

By: Ellington

To: Conservation and
Water Resources; Ways
and MeansHOUSE BILL NO. 1468
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE ENTITIES SEEKING TO ENTER INTO ENERGY EFFICIENCY
3 PERFORMANCE SERVICES OR SHARED SAVINGS CONTRACTS TO PUBLICLY
4 REQUEST PROPOSALS OR QUALIFICATIONS AND TO SELECT THE MOST
5 QUALIFIED PROPOSAL, PERSON OR FIRM; TO REVISE DEFINITIONS AND MAKE
6 TECHNICAL AND CONFORMING AMENDMENTS; TO AMEND SECTION 57-39-203,
7 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF ECONOMIC
8 AND COMMUNITY DEVELOPMENT TO CHARGE AN INTEREST RATE OF NO MORE
9 THAN TWO PERCENT BELOW PRIME ON LOANS TO SCHOOL DISTRICTS FOR
10 SCHOOL ENERGY CONSERVATION PROGRAMS AND TO INCREASE FROM FIVE TO
11 TEN YEARS THE MAXIMUM TERM FOR THOSE LOANS; AND FOR RELATED
12 PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 SECTION 1. Section 31-7-14, Mississippi Code of 1972, is
15 amended as follows:[LH1]

16 31-7-14. (1) (a) For purposes of this section, the
17 following words and phrases shall have the meaning ascribed
18 herein, unless the context clearly indicates otherwise:

19 (i) "Division" means the Energy Division of the
20 Mississippi Department of Economic and Community Development.

21 (ii) "Energy efficiency equipment, services
22 relating to the installation, operation and maintenance of
23 equipment and improvements reasonably required to existing
24 equipment and existing improvements" mean heating, ventilation and
25 air conditioning systems, lighting, windows, insulation and energy
26 management controls and other equipment, services and improvements
27 providing energy efficiency as determined by the division.

28 (iii) "Energy performance contract" means an
29 agreement to provide energy services which include, but are not
30 limited to, the design, installation, financing and maintenance or
31 management of the energy systems or equipment in order to improve

32 its energy efficiency. The energy savings are guaranteed by the
33 performance contractor and can be used to repay the cost of the
34 project.

35 (iv) "Energy services contract" means an agreement
36 to provide energy services which include, but are not limited to,
37 the design, installation, financing and maintenance or management
38 of the energy systems or equipment in order to improve its energy
39 efficiency. Payments for the contract are not contingent upon the
40 actual savings realized from the equipment.

41 (v) "Entity" means the board of trustees of any
42 public school district, junior college, institution of higher
43 learning, publicly owned hospital, state agency or governing
44 authority of this chapter.

45 (vi) "Shared savings contract" means an agreement
46 where the contractor and the entity each receive a pre-agreed
47 percentage or dollar value of the energy cost savings over the
48 life of the contract.

49 (b) An entity may enter into a lease, energy services
50 contract or lease-purchase contracts for energy efficiency
51 equipment, services relating to the installation, operation and
52 maintenance of equipment or improvements reasonably required to
53 existing equipment and existing improvements and shall contract in
54 accordance with the following provisions:

55 (i) An entity shall publicly issue requests for
56 proposals, advertised in the same manner as provided in Section
57 31-7-13 for seeking competitive sealed bids, concerning the
58 provision of energy efficiency services relating to the
59 installation, operation and maintenance of equipment, improvements
60 reasonably required to existing equipment and existing
61 improvements or the design, installation, ownership, operation and
62 maintenance of energy efficiency equipment. Those requests for
63 proposals shall contain terms and conditions relating to
64 submission of proposals, evaluation and selection of proposals,
65 financial terms, legal responsibilities, and any other matters as
66 the entity determines to be appropriate for inclusion.

67 (ii) Upon receiving responses to the request for
68 proposals, the entity may select the most qualified proposal or

69 proposals on the basis of experience and qualifications of the
70 proposers, the technical approach, the financial arrangements, the
71 overall benefits to the entity and any other relevant factors
72 determined to be appropriate.

73 (iii) An entity shall negotiate and enter into
74 contracts with the person, persons, firm or firms submitting the
75 proposal selected as the most qualified under this section.

76 (iv) All contracts must contain the following
77 annual allocation dependency clause: The continuation of this
78 contract is contingent upon the appropriation of funds to fulfill
79 the requirements of the contract by the Legislature or other
80 budgeting authority. If the Legislature or other budgeting
81 authority fails to appropriate sufficient monies to provide for
82 the continuation of the contract, the contract shall terminate on
83 the last day of the fiscal year for which appropriations were
84 made. The termination shall be without penalty or expense to the
85 entity of any kind whatsoever, except as to the portions of
86 payments for which funds were appropriated.

87 (v) The annual rate of interest paid under any
88 lease-purchase agreement authorized by this section shall not
89 exceed the maximum interest rate to maturity on general obligation
90 indebtedness permitted under Section 75-17-101.

91 (vi) The maximum lease-purchase term for any
92 equipment acquired under this section shall not exceed the useful
93 life of that equipment as determined according to the upper limit
94 of the asset depreciation range (ADR) guidelines for the Class
95 Life Asset Depreciation Range System established by the Internal
96 Revenue Service under the United States Internal Revenue Code and
97 the regulations thereunder as in effect on December 31, 1980, or
98 comparable depreciation guidelines with respect to any equipment
99 not covered by ADR guidelines.

