

By: Simpson

To: Judiciary A

HOUSE BILL NO. 930

1 AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURES
2 LAW"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PRESCRIBE THE
3 ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO PROVIDE FOR THE
4 SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF
5 FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW RIGHTS UNDER THE ACT
6 MAY BE WAIVED, HOW MATTERS MAY BE SETTLED INFORMALLY UNDER THE ACT
7 AND HOW PROCEEDINGS UNDER THE ACT MAY BE CONVERTED TO ANOTHER TYPE
8 OF AGENCY PROCEEDING; TO PRESCRIBE THE MANNER OF SERVICE AND
9 COMPUTATION OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION,
10 COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND
11 ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR
12 REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO
13 THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY
14 AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S
15 ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO
16 ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO
17 PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO
18 ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE
19 FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A
20 REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO
21 PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY
22 VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE
23 RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURES PROVIDED
24 IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO
25 REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE
26 RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE
27 METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE
28 EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE
29 INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS
30 FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO
31 REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO PRESCRIBE
32 WHEN ADJUDICATIVE PROCEEDINGS ARE REQUIRED, AND WHEN COMMENCED; TO
33 CREATE EXCEPTIONS; TO ESTABLISH TIME LIMITS; TO REQUIRE A LICENSEE
34 TO BE GIVEN NOTICE OF ANY INTENDED REVOCATION, SUSPENSION,
35 ANNULMENT OR WITHDRAWAL OF HIS LICENSE EXCEPT IN CASE OF
36 EMERGENCY; TO PROVIDE FOR INFORMAL SETTLEMENT, ALTERNATIVE DISPUTE
37 RESOLUTION AND WAIVER; TO PRESCRIBE THE REQUIREMENTS FOR A FORMAL
38 ADJUDICATIVE HEARING, THE PRESIDING OFFICER AND REPRESENTATION; TO
39 PROVIDE FOR THE AVAILABILITY OF A PREHEARING CONFERENCE, NOTICE
40 THEREOF AND PROCEDURE THEREFOR; TO PRESCRIBE RULES OF PROCEDURE;
41 TO PROVIDE FOR REVIEW; TO CREATE THE DIVISION OF INDEPENDENT
42 HEARING OFFICERS; TO PROVIDE FOR INFORMAL ADJUDICATIVE HEARINGS
43 AND PRESCRIBE RULES OF PROCEDURE; TO PRESCRIBE WHEN BASIC
44 ADJUDICATIVE PROCEEDING IS SUFFICIENT AND TO PROVIDE RULES OF
45 PROCEDURE THEREFOR, APPEAL THEREFROM, AND FOR ADMINISTRATIVE
46 REVIEW; TO PROVIDE FOR EMERGENCY ADJUDICATIVE PROCEEDINGS; TO
47 PROVIDE FOR JUDICIAL REVIEW; TO PRESCRIBE RELIEF THAT MAY BE
48 GRANTED; TO PROVIDE FOR CIVIL ENFORCEMENT; TO PROVIDE THAT
49 STATUTORY PROVISIONS THAT CONFLICT WITH THE PROVISIONS OF THIS ACT
50 SHALL GOVERN TO THE EXTENT OF SUCH CONFLICT; TO PRESCRIBE THE

51 PROCEEDINGS TO WHICH THIS ACT IS APPLICABLE; TO REPEAL SECTIONS
52 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9, 25-43-11,
53 25-43-13, 25-43-15, 25-43-17 AND 25-43-19, MISSISSIPPI CODE OF
54 1972, WHICH CREATE THE MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW,
55 PROVIDE DEFINITIONS FOR TERMS USED IN SUCH LAW, PRESCRIBE
56 PROCEDURES THAT MUST BE FOLLOWED BY AGENCIES IN THE ADOPTION,
57 AMENDMENT AND REPEAL OF AGENCY RULES, REQUIRE THE FILING OF AN
58 ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE, REQUIRE
59 FILING AND NOTICE BEFORE SUCH RULES MAY BECOME EFFECTIVE, REQUIRE
60 AGENCIES TO INDEX ALL EFFECTIVE RULES ADOPTED, PROVIDE THAT
61 REVOCATION OR SUSPENSION OF ANY LICENSE SHALL NOT BE EFFECTIVE
62 UNLESS NOTICE OF SUCH INTENDED ACTION IS GIVEN TO THE LICENSEE,
63 AND REQUIRE AGENCIES TO ADOPT PROCEDURES TO ASSURE THAT OPPONENTS
64 OF PROPOSED RULES HAVE THE OPPORTUNITY TO PRESENT THEIR VIEWS AND
65 REVIEW ADVERSE RULINGS; TO REPEAL SECTIONS 37-45-39, 37-45-59 AND
66 37-45-61, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
67 PRESERVATION OF THE REPORTER'S NOTES, TRANSCRIPTION AND
68 PREPARATION OF THE RECORD FOR APPEAL, AND FURTHER APPEAL TO THE
69 SUPREME COURT IN CERTAIN HEARINGS HELD BEFORE THE STATE DEPARTMENT
70 OF EDUCATION; TO REPEAL SECTION 41-51-27, MISSISSIPPI CODE OF
71 1972, WHICH DEALS WITH THE RECORD IN HEARINGS HELD UNDER THE
72 ANIMAL AND POULTRY BY-PRODUCTS DISPOSAL LAW OF 1964; TO REPEAL
73 SECTIONS 49-27-43, 49-27-45 AND 49-27-47, MISSISSIPPI CODE OF
74 1972, WHICH DEAL WITH APPEAL TO THE CHANCERY COURT UNDER THE
75 PROVISIONS OF THE COASTAL PROTECTION WETLANDS ACT; TO REPEAL
76 SECTION 53-1-45, MISSISSIPPI CODE OF 1972, WHICH DEALS WITH
77 APPEALS TO THE SUPREME COURT IN THE MATTER OF A HEARING HELD
78 BEFORE THE STATE OIL AND GAS BOARD; TO REPEAL SECTIONS 63-17-91
79 AND 63-17-93, MISSISSIPPI CODE OF 1972, WHICH DEAL WITH HEARINGS
80 HELD UNDER THE MISSISSIPPI MOTOR VEHICLE COMMISSION LAW; TO REPEAL
81 SECTION 65-2-17, MISSISSIPPI CODE OF 1972, WHICH DEALS WITH THE
82 APPEAL TO THE SUPREME COURT FROM A DECISION OF THE CIRCUIT COURT
83 IN AN APPEAL FROM A HEARING HELD BY THE STATE HIGHWAY ARBITRATION
84 BOARD; TO REPEAL SECTION 83-53-35, MISSISSIPPI CODE OF 1972, WHICH
85 PRESCRIBES THE ISSUANCE OF AN ORDER FOLLOWING A HEARING BEFORE THE
86 COMMISSIONER OF INSURANCE CONCERNING CREDIT LIFE AND CREDIT
87 DISABILITY INSURANCE; AND FOR RELATED PURPOSES.

88

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

90

ARTICLE I

91

GENERAL PROVISIONS

92 SECTION 1. The following shall be codified as Section

93 25-43-1.101, Mississippi Code of 1972:

94 25-43-1.101. **Title; Statement of Purpose.**

95 (1) This chapter may be cited as the "Mississippi
96 Administrative Procedures Law."

97 (2) This chapter is intended to provide a minimum procedural
98 code for the operation of all state agencies when they take action
99 affecting the rights and duties of the public. Nothing in this
100 chapter shall be construed as invalidating any rule or regulation
101 adopted before July 1, 2003, if such rule or regulation was

102 properly adopted in accordance with the law as it existed at the
103 time of adoption. Nothing in this chapter is meant to discourage
104 agencies from adopting procedures providing greater protections to
105 the public or conferring additional rights upon the public; and
106 save for express provisions of this chapter to the contrary,
107 nothing in this chapter is meant to abrogate in whole or in part
108 any statute prescribing procedural duties for an agency which are
109 greater than or in addition to those provided here. This chapter
110 is meant to apply to all rule-making and adjudicative proceedings
111 and all suits for the judicial review of agency action that are
112 not specifically excluded from this chapter or some portion
113 thereof by its express terms or by the express terms of another
114 chapter.

115 The purposes of the Mississippi Administrative Procedures Law
116 are: To provide legislative oversight of powers and duties
117 delegated to administrative agencies; to increase public
118 accountability of administrative agencies; to simplify government
119 by assuring a uniform minimum procedure to which all agencies will
120 be held in the conduct of their most important functions; to
121 increase public access to governmental information; to increase
122 public participation in the formulation of administrative rules;
123 to increase the fairness of agencies in their conduct of contested
124 case proceedings; and to simplify the process of judicial review
125 of agency action as well as increase its ease and availability.

126 In accomplishing its objectives, the intention of this chapter is
127 to strike a fair balance between these purposes and the need for
128 efficient, economical and effective government administration.

129 The chapter is not meant to alter the substantive rights of any
130 person or agency. Its impact is limited to procedural rights with
131 the expectation that better substantive results will be achieved
132 in the everyday conduct of state government by improving the
133 process by which those results are attained.

134 (3) From and after July 1, 2003, any reference to the

135 Mississippi Administrative Procedure Act, the Mississippi
136 Administrative Procedures Act, the Mississippi Administrative
137 Procedure Law, or the Mississippi Administrative Procedures Law,
138 being Sections 25-43-1, et seq., Mississippi Code of 1972, shall
139 be deemed to mean and refer to this chapter.

140 SECTION 2. The following shall be codified as Section
141 25-43-1.102, Mississippi Code of 1972:

142 25-43-1.102. **Definitions.**

143 As used in this chapter the following terms shall have the
144 meanings ascribed to them in this section unless the context
145 otherwise requires:

146 (a) "Adjudicative Proceeding" means an agency
147 proceeding conducted for the purpose of formulating and issuing an
148 order which determines the rights of one or more persons. A
149 "basic adjudicative proceeding" is an adjudicative proceeding
150 conducted in accordance with the provisions of Sections
151 25-43-4.501 through 25-43-4.505. An "emergency adjudicative
152 proceeding" is an adjudicative proceeding conducted in accordance
153 with the provisions of Section 25-43-4.601. A "formal
154 adjudicative hearing" is an adjudicative proceeding conducted in
155 accordance with the provisions of Section 25-43-4.201 through
156 25-43-4.222. An "informal adjudicative hearing" is an
157 adjudicative proceeding conducted in accordance with the
158 provisions of Section 25-43-4.401 through 25-43-4.403.

159 (b) "Agency" means a board, commission, department,
160 officer or other administrative unit of this state, including the
161 agency head, and one or more members of the agency head or agency
162 employees directly or indirectly purporting to act on behalf or
163 under the authority of the agency head. The term does not include
164 the Legislature or any of its component units, the judiciary or
165 any of its component units or the Governor. The term does not
166 include a political subdivision of the state or any of the
167 administrative units of a political subdivision. To the extent it

168 purports to exercise authority subject to any provision of this
169 chapter, an administrative unit otherwise qualifying as an
170 "agency" must be treated as a separate agency even if the unit is
171 located within or subordinate to another agency.

