

By: Senator(s) Fillingane

To: Finance

SENATE BILL NO. 2402
(As Passed the Senate)

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 CONTRACTS ENTERED INTO UNDER THIS SECTION MAY NOT
6 EXCEED FIFTEEN YEARS; AND FOR RELATED PURPOSES.

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

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

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

13 (i) "Division" means the Energy Division of the
14 Mississippi Development Authority.

15 (ii) "Energy services" or "energy efficient
16 services" means energy efficiency equipment, services relating to
17 the installation, operation and maintenance of equipment and
18 improvements reasonably required to existing or new equipment and
19 existing or new improvements and facilities including, but not
20 limited to, heating, ventilation and air-conditioning systems,



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

32 (iii) "Energy performance contract" means an
33 agreement to provide energy services which include, but are not
34 limited to, the design, installation, financing and maintenance or
35 management of the energy systems or equipment in order to improve
36 its energy efficiency. The energy savings are guaranteed by the
37 performance contractor and savings from energy, operations,
38 maintenance and other cost-avoidance measures can be used to repay
39 the cost of the project.

40 (iv) "Qualified energy services provider" means a
41 person or business with a record documented guaranteed energy
42 savings performance contract projects that is experienced in the
43 design, implementation and installation of energy conservation
44 measures; has the technical capabilities to verify that such
45 measures generate guaranteed energy and operational cost savings



or enhanced revenues; has the ability to secure or arrange the financing necessary to support energy savings guarantees; and is approved by the division for inclusion on the prequalification list. Prior to the initial prequalification process managed by the division, any energy services company included on the United States Department of Energy's Qualified List of Energy Services Companies is considered qualified.

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

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

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

(* * *viii) "Reduce operating costs" means elimination of future expenses or avoidance of future replacement expenditures as a result of new equipment installed or services performed. Material savings, labor savings, cancelled maintenance



71 contracts, etc., shall be considered reduced operating costs.
72 Reduce operating costs may be included in the performance contract
73 or energy services agreement solely at the discretion of the
74 entity. A contract that otherwise satisfies the requirements of
75 this section shall satisfy the requirements allowing use of an
76 energy performance or shared-savings contract even if the sole
77 expense being eliminated is maintenance expense.

78 (ix) "Capital cost avoidance" means expenditures
79 that were avoided due to planned capital improvements included in
80 the agreement. Capital cost avoidance may be included in a
81 performance contract solely at the discretion of the entity.
82 Capital cost avoidance may be claimed as an annual avoidance or as
83 a one-time avoidance in a specific year of the contract term.

84 (* * *x) "Alternative fuel motor vehicle" means a
85 motor vehicle propelled by alternative fuel either as a dedicated
86 alternative fuel vehicle, as a bi-fuel vehicle using alternative
87 fuel as one of its fuels, or as a dual fuel vehicle using
88 alternative fuel as one of its fuels.

89 (xi) "Energy conservation measure" means the
90 individual items or components of a large energy services or
91 energy efficient services program.

92 (xii) "Simple payback period" means the amount of
93 time the initial investment is recuperated. The simple payback
94 period is calculated by dividing the initial investment by the
95 annual savings. The simple payback period for any contract shall



96 not exceed fifteen (15) years. The simple payback period of an
97 individual energy conservation measure shall not be considered in
98 any evaluation provided the simple payback period for the contract
99 does not exceed fifteen (15) years.

100 (b) An entity may enter into a lease, energy services
101 contract, energy performance contract, shared-savings contract,
102 or lease-purchase contracts for energy efficiency equipment,
103 services relating to the installation, operation and maintenance
104 of equipment or improvements reasonably required to existing or
105 new equipment and existing or new improvements and facilities and
106 shall contract in accordance with the following provisions:

107 (i) The division may assemble a list of
108 prequalified energy services providers. The division shall use
109 objective criteria in the selection process. The criteria for
110 evaluation shall include the following factors to assess the
111 capability of the qualified energy services provider in the area
112 of design engineering, installation, maintenance, and repairs
113 associated with guaranteed energy savings performance contracts:
114 post-installation project monitoring, data collection, and
115 verification of and reporting of savings; overall project
116 experience and qualifications; management capability; ability to
117 access long-term sources of project financing; financial health
118 and stability, litigation history with customers and other factors
119 determined by the division to be relevant and appropriate and
120 related to the ability to perform the project. The division shall



121 either accept or reject an application for prequalification from
122 an energy service provider within sixty (60) days after receipt.
123 If the division fails to act within sixty (60) days from the date
124 of receiving an application, then the application shall
125 automatically be accepted and the energy service provider shall be
126 added to the prequalified list.

