

House Amendments to Senate Bill No. 2649

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE 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:

5 **SECTION 1.** Section 31-7-14, Mississippi Code of 1972, is
6 reenacted and amended as follows:

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

10 (i) "Division" means the Energy Division of the
11 Mississippi Development Authority.

12 (ii) "Energy services" or "energy efficient
13 services" means energy efficiency equipment, services relating to
14 the installation, operation and maintenance of equipment and
15 improvements reasonably required to existing or new equipment and
16 existing or new improvements and facilities including, but not
17 limited to, heating, ventilation and air-conditioning systems,
18 lighting, windows, insulation and energy management controls, life
19 safety measures that provide long-term, operating-cost reductions,
20 building operation programs that reduce operating costs,
21 alternative fuel motor vehicles including vehicles that have been

22 converted to such and ancillary equipment related to or associated
23 with the fueling of alternative fuel motor vehicles, or other
24 energy-conservation-related improvements, including improvements
25 or equipment related to renewable energy, water and other natural
26 resources conservation, including accuracy and measurement of
27 water distribution and/or consumption, and other equipment,
28 services and improvements providing verifiable cost savings.

29 (iii) "Energy services provider" means a person or
30 business with a successful record of documented energy savings
31 projects that is experienced in the design, implementation and
32 installation of energy conservation measures; has the technical
33 capabilities to verify that such measures generate energy and
34 operational cost savings or enhanced revenues; has the ability to
35 guarantee the savings; has the ability to secure or arrange the
36 financing necessary to support the implementation of the energy
37 conservation measures; and is approved by the division.

38 Approval by the division of an energy services provider shall
39 be granted in a prequalification process.

40 Such energy services providers may petition the division to
41 review their qualifications and deem them to be qualified for
42 inclusion on a prequalification list if they meet the
43 qualifications set forth by the division.

44 Any energy services project that has been competitively bid
45 and awarded prior to any change in law shall be allowed to
46 continue under the laws current at the time the project was
47 awarded.

48 The division shall ensure that small businesses are not
49 disadvantaged in the determination of a qualified energy services
50 provider.

51 (iv) "Entity" means the board of trustees of any
52 public school district, junior college, institution of higher
53 learning, publicly owned hospital, state agency or governmental
54 authority under this chapter.

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

61 (vi) "Energy performance contract" means an
62 agreement to provide energy services which includes, but is not
63 limited to, the design, installation, financing and maintenance or
64 management of the energy systems or equipment in order to improve
65 its energy efficiency.

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

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

74 et cetera, shall be considered as being viable to reduce operating
75 costs. Reduce operating costs may be included in the performance
76 contract or energy services agreement solely at the discretion of
77 the entity. A contract that otherwise satisfies the requirements
78 of this section shall satisfy the requirements allowing use of an
79 energy performance, energy services or shared-savings contract
80 even if the sole expense being eliminated is maintenance expense.

81 (ix) "Capital cost avoidance" means planned
82 capital improvement expenditures that will be avoided through
83 implementation of the energy services project. Capital cost
84 avoidance may be included in an energy services contract or an
85 energy performance contract solely at the discretion of the
86 entity. Capital cost avoidance may be claimed as an annual
87 avoidance or as a one-time avoidance in a specific year of the
88 contract term, depending upon the nature of the avoided capital
89 cost.

90 (x) "Alternative fuel motor vehicle" means a motor
91 vehicle propelled by alternative fuel either as a dedicated
92 alternative fuel vehicle, as a bi-fuel vehicle using alternative
93 fuel as one of its fuels, or as a dual fuel vehicle using
94 alternative fuel as one of its fuels.

95 (xi) "Energy conservation measure" means the
96 individual items or components of a large energy services or
97 energy efficient services program.

