

By: Representatives Ishee, Ellington

To: Conservation and Water Resources; Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1459

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "ENERGY EFFICIENT SERVICES" FOR THE
3 PURPOSES OF CONTRACTING FOR OR LEASING ENERGY EFFICIENCY EQUIPMENT
4 OR ENERGY SERVICES BY PUBLIC ENTITIES; AND FOR RELATED PURPOSES.

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

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

8 31-7-14. (1) (a) For purposes of this section, the
9 following words and phrases shall have the meaning ascribed
10 herein, unless the context clearly indicates otherwise:

11 (i) "Division" means the Energy Division of the
12 Mississippi Development Authority.

13 (ii) "Energy efficient services" means energy
14 efficiency equipment, services relating to the installation,
15 operation and maintenance of equipment and improvements reasonably
16 required to existing or new equipment and existing or new
17 improvements and facilities including, but not limited to,
18 heating, ventilation and air conditioning systems, lighting,
19 windows, insulation and energy management controls, life safety
20 measures that provide long-term, operating-cost reductions,
21 building operation programs that reduce operating costs, other
22 energy-conservation-related improvements, including improvements
23 or equipment related to renewable energy, water and other natural
24 resources conservation, including accuracy and measurement of
25 water distribution and/or consumption, and other equipment,
26 services and improvements providing energy efficiency as
27 determined by the division.

28 (iii) "Energy performance contract" means an
29 agreement to provide energy services * * *. The * * * savings are
30 guaranteed, in whole or in part, by the performance of the
31 contractor and can be used to repay the cost of the project.

32 (iv) "Energy services contract" means an agreement
33 to provide energy services * * *. Payments for the contract are
34 not contingent upon the actual savings realized from the
35 equipment.

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

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

44 (vii) "Reduce operating costs" means elimination
45 of future expenses or avoidance of future replacement expenditures
46 as a result of new equipment installed or services performed. A
47 contract that otherwise satisfies the requirements of this section
48 shall satisfy the requirements allowing use of an energy
49 performance or shared savings contract even if the sole expense
50 being eliminated is maintenance expense.

51 (b) An entity may enter into a lease, energy services
52 contract or lease-purchase contracts for energy efficiency
53 equipment, services relating to the installation, operation and
54 maintenance of equipment or improvements reasonably required to
55 existing or new equipment and existing or new improvements and
56 facilities and shall contract in accordance with the following
57 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 or new equipment and existing or
64 new improvements and facilities or the design, installation,
65 ownership, operation and maintenance of energy efficiency
66 equipment. Those requests for proposals shall contain terms and
67 conditions relating to submission of proposals, evaluation and
68 selection of proposals, financial terms, legal responsibilities,
69 and any other matters as the entity determines to be appropriate
70 for inclusion.

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

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

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

91 (v) The annual rate of interest paid under any
92 lease-purchase agreement authorized by this section shall not

93 exceed the maximum interest rate to maturity on general obligation
94 indebtedness permitted under Section 75-17-101.

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

104 (vii) This subsection shall, with respect to the
105 procurement of energy efficiency services and/or equipment,
106 supersede any contradictory or conflicting provisions of Chapter
107 7, Title 31, Mississippi Code of 1972, and other laws with respect
108 to awarding public contracts.

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

125 lease, energy services contract or lease-purchase basis, may
126 request financial assistance 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 this
142 subparagraph, it is not necessary to publish notice of intention
143 to do so or to secure the consent of the qualified electors,
144 either by election or otherwise. Any borrowing may be negotiated
145 between the parties and is not required to be publicly bid, may be
146 evidenced by negotiable notes or lease and shall not be considered
147 when computing any limitation of indebtedness of the borrowing
148 entity established by law. The principal, interest and costs of
149 incurring any borrowing shall not exceed the principal amount of
150 the final contract or agreement approved by the division, and
151 accepted by the borrowing entity, under subsection (2)(b) of this
152 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 or new equipment and existing or new improvements and
166 facilities on a shared savings 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 or new equipment and
171 existing or new improvements and facilities on a shared savings
172 basis or performance basis, the entity shall issue a request for
173 proposals or a request for qualifications, as determined necessary
174 by the division, in the same manner as prescribed under subsection
175 (1)(b) of this section. The entity shall notify the division in
176 writing. The 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 or new equipment and existing or new improvements and
186 facilities.

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.** This act shall take effect and be in force from
192 and after July 1, 2006.