172 (c) "Agency action" means: (i) the whole or a part of
173 a rule, an order or a declaratory opinion; or (ii) the failure to
174 issue a rule, an order, or a declaratory opinion. "Nonfinal agency
175 action" means the whole or a part of any agency determination,
176 investigation, proceeding, hearing, conference, or other process
177 that is preliminary, preparatory, procedural, or intermediate with
178 regard to subsequent agency action of that agency or another
179 agency. "Final agency action" means the whole or a part of any
180 agency action other than nonfinal agency action. Final agency
181 action occurs when the action is reduced to writing and approved
182 by the agency head.

183 (d) "Agency head" or "head of the agency" means an
184 individual or body of individuals in whom the ultimate legal
185 authority of the agency is vested by any provision of law.

186 (e) "Agency proceeding" or "proceeding" means the
187 process by which an agency considers:

188 (i) A declaratory opinion pursuant to Section
189 25-43-2.103,

190 (ii) A rule pursuant to Article III of this
191 chapter, or

192 (iii) Any form of adjudicative proceeding pursuant
193 to Article IV of this chapter.

194 (f) "Agency record" means the official record of an
195 agency adjudicative proceeding pursuant to Section 25-43-4.222 and
196 the official rule-making record of an agency pursuant to Section
197 25-43-3.112.

198 (g) "Basic adjudicative proceeding" is an adjudicative
199 proceeding conducted in accordance with the provisions of Sections
200 25-43-4.501 through 25-43-4.505.

201 (h) "Declaratory opinion" means an agency opinion
202 rendered in accordance with the provisions of Section 25-43-2.103.

203 (i) "Emergency adjudicative proceeding" is an
204 adjudicative proceeding conducted in accordance with the
205 provisions of Section 25-43-4.601.

206 (j) "Final agency action" means the whole or a part of
207 any agency action other than nonfinal agency action. Final agency
208 action occurs when the action is reduced to writing and approved
209 by the agency head.

210 (k) "Formal adjudicative hearing" is an adjudicative
211 proceeding conducted in accordance with the provisions of Section
212 25-43-4.201 through 25-43-4.222.

213 (l) "Informal adjudicative hearing" is an adjudicative
214 proceeding conducted in accordance with the provisions of Section
215 25-43-4.401 through 25-43-4.403.

216 (m) "License" means a franchise, permit, certification,
217 approval, registration, charter or similar form of authorization
218 required by law. The holder of a "license" may be referred to as
219 a "licensee," "permittee" or "franchisee."

220 (n) "Nonfinal agency action" means the whole or a part
221 of any agency determination, investigation, proceeding, hearing,
222 conference, or other process that is preliminary, preparatory,
223 procedural, or intermediate with regard to subsequent agency
224 action of that agency or another agency.

225 (o) "Order" means an agency action of particular
226 applicability that determines the legal rights, duties,
227 privileges, immunities or other legal interests of one or more
228 specific persons. An order shall be in writing signed by a person
229 with authority to render the order, or if more than one (1) person
230 has such authority by at least that number of such persons as
231 jointly have the authority to render the order, or by a person
232 authorized to render the order on behalf of all such persons. The
233 term does not include an executive order issued by the Governor

234 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
235 General pursuant to Section 7-5-25, an opinion issued by the
236 Ethics Commission pursuant to Section 25-4-17, or a declaratory
237 opinion rendered in accordance with Section 25-43-2.103.

238 (p) "Party to agency proceedings," or "party" in a
239 context so indicating, means:

240 (i) A person to whom the agency action is
241 specifically directed;

242 (ii) A person named as a party to an agency
243 proceeding or allowed to intervene or participate as a party in
244 the proceeding; or

245 (iii) The agency, except where the agency is
246 essentially neutral regarding the outcome of the proceedings and
247 the agency's primary interest is that the proceeding be fair,
248 speedy and cost effective.

249 (q) "Party to judicial review or civil enforcement
250 proceedings," or "party" in a context so indicating, means:

251 (i) A person who files a notice for judicial
252 review or a complaint for civil enforcement;

253 (ii) A person named as a party in a proceeding for
254 judicial review or civil enforcement or allowed to participate as
255 a party in the proceeding; or

256 (iii) The agency in a proceeding for judicial
257 review or civil enforcement.

258 (r) "Person" means an individual, partnership,
259 corporation, association, governmental subdivision or unit
260 thereof, or public or private organization or entity of any
261 character, and includes another agency.

262 (s) "Presiding officer" means a person designated as
263 the principal hearing officer in an adjudicative proceeding.

264 (t) "Provision of law" or "law" means the whole or a
265 part of the federal or state Constitution, or of any federal or
266 state (i) statute, (ii) case law or common law, (iii) rule of

267 court, (iv) executive order, or (v) rule or order of an
268 administrative agency.

269 (u) "Public employee" means any person engaged in
270 "state service" within the meaning and contemplation of Section
271 25-9-107(b) as it now reads or may hereafter be amended and
272 excludes any person engaged in "nonstate service" within the
273 meaning and contemplation of Section 25-9-107(c) as it now reads
274 or may thereafter be amended.

275 (v) "Rule" means the whole or a part of an agency
276 regulation or other statement of general applicability that
277 implements, interprets, or prescribes:

278 (i) Law or policy, or

279 (ii) The organization, procedure or practice
280 requirements of an agency. The term includes the amendment,
281 repeal or suspension of an existing rule. "Rule" does not
282 include:

283 1. A regulation or statement concerning only
284 the internal management of an agency which does not directly and
285 substantially affect the procedural or substantive rights or
286 duties of any segment of the public;

287 2. A regulation or statement that establishes
288 criteria or guidelines to be used by the staff of an agency in
289 performing audits, investigations or inspections, settling
290 commercial disputes, negotiating commercial arrangements or in the
291 defense, prosecution or settlement of cases, if disclosure of the
292 criteria or guidelines would:

293 a. Enable law violators to avoid
294 detection;

295 b. Facilitate disregard of requirements
296 imposed by law; or

297 c. Give a clearly improper advantage to
298 persons who are in an adverse position to the state;

299 3. A regulation or statement that only

300 establishes specific prices to be charged for particular goods or
301 services sold by an agency;

302 4. A regulation or statement concerning only
303 the physical servicing, maintenance or care of agency owned or
304 operated facilities or property;

305 5. A regulation or statement relating only to
306 the use of a particular facility or property owned, operated or
307 maintained by the state or any of its subdivisions, if the
308 substance of the regulation or statement is adequately indicated
309 by means of signs or signals to persons who use the facility or
310 property;

311 6. A regulation or statement concerning only
312 inmates of a correctional or detention facility, students enrolled
313 in an educational institution or patients admitted to a hospital,
314 if adopted by that facility, institution or hospital;

315 7. A form whose contents or substantive
316 requirements are prescribed by rule or statute, and instructions
317 for the execution or use of the form;

318 8. An agency budget;

319 9. A compact or agreement between an agency
320 of this state and one or more agencies of another state or states;
321 or

322 10. An opinion of the Attorney General
323 pursuant to Section 7-5-25, an opinion of the Ethics Commission
324 pursuant to Section 25-4-17, or an executive order of the
325 Governor.

326 (w) "Rule making" means the process for formulation and
327 adoption of a rule.

328 SECTION 3. The following shall be codified as Section
329 25-43-1.103, Mississippi Code of 1972:

330 25-43-1.103. **Applicability and Relation to Other Law.**

331 (1) This chapter applies to all agencies and all proceedings
332 not expressly exempted under this chapter.

333 (2) This chapter creates only procedural rights and imposes
334 only procedural duties. They are in addition to those created and
335 imposed by other statutes.

336 (3) Specific statutory provisions which govern agency
337 proceedings and which are in conflict with any of the provisions
338 of this chapter shall continue to be applied to all proceedings of
339 any such agency to the extent of such conflict only.

340 (4) The provisions of this chapter shall not be construed to
341 amend, repeal or supersede the provisions of any other law; and,
342 to the extent that the provisions of any other law conflict or are
343 inconsistent with the provisions of this act, the provisions of
344 such other law shall govern and control.

345 (5) An agency may grant procedural rights to persons in
346 addition to those conferred by this chapter so long as rights
347 conferred upon other persons by any provision of law are not
348 substantially prejudiced.

349 SECTION 4. The following shall be codified as Section
350 25-43-1.104, Mississippi Code of 1972:

351 25-43-1.104. **Suspension of Chapter's Provisions When**
352 **Necessary to Avoid Loss of Federal Funds or Services.**

353 (1) To the extent necessary to avoid a denial of funds or
354 services from the United States which would otherwise be available
355 to the state, the Governor, by executive order, may suspend, in
356 whole or in part, one or more provisions of this chapter. The
357 Governor, by executive order, shall declare the termination of a
358 suspension as soon as it is no longer necessary to prevent the
359 loss of funds or services from the United States.

360 (2) If any provision of this chapter is suspended pursuant
361 to this section, the Governor shall promptly report the suspension
362 to the Legislature. The report may include recommendations
363 concerning desirable legislation that may be necessary to conform
364 this chapter to federal law, including the exemption, if
365 appropriate, of a particular program from the provisions of this

366 chapter.

367 SECTION 5. The following shall be codified as Section
368 25-43-1.105, Mississippi Code of 1972:

369 25-43-1.105. **Waiver of Rights.**

370 Except to the extent precluded by another provision of law, a
371 person may waive any right conferred upon that person by this
372 chapter, or by any rule made pursuant to this chapter.

373 SECTION 6. The following shall be codified as Section
374 25-43-1.106, Mississippi Code of 1972:

375 25-43-1.106. **Filings with Agency; Service; Computation of**
376 **Time.**

377 (1) (a) Whenever a presiding officer, a party or any person
378 is permitted or required to file with an agency any application,
379 pleading, motion or other document, filing must be made by
380 delivery of the document to the agency, by mailing it to the
381 agency, or by transmitting it to the agency by electronic means,
382 including, but not limited to, facsimile transfer or e-mail.
383 Filing by electronic means is complete when the electronic
384 equipment being used by the agency acknowledges receipt of the
385 material. If the equipment used by the agency does not
386 automatically acknowledge transmission, service is not complete
387 until the filing party obtains an acknowledgment from the agency.

388 Filing by mail is complete upon receipt by the agency.

389 (b) The agency may implement this section by agency
390 rule.

391 (2) (a) Whenever service is required by this article, and
392 whether the service is made by a party, an agency, or a presiding
393 officer, service of orders, notices, pleadings, motions, and other
394 documents upon a party shall be made by delivering a copy to the
395 party, by transmitting it to the party by electronic means,
396 including but not limited to facsimile transfer or e-mail, or by
397 mailing it to the party at the party's last known address.
398 Delivery of a copy means handing it to a party, leaving it at the

399 office of a party with a person in charge thereof, or leaving it
400 at the dwelling house or usual place of abode of the party with
401 some person of suitable age and discretion then residing therein.

402 Service by electronic means is complete when the electronic
403 equipment being used by the party being served acknowledges
404 receipt of the material. If the equipment used by the party being
405 served does not automatically acknowledge the transmission,
406 service is not complete until the sending party obtains an
407 acknowledgment from the recipient. Service by mail is complete
408 upon mailing.

409 (b) Whenever service is required or permitted to be
410 made upon a party who is represented by an attorney of record in
411 the proceedings, the service shall be made upon such attorney.

