

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 691**

Introduced by Brasch, 16; Bloomfield, 17; Carlson, 38; Hansen, 42;  
Schilz, 47.

Read first time January 19, 2011

Committee: Government, Military and Veterans Affairs

A BILL

- 1 FOR AN ACT relating to state government; to provide requirements
- 2 relating to purchasing biobased products.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Legislature finds that the increased  
2 purchase and use of biobased products should be a priority for  
3 Nebraska because it will increase the use of agricultural products  
4 and spur economic development in rural areas.

5           Sec. 2. For purposes of sections 1 to 5 of this act:

6           (1) Agricultural materials means agricultural-based  
7 materials or residues, including plant, animal, and marine materials  
8 or residues, used in the manufacture of commercial or industrial  
9 nonfood products;

10          (2) Biobased product means a product determined by the  
11 materiel division of the Department of Administrative Services to be  
12 a commercial or an industrial product, other than food or feed, that  
13 is composed, in whole or significant part, of biological products,  
14 renewable domestic agricultural materials, or forestry material, or  
15 is an intermediate ingredient or feedstock;

16          (3) Biological products means products derived from  
17 living materials other than agricultural or forestry materials;

18          (4) Designated item means a generic grouping of biobased  
19 products identified in subpart B, 7 C.F.R. 2902.10 to 2902.42, as  
20 such regulation existed on January 1, 2011;

21          (5) Forest thinnings means woody materials removed from a  
22 dense forest to improve growth, enhance forest health, or remove  
23 trees to recover potential mortality;

24          (6) Forestry materials means materials derived from the  
25 practice of planting and caring for forests and the management of

1 growing timber where such materials come from short-rotation woody  
2 crops that are less than ten years old, sustainably managed forests,  
3 wood residues, or forest thinnings;

4 (7) Intermediate ingredient or feedstock means a material  
5 or compound made, in whole or in significant part, from biological  
6 products, renewable agricultural materials, or forestry materials  
7 that are subsequently used to make a more complex compound or  
8 product; and

9 (8) Sustainably managed forests means the practice of  
10 land stewardship that integrates the reforestation, management,  
11 growing, nurturing, and harvesting of trees for useful products while  
12 conserving soil and improving air and water quality, wildlife, fish  
13 habitat, and aesthetics.

14 Sec. 3. (1) Except as provided in subsections (7) and (8)  
15 of this section, when purchasing equipment, material, or supplies,  
16 the materiel division of the Department of Administrative Services  
17 and other state agencies shall purchase biobased products in  
18 accordance with the biobased product preference program established  
19 by the materiel division under this section.

20 (2) Not later than one hundred eighty days after the  
21 effective date of this act, the materiel administrator of the  
22 materiel division shall establish a biobased product preference  
23 program, which shall ensure that the materiel division and other  
24 state agencies purchase biobased products by giving a preference to  
25 those designated items that are composed of the highest percentage of

1 biobased content practicable or that comply with regulations adopted  
2 under 42 U.S.C. 6914b-1, as such section existed on January 1, 2011,  
3 by the administrator of the United States Environmental Protection  
4 Agency. As part of the program, the materiel administrator shall  
5 adopt a policy of setting minimum biobased content specifications for  
6 awarding contracts in a manner that ensures that the biobased content  
7 of biobased products is consistent with the guidelines issued under 7  
8 U.S.C. 8102, as such section existed on January 1, 2011, except when  
9 the materiel administrator determines that subdivision (3)(a), (b),  
10 or (c) of this section applies.

11 (3) The materiel administrator may determine that it is  
12 not possible for a biobased product to be purchased in accordance  
13 with the biobased product preference program if he or she determines  
14 that any of the following applies to the product:

15 (a) The product is not available within a reasonable  
16 period of time;

17 (b) The product fails to meet the performance standards  
18 set forth in the applicable specifications for the product; or

19 (c) The price of the product is an unreasonable price.

20 Unreasonable price means either of the following:

21 (i) The price of the biobased product exceeds the price  
22 of a substantially equivalent nonbiobased product; or

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

25 The materiel administrator may determine a percentage, up

1 to five percent, by which the price of a biobased product may exceed  
2 the price or fair market value of a substantially equivalent  
3 nonbiobased product without being considered an unreasonable price  
4 for the purpose of this subsection. In doing so, the materiel  
5 administrator shall give consideration to the benefits of expanding  
6 the use of biobased products.

7 (4) For any biobased product offered under the biobased  
8 product preference program, a vendor shall certify that the product  
9 meets the biobased content requirements for the designated item of  
10 which the product is an exemplar. Upon request, a vendor shall  
11 provide to the materiel administrator information to verify the  
12 biobased content of a biobased product qualifying for purchase in  
13 accordance with the program.

14 (5) The materiel administrator shall adopt and promulgate  
15 rules and regulations that prescribe:

16 (a) The procedures the materiel division and other state  
17 agencies shall use to give preference to and purchase biobased  
18 products in accordance with the program;

19 (b) The biobased product preference program the materiel  
20 administrator adopts under subsection (2) of this section;

21 (c) Procedures and guidelines to be used by the materiel  
22 administrator in determining percentages for purposes of subsection  
23 (3) of this section; and

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

1           (6) The materiel administrator shall maintain a list of  
2 products that qualify as designated items under the biobased product  
3 preference program.

4           (7) If, after assessing the functions of designated  
5 items, a state agency determines that none of the designated items  
6 are functionally capable of meeting a specific need of the agency,  
7 the agency shall notify the materiel administrator. The agency then  
8 may purchase a nonbiobased product that is functionally capable of  
9 meeting that specific need of the agency, as applicable. Such a  
10 purchase does not constitute failure to comply with the biobased  
11 product preference program or preclude the agency from otherwise  
12 participating in the program.

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

15           Sec. 4. When purchasing equipment or supplies, a state  
16 institution of higher education shall purchase designated items in  
17 accordance with procedures established by the institution that are  
18 similar to those established by the materiel administrator under  
19 section 3 of this act.

20           Sec. 5. (1) Not later than October 1, 2012, and each  
21 October 1 thereafter, the materiel administrator shall prepare and  
22 submit to the Governor and the Legislature a report that describes  
23 the number and types of biobased products purchased under section 3  
24 of this act and the amount of money spent by the materiel division  
25 and other state agencies for those biobased products.

1                   (2) Not later than October 1, 2012, and each October 1  
2 thereafter, each state institution of higher education shall prepare  
3 and submit to the Governor and the Legislature a report that  
4 describes the number and types of biobased products purchased under  
5 its procedures established pursuant to section 4 of this act and the  
6 amount of money spent by the institution for those biobased products.