

By: Representatives Cockerham, Sykes, Dixon To: Energy

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1101

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE DIVISION OF ENERGY OF THE MISSISSIPPI DEVELOPMENT
3 AUTHORITY TO ASSEMBLE A LIST OF PREQUALIFIED ENERGY SERVICES
4 PROVIDERS FOR ENERGY SAVINGS PERFORMANCE CONTRACT PROJECTS; TO
5 PROVIDE THAT PROJECT DEVELOPMENT ENGINEERS ARE ELIGIBLE TO MAKE
6 ENERGY PERFORMANCE CONTRACTS; TO PROVIDE THAT EVERY ENERGY
7 SERVICES CONTRACT MUST INCLUDE A THIRD PARTY INDEPENDENT MONITOR;
8 AND FOR RELATED PURPOSES.

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

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

12 31-7-14. (1) (a) For purposes of this section, the
13 following words and phrases shall have the meaning ascribed
14 herein, unless the context clearly indicates otherwise:

15 (i) "Division" means the Energy Division of the
16 Mississippi Development Authority.

17 (ii) "Energy services" or "energy efficient
18 services" means energy efficiency equipment, services relating to
19 the installation, operation and maintenance of equipment and
20 improvements reasonably required to existing or new equipment and
21 existing or new improvements and facilities including, but not



22 limited to, heating, ventilation and air-conditioning systems,
23 lighting, windows, insulation and energy management controls, life
24 safety measures that provide long-term, operating-cost reductions,
25 building operation programs that reduce operating costs,
26 alternative fuel motor vehicles including vehicles that have been
27 converted to such and ancillary equipment related to or associated
28 with the fueling of alternative fuel motor vehicles, or other
29 energy-conservation-related improvements, including improvements
30 or equipment related to renewable energy, water and other natural
31 resources conservation, including accuracy and measurement of
32 water distribution and/or consumption, and other equipment,
33 services and improvements providing * * * verifiable cost savings.

34 (iii) "Energy performance contract" means an
35 agreement to provide energy services which include, but are not
36 limited to, the design, installation, financing and maintenance or
37 management of the energy systems or equipment in order to improve
38 its energy efficiency. The energy savings are guaranteed by the
39 performance contractor and savings from energy, operations,
40 maintenance and other cost-avoidance measures can be used to repay
41 the cost of the project. Such contracts shall include, but are
42 not limited to, contracts with project development engineers that
43 otherwise meet the requirements of an energy performance contract.
44 Every energy services contract must include a third party
45 independent monitor with costs to be included as part of the
46 contract.



47 (iv) "Qualified energy services provider" means a
48 person or business with a record of documented guaranteed energy
49 savings performance contract projects that is experienced in the
50 design, implementation and installation of energy conservation
51 measures; has the technical capabilities to verify that such
52 measures generate guaranteed energy and operational cost savings
53 or enhanced revenues; has the ability to secure or arrange the
54 financing necessary to support energy savings guarantees; and is
55 approved by the division for inclusion on the prequalification
56 list. The division shall ensure that small businesses are not
57 disadvantaged in the determination of a qualified energy services
58 provider. Prior to the initial prequalification process managed
59 by the division, any energy services company included on the
60 United States Department of Energy's Qualified List of Energy
61 Services Companies and any energy services company on the list of
62 the National Association of Energy Service Companies is considered
63 qualified.

64 (* * *y) "Energy services contract" means an
65 agreement to provide energy services which include, but are not
66 limited to, the design, installation, financing and maintenance or
67 management of the energy systems or equipment in order to improve
68 its energy efficiency. Payments for the contract are not
69 contingent upon the actual savings realized from the equipment.

70 (* * *vi) "Entity" means the board of trustees of
71 any public school district, junior college, institution of higher



72 learning, publicly owned hospital, state agency or governing
73 authority of this chapter.

74 (* * *vii) "Shared savings contract" means an
75 agreement where the contractor and the entity each receive a
76 preagreed percentage or dollar value of the energy cost savings
77 over the life of the contract.

78 (* * *viii) "Reduce operating costs" means
79 elimination of future expenses or avoidance of future replacement
80 expenditures as a result of new equipment installed or services
81 performed. Material savings, labor savings, cancelled maintenance
82 contracts, etc. shall be considered reduce operating costs.
83 Reduce operating costs may be included in the performance contract
84 or energy services agreement solely at the discretion of the
85 entity. A contract that otherwise satisfies the requirements of
86 this section shall satisfy the requirements allowing use of an
87 energy performance or shared-savings contract even if the sole
88 expense being eliminated is maintenance expense.

89 (ix) "Capital cost avoidance" means expenditures
90 that were avoided due to planned capital improvements included in
91 the agreement. Capital cost avoidance may be included in a
92 performance contract solely at the discretion of the entity.
93 Capital cost avoidance may be claimed as an annual avoidance or as
94 a one-time avoidance in a specific year of the contract term.