412 (c) Whenever an agency or presiding officer issues an
413 order or serves a notice or other document, the order or notice or
414 other document shall be dated and shall be deemed to have been
415 issued on the day it is served on the parties to the matter. If
416 the order or notice or other document is to be served by mail, it
417 shall be dated and shall be deemed to have been issued on the day
418 it is mailed.

419 (3) (a) In computing any period of time prescribed or
420 allowed by this article, by order of an agency, or by any
421 applicable statute or agency rule, the day of the act, event or
422 default from which the designated period of time begins to run
423 shall not be included. The last day of the period so computed
424 shall be included, unless it is a Saturday, a Sunday, or a legal
425 holiday, as defined by statute, or any other day when the agency's
426 office is in fact closed, whether with or without legal authority,
427 in which event the period runs until the end of the next day which
428 is not a Saturday, a Sunday, a legal holiday, or any other day
429 when the agency's office is closed. When the period of time
430 prescribed or allowed is less than seven (7) days, intermediate
431 Saturdays, Sundays, and legal holidays shall be excluded in the

432 computation. In the event any legal holiday falls on a Sunday,
433 the next following day shall be a legal holiday.

434 (b) Whenever a party has the right or is required to do
435 some act or take some proceedings within a prescribed period after
436 the service of a notice, order, pleading, motion or other paper
437 upon him and the notice or paper is served upon him by mail, three
438 (3) days shall be added to the prescribed period.

439 **ARTICLE II**

440 **PUBLIC ACCESS TO AGENCY LAW AND POLICY**

441 SECTION 7. The following shall be codified as Section
442 25-43-2.101, Mississippi Code of 1972:

443 **25-43-2.101. Publication, Compilation, Indexing and Public**
444 **Inspection of Rules.**

445 (1) Subject to the provisions of this chapter, the Secretary
446 of State shall prescribe a uniform numbering system, form, style
447 and transmitting format for all proposed and adopted rules caused
448 to be published by him and, with prior approval of each respective
449 agency involved, may edit rules for publication and codification
450 without changing the meaning or effect of any rule.

451 (2) The Secretary of State shall cause an administrative
452 bulletin to be published in a format and at such regular intervals
453 as the Secretary of State shall prescribe by rule. Upon proper
454 filing of proposed rules, the Secretary of State shall publish
455 them in the administrative bulletin as expeditiously as possible.

456 The administrative bulletin must contain:

457 (a) Notices of proposed rule adoption prepared so that
458 the text of the proposed rule shows the text of any existing rule
459 proposed to be changed and the change proposed;

460 (b) Any other notices and materials designated by law
461 for publication therein; and

462 (c) An index to its contents by subject.

463 (3) The Secretary of State shall cause an administrative
464 bulletin to be published in a format and at such regular intervals

465 as the Secretary of State shall prescribe by rule. Upon proper
466 filing of newly adopted rules, the Secretary of State shall
467 publish them as expeditiously as possible. The administrative
468 bulletin must contain:

469 (a) Newly filed adopted rules prepared so that the text
470 of the newly filed adopted rule shows the text of any existing
471 rule being changed and the change being made;

472 (b) Any other notices and materials designated by law
473 for publication therein; and

474 (c) An index to its contents by subject.

475 (4) The Secretary of State retains the authority to reject
476 proposed and newly adopted rules not properly filed in accordance
477 with the Secretary of State's rules prescribing the numbering
478 system, form, style or transmitting format for such filings. In
479 addition, a filing with the Secretary of State may be rejected if
480 it fails to comply with any of the provisions of Articles II and
481 III of this chapter. The Secretary of State shall notify the
482 agency of its rejection of a proposed or newly adopted rule as
483 expeditiously as possible and accompany such notification with a
484 stated reason for the rejection. A rejected filing of a proposed
485 or newly adopted rule does not constitute filing pursuant to
486 Section 25-43-3.101 et seq. of this chapter.

487 (5) (a) The Secretary of State shall cause an
488 administrative code to be compiled, indexed by subject and
489 published in a format prescribed by the Secretary of State by
490 rule. All of the effective rules of each agency must be published
491 and indexed in that publication. The Secretary of State shall
492 also cause supplements to the administrative code to be published
493 in a format and at such regular intervals as the Secretary of
494 State shall prescribe by rule.

495 (b) The Secretary of State is hereby authorized to
496 contract with a reputable and competent publishing company on such
497 terms and conditions and at such prices as he may deem proper to

498 digest, compile, annotate, index and publish the state agency
499 rules and regulations.

500 (6) (a) Copyrights of the Mississippi Administrative Code,
501 including, but not limited to, cross references, tables of cases,
502 notes of decisions, tables of contents, indices, source notes,
503 authority notes, numerical lists and codification guides, other
504 than the actual text of rules or regulations, shall be taken by
505 and in the name of the publishers of said compilation. Such
506 publishers shall thereafter promptly assign the same to the State
507 of Mississippi and said copyright shall be owned by the state.

508 (b) Any information appearing on the same leaf with the
509 text of any rule or regulation may be incidentally reproduced in
510 connection with the reproduction of such rule or regulation, if
511 such reproduction is for private use and not for resale.

512 (7) The Secretary of State may omit from the administrative
513 bulletin or code any proposed or filed adopted rule the
514 publication in hard copy of which would be unduly cumbersome,
515 expensive or otherwise inexpedient, if:

516 (a) Knowledge of the rule is likely to be important to
517 only a small class of persons;

518 (b) On application to the issuing agency, the proposed
519 or adopted rule in printed or processed form is made available at
520 no more than its cost of reproduction; and

521 (c) The administrative bulletin or code contains a
522 notice stating in detail the specific subject matter of the
523 omitted proposed or adopted rule and how a copy of the omitted
524 material may be obtained.

525 (8) The administrative bulletin and administrative code with
526 supplements must be furnished to designated officials without
527 charge and to all subscribers at a reasonable cost to be
528 determined by the Secretary of State. Each agency shall also make
529 available for public inspection and copying those portions of the
530 administrative bulletin and administrative code containing all

531 rules adopted or used by the agency in the discharge of its
532 functions, and the index to those rules.

533 SECTION 8. The following shall be codified as Section
534 25-43-2.102, Mississippi Code of 1972:

535 25-43-2.102. **Public Inspection and Indexing of Agency**
536 **Orders.**

537 (1) In addition to other requirements imposed by any
538 provision of law, and subject to any confidentiality provisions
539 established by law, each agency shall make all written final
540 orders available for public inspection and copying and index them
541 by name and subject.

542 (2) A written final order may not be relied on as precedent
543 by an agency to the detriment of any person until it has been made
544 available for public inspection and indexed in the manner
545 described in subsection (1) of this section. This provision is
546 inapplicable to any person who has actual, timely knowledge of the
547 order. The burden of proving that knowledge is on the agency.

548 SECTION 9. The following shall be codified as Section
549 25-43-2.103, Mississippi Code of 1972:

550 25-43-2.103. **Declaratory Opinions.**

551 (1) Any person with a substantial interest in the subject
552 matter may make a written request of an agency for a declaratory
553 opinion as to the applicability to specified circumstances of a
554 statute, rule or order within the primary jurisdiction of the
555 agency. An agency, through the agency head or its designee(s) by
556 rule, shall issue a declaratory opinion in response to a written
557 request for that opinion unless the agency determines that
558 issuance of the opinion under the circumstances would be contrary
559 to a rule adopted in accordance with subsection (2) of this
560 section.

561 (2) Each agency shall issue rules that provide for: (a) the
562 form, contents and filing of written requests for declaratory
563 opinions; (b) the procedural rights of persons in relation to the

564 written requests and (c) the disposition of the written requests.

565 Those rules must describe the classes of circumstances in which
566 the agency will not issue a declaratory opinion.

567 (3) Within forty-five (45) days after receipt of a written
568 request for a declaratory opinion an agency, in writing, shall:

569 (a) Issue an opinion declaring the applicability of the
570 statute, rule or order in question to the specified circumstances;

571 (b) Agree to issue a declaratory opinion by a specified
572 time but no later than ninety (90) days after receipt of the
573 written request; or

574 (c) Decline to issue a declaratory opinion, stating the
575 reasons for its action.

576 (4) A copy of all opinions issued in response to a written
577 request for a declaratory opinion must be mailed promptly to the
578 requesting party.

579 (5) (a) When any person receives a declaratory opinion from
580 an agency and shall have stated all the facts to govern such
581 opinion, there shall be no liability, civil or criminal, accruing
582 to or against any such person who, in good faith, follows the
583 direction of such opinion and acts in accordance therewith unless
584 a court of competent jurisdiction, after a full hearing, shall
585 judicially declare that such opinion is manifestly wrong and
586 without any substantial support. No declaratory opinion shall be
587 given or considered if the opinion is requested after suit is
588 filed or prosecution begun.

589 (b) The authority of persons to request and receive
590 agency declaratory opinions in no way affects the ability of any
591 person authorized by Section 7-5-25 to request a legal opinion
592 from the Attorney General.

593 (c) Each agency shall make all declaratory opinions
594 available for public inspection and copying and shall index them
595 by name and subject, unless information contained within such
596 opinions is confidential by statute or exempt from public

597 disclosure pursuant to another provision of law.

598 SECTION 10. The following shall be codified as Section
599 25-43-2.104, Mississippi Code of 1972:

600 25-43-2.104. **Required Rule Making.**

601 In addition to other rule-making requirements imposed by law,
602 each agency shall:

603 (a) Adopt as a rule a description of the organization
604 of the agency which states the general course and method of its
605 operations and where and how the public may obtain information or
606 make submissions or requests;

607 (b) Adopt rules of practice setting forth the nature
608 and requirements of all formal and informal proceedings available
609 to the public.

610 SECTION 11. The following shall be codified as Section
611 25-43-2.105, Mississippi Code of 1972:

612 25-43-2.105. **Model Rules of Procedure.**

613 In accordance with the rule-making requirements of this
614 chapter, the Secretary of State shall adopt model rules of
615 procedure appropriate for use by as many agencies as possible.
616 The model rules must deal with all general functions and duties
617 performed in common by several agencies. Each agency may adopt as
618 much of the model rules as is practicable under its circumstances.

619 To the extent an agency adopts the model rules, it shall do so in
620 accordance with the rule-making requirements of this chapter.

621 **ARTICLE III**

622 **RULE MAKING**

623 **ADOPTION AND EFFECTIVENESS OF RULES**

624 SECTION 12. The following shall be codified as Section
625 25-43-3.101, Mississippi Code of 1972:

626 25-43-3.101. **Advice on Possible Rules before Notice of
627 Proposed Rule Adoption.**

628 (1) In addition to seeking information by other methods, an
629 agency, before filing of a notice of proposed rule adoption under

630 Section 25-43-3.103, may solicit comments from the public on a
631 subject matter of possible rule making under active consideration
632 within the agency by causing notice to be filed with the Secretary
633 of State for publication in the administrative bulletin of the
634 subject matter and indicating where, when and how persons may
635 comment.

636 (2) Each agency may also appoint committees to comment,
637 before filing of a notice of proposed rule adoption under Section
638 25-43-3.103, on the subject matter of a possible rule making under
639 active consideration within the agency. The membership of those
640 committees must be filed with the Secretary of State for
641 publication in the administrative bulletin.

