

By: Representative Lamar

To: Energy

HOUSE BILL NO. 1643

1 AN ACT TO BRING FORWARD SECTION 31-7-14, MISSISSIPPI CODE OF
2 1972, WHICH RELATES TO PUBLIC CONTRACTS FOR ENERGY EFFICIENCY
3 SERVICES, FOR THE PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 31-7-14, Mississippi Code of 1972, is
7 brought forward 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,
22 alternative fuel motor vehicles including vehicles that have been
23 converted to such and ancillary equipment related to or associated
24 with the fueling of alternative fuel motor vehicles, or other
25 energy-conservation-related improvements, including improvements
26 or equipment related to renewable energy, water and other natural
27 resources conservation, including accuracy and measurement of
28 water distribution and/or consumption, and other equipment,
29 services and improvements providing verifiable cost savings.

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

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

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



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

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

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

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

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

67 (vii) "Shared-savings contract" means an agreement
68 where the contractor and the entity each receive a preagreed



69 percentage or dollar value of the energy cost savings over the
70 life of the contract.

71 (viii) "Reduce operating costs" means elimination
72 of future expenses or avoidance of future replacement expenditures
73 as a result of new equipment installed or services performed.
74 Material savings, labor savings, cancelled maintenance contracts,
75 et cetera, shall be considered as being viable to reduce operating
76 costs. Reduce operating costs may be included in the performance
77 contract or energy services agreement solely at the discretion of
78 the entity. A contract that otherwise satisfies the requirements
79 of this section shall satisfy the requirements allowing use of an
80 energy performance, energy services or shared-savings contract
81 even if the sole expense being eliminated is maintenance expense.

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

91 (x) "Alternative fuel motor vehicle" means a motor
92 vehicle propelled by alternative fuel either as a dedicated
93 alternative fuel vehicle, as a bi-fuel vehicle using alternative



94 fuel as one of its fuels, or as a dual fuel vehicle using
95 alternative fuel as one of its fuels.

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

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

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

115 (i) The division may assemble a list of
116 prequalified energy services providers. The division shall use
117 objective criteria in the selection process. The criteria for
118 evaluation shall include, but shall not be limited to, the



119 following factors: to assess the capability of the qualified
120 energy services provider in the area of design engineering,
121 installation, maintenance and repairs associated with energy
122 services or guaranteed energy performance contracts;
123 qualifications including engineering depth and experience,
124 post-installation project monitoring, data collection, and
125 verification of and reporting of savings; overall project
126 experience and qualifications; management capability; ability to
127 access long-term sources of project financing; financial health
128 and stability, litigation history with customers and other factors
129 determined by the division to be relevant and appropriate and
130 related to the ability to perform the project. The division shall
131 either accept or reject an application for prequalification from
132 an energy services provider within sixty (60) days after receipt.
133 If the division fails to act within sixty (60) days from the date
134 of receiving an application, then the application shall
135 automatically be accepted and the energy services provider shall
136 be added to the prequalified list.

137 (ii) An entity shall publicly issue requests for
138 proposals, advertised in the same manner as provided in Section
139 31-7-13 for seeking competitive sealed bids, concerning the
140 provision of energy efficiency services relating to the
141 installation, operation and maintenance of equipment, improvements
142 reasonably required to existing or new equipment and existing or
143 new improvements and facilities or the design, installation,



144 ownership, operation and maintenance of energy efficiency
145 equipment. Those requests for proposals shall contain terms and
146 conditions relating to submission of proposals, evaluation and
147 selection of proposals, financial terms, legal responsibilities,
148 and any other matters as the entity determines to be appropriate
149 for inclusion.

150 (iii) Upon receiving responses to the request for
151 proposals, the entity may select the most qualified proposal or
152 proposals on the basis of experience and qualifications of the
153 proposers, the technical approach, the financial arrangements, the
154 overall benefits to the entity and any other relevant factors
155 determined to be appropriate.

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

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

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



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

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

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

192 (c) The provisions of any energy efficiency
193 lease-purchase agreements authorized under this subsection (2)



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

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



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

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

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

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



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

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

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

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

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



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

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

271 **SECTION 2.** This act shall take effect and be in force from
272 and after July 1, 2024.

