

By: Representative Bowles

To: Judiciary A;
Appropriations

HOUSE BILL NO. 368

1 AN ACT TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
2 25-43-20, MISSISSIPPI CODE OF 1972, TO CREATE A JOINT STANDING
3 LEGISLATIVE COMMITTEE TO BE KNOWN AS THE JOINT COMMITTEE ON
4 ADMINISTRATIVE REGULATION REVIEW, WHICH SHALL REVIEW ALL AGENCY
5 RULES PROPOSED AFTER JUNE 30, 1999; TO PROVIDE FOR THE MEMBERSHIP,
6 APPOINTMENT AND MEETINGS OF THE COMMITTEE; TO REQUIRE EACH AGENCY
7 PROPOSING THE ADOPTION OF ANY RULE AFTER JUNE 30, 1999, TO GIVE
8 NOTICE TO THE CHAIRMAN OF THE COMMITTEE AT LEAST 30 DAYS BEFORE
9 THE AGENCY'S INTENDED ACTION; TO AUTHORIZE THE COMMITTEE TO HOLD
10 PUBLIC HEARINGS ON ANY PROPOSED RULE; TO PROVIDE THAT THE
11 COMMITTEE SHALL NOTIFY THE AGENCY PROPOSING THE ADOPTION OF A RULE
12 IF IT OBJECTS TO THE PROPOSED RULE OR ANY PART THEREOF, AND SHALL
13 PROVIDE THE AGENCY WITH THE REASONS FOR ITS OBJECTIONS; TO PROVIDE
14 THAT THE COMMITTEE MAY MAKE RECOMMENDATIONS TO THE AGENCY FOR
15 SUGGESTED CHANGES TO BE MADE TO ANY PROPOSED RULE; TO PROVIDE THAT
16 IF THE AGENCY DOES NOT MAKE ANY OF THE SUGGESTED CHANGES TO THE
17 PROPOSED RULE, THE PROPOSED RULE SHALL TAKE EFFECT 30 DAYS AFTER
18 THE COMMITTEE HAS CONCLUDED ITS MEETINGS TO REVIEW THE PROPOSED
19 RULE; TO PROVIDE THAT IF THE AGENCY MAKES ANY OF THE SUGGESTED
20 CHANGES TO THE PROPOSED RULE, THE PROPOSED RULE SHALL TAKE EFFECT
21 30 DAYS AFTER THE AGENCY HAS FILED A COPY OF THE REVISED PROPOSED
22 RULE WITH THE OFFICE OF THE SECRETARY OF STATE; TO AMEND SECTIONS
23 25-43-7 AND 25-43-9, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH
24 THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

26 SECTION 1. The following shall be codified as Section

27 25-43-20, Mississippi Code of 1972:

28 25-43-20. (1) There shall be a joint standing legislative
29 committee to be known as the Joint Committee on Administrative
30 Regulation Review, which shall review all agency rules proposed
31 after June 30, 1999. The committee shall consist of ten (10)
32 members: five (5) members of the House of Representatives, one (1)
33 from each congressional district, to be appointed by the Speaker
34 of the House, and five (5) members of the Senate, one (1) from
35 each congressional district, to be appointed by the Lieutenant
36 Governor. The Speaker and the Lieutenant Governor shall call an
37 organizational meeting of the committee, and the committee shall

38 elect a chairman and such other officers as they deem necessary.
39 The chairmanship shall alternate for twelve-month periods between
40 a House member and a Senate member, with the first chairman being
41 a House member. All actions of the committee shall require a
42 majority vote of the members of each house present and voting. A
43 quorum of the committee shall be three (3) House members and three
44 (3) Senate members. The committee shall meet at least once each
45 month, and the chairman may call additional meetings at such time
46 as he deems necessary or advisable. The chairman may name
47 subcommittees to meet and review proposed rules and report to the
48 full committee.

49 (2) The committee shall review all agency rules that are
50 proposed to be adopted, amended or repealed after June 30, 1999.
51 For the purposes of this section, any reference to a proposed rule
52 or the proposed adoption of a rule includes a proposed amendment
53 or repeal of a rule. Any agency proposing the adoption of any
54 rule after June 30, 1999, shall give notice to the chairman of the
55 committee at least thirty (30) days before the agency's intended
56 action. The agency shall furnish the committee with fifteen (15)
57 copies of each proposed rule. If the agency has prepared an
58 economic impact statement regarding any proposed rule as provided
59 by Section 25-43-6, the agency shall furnish the committee with
60 fifteen (15) copies of the economic impact statement along with
61 the copies of the proposed rule. Any member of the House of
62 Representatives or Senate who requests a copy of a proposed rule
63 or an economic impact statement from the committee chairman shall
64 be provided a copy. The language of a proposed rule as presented
65 to the committee shall be as follows: New language added to an
66 existing rule shall be underlined, and language to be deleted from
67 an existing rule shall be typed and lined through. The committee,
68 in its discretion, may hold public hearings on any proposed rule.