642 SECTION 13. The following shall be codified as Section
643 25-43-3.102, Mississippi Code of 1972:

644 25-43-3.102. **Public Rule-making Docket.**

645 (1) Each agency shall maintain a current, public rule-making
646 docket.

647 (2) The rule-making docket may, but need not, contain a
648 listing of the subject matter of possible rules currently under
649 active consideration within the agency for proposal under Section
650 25-43-3.103 and the name and address of agency personnel with whom
651 persons may communicate with respect to the matter.

652 (3) The rule-making docket must list each pending
653 rule-making proceeding. A rule-making proceeding is pending from
654 the time it is commenced, by proper filing with the Secretary of
655 State of a notice of proposed rule adoption, to the time it is
656 terminated by the filing with the Secretary of State of a notice
657 of termination or the rule becoming effective. For each pending
658 rule-making proceeding, the docket must indicate:

659 (a) The subject matter of the proposed rule;

660 (b) A citation to all published notices relating to the
661 proceeding;

662 (c) Where written submissions or written requests for

663 an opportunity to make oral presentations on the proposed rule may
664 be inspected;

665 (d) The time during which written submissions may be
666 made;

667 (e) If applicable, where and when oral presentations
668 may be made;

669 (f) Where any economic impact statement and written
670 requests for the issuance of and other information concerning an
671 economic impact statement of the proposed rule may be inspected;

672 (g) The current status of the proposed rule;

673 (h) The date of the rule's adoption; and

674 (i) When the rule will become effective.

675 SECTION 14. The following shall be codified as Section
676 25-43-3.103, Mississippi Code of 1972:

677 25-43-3.103. **Notice of Proposed Rule Adoption.**

678 (1) At least twenty-five (25) days before the adoption of a
679 rule an agency shall cause notice of its contemplated action to be
680 properly filed with the Secretary of State for publication in the
681 administrative bulletin. The notice of proposed rule adoption
682 must include:

683 (a) A short explanation of the purpose of the proposed
684 rule and the agency's reasons for proposing the rule;

685 (b) The specific legal authority authorizing the
686 proposed rule;

687 (c) A reference to all rules repealed, amended or
688 suspended by the proposed rule;

689 (d) Subject to Section 25-43-2.101(5), the text of the
690 proposed rule;

691 (e) Where, when and how persons may present their views
692 on the proposed rule; and

693 (f) Where, when and how persons may demand an oral
694 proceeding on the proposed rule if the notice does not already
695 provide for one.

696 (2) Within three (3) days after its proper filing with the
697 Secretary of State for publication in the administrative bulletin,
698 the agency shall cause a copy of the notice of proposed rule
699 adoption to be mailed to each person who has made a timely request
700 to the agency to be placed on the mailing list maintained by the
701 agency of persons who have requested notices of proposed rule
702 adoptions. An agency may charge persons a reasonable fee for such
703 service, which fee may be in excess of the actual cost of
704 providing persons with mailed copies.

705 SECTION 15. The following shall be codified as Section
706 25-43-3.104, Mississippi Code of 1972:

707 25-43-3.104. **Public Participation.**

708 (1) For at least twenty-five (25) days after proper filing
709 with the Secretary of State of the notice of proposed rule
710 adoption, an agency shall afford persons the opportunity to
711 submit, in writing, argument, data and views on the proposed rule.

712 (2) (a) An agency in its discretion may schedule an oral
713 proceeding on any proposed rule. However, an agency shall
714 schedule an oral proceeding on a proposed rule if, within twenty
715 (20) days after the proper filing of the notice of proposed rule
716 adoption, a written request for an oral proceeding is submitted by
717 a political subdivision, an agency, or twenty-five (25) persons.
718 At that proceeding, persons may present oral or written argument,
719 data, and views on the proposed rule.

720 (b) An oral proceeding on a proposed rule, if required,
721 may not be held earlier than twenty (20) days after notice of its
722 location and time is properly filed with the Secretary of State
723 for publication in the administrative bulletin. Within three (3)
724 days after its proper filing with the Secretary of State for
725 publication in the administrative bulletin, the agency shall cause
726 a copy of the notice of the location and time of the oral
727 proceeding to be mailed to each person who has made a timely
728 request to the agency to be placed on the mailing list maintained

729 by the agency of persons who have requested notices of proposed
730 rule adoptions.

731 (c) The agency, a member of the agency, or another
732 presiding officer designated by the agency shall preside at a
733 required oral proceeding on a proposed rule. Oral proceedings
734 must be open to the public and may be recorded by stenographic or
735 other means.

736 (d) An agency may issue rules for the conduct of oral
737 rule-making proceedings or prepare reasonable guidelines or
738 procedures for the conduct of any such proceedings. Those rules
739 may include, but not be limited to, provisions calculated to
740 prevent undue repetition in the oral proceedings.

741 SECTION 16. The following shall be codified as Section
742 25-43-3.105, Mississippi Code of 1972:

743 25-43-3.105. **Economic Impact Statement, Requirement and**
744 **Conditions.**

745 (1) Prior to giving the notice required in Section
746 25-43-3.103, each agency proposing the adoption of a rule or
747 significant amendment of an existing rule imposing a duty,
748 responsibility or requirement on any person shall consider the
749 economic impact the rule will have on the citizens of our state
750 and the benefits the rule will cause to accrue to those citizens.

751 For purposes of this section, a "significant amendment" means any
752 amendment to a rule for which the total aggregate cost to all
753 persons required to comply with that rule exceeds One Hundred
754 Thousand Dollars (\$100,000.00).

755 (2) Each agency shall prepare a written report providing an
756 economic impact statement for the adoption of a rule or
757 significant amendment to an existing rule imposing a duty,
758 responsibility or requirement on any person, except as provided in
759 subsection (7) of this section. The economic impact statement
760 shall include the following:

761 (a) A description of the need for and the benefits

762 which will likely accrue as the result of the proposed action;

763 (b) An estimate of the cost to the agency, and to any
764 other state or local government entities, of implementing and
765 enforcing the proposed action, including the estimated amount of
766 paperwork, and any anticipated effect on state or local revenues;

767 (c) An estimate of the cost or economic benefit to all
768 persons directly affected by the proposed action;

769 (d) An analysis of the impact of the proposed rule on
770 small business;

771 (e) A comparison of the costs and benefits of the
772 proposed rule to the probable costs and benefits of not adopting
773 the proposed rule or significantly amending an existing rule;

774 (f) A determination of whether less costly methods or
775 less intrusive methods exist for achieving the purpose of the
776 proposed rule where reasonable alternative methods exist which are
777 not precluded by law;

778 (g) A description of reasonable alternative methods,
779 where applicable, for achieving the purpose of the proposed action
780 which were considered by the agency and a statement of reasons for
781 rejecting those alternatives in favor of the proposed rule; and

782 (h) A detailed statement of the data and methodology
783 used in making estimates required by this subsection.

784 (3) No rule or regulation shall be declared invalid based on
785 a challenge to the economic impact statement for the rule unless
786 the issue is raised in the agency proceeding. No person shall
787 have standing to challenge a rule, based upon the economic impact
788 statement or lack thereof, unless that person provided the agency
789 with information sufficient to make the agency aware of specific
790 concerns regarding the statement in an oral proceeding or in
791 written comments regarding the rule. The grounds for invalidation
792 of an agency action, based upon the economic impact statement, are
793 limited to the agency's failure to adhere to the procedure for
794 preparation of the economic impact statement as provided in this

795 section, or the agency's failure to consider information submitted
796 to the agency regarding specific concerns about the statement, if
797 that failure substantially impairs the fairness of the rule-making
798 proceeding.

799 (4) A concise summary of the economic impact statement must
800 be properly filed with the Secretary of State for publication in
801 the administrative bulletin and the period during which persons
802 may make written submissions on the proposed rule shall not expire
803 until at least twenty (20) days after the date of such proper
804 filing.

805 (5) The properly filed summary of the economic impact
806 statement must also indicate where persons may obtain copies of
807 the full text of the economic impact statement and where, when,
808 and how persons may present their views on the proposed rule and
809 demand an oral proceeding on the proposed rule if one is not
810 already provided.

811 (6) If the agency has made a good faith effort to comply
812 with the requirements of subsections (1) and (2) of this section,
813 the rule may not be invalidated on the ground that the contents of
814 the economic impact statement are insufficient or inaccurate.

815 (7) This section does not apply to the adoption of:

816 (a) Any rule which is required by the federal
817 government pursuant to a state/federal program delegation
818 agreement or contract;

819 (b) Any rule which is expressly required by state law;
820 and

821 (c) A temporary rule adopted pursuant to Section
822 25-43-3.108.

823 SECTION 17. The following shall be codified as Section
824 25-43-3.106, Mississippi Code of 1972:

825 25-43-3.106. **Time and Manner of Rule Adoption.**

826 (1) An agency may not adopt a rule until the period for
827 making written submissions and oral presentations has expired.

828 (2) Following the proper filing with the Secretary of State
829 of the notice of proposed rule adoption, an agency shall adopt a
830 rule pursuant to the rule-making proceeding or terminate the
831 proceeding by proper filing with the Secretary of State of a
832 notice to that effect for publication in the administrative
833 bulletin.

834 (3) Before the adoption of a rule, an agency shall consider
835 the written submissions, oral submissions or any memorandum
836 summarizing oral submissions, and any economic impact statement,
837 provided for by this article.

838 (4) Within the scope of its delegated authority, an agency
839 may use its own experience, technical competence, specialized
840 knowledge and judgment in the adoption of a rule.

841 SECTION 18. The following shall be codified as Section
842 25-43-3.107, Mississippi Code of 1972:

843 25-43-3.107. **Variance between Adopted Rule and Published**
844 **Notice of Proposed Rule Adoption.**

845 (1) An agency shall not adopt a rule that differs from the
846 rule proposed in the notice of proposed rule adoption on which the
847 rule is based unless all of the following apply:

848 (a) The differences are within the scope of the matter
849 announced in the notice of proposed rule adoption and are in
850 character with the issues raised in that notice;

851 (b) The differences are a logical outgrowth of the
852 contents of that notice of proposed rule adoption and the comments
853 submitted in response thereto; and

854 (c) The notice of proposed rule adoption provided fair
855 warning that the outcome of that rule-making proceeding could be
856 the rule in question.

857 (2) In determining whether the notice of proposed rule
858 adoption provided fair warning that the outcome of that
859 rule-making proceeding could be the rule in question an agency
860 shall consider all of the following factors:

861 (a) The extent to which persons who will be affected by
862 the rule should have understood that the rule-making proceeding on
863 which it is based could affect their interests;

864 (b) The extent to which the subject matter of the rule
865 or issues determined by the rule are different from the subject
866 matter or issues contained in the notice of proposed rule
867 adoption; and

868 (c) The extent to which the effects of the rule differ
869 from the effects of the proposed rule contained in the notice of
870 proposed rule adoption.

