

By: Representative Ford (54th)

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 186

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT AN ENTITY MAY USE ANY SOURCES OF FUNDS AVAILABLE TO
3 THE ENTITY TO ENTER INTO CERTAIN CONTRACTS; TO EXTEND THE DATE OF
4 THE REPEALER ON ENERGY EFFICIENCY SERVICES PUBLIC CONTRACTS; AND
5 FOR RELATED PURPOSES.

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

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

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

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

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



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

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

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

42 Such energy services providers may petition the division to
43 review their qualifications and deem them to be qualified for



inclusion on a prequalification list if they meet the 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.



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

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

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

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

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

(b) An entity may, using any sources of funding available to the entity, enter into an energy services contract, energy performance contract, shared-savings contract, any of which may contain a lease, or lease-purchase 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 and shall contract in accordance with the following provisions:



(i) The division may assemble a list of prequalified energy services providers. The division shall use objective criteria in the selection process. The criteria for evaluation shall include, but shall not be limited to, the following factors: to assess the capability of the qualified energy services provider in the area of design engineering, installation, maintenance and repairs associated with energy services or guaranteed energy performance contracts; qualifications including engineering depth and experience, post-installation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; financial health and stability, litigation history with customers and other factors determined by the division to be relevant and appropriate and related to the ability to perform the project. The division shall either accept or reject an application for prequalification from an energy services provider within sixty (60) days after receipt. If the division fails to act within sixty (60) days from the date of receiving an application, then the application shall automatically be accepted and the energy services provider shall be added to the prequalified list.

(ii) An entity shall publicly issue requests for proposals, advertised in the same manner as provided in Section 31-7-13 for seeking competitive sealed bids, concerning the



142 provision of energy efficiency services relating to the
143 installation, operation and maintenance of equipment, improvements
144 reasonably required to existing or new equipment and existing or
145 new improvements and facilities or the design, installation,
146 ownership, operation and maintenance of energy efficiency
147 equipment. Those requests for proposals shall contain terms and
148 conditions relating to submission of proposals, evaluation and
149 selection of proposals, financial terms, legal responsibilities,
150 and any other matters as the entity determines to be appropriate
151 for inclusion.

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

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

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

165 (vi) The maximum lease-purchase term for any
166 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



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



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 intention to issue a request for proposals or a request for qualifications.

(c) The terms of any shared-savings contract, energy services contract, or energy performance contract entered into under this section may not exceed twenty (20) 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) (a) By March 1 and September 1 of each year, each entity that enters into an energy performance contract or shared-savings contract shall report to the division its energy usage by meter in dollars and consumption by fuel type for the previous six-month period determined by the division.

(b) The division shall remove qualified status of an energy services provider that fails to meet the reporting requirements of paragraph (a) of this subsection after two (2) 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, * * * 2028.

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

