

By: Representative Ford (54th)

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 186

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 EXTEND THE DATE OF THE REPEALER ON ENERGY EFFICIENCY SERVICES
3 PUBLIC CONTRACTS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 31-7-14, Mississippi Code of 1972, is
6 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.



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

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

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

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

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

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

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



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

(iii) Upon receiving responses to the request for proposals, the entity may select the most qualified proposal or proposals on the basis of experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the entity and any 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) 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.

(vi) The maximum lease-purchase term for any equipment acquired under this section shall not exceed the lesser of twenty (20) 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.



(vii) 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)(v) 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 twenty (20) 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.



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

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

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

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



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

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

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

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

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



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

269 (7) This section shall stand repealed on July 1, * * * 2028.

270 **SECTION 2.** This act shall take effect and be in force from
271 and after July 1, 2025.

