

By: Senator(s) Moffatt

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2804

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 DEFINE ENERGY EFFICIENT EQUIPMENT, SERVICES AND IMPROVEMENTS FOR
3 THE PURPOSES OF ENERGY PERFORMANCE CONTRACTS, ENERGY SERVICES
4 CONTRACTS, LEASES AND LEASE PURCHASE AGREEMENTS; AND FOR RELATED
5 PURPOSES.

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

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

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

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

14 (ii) "Energy efficiency equipment, services
15 relating to the installation, operation and maintenance of
16 equipment and improvements reasonably required to existing or new
17 equipment and existing or new improvements and facilities" mean
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 or equipment, including
23 improvements or equipment related to renewable energy, water and
24 other natural resources conservation, including accuracy and
25 measurement of water distribution and/or consumption, and other
26 equipment, services and improvements providing energy efficiency
27 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 (vii) "Reduce operating costs" means elimination
50 of future expenses or avoidance of future replacement expenditures
51 as a result of new equipment installed or services performed. A
52 contract which otherwise satisfies the requirements of this
53 section shall satisfy the requirements allowing use of an energy
54 performance or shared savings contract even if the sole expense
55 being eliminated is maintenance expense.

56 (b) An entity may enter into a lease, energy services
57 contract or lease-purchase contracts for energy efficiency
58 equipment, services relating to the installation, operation and
59 maintenance of equipment or improvements reasonably required to
60 existing or new equipment and existing or new improvements and

61 facilities and shall contract in accordance with the following
62 provisions:

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

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

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

85 (iv) All contracts must contain the following
86 annual allocation dependency clause: The continuation of this
87 contract is contingent upon the appropriation of funds to fulfill
88 the requirements of the contract by the Legislature or other
89 budgeting authority. If the Legislature or other budgeting
90 authority fails to appropriate sufficient monies to provide for
91 the continuation of the contract, the contract shall terminate on
92 the last day of the fiscal year for which appropriations were
93 made. The termination shall be without penalty or expense to the

94 entity of any kind whatsoever, except as to the portions of
95 payments for which funds were appropriated.

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

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

109 (vii) This subsection shall, with respect to the
110 procurement of energy efficiency services and/or equipment,
111 supersede any contradictory or conflicting provisions of Chapter
112 7, Title 31, Mississippi Code of 1972, and other laws with respect
113 to awarding public contracts.

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

125 (b) The entities and private "nonprofit" hospitals that
126 decide to contract for energy efficiency equipment, services

127 relating to the installation, operation and maintenance of
128 equipment or improvements reasonably required to existing or new
129 equipment and existing or new improvements and facilities on a
130 lease, energy services contract or lease-purchase basis, may
131 request financial assistance from the division.

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

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

158 (e) This subsection shall, with respect to the
159 procurement of energy efficiency services and/or equipment,

160 supersede the provisions of any contradictory or conflicting
161 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
162 other laws with respect to awarding public contracts.

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

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

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

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

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

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

196 **SECTION 2.** This act shall take effect and be in force from
197 and after July 1, 2006.