127 (* * *ii) An entity shall publicly issue requests
128 for proposals, advertised in the same manner as provided in
129 Section 31-7-13 for seeking competitive sealed bids, concerning
130 the provision of energy efficiency services relating to the
131 installation, operation and maintenance of equipment, improvements
132 reasonably required to existing or new equipment and existing or
133 new improvements and facilities or the design, installation,
134 ownership, operation and maintenance of energy efficiency
135 equipment. Those requests for proposals shall contain terms and
136 conditions relating to submission of proposals, evaluation and
137 selection of proposals, financial terms, legal responsibilities,
138 and any other matters as the entity determines to be appropriate
139 for inclusion.

140 (* * *iii) Upon receiving responses to the
141 request for proposals, the entity may select the most qualified
142 proposal or proposals on the basis of experience and
143 qualifications of the proposers, the technical approach, the
144 financial arrangements, the overall benefits to the entity and any
145 other relevant factors determined to be appropriate.



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

(v) An entity may enter into multiple phases of a performance contract provided the area where the scope of work shall take place was included in the original request for proposals or request for qualification, the original terms of conditions are satisfied, and the contract term for each phase cannot exceed a total of fifteen (15) years.

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

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



(* * * viii) The maximum lease-purchase term for any equipment acquired under this section shall not exceed the lesser of fifteen (15) years or the average useful life of * * * the energy conservation measures from the date the energy conservation measures have been completed and accepted by the governmental unit.

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

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

(b) The entities and private "nonprofit" hospitals that decide to contract for energy efficiency equipment, services relating to the installation, operation and maintenance of



equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a lease, energy services contract or lease-purchase basis, may request financial assistance from the division.

(c) The provisions of any energy efficiency lease-purchase agreements authorized under this subsection (2) shall comply with the requirements of subsection (1)(b) (* * * vi) and (* * * vii) of this section. The term of any lease or lease-purchase agreement for energy efficiency services and/or equipment entered into under this section shall not exceed * * * fifteen (15) years, commencing on the completion of the installation of equipment or improvements under the contract.

(d) Any entity or private "nonprofit" hospital having approval of the division may borrow money in anticipation of entering into a lease-purchase agreement pursuant to subsection (2)(b) of this section. Any borrowing may be upon terms and conditions as may be agreed upon by the borrowing entity and the party advancing interim funds; however, the principal on any borrowing shall be repaid within a period of time not to exceed one hundred eighty (180) days. In borrowing money under this paragraph (d), it is not necessary to publish notice of intention to do so or to secure the consent of the qualified electors, either by election or otherwise. Any borrowing may be negotiated between the parties and is not required to be publicly bid, may be evidenced by negotiable notes or lease and shall not be considered



when computing any limitation of indebtedness of the borrowing entity established by law. The principal, interest and costs of incurring any borrowing shall not exceed the principal amount of the final contract or agreement approved by the division, and accepted by the borrowing entity, under subsection (2)(b) of this section.

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

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

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

(b) If an entity decides to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared-savings



basis or performance basis, the entity shall issue a request for proposals or a request for qualifications, as determined necessary by the division, in the same manner as prescribed under subsection (1)(b) of this section. The entity shall notify the division in writing of its intentions to issue a request for proposals or a request for qualifications. * * *

(c) The terms of any shared savings, energy services contract, or energy performance contract entered into under this section may not exceed * * * fifteen (15) years, commencing on the completion of the installation of equipment or improvements under the contract.

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

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

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



270 **SECTION 2.** This act shall take effect and be in force from
271 and after July 1, 2017, and shall stand repealed on June 30, 2017.