98 (xii) "Simple payback period" means the amount of
99 time for the recuperation of the initial investment. The simple

100 payback period is calculated by dividing the initial investment by
101 the annual savings. The simple payback period for any contract
102 shall not exceed twenty (20) years. The simple payback period of
103 an individual energy conservation measure shall not be considered
104 in any evaluation provided the simple payback period for the
105 contract does not exceed twenty (20) years.

106 (b) An entity may enter into an energy services
107 contract, energy performance contract, shared-savings contract,
108 any of which may contain a lease, or lease-purchase contract for
109 energy efficiency equipment, services relating to the
110 installation, operation and maintenance of equipment or
111 improvements reasonably required to existing or new equipment and
112 existing or new improvements and facilities and shall contract in
113 accordance with the following provisions:

114 (i) The division may assemble a list of
115 prequalified energy services providers. The division shall use
116 objective criteria in the selection process. The criteria for
117 evaluation shall include, but shall not be limited to, the
118 following factors: to assess the capability of the qualified
119 energy services provider in the area of design engineering,
120 installation, maintenance and repairs associated with energy
121 services or guaranteed energy performance contracts;
122 qualifications including engineering depth and experience,
123 post-installation project monitoring, data collection, and
124 verification of and reporting of savings; overall project
125 experience and qualifications; management capability; ability to

126 access long-term sources of project financing; financial health
127 and stability, litigation history with customers and other factors
128 determined by the division to be relevant and appropriate and
129 related to the ability to perform the project. The division shall
130 either accept or reject an application for prequalification from
131 an energy services provider within sixty (60) days after receipt.
132 If the division fails to act within sixty (60) days from the date
133 of receiving an application, then the application shall
134 automatically be accepted and the energy services provider shall
135 be added to the prequalified list.

136 (ii) An entity shall publicly issue requests for
137 proposals, advertised in the same manner as provided in Section
138 31-7-13 for seeking competitive sealed bids, concerning the
139 provision of energy efficiency services relating to the
140 installation, operation and maintenance of equipment, improvements
141 reasonably required to existing or new equipment and existing or
142 new improvements and facilities or the design, installation,
143 ownership, operation and maintenance of energy efficiency
144 equipment. Those requests for proposals shall contain terms and
145 conditions relating to submission of proposals, evaluation and
146 selection of proposals, financial terms, legal responsibilities,
147 and any other matters as the entity determines to be appropriate
148 for inclusion.

149 (iii) Upon receiving responses to the request for
150 proposals, the entity may select the most qualified proposal or
151 proposals on the basis of experience and qualifications of the

152 proposers, the technical approach, the financial arrangements, the
153 overall benefits to the entity and any other relevant factors
154 determined to be appropriate.

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

158 (v) The annual rate of interest paid under any
159 lease-purchase agreement authorized by this section shall not
160 exceed the maximum interest rate to maturity on general obligation
161 indebtedness permitted under Section 75-17-101. An entity may
162 obtain lease-purchase financing under this section from a
163 third-party source in the same manner as provided in Section
164 31-7-13(e).

165 (vi) The maximum lease-purchase term for any
166 equipment acquired under this section shall not exceed the lesser
167 of twenty (20) years or the average useful life of the energy
168 conservation measures from the date the energy conservation
169 measures have been completed and accepted by the governmental
170 unit.

171 (vii) This subsection shall, with respect to the
172 procurement of energy efficiency services and/or equipment,
173 supersede any contradictory or conflicting provisions of Chapter
174 7, Title 31, Mississippi Code of 1972, and other laws with respect
175 to awarding public contracts.

176 (2) (a) The division may contract with a party selected
177 under this subsection to provide financing to entities and private

178 "nonprofit" hospitals, to purchase energy efficiency equipment,
179 services relating to the installation, operation and maintenance
180 of equipment or improvements reasonably required to existing or
181 new equipment and existing or new improvements and facilities or
182 an energy saving performance contract, energy services contract,
183 or lease-purchase basis. Any energy efficiency lease financing
184 contract entered into by the division before May 15, 1992, shall
185 be valid and binding when the contract was entered into under this
186 subsection.

