax credit as follows. First, it states that in the definition of "blended biodiesel" discussed above, for taxable years ending in 2010

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<sup>2</sup> E85 fuel may contain between 70% and 85% 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.

or 2011, 6% must be substituted for 20%, thus stipulating that the resultant blended product of biodiesel and petroleum-based diesel fuel must contain not less than 6% biodiesel for those taxable years (R.C. 5747.77(A)(3)). It then allows the tax credit to be claimed for taxable years ending in 2010 and 2011 (R.C. 5747.77(C)(1)).

The act states that except as discussed below, for a retail dealer's taxable year ending in 2010, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2009 or 2010 included in that taxable year. For a taxable year ending in 2011, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2010 included in that taxable year plus 13¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2011 included in that taxable year. (R.C. 5747.77(C)(1).) However, in the case of blended biodiesel containing at least 10%, but less than 20% biodiesel sold and dispensed, the credit is 7.5¢ per gallon. In the case of blended biodiesel containing at least 6%, but less than 10% biodiesel sold and dispensed, the credit is \$3.75 per gallon. (R.C. 5747.77(C)(2).)

The act retains the provisions in continuing law that are discussed above concerning calculation and claiming of the credit and pass-through treatment (R.C. 5747.77(D), (E), and (F) and 5747.98, not in the act).

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## HISTORY

ACTION	DATE
Introduced	06-03-09
Reported, S. Agriculture	09-23-09
Passed Senate (30-0)	09-29-09
Reported, H. Agriculture & Natural Resources	02-08-10
Passed House (93-1)	02-17-10
Senate concurred in House amendments (30-0)	02-17-10

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