MISSISSIPPI LEGISLATURE
REGULAR SESSION 2000

By: Dearing

To: Economic Dev, Tourism and Parks

SENATE BILL NO. 3052
(As Sent to Governor)

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

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

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

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

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

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

(iii) "Energy performance contract" means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve
its energy efficiency. The energy savings are guaranteed by the performance contractor and can be used to repay the cost of the project.

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

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

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

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

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

(ii) Upon receiving responses to the request for proposals, the entity may select the most qualified proposal or
proposals on the basis of experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the entity and any other relevant factors determined to be appropriate.

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

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

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

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

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

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

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

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

(d) Any entity or private nonprofit hospital having approval of the division may borrow money in anticipation of entering into a lease-purchase agreement pursuant to subsection (2)(b) of this section. Any borrowing may be upon terms and
conditions as may be agreed upon by the borrowing entity and the party advancing interim funds; however, the principal on any borrowing shall be repaid within a period of time not to exceed one hundred eighty (180) days. In borrowing money under this subparagraph, it is not necessary to publish notice of intention to do so or to secure the consent of the qualified electors, either by election or otherwise. Any borrowing may be negotiated between the parties and is not required to be publicly bid, may be evidenced by negotiable notes or lease and shall not be considered when computing any limitation of indebtedness of the borrowing entity established by law. The principal, interest and costs of incurring any borrowing shall not exceed the principal amount of the final contract or agreement approved by the division, and accepted by the borrowing entity, under subsection (2)(b) of this section.

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

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

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

(b) If an entity decides to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment or improvements reasonably required to existing equipment and
existing improvements on a shared savings basis or performance
basis, the entity shall issue a request for proposals or a request
for qualifications, as determined necessary by the division, in
the same manner as prescribed under subsection (1)(b) of this
section. The entity shall notify the division in writing. The
final contract shall be approved by the division.

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

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

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

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

57-39-203. The Executive Director of the Department of
Economic and Community Development may enter into agreements with
school boards for implementation of Sections 57-39-201 through
57-39-205. The interest rate on any loan provided to a school
district shall not exceed two percent (2%) below the prime
interest rate as determined by the United States Federal Reserve
Board. School districts may borrow funds from the Department of
Economic and Community Development for a term not to exceed ten
years and shall establish a bond sinking fund to which
installment payments shall be made on a monthly basis in equal
amounts from the local operation and maintenance fund. From this
bond sinking fund, repayment shall be made to the Department of Economic and Community Development annually in equal amounts. In borrowing money under * * * this section it shall not be necessary to publish notice of intention to do so or to secure the consent of the qualified electorate of the school district, either by election or otherwise. Any borrowing shall be authorized by order or resolution of the school board.

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