187 (b) The entities and private "nonprofit" hospitals that
188 decide to contract for energy efficiency equipment, services
189 relating to the installation, operation and maintenance of
190 equipment or improvements reasonably required to existing or new
191 equipment and existing or new improvements and facilities on a
192 lease, energy services contract or lease-purchase basis, may
193 request financial assistance from the division.

194 (c) The provisions of any energy efficiency
195 lease-purchase agreements authorized under this subsection (2)
196 shall comply with the requirements of subsection (1)(b)(v) of this
197 section. The term of any lease or lease-purchase agreement for
198 energy efficiency services and/or equipment entered into under
199 this section shall not exceed twenty (20) years, commencing on the
200 completion of the installation of equipment or improvements under
201 the contract.

202 (d) Any entity or private "nonprofit" hospital having
203 approval of the division may borrow money in anticipation of

204 entering into a lease-purchase agreement pursuant to subsection
205 (2)(b) of this section. Any borrowing may be upon terms and
206 conditions as may be agreed upon by the borrowing entity and the
207 party advancing interim funds; however, the principal on any
208 borrowing shall be repaid within a period of time not to exceed
209 one hundred eighty (180) days. In borrowing money under this
210 paragraph (d), it is not necessary to publish notice of intention
211 to do so or to secure the consent of the qualified electors,
212 either by election or otherwise. Any borrowing may be negotiated
213 between the parties and is not required to be publicly bid, may be
214 evidenced by negotiable notes or lease and shall not be considered
215 when computing any limitation of indebtedness of the borrowing
216 entity established by law. The principal, interest and costs of
217 incurring any borrowing shall not exceed the principal amount of
218 the final contract or agreement approved by the division, and
219 accepted by the borrowing entity, under subsection (2)(b) of this
220 section.

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

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

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

235 (b) If an entity decides to enter into a contract for
236 energy efficiency equipment, services relating to the
237 installation, operation or maintenance of equipment or
238 improvements reasonably required to existing or new equipment and
239 existing or new improvements and facilities on a shared-savings
240 basis or performance basis, the entity shall issue a request for
241 proposals or a request for qualifications, as determined necessary
242 by the division, in the same manner as prescribed under subsection
243 (1)(b) of this section. The entity shall notify the division in
244 writing of its intention to issue a request for proposals or a
245 request for qualifications.

246 (c) The terms of any shared-savings contract, energy
247 services contract, or energy performance contract entered into
248 under this section may not exceed twenty (20) years, commencing on
249 the completion of the installation of equipment or improvements
250 under the contract.

251 (d) The terms of any shared-savings or energy
252 performance contract entered into under this section must contain
253 a guarantee of savings clause from the company providing energy
254 efficiency equipment services relating to the installation,
255 operation and maintenance of equipment or improvements reasonably

256 required to existing or new equipment and existing or new
257 improvements and facilities.

258 (5) (a) By March 1 and September 1 of each year, each
259 entity that enters into an energy performance contract or
260 shared-savings contract shall report to the division its energy
261 usage by meter in dollars and consumption by fuel type for the
262 previous six-month period determined by the division.

263 (b) The division shall remove qualified status of an
264 energy services provider that fails to meet the reporting
265 requirements of paragraph (a) of this subsection after two (2)
266 such violations.

267 (c) Any costs associated with the reporting made under
268 this subsection (5) shall be paid by the energy services provider.

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

272 (7) This section shall stand repealed on July 1, * * * 2025.

273 **SECTION 2.** This act shall take effect and be in force from
274 and after July 1, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO REENACT AND AMEND SECTION 31-7-14, MISSISSIPPI CODE
2 OF 1972, TO EXTEND THE REPEAL DATE ON USE OF ENERGY EFFICIENT
3 EQUIPMENT OR SERVICE CONTRACTS; AND FOR RELATED PURPOSES.

HR26\SB2649A.J

Andrew Ketchings
Clerk of the House of Representatives