

By: Representatives Ishee, Ellington

To: Conservation and Water Resources; Ways and Means

HOUSE BILL NO. 1459
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "ENERGY EFFICIENT SERVICES" FOR THE
3 PURPOSES OF CONTRACTING FOR OR LEASING ENERGY EFFICIENCY EQUIPMENT
4 OR ENERGY SERVICES BY PUBLIC ENTITIES; AND FOR RELATED 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 amended 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, other
22 energy-conservation-related improvements, including improvements
23 or equipment related to renewable energy, water and other natural
24 resources conservation, including accuracy and measurement of
25 water distribution and/or consumption, and other equipment,
26 services and improvements providing energy efficiency as
27 determined by the division.

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

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

42 (v) "Entity" means the board of trustees of any
43 public school district, junior college, institution of higher
44 learning, publicly-owned hospital, state agency or governing
45 authority of this chapter.

46 (vi) "Shared savings contract" means an agreement
47 where the contractor and the entity each receive a pre-agreed
48 percentage or dollar value of the energy cost savings over the
49 life of the contract.

50 (vii) "Reduce operating costs" means elimination
51 of future expenses or avoidance of future replacement expenditures
52 as a result of new equipment installed or services performed. A
53 contract that otherwise satisfies the requirements of this section
54 shall satisfy the requirements allowing use of an energy
55 performance or shared savings contract even if the sole expense
56 being eliminated is maintenance expense.

57 (b) An entity may enter into a lease, energy services
58 contract or lease-purchase contracts for energy efficiency
59 equipment, services relating to the installation, operation and
60 maintenance of equipment or improvements reasonably required to

61 existing or new equipment and existing or new improvements and
62 facilities and shall contract in accordance with the following
63 provisions:

64 (i) An entity shall publicly issue requests for
65 proposals, advertised in the same manner as provided in Section
66 31-7-13 for seeking competitive sealed bids, concerning the
67 provision of energy efficiency services relating to the
68 installation, operation and maintenance of equipment, improvements
69 reasonably required to existing or new equipment and existing or
70 new improvements and facilities or the design, installation,
71 ownership, operation and maintenance of energy efficiency
72 equipment. Those requests for proposals shall contain terms and
73 conditions relating to submission of proposals, evaluation and
74 selection of proposals, financial terms, legal responsibilities,
75 and any other matters as the entity determines to be appropriate
76 for inclusion.

77 (ii) Upon receiving responses to the request for
78 proposals, the entity may select the most qualified proposal or
79 proposals on the basis of experience and qualifications of the
80 proposers, the technical approach, the financial arrangements, the
81 overall benefits to the entity and any other relevant factors
82 determined to be appropriate.

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

86 (iv) All contracts must contain the following
87 annual allocation dependency clause: The continuation of this
88 contract is contingent upon the appropriation of funds to fulfill
89 the requirements of the contract by the Legislature or other
90 budgeting authority. If the Legislature or other budgeting
91 authority fails to appropriate sufficient monies to provide for
92 the continuation of the contract, the contract shall terminate on
93 the last day of the fiscal year for which appropriations were

94 made. The termination shall be without penalty or expense to the
95 entity of any kind whatsoever, except as to the portions of
96 payments for which funds were appropriated.

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

101 (vi) The maximum lease-purchase term for any
102 equipment acquired under this section shall not exceed the useful
103 life of that equipment as determined according to the upper limit
104 of the asset depreciation range (ADR) guidelines for the Class
105 Life Asset Depreciation Range System established by the Internal
106 Revenue Service under the United States Internal Revenue Code and
107 the regulations thereunder as in effect on December 31, 1980, or
108 comparable depreciation guidelines with respect to any equipment
109 not covered by ADR guidelines.

110 (vii) This subsection shall, with respect to the
111 procurement of energy efficiency services and/or equipment,
112 supersede any contradictory or conflicting provisions of Chapter
113 7, Title 31, Mississippi Code of 1972, and other laws with respect
114 to awarding public contracts.

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

126 (b) The entities and private "nonprofit" hospitals that
127 decide to contract for energy efficiency equipment, services
128 relating to the installation, operation and maintenance of
129 equipment or improvements reasonably required to existing or new
130 equipment and existing or new improvements and facilities on a
131 lease, energy services contract or lease-purchase basis, may
132 request financial assistance from the division.

133 (c) The provisions of any energy efficiency
134 lease-purchase agreements authorized under this subsection shall
135 comply with the requirements of subparagraphs (1)(b)(iv) and (v)
136 of this section. The term of any energy services performance
137 contract, energy services contract, lease or lease-purchase
138 agreement for energy efficiency services and/or equipment entered
139 into under this section shall not exceed fifteen (15) years.

140 (d) Any entity or private "nonprofit" hospital having
141 approval of the division may borrow money in anticipation of
142 entering into a lease-purchase agreement pursuant to subsection
143 (2)(b) of this section. Any borrowing may be upon terms and
144 conditions as may be agreed upon by the borrowing entity and the
145 party advancing interim funds; however, the principal on any
146 borrowing shall be repaid within a period of time not to exceed
147 one hundred eighty (180) days. In borrowing money under this
148 subparagraph, it is not necessary to publish notice of intention
149 to do so or to secure the consent of the qualified electors,
150 either by election or otherwise. Any borrowing may be negotiated
151 between the parties and is not required to be publicly bid, may be
152 evidenced by negotiable notes or lease and shall not be considered
153 when computing any limitation of indebtedness of the borrowing
154 entity established by law. The principal, interest and costs of
155 incurring any borrowing shall not exceed the principal amount of
156 the final contract or agreement approved by the division, and
157 accepted by the borrowing entity, under subsection (2)(b) of this
158 section.

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

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

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

173 (b) If an entity decides to enter into a contract for
174 energy efficiency equipment, services relating to the
175 installation, operation or maintenance of equipment or
176 improvements reasonably required to existing or new equipment and
177 existing or new improvements and facilities on a shared savings
178 basis or performance basis, the entity shall issue a request for
179 proposals or a request for qualifications, as determined necessary
180 by the division, in the same manner as prescribed under subsection
181 (1)(b) of this section. The entity shall notify the division in
182 writing. The final contract shall be approved by the division.

183 (c) The terms of any shared savings or performance
184 contract for efficiency services and/or equipment entered into
185 under this section may not exceed fifteen (15) years.

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

191 existing or new equipment and existing or new improvements and
192 facilities.

193 (5) By September 1 of each year, each entity that receives
194 financial assistance through the energy efficiency lease program
195 shall annually report to the division its energy usage by meter in
196 dollars and consumption by fuel type for the previous fiscal year.

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

200 **SECTION 2.** This act shall take effect and be in force from
201 and after its passage.