871 SECTION 19. The following shall be codified as Section
872 25-43-3.108, Mississippi Code of 1972:

873 25-43-3.108. **Exemption from Public Rule-making Procedures**
874 **for Temporary Rules.**

875 (1) To the extent an agency for good cause finds that any
876 requirements of Sections 25-43-3.103 through 25-43-3.107 are
877 unnecessary, impracticable or contrary to the public interest in
878 the process of adopting a temporary rule, those requirements do
879 not apply. The agency shall incorporate the required finding and
880 a brief statement of its supporting reasons in each temporary rule
881 adopted in reliance on this subsection. The supporting reasons
882 for the issuance of a temporary rule in accordance with this
883 provision may include, but are not limited to, a serious and
884 unforeseen threat to the public health, safety or welfare; an
885 impending effective date of a recent act of the Legislature of the
886 State of Mississippi or the United States Congress that requires
887 the issuance of implementing or conforming rules or regulations;
888 an impending effective date of a regulation recently issued by an
889 agency or authority of the federal government of the United States
890 that requires the issuance of implementing or conforming rules or
891 regulations; or a court order or other controlling judicial
892 decision that requires the issuance of implementing or conforming
893 rules or regulations. Unless a shorter period of time is stated

894 in the temporary rule, a temporary rule shall expire no later than
895 one hundred eighty (180) days after adoption. A temporary rule
896 may not be renewed after its expiration or early termination by
897 the agency. However, an agency may adopt a rule which is
898 identical or similar to a temporary rule to become effective
899 following the expiration or early termination of the temporary
900 rule, provided that the rule is adopted in accordance with the
901 requirements of Sections 25-43-3.103 through 25-43-3.107.

902 (2) In an action contesting a temporary rule adopted under
903 subsection (1) of this section, the burden is upon the agency to
904 demonstrate that any omitted requirements of Sections 25-43-3.103
905 through 25-43-3.107 were impracticable, unnecessary or contrary to
906 the public interest in the particular circumstances involved.

907 SECTION 20. The following shall be codified as Section
908 25-43-3.109, Mississippi Code of 1972:

909 25-43-3.109. **Contents, Style, and Form of Rule.**

910 (1) Each rule adopted by an agency must contain the text of
911 the rule and:

912 (a) The date the agency adopted the rule;

913 (b) An indication of any change between the text of the
914 proposed rule contained in the published notice of proposed rule
915 adoption and the text of the rule as finally adopted, with the
916 reasons for any substantive change;

917 (c) Any changes to the information contained in the
918 notice of proposed rule adoption as required by subsections (a),
919 (b) or (c) of Section 25-43-3.103;

920 (d) Any findings required by any provision of law as a
921 prerequisite to adoption or effectiveness of the rule; and

922 (e) The effective date of the rule if other than that
923 specified in Section 25-43-3.113(1).

924 (2) To the extent feasible, each rule should be written in
925 clear and concise language understandable to persons who may be
926 affected by it.

927 (3) An agency may incorporate, by reference in its rules and
928 without publishing the incorporated matter in full, all or any
929 part of a code, standard, rule or regulation that has been adopted
930 by an agency of the United States or of this state, another state
931 or by a nationally recognized organization or association, if
932 incorporation of its text in agency rules would be unduly
933 cumbersome, expensive or otherwise inexpedient. The reference in
934 the agency rules must fully identify the incorporated matter with
935 an appropriate citation. An agency may incorporate by reference
936 such matter in its rules only if the agency, organization or
937 association originally issuing that matter makes copies of it
938 readily available to the public. The rules must state if copies
939 of the incorporated matter are available from the agency issuing
940 the rule or where copies of the incorporated matter are available
941 from the agency of the United States, this state, another state or
942 the organization or association originally issuing that matter.

943 (4) In preparing its rules pursuant to this article, each
944 agency shall follow the uniform numbering system, form and style
945 prescribed by the Secretary of State.

946 SECTION 21. The following shall be codified as Section
947 25-43-3.110, Mississippi Code of 1972:

948 25-43-3.110. **Agency Rule-making Record.**

949 (1) An agency shall maintain an official rule-making record
950 for each rule it (a) proposes, or (b) adopts. The agency has the
951 exclusive authority to prepare and exclusive authority to certify
952 the record or any part thereof, including, but not limited to, any
953 transcript of the proceedings, and the agency's certificate shall
954 be accepted by the court and by any other agency. The record must
955 be available for public inspection.

956 (2) The agency rule-making record must contain:

957 (a) Copies of all notices of proposed rule making or
958 oral proceedings or other publications in the administrative
959 bulletin with respect to the rule or the proceeding upon which the

960 rule is based;

961 (b) Copies of any portions of the agency's public
962 rule-making docket containing entries relating to the rule or the
963 proceeding upon which the rule is based;

964 (c) All written petitions, requests, submissions and
965 comments received by the agency and all other written materials
966 considered by the agency in connection with the formulation,
967 proposal or adoption of the rule or the proceeding upon which the
968 rule is based;

969 (d) Any official transcript of oral presentations made
970 in the proceeding upon which the rule is based or, if not
971 transcribed, any tape recording or stenographic record of those
972 presentations, and any memorandum prepared by a presiding official
973 summarizing the contents of those presentations. The word
974 "transcript" includes a written transcript, a printed transcript,
975 an audible audiotape or videotape that is indexed and annotated so
976 that it is readily accessible and any other means that the agency
977 may have by rule provided for the reliable and accessible
978 preservation of the proceeding;

979 (e) A copy of any economic impact statement prepared
980 for the proceeding upon which the rule is based;

981 (f) A copy of the rule and related information set out
982 in Section 25-43-3.109 as filed in the Office of the Secretary of
983 State; and

984 (g) All petitions for exceptions to, amendments of, or
985 repeal or suspension of, the rule.

986 (3) The agency shall have authority to engage such persons
987 and acquire such equipment as may be reasonably necessary to
988 record and preserve in any technically and practicably feasible
989 manner all matters and all proceedings had at any rule-making
990 proceeding.

991 (4) Upon judicial review, the record required by this
992 section constitutes the official agency rule-making record with

993 respect to a rule. Except as otherwise required by a provision of
994 law, the agency rule-making record need not constitute the
995 exclusive basis for agency action on that rule or for judicial
996 review thereof.

997 SECTION 22. The following shall be codified as Section
998 25-43-3.111, Mississippi Code of 1972:

999 25-43-3.111. **Invalidity of Rules Not Adopted According to**
1000 **Article; Time Limitation.**

1001 (1) A rule adopted after July 1, 2000, is invalid unless
1002 adopted in substantial compliance with the provisions of Sections
1003 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a
1004 notice of proposed rule adoption to any person as required by
1005 Section 25-43-3.103(2) does not invalidate a rule.

1006 (2) An action to contest the validity of a rule on the
1007 grounds of its noncompliance with any provision of Sections
1008 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
1009 year after the effective date of the rule.

1010 SECTION 23. The following shall be codified as Section
1011 25-43-3.112, Mississippi Code of 1972:

1012 25-43-3.112. **Filing of Rules.**

1013 An agency shall file in the Office of the Secretary of State
1014 each rule it adopts and all rules existing on July 1, 2000, that
1015 have not previously been filed. The filing must be done as soon
1016 after adoption of the rule as is practicable. At the time of
1017 filing, each rule adopted after July 1, 2000, must have included
1018 in or attached to it the material set out in Section 25-43-3.109.

1019 The Secretary of State shall affix to each rule and statement a
1020 certification of the date of filing and keep a permanent register
1021 open to public inspection of all filed rules and attached
1022 material. In filing a rule, each agency shall use a standard
1023 format prescribed by the Secretary of State.

1024 SECTION 24. The following shall be codified as Section
1025 25-43-3.113, Mississippi Code of 1972:

1026 25-43-3.113. **Effective Date of Rules.**

1027 (1) Except to the extent subsection (2) or (3) of this
1028 section provides otherwise, each rule adopted after July 1, 2000,
1029 becomes effective thirty (30) days after its proper filing in the
1030 Office of the Secretary of State.

1031 (2) (a) A rule becomes effective on a date later than that
1032 established by subsection (1) of this section if a later date is
1033 required by another statute or specified in the rule.

1034 (b) A rule may become effective immediately upon its
1035 filing or on any subsequent date earlier than that established by
1036 subsection (1) of this section if the agency establishes such an
1037 effective date and finds that:

1038 (i) It is required by constitution, statute or
1039 court order;

1040 (ii) The rule only confers a benefit or removes a
1041 restriction on the public or some segment thereof;

1042 (iii) The rule only delays the effective date of
1043 another rule that is not yet effective; or

1044 (iv) The earlier effective date is necessary
1045 because of imminent peril to the public health, safety or welfare.

1046 (c) The finding and a brief statement of the reasons
1047 therefor required by paragraph (b) of this subsection must be made
1048 a part of the rule. In any action contesting the effective date
1049 of a rule made effective under paragraph (b) of this subsection,
1050 the burden is on the agency to justify its finding.

1051 (d) A temporary rule may become effective immediately
1052 upon its filing or on any subsequent date earlier than that
1053 established by subsection (1) of this section.

1054 (e) Each agency shall make a reasonable effort to make
1055 known to persons who may be affected by it a rule made effective
1056 before any date established by subsection (1) of this section.

1057 (3) This section does not relieve an agency from compliance
1058 with any provision of law requiring that some or all of its rules

1059 be approved by other designated officials or bodies before they
1060 become effective.

1061 SECTION 25. The following shall be codified as Section
1062 25-43-3.114, Mississippi Code of 1972:

1063 25-43-3.114. **Review by Agency.**

1064 At least every five (5) years, each agency shall review all
1065 of its rules to determine whether any rule should be repealed,
1066 amended or a new rule adopted.

1067 **ARTICLE IV**

1068 **ADJUDICATIVE PROCEEDINGS**

1069 **PART I**

1070 **AVAILABILITY OF ADJUDICATIVE PROCEEDINGS;**

1071 **APPLICATIONS; LICENSES**

1072 SECTION 26. The following shall be codified as Section
1073 25-43-4.101, Mississippi Code of 1972:

1074 25-43-4.101. **Adjudicative Proceedings - When Required;**
1075 **Exceptions.**

1076 (1) An agency shall conduct an adjudicative proceeding as
1077 the process for formulating and issuing an order, unless the order
1078 is a decision:

1079 (a) To issue or not to issue a complaint, demand,
1080 charge of violation or other obligation, summons, assessment or
1081 similar accusation subject to administrative review;

1082 (b) To initiate or not to initiate an investigation,
1083 prosecution, or other proceeding before the agency, another
1084 agency, or a court;

1085 (c) Under Section 25-43-4.103, not to conduct an
1086 adjudicative proceeding;

1087 (d) To issue notice of intent to take agency action;

1088 (e) To issue a license where by law the applicant is
1089 entitled to an adjudicative proceeding if the license is denied,
1090 or where after issuance of the license by law there is provided an
1091 opportunity for an adjudicative proceeding upon application of an

1092 interested person;

1093 (f) To take an agency action where after the agency
1094 action is taken by law there is provided an opportunity for the
1095 person affected for an adjudicative proceeding before the
1096 Mississippi Employee Appeals Board;

1097 (g) To issue an order granting the request of the
1098 agency staff which may take effect only upon authorization by the
1099 agency head;

1100 (h) To take an action with respect to a prisoner,
1101 student, public employee or a licensee without continuing or
1102 permanent impact thereafter, such as a reprimand, warning,
1103 disciplinary report or purely verbal sanction without continuing
1104 impact;

1105 (i) To take an action with respect to a student that is
1106 not a suspension or expulsion from school or does not affect a
1107 grade or academic credit to which the student would otherwise be
1108 entitled;

1109 (j) To open or close a season for hunting or fishing,
1110 or to set limits for kill or catch;

1111 (k) To restrict access to levees protecting against
1112 rivers at flood stage;

1113 (l) Under Sections 93-11-155 et seq., to suspend a
1114 state-issued license;

1115 (m) To acquire, administer or dispose of interests in
1116 real or personal property, except where by another provision of
1117 law a party with standing may complain of agency action; or

1118 (n) To take action in a nonregulatory matter which is
1119 in the normal scope of business of the agency, including entering
1120 into contracts or agreements with any other state or federal
1121 agency, or with any private person, organization or group capable
1122 of contracting, if it finds such action to be in the public
1123 interest, except where by another provision of law a party with
1124 standing may complain of agency action; to accept gifts, trusts,

1125 bequests, grants, endowments or transfers of property of any kind;
1126 to receive monies coming to it by way of fees for services or by
1127 appropriations; to employ, qualified professional personnel, and
1128 such other technical and clerical staff as may be required for the
1129 operation of the agency.