95 (* * *x) "Alternative fuel motor vehicle" means a
96 motor vehicle propelled by alternative fuel either as a dedicated



97 alternative fuel vehicle, as a bi-fuel vehicle using alternative
98 fuel as one of its fuels, or as a dual fuel vehicle using
99 alternative fuel as one of its fuels.

100 (xi) "Energy conservation measure" means the
101 individual items or components of a large energy services or
102 energy efficient services program.

103 (xii) "Simple payback period" means the amount of
104 time the initial investment is recuperated. The simple payback
105 period is calculated by dividing the initial investment by the
106 annual savings. The simple payback period for any contract shall
107 not exceed twenty (20) years. The simple payback period of an
108 individual energy conservation measure shall not be considered in
109 any evaluation provided the simple payback period for the contract
110 does not exceed twenty (20) years.

111 (xiii) "Project development engineer" means a
112 person with a Master of Science in Mechanical Engineering or
113 equivalent four-year technical engineering degree with proven
114 energy efficiency, conservation and/or renewable solutions
115 technology project development and implementation work experience,
116 five (5) to six (6) years experience on energy efficiency
117 projects, ability to analyze and quantify energy savings and
118 implement multimillion dollar projects involving chiller and
119 boiler plants, motors, VSDs, HVAC retrofitting, controls,
120 distributed generation, knowledge of measurement and verification,
121 project cost estimating and accounting.



122 (b) An entity may enter into a lease, energy services
123 contract, energy performance contract, shared_savings contract,
124 or lease-purchase contracts for energy efficiency equipment,
125 services relating to the installation, operation and maintenance
126 of equipment or improvements reasonably required to existing or
127 new equipment and existing or new improvements and facilities and
128 shall contract in accordance with the following provisions:

129 (i) The division may assemble a list of
130 prequalified energy services providers. The division shall
131 attempt to use objective criteria in the selection process. The
132 criteria for evaluation shall include the following factors to
133 assess the capability of the qualified energy services provider in
134 the area of design engineering, installation, maintenance, and
135 repairs associated with guaranteed energy savings performance
136 contracts; post-installation project monitoring, data collection,
137 and verification of and reporting of savings; overall project
138 experience and qualifications; management capability; ability to
139 access long-term sources of project financing; financial health
140 and stability, litigation history with customers and other factors
141 determined by the division to be relevant and appropriate and
142 related to the ability to perform the project. The division shall
143 either accept or reject an application for prequalification from
144 an energy services provider within sixty (60) days after receipt.
145 If the division fails to act within sixty (60) days from the date
146 of receiving an application, then the application shall



147 automatically be accepted and the energy services provider shall
148 be added to the prequalified list.

149 (* * *ii) An entity shall publicly issue requests
150 for proposals, advertised in the same manner as provided in
151 Section 31-7-13 for seeking competitive sealed bids, concerning
152 the provision of energy efficiency services relating to the
153 installation, operation and maintenance of equipment, improvements
154 reasonably required to existing or new equipment and existing or
155 new improvements and facilities or the design, installation,
156 ownership, operation and maintenance of energy efficiency
157 equipment. Those requests for proposals shall contain terms and
158 conditions relating to submission of proposals, evaluation and
159 selection of proposals, financial terms, legal responsibilities,
160 and any other matters as the entity determines to be appropriate
161 for inclusion.

162 (* * *iii) Upon receiving responses to the
163 request for proposals, the entity may select the most qualified
164 proposal or proposals on the basis of experience and
165 qualifications of the proposers, the technical approach, the
166 financial arrangements, the overall benefits to the entity and any
167 other relevant factors determined to be appropriate.

168 (* * *iv) An entity shall negotiate and enter
169 into contracts with the person, persons, firm or firms submitting
170 the proposal selected as the most qualified under this section.



171 (v) An entity may enter into multiple phases of a
172 performance contract provided the area where the scope of work
173 shall take place was included in the original request for
174 proposals or request for qualification, the original terms of
175 conditions are satisfied, and the contract term for each phase
176 cannot exceed a total of twenty (20) years.

177 (* * * vi) All contracts must contain the
178 following annual allocation dependency clause: The continuation
179 of this contract is contingent upon the appropriation of funds to
180 fulfill the requirements of the contract by the Legislature or
181 other budgeting authority. If the Legislature or other budgeting
182 authority fails to appropriate sufficient monies to provide for
183 the continuation of the contract, the contract shall terminate on
184 the last day of the fiscal year for which appropriations were
185 made. The termination shall be without penalty or expense to the
186 entity of any kind whatsoever, except as to the portions of
187 payments for which funds were appropriated.

188 (* * * vii) The annual rate of interest paid under
189 any lease-purchase agreement authorized by this section shall not
190 exceed the maximum interest rate to maturity on general obligation
191 indebtedness permitted under Section 75-17-101.

