

**Adopted  
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**Senate Bill No. 2804**

**BY: Committee**

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

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 services" or "energy efficient  
14 services" means energy efficiency equipment, services relating to  
15 the installation, operation and maintenance of equipment and  
16 improvements reasonably required to existing or new equipment and  
17 existing or new improvements and facilities including, but not  
18 limited to, heating, ventilation and air conditioning systems,  
19 lighting, windows, insulation and energy management controls, life  
20 safety 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 by the performance of the contractor and can be used to  
31 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 (6) The contract may be construed to provide flexibility to  
192 public agencies in structuring agreements entered into hereunder  
193 so that economic benefits may be maximized.

194 **SECTION 2.** This act shall take effect and be in force from  
195 and after its passage.

**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 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.