1130 (2) This article does not apply to rule-making proceedings
1131 unless a statute other than contained in this chapter expressly so
1132 requires.

1133 (3) This article does not apply to a public hearing held by
1134 an agency where the principal purpose of such hearing is to invite
1135 the public to appear and receive information or provide comment on
1136 a proposed agency action.

1137 (4) This article provides minimum standards for adjudicative
1138 proceedings. Nothing in this article provides that an agency may
1139 not employ additional procedures as may be required or permitted
1140 by other law, including valid agency rules that the agency may
1141 make, so long as the rights conferred by this article are not
1142 prejudiced.

1143 (5) Except as provided otherwise in this chapter or another
1144 provision of law, an agency may conduct an adjudicative proceeding
1145 as the process for resolving any matter within the jurisdiction of
1146 the agency. If an agency commences an adjudicative proceeding in
1147 any matter, that proceeding shall be governed by this article
1148 unless the parties agree otherwise.

1149 (6) In the case of an agency that is subject to the
1150 regulatory requirements of an agency or department of the United
1151 States, an adjudicative proceeding conducted by the state agency
1152 that conforms to the requirements of the agency or department of
1153 the United States that the state agency is mandated to follow may,
1154 at the election of the state agency made in advance of the
1155 proceeding, be deemed to satisfy the requirements of this article
1156 respecting adjudicative proceedings, provided that any
1157 adjudicative proceeding so conducted shall conform to the

1158 provisions of this article that are not materially inconsistent
1159 with or substantially duplicative of the requirements of the
1160 agency or department of the United States. Any agency may
1161 implement the provisions of this section by rule. The final order
1162 of the state agency is any proceeding conducted under this
1163 subsection shall be subject to judicial review in accordance with
1164 Article V, Part I of this act.

1165 SECTION 27. The following shall be codified as Section
1166 25-43-4.102, Mississippi Code of 1972:

1167 25-43-4.102. **Adjudicative Proceedings - Commencement.**

1168 (1) An agency may commence an adjudicative proceeding at any
1169 time with respect to a matter within the jurisdiction of the
1170 agency.

1171 (2) An agency shall commence an adjudicative proceeding upon
1172 the application of any person responding to a complaint, demand,
1173 denial of a benefit, notice of agency action affecting that
1174 person, charge of violation or other obligation, summons,
1175 assessment or similar accusation served on that person by the
1176 agency.

1177 (3) In addition to its obligations provided in paragraph
1178 (b), an agency shall commence an adjudicative proceeding upon the
1179 application of any person, unless:

1180 (a) The agency lacks jurisdiction of the subject
1181 matter;

1182 (b) Resolution of the matter requires the agency to
1183 exercise discretion within the scope of Section 25-43-4.101(1),
1184 subject to the provision of subsection (2) of this section;

1185 (c) The Constitution or a statute vests the agency with
1186 discretion to conduct or not to conduct an adjudicative proceeding
1187 before issuing an order to resolve the matter and, in the exercise
1188 of that discretion, the agency has determined not to conduct an
1189 adjudicative proceeding;

1190 (d) Resolution of the matter will not require the

1191 agency to issue an order that may adjudge the applicant's legal
1192 rights, duties, privileges, immunities, or other legal interests;

1193 (e) The applicant claims only (i) that he is a citizen,
1194 a voter, or a taxpayer, or (ii) that he has an interest that the
1195 law be enforced, and nothing more;

1196 (f) The matter was not timely submitted to the agency;
1197 or

1198 (g) The matter was not submitted in a form
1199 substantially complying with any applicable provision of law, and
1200 was not amended within a reasonable time so that it substantially
1201 complies with any applicable provision of law. Any timely
1202 amendment relates back to the date of the original application.

1203 (4) (a) An application for an agency to issue an order is
1204 deemed to include an application for the agency to conduct
1205 appropriate adjudicative proceedings, whether or not the applicant
1206 expressly requests those proceedings.

1207 (b) An application for an agency to conduct an
1208 adjudicative proceeding shall be deemed to include an application
1209 for the agency to issue an appropriate order, whether or not the
1210 applicant expressly requests the agency to issue an order.

1211 (5) An adjudicative proceeding commences when the agency:

1212 (a) Serves notice on a party that a prehearing
1213 conference, hearing, or other stage of an adjudicative proceeding
1214 will be conducted; or

1215 (b) Begins to take action on a matter that
1216 appropriately may be determined by an adjudicative proceeding,
1217 unless the action is:

1218 (i) An investigation for the purpose of
1219 determining whether an adjudicative proceeding should be
1220 conducted; or

1221 (ii) A decision which, under Section
1222 25-43-4.101(1), the agency may make without conducting an
1223 adjudicative proceeding.

1224 SECTION 28. The following shall be codified as Section
1225 25-43-4.103, Mississippi Code of 1972:

1226 25-43-4.103. **Decision Not to Conduct Adjudicative**
1227 **Proceeding.**

1228 If an agency decides not to conduct an adjudicative
1229 proceeding in response to an application, the agency shall serve
1230 on any applicant therefor a copy of its decision in writing, with
1231 a brief statement of the agency's reasons and of any
1232 administrative review available to the applicant.

1233 SECTION 29. The following shall be codified as Section
1234 25-43-4.104, Mississippi Code of 1972:

1235 25-43-4.104. **Agency Action on Applications.**

1236 (1) Except to the extent that the time limits in this
1237 subsection are inconsistent with limits established by another
1238 statute for any stage of a proceeding, an agency shall process an
1239 application for an order, as follows:

1240 (a) Within thirty (30) days after receipt of the
1241 application, the agency shall examine the application, notify the
1242 applicant of any apparent errors or omissions, request any
1243 additional information the agency wishes to obtain and is
1244 permitted by law to require, and notify the applicant of the name,
1245 official title, mailing address and telephone number of an agency
1246 member or employee who may be contacted regarding the status of
1247 the application or other procedural information relating to the
1248 matter.

1249 (b) Any timely response the applicant makes to a timely
1250 request made by the agency pursuant to paragraph (a) shall relate
1251 back to the date of the original application.

1252 (c) Except in situations governed by paragraph (d),
1253 within and no later than ninety (90) days after receipt of the
1254 application or of a response to a timely request made by the
1255 agency pursuant to paragraph (a), whichever is later, the agency
1256 shall:

1257 (i) Approve or deny the application, in whole or
1258 in part, on the basis of emergency or basic adjudicative
1259 proceedings, if those proceedings are available under this chapter
1260 for disposition of the matter;

1261 (ii) Commence a formal adjudicative hearing or an
1262 informal adjudicative hearing in accordance with this chapter; or

1263 (iii) Dispose of the application in accordance
1264 with Section 25-43-4.103.

1265 (d) If the application pertains to subject matter that
1266 is not available when the application is filed but may be
1267 available in the future, the agency may proceed to make a
1268 determination of eligibility within the time provided in paragraph
1269 (c) of this subsection. If the agency determines that the
1270 applicant is eligible, the agency shall maintain the application
1271 on the agency's list of eligible applicants as provided by law
1272 and, upon request, shall notify the applicant of the status of the
1273 application.

1274 (2) If a timely and sufficient application has been made for
1275 renewal of a license with reference to any activity of a
1276 continuing nature, and if at the time of the application, the
1277 license is held by applicant in good standing, the existing
1278 license does not expire until the agency has taken final action
1279 upon the application for renewal or, if the agency's action is
1280 unfavorable, until the last day for seeking judicial review of the
1281 agency's action or a later date fixed by the court.

1282 SECTION 30. The following shall be codified as Section
1283 25-43-4.105, Mississippi Code of 1972:

1284 25-43-4.105. **Agency Action Against Licensees.**

1285 An agency may not revoke, suspend, modify, annul, withdraw,
1286 or amend a license unless the agency first serves notice of the
1287 anticipated action on the licensee and affords a reasonable
1288 opportunity for an appropriate adjudicative proceeding in
1289 accordance with this chapter and any other applicable statute.

1290 This section does not preclude an agency from (1) taking immediate
1291 action to protect the public interest in accordance with Section
1292 25-43-4.601 or (2) adopting rules otherwise within the scope of
1293 its authority, pertaining to a class of licensees, including rules
1294 affecting the existing licenses of a class of licensees.

1295 SECTION 31. The following shall be codified as Section
1296 25-43-4.106, Mississippi Code of 1972:

1297 25-43-4.106. **Informal Settlements; Alternative Dispute**
1298 **Resolution; Waiver.**

1299 (1) Unless precluded by statute, parties are encouraged to
1300 consider settlement, including the entry of a consent order, in a
1301 matter that may lead to adjudicative proceedings according to the
1302 provisions of this article. Unless precluded by statute, agencies
1303 may make rules that may regulate and facilitate settlements of
1304 matters prior to the commencement of and in the course of
1305 adjudicative proceedings. This subsection shall not be construed
1306 to require any party to an adjudicative proceeding to utilize any
1307 such settlement procedures or to settle the matter.

1308 (2) Unless precluded by statute, parties are encouraged to
1309 consider alternative dispute resolution as a means that may
1310 resolve a matter that may lead to adjudicative proceedings.
1311 Unless precluded by statute, agencies may make rules that may
1312 regulate and facilitate alternative dispute resolution of matters
1313 prior to the commencement of or in the course of adjudicative
1314 proceedings. This subsection shall not be construed to require
1315 any party to utilize alternative dispute resolution.

1316 (3) Unless precluded by statute, the parties to an
1317 adjudicative proceeding may, by written instrument manifesting an
1318 informed consent and agreement, enter a consent order resolving
1319 all or part of an adjudicative proceeding.

1320 (4) Unless precluded by statute, the parties to an
1321 adjudicative proceeding may, by written stipulation manifesting an
1322 informed consent and agreement, waive any provision of this

1323 article relating to such proceeding.

