

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 3052

By Representative(s) Committee

14 Amend by striking all after the enacting clause and inserting
15 in lieu thereof the following:

16

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

19 31-7-14. (1) (a) For purposes of this section, the
20 following words and phrases shall have the meaning ascribed
21 herein, unless the context clearly indicates otherwise:

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

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

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

37 project.

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

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

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

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

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

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

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

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

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

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

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

103 (vii) This subsection shall, with respect to the
104 procurement of energy efficiency services and/or equipment,
105 supersede any contradictory or conflicting provisions of Chapter
106 7, Title 31, Mississippi Code of 1972, and other laws with respect

107 to awarding public contracts.

108 * * *

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

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

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

134 (d) Any entity or private nonprofit hospital having
135 approval of the division may borrow money in anticipation of
136 entering into a lease-purchase agreement pursuant to subsection
137 (2)(b) of this section. Any borrowing may be upon terms and
138 conditions as may be agreed upon by the borrowing entity and the
139 party advancing interim funds; however, the principal on any * * *
140 borrowing shall be repaid within a period of time not to exceed
141 one hundred eighty (180) days. In borrowing money under * * *

142 this subparagraph, it is not necessary to publish notice of
143 intention to do so or to secure the consent of the qualified
144 electors, either by election or otherwise. Any borrowing may be
145 negotiated between the parties and is not required to be publicly
146 bid, may be evidenced by negotiable notes or lease and shall not
147 be considered when computing any limitation of indebtedness of the
148 borrowing entity established by law. The principal, interest and
149 costs of incurring any borrowing shall not exceed the principal
150 amount of the final contract or agreement approved by the
151 division, and accepted by the borrowing entity, under subsection
152 (2)(b) of this section.

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

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

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

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

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

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

186 * * *

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

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

193 57-39-203. The Executive Director of the Department of
194 Economic and Community Development may enter into agreements with
195 school boards for implementation of Sections 57-39-201 through
196 57-39-205. The interest rate on any loan provided to a school
197 district shall not exceed two percent (2%) below the prime
198 interest rate as determined by the United States Federal Reserve
199 Board. School districts may borrow funds from the Department of
200 Economic and Community Development for a term not to exceed ten
201 (10) years and shall establish a bond sinking fund to which
202 installment payments shall be made on a monthly basis in equal
203 amounts from the local operation and maintenance fund. From this
204 bond sinking fund, repayment shall be made to the Department of
205 Economic and Community Development annually in equal amounts. In
206 borrowing money under * * * this section it shall not be necessary
207 to publish notice of intention to do so or to secure the consent
208 of the qualified electorate of the school district, either by
209 election or otherwise. Any borrowing shall be authorized by order
210 or resolution of the school board.

211 SECTION 3. This act shall take effect and be in force from

212 and after July 1, 2000.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

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.