69 (3) The committee shall notify the agency proposing the
70 adoption of a rule if it objects to the proposed rule or any part
71 thereof, and shall provide the agency with the reasons for its
72 objections. The committee shall consider the criteria specified
73 in subsection (4) of this section in determining whether it should
74 object to any proposed rule. The committee may make

75 recommendations to the agency for suggested changes to be made to
76 any proposed rule. After the agency has received any objections
77 and recommendations for suggested changes from the committee, the
78 agency may withdraw the proposed rule, make any of the suggested
79 changes to the proposed rule, or leave the proposed rule
80 unchanged. If the agency does not make any of the suggested
81 changes to the proposed rule, it shall notify the committee of
82 that fact, and the proposed rule shall take effect thirty (30)
83 days after the committee has concluded its meetings to review the
84 proposed rule, or on such later date as required by statute or
85 specified in the proposed rule. If the agency makes any of the
86 suggested changes to the proposed rule, the proposed rule shall
87 take effect thirty (30) days after the agency has filed a copy of
88 the revised proposed rule with the Office of the Secretary of
89 State, or on such later date as required by statute or specified
90 in the proposed rule. No proposed rule, except an emergency rule
91 adopted under Section 25-43-7(2), shall be effective any earlier
92 than thirty (30) days after the committee has concluded its
93 meetings to review the proposed rule. Nothing in this section
94 shall be construed as giving the committee any authority to veto,
95 nullify or amend any agency rule or proposed rule. The
96 committee's authority is limited to reviewing, making objections
97 to and making recommendations for suggested changes to proposed
98 rules.

99 (4) In determining whether to object to any proposed rule,
100 the committee shall consider, at a minimum, the following
101 criteria:

102 (a) Would the absence of the rule significantly harm or
103 endanger the public health, safety, or welfare?

104 (b) Is there a reasonable relationship between the
105 state's police power and the protection of the public health,
106 safety, or welfare?

107 (c) Is there another, less restrictive method of

108 regulation available that could adequately protect the public?

109 (d) Does the rule have the effect of directly or
110 indirectly increasing the costs of any goods or services involved
111 and, if so, to what degree?

112 (e) Is the increase in cost, if any, more harmful to
113 the public than the harm that might result from the absence of the
114 rule?

115 (f) Are all facets of the rulemaking process designed
116 solely for the purpose of, and do they have as their primary
117 effect, the protection of the public?

118 (g) Any other criteria the committee may deem
119 appropriate.

120 SECTION 2. Section 25-43-7, Mississippi Code of 1972, is
121 amended as follows:

122 25-43-7. (1) Prior to the adoption, amendment or repeal of
123 any rule, the agency shall give at least thirty (30) days' notice
124 of its intended action. The notice shall include a statement of
125 either the terms or substance of the intended action or a
126 description of the subjects and issues involved, and the manner in
127 which interested persons may present their views thereon. The
128 notice shall be filed with the Office of the Secretary of State
129 and mailed by the agency to all persons who have made timely
130 request of the agency for advance notice of its rule-making
131 proceedings. The notice also shall be given by the agency to the
132 Chairman of the Joint Committee on Administrative Regulation
133 Review as provided in Section 25-43-20. The Secretary of State
134 shall furnish copies at the request of any person and shall be
135 reimbursed by the requesting person for the expense of providing
136 such service.

137 (2) If an agency finds that an imminent peril to the public
138 health, safety or welfare requires adoption of a rule upon fewer
139 than thirty (30) days' notice and states in writing its reasons
140 for that finding, it may proceed without prior notice of hearing

141 or upon any abbreviated notice and hearing that it finds
142 practicable to adopt an emergency rule. The rule may be effective
143 for a period of not longer than one hundred twenty (120) days,
144 renewable once for a period not exceeding ninety (90) days, but
145 the adoption of an identical rule under subsection (1) of this
146 section is not precluded.

147 (3) No rule hereafter adopted is valid unless adopted in
148 substantial compliance with this section. A proceeding to contest
149 any rule on the ground of noncompliance with the procedural
150 requirements of this section must be commenced within one (1) year
151 from the effective date of the rule.

152 SECTION 3. Section 25-43-9, Mississippi Code of 1972, is
153 amended as follows:

154 25-43-9. (1) Each agency shall file in the Office of the
155 Secretary of State a certified copy of each rule adopted by it,
156 including all rules existing on January 1, 1977. The Secretary of
157 State shall keep a permanent register of the rules open to public
158 inspection.

159 (2) Each rule hereafter adopted is effective thirty (30)
160 days after the Joint Committee on Administrative Regulation Review
161 has concluded its meetings to review the proposed rule, or thirty
162 (30) days after the agency has filed a copy of the revised
163 proposed rule with the Office of the Secretary of State, as
164 provided in Section 25-43-20(3), except that:

165 (a) If a later date is required by statute or specified
166 in the rule, the later date is the effective date.

167 (b) Subject to applicable constitutional or statutory
168 provisions, an emergency rule becomes effective immediately upon
169 filing with the secretary of state, or at a stated date less than
170 thirty (30) days thereafter if the agency finds that this
171 effective date is necessary because of imminent peril to the
172 public health, safety or welfare. The agency's finding and a
173 brief statement of the reasons therefor shall be filed with the

174 rule. The agency shall take appropriate measures to make
175 emergency rules known to the persons who may be affected by them.

176 SECTION 4. This act shall take effect and be in force from
177 and after July 1, 1999.