1324 **PART II**

1325 **FORMAL ADJUDICATIVE HEARING**

1326 SECTION 32. The following shall be codified as Section
1327 25-43-4.201, Mississippi Code of 1972:

1328 25-43-4.201. **Applicability.**

1329 An adjudicative proceeding is governed by this part, except
1330 as otherwise provided by:

1331 (a) A statute other than one contained in this chapter;

1332 (b) A rule lawfully made pursuant to such statute,
1333 where such rule is not inconsistent with the standards in this
1334 chapter or an applicable statute other than one contained in this
1335 chapter;

1336 (c) A rule that adopts the procedures for the informal
1337 adjudicative hearing or basic adjudicative proceeding in
1338 accordance with the standards provided in this chapter for those
1339 proceedings;

1340 (d) Section 25-43-4.601 pertaining to emergency
1341 adjudicative proceedings; or

1342 (e) Section 25-43-2.103 pertaining to proceedings for
1343 declaratory opinions.

1344 SECTION 33. The following shall be codified as Section
1345 25-43-4.202, Mississippi Code of 1972:

1346 25-43-4.202. **Presiding Officer - Disqualification;
1347 Substitution.**

1348 (1) "Presiding officer" means a person or persons acting in
1349 accordance with this section.

1350 (2) The agency head, one or more members of the agency head,
1351 one or more hearing officers or administrative judges employed or
1352 appointed by the agency, or one or more hearing officers assigned
1353 by the Division of Independent Hearing Officers in accordance with
1354 Section 25-43-4.301, or any combination thereof, in the discretion
1355 of the agency head, may be the presiding officer.

1356 (3) Ordinarily, the presiding officer should be, but is not
1357 required to be a person or persons assigned by the Division of
1358 Independent Hearing Officers:

1359 (a) Unless the agency head is the presiding officer, or

1360 (b) Unless the agency is essentially neutral regarding
1361 the outcome of the proceeding and the agency's primary interest is
1362 that the proceeding be fair, speedy and cost-effective;
1363 provided, however, that nothing in this article shall prohibit any
1364 agency from using hearing officers who may be employed or
1365 appointed by the agency. Hearing officers utilized by the agency
1366 who are not employed or otherwise engaged by the division shall
1367 have the same qualifications as those engaged by the division.

1368 (4) Any person serving or designated to serve alone or with
1369 others as presiding officer is subject to disqualification for
1370 bias, prejudice, interest, or any other cause provided in this
1371 chapter or for which a judge is or may be disqualified in a civil
1372 action.

1373 (5) Any party may move to disqualify a person promptly after
1374 receipt of notice indicating that the person will preside or
1375 promptly upon discovering facts establishing grounds for
1376 disqualification, whichever is later.

1377 (6) A person whose disqualification is requested shall
1378 determine whether to grant the motion, stating facts and reasons
1379 for the determination.

1380 (7) If a substitute is required for a person who is
1381 disqualified or becomes unavailable for any other reason, the
1382 substitute may be appointed as provided in subsections (2) and (3)
1383 of this section.

1384 (8) Any action taken by a duly-appointed substitute for a
1385 disqualified or unavailable person is as effective as if taken by
1386 the latter.

1387 SECTION 34. The following shall be codified as Section
1388 25-43-4.203, Mississippi Code of 1972:

1389 25-43-4.203. **Representation.**

1390 (1) Any party may participate in the hearing in person or,
1391 if the party is a corporation or other artificial person, by its
1392 duly authorized representative.

1393 (2) Whether or not participating in person, any party may be
1394 advised and represented at the party's own expense by a lawyer or,
1395 except as limited but not prohibited by agency rule, by any other
1396 representative. The agency may implement this subsection by rule
1397 designating the qualifications of representative(s) that may
1398 appear on behalf of a party and what binding effect the actions of
1399 the representative(s) will have on the party so represented.

1400 (3) Any application, pleading, or other document prepared by
1401 a lawyer or other representative of a party shall contain the
1402 typed or printed name, mailing address (including fax number and
1403 e-mail address, if available), and telephone number of the
1404 preparer.

1405 SECTION 35. The following shall be codified as Section
1406 25-43-4.204, Mississippi Code of 1972:

1407 25-43-4.204. **Prehearing Conference - Availability; Notice.**

1408 (1) Any party may request a prehearing conference. In
1409 response to a request by a party, or on the presiding officer's
1410 own motion, the presiding officer may determine, subject to any
1411 applicable agency rules, that a prehearing conference will be
1412 conducted.

1413 (2) If the prehearing conference is to be conducted:

1414 (a) The presiding officer shall promptly notify the
1415 agency that a prehearing conference will be conducted. The
1416 presiding officer shall conduct the prehearing conference except
1417 as provided by agency rule or unless that presiding officer is
1418 disqualified or becomes unavailable for any other reason.

1419 (b) The presiding officer shall set the time and place
1420 of the prehearing conference, subject to any applicable agency
1421 rules, and direct the agency to serve notice of the prehearing

1422 conference to all parties and to all persons who have motions to
1423 intervene pending in the matter. The agency shall also serve
1424 notice to other persons entitled to notice under any provision of
1425 law or agency rule.

1426 (c) The notice must include:

1427 (i) The official agency file or other reference
1428 number and the style of the proceeding;

1429 (ii) A statement of the time, place, and nature of
1430 the prehearing conference;

1431 (iii) A statement of the legal authority and
1432 jurisdiction under which the hearing is to be held;

1433 (iv) The name, official title, and mailing address
1434 of the presiding officer for the prehearing conference;

1435 (v) The name, official title, and mailing address
1436 (including fax number and e-mail address, if available) of any
1437 counsel or employee who has been designated to appear for the
1438 agency;

1439 (vi) The names and mailing addresses of all
1440 parties and other persons to whom notice is being given;

1441 (vii) The name, official title, mailing address
1442 (including fax number and e-mail address, if available), and
1443 telephone number of the agency employee or other person who may be
1444 able to answer procedural questions about the prehearing
1445 conference;

1446 (viii) A statement that at the prehearing
1447 conference the proceeding, without further notice, may be
1448 converted into an informal adjudicative hearing or basic
1449 adjudicative proceeding for disposition of the matter as provided
1450 by this chapter; and

1451 (ix) A statement with an explanation of its
1452 consequences that a party who fails to attend or participate in a
1453 prehearing conference, hearing, or other stage of an adjudicative
1454 proceeding may be held in default under this chapter.

1455 (d) The notice may include any other matters that the
1456 presiding officer considers desirable to expedite the proceedings,
1457 subject to any applicable provision of law including agency rules.

1458 SECTION 36. The following shall be codified as Section
1459 25-43-4.205, Mississippi Code of 1972:

1460 25-43-4.205. **Prehearing Conference - Procedure; Prehearing**
1461 **Order.**

1462 (1) The presiding officer may conduct all or part of the
1463 prehearing conference by telephone, television, or other
1464 electronic means if each participant in the prehearing conference
1465 has an opportunity to participate in, to hear, and, if technically
1466 and practicably feasible, to see the entire proceeding while it is
1467 taking place.

1468 (2) Any matters respecting the fair, speedy and
1469 cost-effective determination of the issues may be considered at
1470 the prehearing conference, including without limitation such
1471 matters as:

1472 (a) Conversion of the proceeding to another type;

1473 (b) Use of alternative dispute resolution;

1474 (c) Whether there are other persons to be joined if
1475 feasible;

1476 (d) Any motions, petitions or other applications;

1477 (e) Exploration of settlement possibilities;

1478 (f) Preparation of stipulations;

1479 (g) Clarification of issues;

1480 (h) Identity and limitation of the number of witnesses;

1481 (i) Identity and authenticity of exhibits;

1482 (j) Objections to proffers of evidence;

1483 (k) Determination of the extent to which direct
1484 evidence, rebuttal evidence, or cross-examination will be
1485 presented in written form;

1486 (l) Determination of the extent to which telephone,
1487 television, or other electronic means may be used to conduct the

1488 hearing as a substitute for proceedings in person;

1489 (m) Order of presentation of evidence and
1490 cross-examination;

1491 (n) Rulings regarding issuance of subpoenas;

1492 (o) Matters regarding discovery, the adequacy of
1493 responses to discovery, orders compelling discovery, or protective
1494 orders as may be appropriate; and

1495 (p) Such other matters as may aid in the conduct of the
1496 proceeding or the disposition of the matter.

1497 (3) If a prehearing conference is held, the presiding
1498 officer shall issue a prehearing order incorporating and
1499 memorializing the matters determined at the prehearing conference.

1500 The presiding officer may require that the agency and the parties
1501 assist in preparing the prehearing order.

1502 (4) If a prehearing conference is not held, the presiding
1503 officer may issue a prehearing order, based on the pleadings, to
1504 regulate the conduct of the proceedings.

1505 (5) Whether a prehearing conference is held or not, the
1506 presiding officer, subject to any applicable agency rules, may
1507 require the parties, jointly or severally, to prepare a prehearing
1508 statement or order addressing such matters as set out in
1509 subsection (2) of this section. Any prehearing statement shall be
1510 included within "prehearing order" for purposes of this article.

1511 SECTION 37. The following shall be codified as Section
1512 25-43-4.206, Mississippi Code of 1972:

1513 25-43-4.206. **Notice of Hearing.**

1514 (1) The presiding officer for the hearing shall set the time
1515 and place of the hearing, subject to any applicable agency rules,
1516 and direct the agency to serve notice of the hearing on all
1517 parties, all persons who have written motions to intervene pending
1518 in the matter, and any other person entitled to notice under any
1519 provision of law.

1520 (2) The notice may include a copy of any prehearing order

1521 issued in the matter.

1522 (3) To the extent not included in a prehearing order
1523 accompanying it, the notice must include:

1524 (a) The official agency file or other reference number
1525 and the style of the proceeding;

1526 (b) A statement of the time, place, and nature of the
1527 hearing;

1528 (c) A statement of the legal authority and jurisdiction
1529 under which the hearing is to be held;

1530 (d) The name, official title, and mailing address of
1531 the presiding officer;

1532 (e) The name, official title, mailing address
1533 (including fax number and e-mail address, if available) and
1534 telephone number of any counsel or employee who has been
1535 designated to appear for the agency;

1536 (f) The names and mailing addresses of all parties and
1537 other persons to whom notice is being given;

1538 (g) The name, official title, mailing address
1539 (including fax number and e-mail address, if available) and
1540 telephone number of the agency employee(s) or other person who may
1541 be able to answer procedural questions about the hearing;

1542 (h) A statement with an explanation of its consequences
1543 that a party who fails to attend or participate in a prehearing
1544 conference, hearing, or other stage of an adjudicative proceeding
1545 may be held in default.

1546 (4) The notice may include any other matters the agency or
1547 presiding officer considers appropriate to expedite and facilitate
1548 the proceedings.

1549 SECTION 38. The following shall be codified as Section
1550 25-43-4.207, Mississippi Code of 1972:

1551 25-43-4.207. **Pleadings; Briefs; Motions.**

1552 (1) The presiding officer, at all stages of the proceedings,
1553 and subject to any applicable provision of law, including agency

1554 rules, shall give all parties fair opportunity to file pleadings,
1555 and amendments thereto, motions, responses, objections, and other
1556 statements of position as may be required by agency rule. A
1557 timely amendment to a pleading relates back to the date of the
1558 original pleading.

1559 (2) The presiding officer, at appropriate stages of the
1560 proceedings, and subject to any applicable provision of law,
1561 including agency rules, may give all parties fair opportunity to
1562 file briefs, proposed findings of fact and conclusions of law, and
1563 proposed initial or final orders.

1564 (3) A party shall serve copies of any pleading, motion,
1565 brief or other paper that the party files in the proceeding on all
1566 other parties by any means provided in this chapter and, in
1567 addition, by any means provided by agency rule.

