

# HOUSE BILL No. 5529

April 17, 2012, Introduced by Reps. Muxlow, Shaughnessy, Goike, Gilbert, Kurtz, Rogers, Daley, Opsommer, Damrow, Hooker, Potvin and Rendon and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled  
"The management and budget act,"  
(MCL 18.1101 to 18.1594) by adding section 261e.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 261E. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (4) AND (9),  
2        WHEN PURCHASING EQUIPMENT, MATERIAL, OR SUPPLIES, THE DEPARTMENT  
3        SHALL PURCHASE BIOBASED PRODUCTS IN ACCORDANCE WITH THE BIOBASED  
4        PRODUCT PREFERENCE PROGRAM ESTABLISHED BY THE DIRECTOR UNDER THIS  
5        SECTION.

6        (2) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THIS  
7        SECTION, THE DIRECTOR SHALL ESTABLISH A BIOBASED PRODUCT PREFERENCE  
8        PROGRAM, WHICH SHALL GIVE A PREFERENCE TO DESIGNATED ITEMS THAT ARE  
9        COMPOSED OF THE HIGHEST PERCENTAGE OF BIOBASED CONTENT PRACTICABLE  
10       OR THAT COMPLY WITH REGULATIONS ADOPTED UNDER 42 USC 6914B-1 BY THE  
11       ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

1 THE PURCHASE OF BIOBASED PRODUCTS UNDER THE PROGRAM SHALL BE  
2 CONSISTENT WITH OTHER PURCHASING REQUIREMENTS.

3 (3) AS PART OF THE PROGRAM, THE DIRECTOR SHALL ADOPT A POLICY  
4 SETTING MINIMUM BIOBASED CONTENT SPECIFICATIONS FOR AWARDING  
5 CONTRACTS IN A MANNER THAT ENSURES THAT THE BIOBASED CONTENT OF  
6 PRODUCTS IS CONSISTENT WITH THE GUIDELINES ISSUED UNDER 7 USC 8102,  
7 EXCEPT WHEN THE DIRECTOR DETERMINES THAT SUBSECTION (4) OR (9)  
8 APPLIES.

9 (4) THE DIRECTOR MAY DETERMINE THAT IT IS NOT POSSIBLE FOR A  
10 BIOBASED PRODUCT TO BE PURCHASED IN ACCORDANCE WITH THE BIOBASED  
11 PRODUCT PREFERENCE PROGRAM IF THE DIRECTOR DETERMINES THAT ANY OF  
12 THE FOLLOWING APPLY TO THE PRODUCT:

13 (A) THE PRODUCT IS NOT AVAILABLE WITHIN A REASONABLE PERIOD OF  
14 TIME.

15 (B) THE PRODUCT FAILS TO MEET THE PERFORMANCE STANDARDS SET  
16 FORTH IN THE APPLICABLE SPECIFICATIONS FOR THE PRODUCT.

17 (C) THE PRICE OF THE PRODUCT IS UNREASONABLE BECAUSE ANY OF  
18 THE FOLLOWING APPLY:

19 (i) THE PRICE EXCEEDS THE PRICE OF A SUBSTANTIALLY EQUIVALENT  
20 NONBIOBASED PRODUCT.

21 (ii) THE PRICE EXCEEDS THE FAIR MARKET VALUE OF A SUBSTANTIALLY  
22 EQUIVALENT NONBIOBASED PRODUCT.