192 (* * * viii) The maximum lease-purchase term for
193 any equipment acquired under this section shall not exceed the
194 lesser of twenty (20) years or the average useful life of * * *
195 the energy conservation measures from the date the energy



196 conservation measures have been completed and accepted by the
197 governmental unit.

198 (* * *ix) This subsection shall, with respect to
199 the procurement of energy efficiency services and/or equipment,
200 supersede any contradictory or conflicting provisions of Chapter
201 7, Title 31, Mississippi Code of 1972, and other laws with respect
202 to awarding public contracts.

203 (2) (a) The division may contract with a party selected
204 under this subsection to provide financing to entities and private
205 "nonprofit" hospitals, to purchase energy efficiency equipment,
206 services relating to the installation, operation and maintenance
207 of equipment or improvements reasonably required to existing or
208 new equipment and existing or new improvements and facilities or
209 an energy saving performance contract, energy services contract,
210 or lease-purchase basis. Any energy efficiency lease financing
211 contract entered into by the division before May 15, 1992, shall
212 be valid and binding when the contract was entered into under this
213 subsection.

214 (b) The entities and private "nonprofit" hospitals that
215 decide to contract for energy efficiency equipment, services
216 relating to the installation, operation and maintenance of
217 equipment or improvements reasonably required to existing or new
218 equipment and existing or new improvements and facilities on a
219 lease, energy services contract or lease-purchase basis, may
220 request financial assistance from the division.



221 (c) The provisions of any energy efficiency
222 lease-purchase agreements authorized under this subsection (2)
223 shall comply with the requirements of subsection (1)(b) (* * *vi)
224 and (* * *vii) of this section. The term of any lease or
225 lease-purchase agreement for energy efficiency services and/or
226 equipment entered into under this section shall not exceed twenty
227 (20) years, commencing on the completion of the installation of
228 equipment or improvements under the contract.

229 (d) Any entity or private "nonprofit" hospital having
230 approval of the division may borrow money in anticipation of
231 entering into a lease-purchase agreement pursuant to subsection
232 (2)(b) of this section. Any borrowing may be upon terms and
233 conditions as may be agreed upon by the borrowing entity and the
234 party advancing interim funds; however, the principal on any
235 borrowing shall be repaid within a period of time not to exceed
236 one hundred eighty (180) days. In borrowing money under this
237 paragraph (d), it is not necessary to publish notice of intention
238 to do so or to secure the consent of the qualified electors,
239 either by election or otherwise. Any borrowing may be negotiated
240 between the parties and is not required to be publicly bid, may be
241 evidenced by negotiable notes or lease and shall not be considered
242 when computing any limitation of indebtedness of the borrowing
243 entity established by law. The principal, interest and costs of
244 incurring any borrowing shall not exceed the principal amount of
245 the final contract or agreement approved by the division, and



246 accepted by the borrowing entity, under subsection (2) (b) of this
247 section.

248 (e) This subsection (2) shall, with respect to the
249 procurement of energy efficiency services and/or equipment,
250 supersede the provisions of any contradictory or conflicting
251 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
252 other laws with respect to awarding public contracts.

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

257 (4) (a) An entity may contract for energy efficiency
258 equipment services relating to the installation, operation or
259 maintenance of equipment or improvements reasonably required to
260 existing or new equipment and existing or new improvements and
261 facilities on a shared-savings basis or performance basis.

262 (b) If an entity decides to enter into a contract for
263 energy efficiency equipment, services relating to the
264 installation, operation or maintenance of equipment or
265 improvements reasonably required to existing or new equipment and
266 existing or new improvements and facilities on a shared-savings
267 basis or performance basis, the entity shall issue a request for
268 proposals or a request for qualifications, as determined necessary
269 by the division, in the same manner as prescribed under subsection
270 (1) (b) of this section. The entity shall notify the division in



271 writing of its intentions to issue a request for proposals or a
272 request for qualifications. * * *

273 (c) The terms of any shared savings, energy services
274 contract, or energy performance contract entered into under this
275 section may not exceed twenty (20) years, commencing on the
276 completion of the installation of equipment or improvements under
277 the contract.

278 (d) The terms of any shared savings or energy
279 performance contract entered into under this section must contain
280 a guarantee of savings clause from the company providing energy
281 efficiency equipment services relating to the installation,
282 operation and maintenance of equipment or improvements reasonably
283 required to existing or new equipment and existing or new
284 improvements and facilities.

285 (5) By September 1 of each year, each entity that * * *
286 enters into a performance contract or shared savings contract
287 shall annually report to the division its energy usage by meter in
288 dollars and consumption by fuel type for the previous fiscal year.

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

292 **SECTION 2.** This act shall take effect and be in force from
293 and after July 1, 2017.

