

## Senate Amendments to House Bill No. 1459

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

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 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 savings from energy, operations,  
34 maintenance and other cost-avoidance measures can be used to repay  
35 the cost of the project.

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

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

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

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

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

64 (i) An entity shall publicly issue requests for  
65 proposals, advertised in the same manner as provided in Section  
66 31-7-13 for seeking competitive sealed bids, concerning the

67 provision of energy efficiency services relating to the  
68 installation, operation and maintenance of equipment, improvements  
69 reasonably required to existing or new equipment and existing or  
70 new improvements and facilities or the design, installation,  
71 ownership, operation and maintenance of energy efficiency  
72 equipment. Those requests for proposals shall contain terms and  
73 conditions relating to submission of proposals, evaluation and  
74 selection of proposals, financial terms, legal responsibilities,  
75 and any other matters as the entity determines to be appropriate  
76 for inclusion.

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

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

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

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

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

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

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

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

133           (c) The provisions of any energy efficiency  
134 lease-purchase agreements authorized under this subsection shall  
135 comply with the requirements of subparagraphs (1)(b)(iv) and (v)

136 of this section. The term of any energy services performance  
137 contract, energy services contract, lease or lease-purchase  
138 agreement for energy efficiency services and/or equipment entered  
139 into under this section shall not exceed fifteen (15) years.

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

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

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

168 (4) (a) An entity may contract for energy efficiency  
169 equipment services relating to the installation, operation or  
170 maintenance of equipment or improvements reasonably required to

171 existing or new equipment and existing or new improvements and  
172 facilities on a shared savings basis or performance basis.

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

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

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

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

197 (6) The contract may be construed to provide flexibility to  
198 public agencies in structuring agreements entered into hereunder  
199 so that economic benefits may be maximized.

200 **SECTION 2.** This act shall take effect and be in force from  
201 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.

SS01\HB1459A.J

John O. Gilbert  
Secretary of the Senate