

SENATE BILL No. 431

June 13, 2013, Introduced by Senators CASWELL, GREEN, BRANDENBURG and PAPPAGEORGE
and referred to the Committee on Appropriations.

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 ALL OTHER THINGS BEING EQUAL, WHEN PURCHASING EQUIPMENT, MATERIAL,
3 OR SUPPLIES, THE DEPARTMENT SHALL PURCHASE BIOBASED PRODUCTS IN
4 ACCORDANCE WITH THE BIOBASED PRODUCT PREFERENCE PROGRAM ESTABLISHED
5 BY THE DIRECTOR UNDER THIS 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

1 ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.
2 THE PURCHASE OF BIOBASED PRODUCTS UNDER THE PROGRAM SHALL BE
3 CONSISTENT WITH OTHER PURCHASING REQUIREMENTS.

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

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

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

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

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

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

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

24 (5) IN ACCORDANCE WITH RULES ADOPTED UNDER THIS SECTION AND
25 ALL OTHER THINGS BEING EQUAL, THE DIRECTOR MAY DETERMINE A
26 PERCENTAGE BY WHICH THE PRICE OF A DESIGNATED BIOBASED PRODUCT MAY
27 EXCEED THE PRICE OR FAIR MARKET VALUE OF A SUBSTANTIALLY EQUIVALENT

1 NONBIOBASED PRODUCT WITHOUT BEING CONSIDERED UNREASONABLE. IN DOING
2 SO, THE DIRECTOR SHALL GIVE CONSIDERATION TO THE BENEFITS OF
3 EXPANDING THE USE OF BIOBASED PRODUCTS.

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

10 (7) THE DIRECTOR SHALL ADOPT RULES IN ACCORDANCE WITH THE
11 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
12 24.328, THAT PRESCRIBE ALL OF THE FOLLOWING:

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

15 (B) THE PURCHASING POLICY THE DIRECTOR ADOPTS UNDER SUBSECTION
16 (3).

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

19 (D) THE PROCEDURES AND GUIDELINES FOR GIVING PREFERENCE TO
20 BIOBASED PRODUCTS IN PURCHASES UNDER THIS SECTION IN INSTANCES IN
21 WHICH OTHER PURCHASING PREFERENCES MAY BE APPLICABLE UNDER THIS
22 ACT.

23 (E) OTHER REQUIREMENTS OR PROCEDURES THAT ARE NECESSARY TO
24 IMPLEMENT THE BIOBASED PRODUCT PREFERENCE PROGRAM.

25 (8) THE DIRECTOR SHALL MAINTAIN A LIST OF PRODUCTS THAT
26 QUALIFY AS DESIGNATED ITEMS UNDER THE BIOBASED PRODUCT PREFERENCE
27 PROGRAM.

1 (9) IF, AFTER ASSESSING THE FUNCTIONS OF DESIGNATED ITEMS, A
2 STATE DEPARTMENT OR AGENCY DETERMINES THAT NONE OF THE DESIGNATED
3 ITEMS ARE FUNCTIONALLY CAPABLE OF MEETING A SPECIFIC NEED, THE
4 DEPARTMENT OR AGENCY SHALL NOTIFY THE DIRECTOR. THE DEPARTMENT OR
5 AGENCY MAY THEN PROCEED WITH THE SOLICITATION AND PURCHASE OF A
6 NONBIOBASED PRODUCT THAT IS FUNCTIONALLY CAPABLE OF MEETING THAT
7 SPECIFIC NEED OF THE DEPARTMENT OR AGENCY. THAT PURCHASE DOES NOT
8 CONSTITUTE FAILURE TO COMPLY WITH THE BIOBASED PRODUCT PREFERENCE
9 PROGRAM OR PRECLUDE THE DEPARTMENT OR AGENCY FROM OTHERWISE
10 PARTICIPATING IN THE PROGRAM.

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