23 (5) IN ACCORDANCE WITH RULES ADOPTED UNDER THIS SECTION, THE  
24 DIRECTOR MAY DETERMINE A PERCENTAGE UP TO 5% BY WHICH THE PRICE OF  
25 A DESIGNATED BIOBASED PRODUCT MAY EXCEED THE PRICE OR FAIR MARKET  
26 VALUE OF A SUBSTANTIALLY EQUIVALENT NONBIOBASED PRODUCT WITHOUT  
27 BEING CONSIDERED UNREASONABLE. IN DOING SO, THE DIRECTOR SHALL GIVE

1 CONSIDERATION TO THE BENEFITS OF EXPANDING THE USE OF BIOBASED  
2 PRODUCTS.

3 (6) FOR ANY BIOBASED PRODUCT OFFERED UNDER THE BIOBASED  
4 PRODUCT PREFERENCE PROGRAM, A VENDOR SHALL CERTIFY THAT THE PRODUCT  
5 MEETS THE BIOBASED CONTENT REQUIREMENTS FOR THE DESIGNATED ITEM.  
6 UPON REQUEST, A VENDOR SHALL PROVIDE THE DIRECTOR WITH INFORMATION  
7 TO VERIFY THE BIOBASED CONTENT OF A BIOBASED PRODUCT QUALIFYING FOR  
8 PURCHASE IN ACCORDANCE WITH THE PROGRAM.

9 (7) THE DIRECTOR SHALL ADOPT RULES IN ACCORDANCE WITH THE  
10 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
11 24.328, THAT PRESCRIBE ALL OF THE FOLLOWING:

12 (A) THE PROCEDURES FOR GIVING PREFERENCE TO BIOBASED PRODUCTS  
13 IN PURCHASES UNDER THE PROGRAM.

14 (B) THE PURCHASING POLICY THE DIRECTOR ADOPTS UNDER SUBSECTION  
15 (3).

16 (C) PROCEDURES AND GUIDELINES THE DIRECTOR WILL USE IN  
17 DETERMINING PERCENTAGES FOR PURPOSES OF SUBSECTION (5).

18 (D) OTHER REQUIREMENTS OR PROCEDURES THAT ARE NECESSARY TO  
19 IMPLEMENT THE BIOBASED PRODUCT PREFERENCE PROGRAM.

20 (8) THE DIRECTOR SHALL MAINTAIN A LIST OF PRODUCTS THAT  
21 QUALIFY AS DESIGNATED ITEMS UNDER THE BIOBASED PRODUCT PREFERENCE  
22 PROGRAM.

23 (9) IF, AFTER ASSESSING THE FUNCTIONS OF DESIGNATED ITEMS, A  
24 STATE DEPARTMENT OR AGENCY DETERMINES THAT NONE OF THE DESIGNATED  
25 ITEMS ARE FUNCTIONALLY CAPABLE OF MEETING A SPECIFIC NEED, THE  
26 DEPARTMENT OR AGENCY SHALL NOTIFY THE DIRECTOR. THE DEPARTMENT OR  
27 AGENCY MAY THEN PROCEED WITH THE SOLICITATION AND PURCHASE OF A

1 NONBIOBASED PRODUCT THAT IS FUNCTIONALLY CAPABLE OF MEETING THAT  
2 SPECIFIC NEED OF THE DEPARTMENT OR AGENCY. THAT PURCHASE DOES NOT  
3 CONSTITUTE FAILURE TO COMPLY WITH THE BIOBASED PRODUCT PREFERENCE  
4 PROGRAM OR PRECLUDE THE DEPARTMENT OR AGENCY FROM OTHERWISE  
5 PARTICIPATING IN THE PROGRAM.

6 (10) THIS SECTION DOES NOT APPLY TO THE PURCHASE OF MOTOR  
7 VEHICLE FUEL, HEATING OIL, OR ELECTRICITY.

8 (11) BY SEPTEMBER 30, 2012 AND BY SEPTEMBER 30 OF EACH YEAR  
9 THEREAFTER, THE DIRECTOR SHALL PREPARE AND SUBMIT TO THE GOVERNOR,  
10 THE SECRETARY OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF  
11 REPRESENTATIVES A REPORT THAT DESCRIBES THE NUMBER AND TYPE OF  
12 BIOBASED PRODUCTS PURCHASED UNDER THIS SECTION AND THE ADDITIONAL  
13 AMOUNT OF MONEY SPENT BY THE DEPARTMENT AND OTHER STATE AGENCIES  
14 FOR THOSE BIOBASED PRODUCTS.