100 (vii) This subsection shall, with respect to the
101 procurement of energy efficiency services and/or equipment,

102 supersede any contradictory or conflicting provisions of Chapter
103 7, Title 31, Mississippi Code of 1972, and other laws with respect
104 to awarding public contracts.

105 * * *

106 (2) (a) The division * * * may contract with a party
107 selected under * * * this subsection to provide financing to
108 entities and private "nonprofit" hospitals, * * * to purchase
109 energy efficiency equipment, services relating to the
110 installation, operation and maintenance of equipment or
111 improvements reasonably required to existing equipment and
112 existing improvements or an energy saving performance contract,
113 energy services contract, or lease-purchase basis. Any energy
114 efficiency lease financing contract entered into by the division
115 before May 15, 1992, shall be valid and binding when the contract
116 was entered into under this subsection.

117 (b) The entities and private "nonprofit" hospitals that
118 decide to contract for energy efficiency equipment, services
119 relating to the installation, operation and maintenance of
120 equipment or improvements reasonably required to existing
121 equipment and existing improvements on a lease, energy services
122 contract or lease-purchase basis, may request financial assistance
123 from the division.

124 (c) The provisions of any energy efficiency
125 lease-purchase agreements authorized under this subsection shall
126 comply with the requirements of subparagraphs (1)(b)(iv) and (v)
127 of this section. The term of any energy services performance
128 contract, energy services contract, lease or lease-purchase
129 agreement for energy efficiency services and/or equipment entered
130 into under this section shall not exceed fifteen (15) years.

131 (d) Any entity or private nonprofit hospital having
132 approval of the division may borrow money in anticipation of
133 entering into a lease-purchase agreement pursuant to subsection
134 (2)(b) of this section. Any borrowing may be upon terms and

135 conditions as may be agreed upon by the borrowing entity and the
136 party advancing interim funds; however, the principal on any * * *
137 borrowing shall be repaid within a period of time not to exceed
138 one hundred eighty (180) days. In borrowing money under * * *
139 this subparagraph, it is not necessary to publish notice of
140 intention to do so or to secure the consent of the qualified
141 electors, either by election or otherwise. Any borrowing may be
142 negotiated between the parties and is not required to be publicly
143 bid, may be evidenced by negotiable notes or lease and shall not
144 be considered when computing any limitation of indebtedness of the
145 borrowing entity established by law. The principal, interest and
146 costs of incurring any borrowing shall not exceed the principal
147 amount of the final contract or agreement approved by the
148 division, and accepted by the borrowing entity, under subsection
149 (2)(b) of this section.

150 (e) This subsection shall, with respect to the
151 procurement of energy efficiency services and/or equipment,
152 supersede the provisions of any contradictory or conflicting
153 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
154 other laws with respect to awarding public contracts.

155 (3) All lease-purchase agreements authorized by this section
156 and the income from those agreements shall be exempt from all
157 taxation within the State of Mississippi, except gift, transfer
158 and inheritance taxes.

159 (4) (a) * * * An entity may contract for energy efficiency,
160 equipment, services relating to the installation, operation or
161 maintenance of equipment or improvements reasonably required to
162 existing equipment and existing improvements on a shared savings
163 basis or performance basis * * *.

164 (b) If an entity decides to enter into a contract for
165 energy efficiency equipment, services relating to the
166 installation, operation or maintenance of equipment or
167 improvements reasonably required to existing equipment and

168 existing improvements on a shared savings basis or performance
169 basis, the entity shall issue a request for proposals or a request
170 for qualifications, as determined necessary by the division, in
171 the same manner as prescribed under subsection (1)(b) of this
172 section. The entity shall notify the division in writing. The
173 final contract shall be approved by the division.

174 (c) The terms of any shared savings or performance
175 contract for efficiency services and/or equipment entered into
176 under this section may not exceed fifteen (15) years.

177 (d) The terms of any shared savings or performance
178 contract entered into under this section must contain a guarantee
179 of savings clause from the company providing energy efficiency,
180 equipment, services relating to the installation, operation and
181 maintenance of equipment or improvements reasonably required to
182 existing equipment and existing improvements.

183 * * *

184 (5) By September 1 of each year, each entity that receives
185 financial assistance through the energy efficiency lease program
186 shall annually report to the division its energy usage by meter in
187 dollars and consumption by fuel type for the previous fiscal year.

188 SECTION 2. Section 57-39-203, Mississippi Code of 1972, is
189 amended as follows:

190 57-39-203. The Executive Director of the Department of
191 Economic and Community Development may enter into agreements with
192 school boards for implementation of Sections 57-39-201 through
193 57-39-205. The interest rate on any loan provided to a school
194 district shall not exceed two percent (2%) below the prime
195 interest rate as determined by the United States Federal Reserve
196 Board. School districts may borrow funds from the Department of
197 Economic and Community Development for a term not to exceed ten
198 (10) years and shall establish a bond sinking fund to which
199 installment payments shall be made on a monthly basis in equal
200 amounts from the local operation and maintenance fund. From this

201 bond sinking fund, repayment shall be made to the Department of
202 Economic and Community Development annually in equal amounts. In
203 borrowing money under * * * this section it shall not be necessary
204 to publish notice of intention to do so or to secure the consent
205 of the qualified electorate of the school district, either by
206 election or otherwise. Any borrowing shall be authorized by order
207 or resolution of the school board.

208 SECTION 3. This act shall take effect and be in force from
209 and after July 1, 2000.