1568 SECTION 39. The following shall be codified as Section
1569 25-43-4.208, Mississippi Code of 1972:

1570 25-43-4.208. **Default.**

1571 (1) If a party fails to attend or participate in a duly
1572 noticed prehearing conference, hearing, or other stage of a formal
1573 adjudicative proceeding, the presiding officer may serve upon all
1574 parties written notice of a proposed default order, including a
1575 statement of the grounds, or, if the presiding officer so directs,
1576 the agency must serve such proposed default order.

1577 (2) Within ten (10) days after service of a proposed default
1578 order, the party against whom it is proposed to be issued may
1579 object in writing to the issuance of the proposed default order
1580 and state the grounds of the objection. During the time within
1581 which a party may file a written objection under this subsection,
1582 the presiding officer may adjourn the proceedings or conduct them
1583 without the participation of the party against whom a proposed
1584 default order may be issued, having due regard for the interests
1585 of justice and fairness and the orderly and prompt conduct of the
1586 proceedings.

1587 (3) The presiding officer shall either issue or deny the
1588 default order promptly after expiration of the time within which
1589 the party may object under subsection (2) of this section.

1590 (4) After issuing a default order, the presiding officer
1591 shall conduct any further proceedings necessary to complete the
1592 proceeding without the participation of the party in default and
1593 shall determine all issues in the proceeding, including those
1594 affecting the defaulting party. The presiding officer may allow
1595 the defaulting party to participate in the proceeding subject to
1596 the terms and conditions of the default order.

1597 SECTION 40. The following shall be codified as Section
1598 25-43-4.209, Mississippi Code of 1972:

1599 25-43-4.209. **Intervention - Persons Needed for Full and Fair**
1600 **Determination.**

1601 (1) Subject to any applicable provision of law or agency
1602 rule, the presiding officer shall grant a motion to intervene in
1603 an adjudicative proceeding if the motion is filed with the agency,
1604 with copies served on all parties named in the official notice of
1605 the hearing, at least ten (10) days before the hearing, or, for
1606 good cause and having due regard for the interests of the agency
1607 and the parties, less than ten (10) days before the hearing; and

1608 (a) The motion states facts demonstrating that the
1609 movant's legal rights, duties, privileges, immunities, or other
1610 legal interests may be affected by the outcome of the proceeding
1611 or that the movant qualifies as an intervener under any provision
1612 of law; or

1613 (b) The movant's asserted interests are among those the
1614 agency is required to consider in the proceeding; and

1615 (c) The presiding officer determines that the interests
1616 of justice and the orderly and prompt conduct of the proceeding
1617 will not be impaired by allowing the intervention.

1618 (2) Upon filing a motion to intervene, the would be
1619 intervener becomes a person who, pending ruling on the motion,

1620 should receive all notices provided thereafter to parties and all
1621 papers the parties may thereafter file and serve.

1622 (3) The fact that a person moving to intervene in a
1623 proceeding claims (1) that he is a citizen, a voter or a taxpayer
1624 or (2) that he has an interest that the law be enforced is,
1625 without more, insufficient grounds upon which the presiding
1626 officer may grant a motion to intervene.

1627 (4) The presiding officer may grant a motion to intervene at
1628 any time, upon determining that the intervention sought is in the
1629 interests of justice and fairness and will not impair the orderly
1630 and prompt conduct of the proceedings.

1631 (5) An association of persons, some of whose members are
1632 eligible for intervention, may be allowed to intervene upon the
1633 same showing and subject to the same conditions as its members who
1634 may be eligible to intervene.

1635 (6) If a movant qualifies for intervention, the presiding
1636 officer may impose conditions upon the intervener's participation
1637 in the proceedings, subject to any applicable provision of law,
1638 including agency rules, either at the time that intervention is
1639 granted or at any subsequent time. Conditions may include:

1640 (a) Limiting the intervener's participation to
1641 designated issues in which the intervener has a particular
1642 interest;

1643 (b) Limiting the intervener's use of discovery,
1644 subpoenas, cross-examination, and other procedures so as to
1645 promote the orderly and prompt conduct of the proceedings; and

1646 (c) Requiring two (2) or more interveners to combine
1647 their presentations of evidence and argument, cross-examination,
1648 discovery, and other participation in the proceedings.

1649 (7) The presiding officer shall issue an order granting or
1650 denying each pending motion to intervene, specifying any
1651 conditions, and briefly stating the reasons for the order. The
1652 presiding officer may modify the order at any time, briefly

1653 stating the reasons for the order.

1654 (8) A person who is subject to the jurisdiction of the
1655 agency shall be joined as a party in the proceeding if:

1656 (a) In the person's absence complete relief cannot be
1657 accorded among those already parties, or

1658 (b) The person claims an interest relating to the
1659 subject of the proceeding and is so situated that the disposition
1660 of the proceeding in the person's absence may (i) as a practical
1661 matter impair or impede the person's ability to protect that
1662 interest or (ii) leave any of the parties subject to a substantial
1663 risk of incurring double, multiple, or otherwise inconsistent
1664 obligations by reason of the person's claimed interest. If the
1665 person has not been so joined, the presiding officer may order
1666 that the person be made a party and summoned to appear.

1667 (9) After entry of an order allowing intervention or for
1668 joinder, the intervener or the person being joined shall be a
1669 party, subject to any conditions provided under the authority of
1670 subsection (6) of this section.

1671 SECTION 41. The following shall be codified as Section
1672 25-43-4.210, Mississippi Code of 1972:

1673 25-43-4.210. **Subpoenas; Discovery Orders; Protective Orders.**

1674 (1) Prehearing discovery is authorized in formal
1675 adjudicative proceedings under this part. The presiding officer,
1676 at the request of any party or upon the presiding officer's own
1677 motion, and subject to any applicable provision of law, including
1678 agency rules, may but is not required to allow discovery and issue
1679 protective orders, compel discovery, or grant sanctions in
1680 accordance with the Mississippi Rules of Civil Procedure as if the
1681 proceeding were a civil action governed by the Mississippi Rules
1682 of Civil Procedure.

1683 (2) Each agency is authorized to issue subpoenas. The
1684 subpoena power of each agency extends throughout the entire State
1685 of Mississippi. The presiding officer, at the request of any

1686 party shall, or upon the presiding officer's own motion may,
1687 direct the agency to issue subpoenas. Every subpoena shall be
1688 issued by the agency, shall state the name and address of the
1689 agency, the official agency file or other reference number, and
1690 the style of the proceeding, and shall command each person to whom
1691 it is directed to attend and give testimony, or to produce and
1692 permit inspection, testing and copying of designated books,
1693 documents or tangible things in the possession, custody or control
1694 of that person, or to which that person has reasonable access, or
1695 to permit inspection or testing of premises, at a time that may be
1696 before or at a hearing and at a place therein specified. Pursuant
1697 to agency rule, the subpoena may be issued by the person
1698 designated by agency rule to issue subpoenas on behalf of the
1699 agency or by the presiding officer, but otherwise in blank, to a
1700 party requesting it, who shall fill it in before service. A
1701 command to produce evidence or to permit inspection may be joined
1702 with a command to appear at hearing or at deposition, or may be
1703 issued separately.

1704 (3) Subpoenas and other orders issued under this section may
1705 be enforced pursuant to the provisions of this chapter on civil
1706 enforcement of agency action. A subpoena shall be treated as an
1707 order for purposes of civil enforcement subpoenas.

1708 (4) Witnesses subpoenaed to appear in agency proceedings
1709 shall receive at least the same fees and mileage as witnesses in
1710 civil actions in courts of record.

1711 (5) A subpoena may be served by a sheriff, or by sheriff's
1712 deputy, or by a representative of the agency, or by any other
1713 person who is not less than eighteen (18) years of age, and his or
1714 her return endorsed thereon shall be prima facie proof of service,
1715 or the person served may acknowledge service in writing on the
1716 subpoena. Service of the subpoena shall be executed upon the
1717 witness personally. Proof of service shall be made by filing with
1718 the agency from which the subpoena was issued a statement,

1719 certified by the person who made the service, setting forth the
1720 date and manner of service, the address, including the city and
1721 county in which it was served, and the names of the person or
1722 persons served.

1723 (6) The agency may adopt rules that implement and elaborate
1724 this section.

1725 SECTION 42. The following shall be codified as Section
1726 25-43-4.211, Mississippi Code of 1972:

1727 25-43-4.211. **Agency Records; Staff Recommendations;**
1728 **Proceedings.**

1729 (1) An agency that relies on a witness in an adjudicative
1730 proceeding, whether or not an agency employee, who has made prior
1731 statements or reports with respect to the subject matter of the
1732 witness' testimony, shall, on request, promptly make such
1733 statements or reports available to parties, unless those
1734 statements or reports are otherwise expressly protected from
1735 disclosure by another provision of law. Identifiable agency
1736 records that are relevant to disputed material facts involved in
1737 an adjudicative proceeding, shall, upon request, promptly be made
1738 available to a party unless the requested records are expressly
1739 protected from disclosure by another provision of law. The
1740 provisions of this subsection are independent of and in addition
1741 to any provisions of the Mississippi Public Records Act.

1742 (2) Not less than ten (10) days before a hearing under this
1743 part, the agency staff shall serve upon all parties any
1744 recommendation the staff will make at the hearing, including the
1745 substance of the facts and circumstances supporting the
1746 recommendation, and identification of all persons who have
1747 provided facts or opinions upon which the staff recommendation is
1748 based, and a summary of the grounds for each such opinion. The
1749 agency staff shall serve upon all parties all other materials it
1750 provides to the presiding officer.

1751 (3) In the discretion of and within such time frames as he

1752 may deem appropriate, the presiding officer may allow discovery
1753 with respect to the staff recommendation and other materials the
1754 staff provides to the presiding officer.

1755 (4) The agency may adopt rules that implement and elaborate
1756 this section.

1757 SECTION 43. The following shall be codified as Section
1758 25-43-4.212, Mississippi Code of 1972:

1759 25-43-4.212. **Procedure at Hearing.**

1760 At a hearing:

1761 (a) The presiding officer shall regulate the course of
1762 the proceedings in conformity with any prehearing order and
1763 subject to any applicable provision of law, including agency rule.

1764 The presiding officer may expedite the proceedings, grant
1765 continuances, recess or bifurcate hearings, and shall exercise
1766 reasonable control over the mode and order of questioning
1767 witnesses and presenting evidence so as to (i) make the
1768 questioning and presentation effective for the ascertainment of
1769 the facts, (ii) avoid needless consumption of time, (iii) protect
1770 privacy rights, trade secrets, and other similar interests created
1771 by another provision of law, and (iv) protect witnesses from
1772 harassment or undue embarrassment.

1773 (b) To the extent necessary for full disclosure of all
1774 relevant facts and issues, the presiding officer shall afford to
1775 all parties the opportunity to respond, present evidence and
1776 argument, conduct cross-examination, and submit rebuttal evidence,
1777 except as restricted by a limited grant of intervention, by agency
1778 rule, or by a prehearing order.

1779 (c) The presiding officer may give nonparties an
1780 opportunity to present oral or written statements. If the
1781 presiding officer proposes to consider a statement by a nonparty,
1782 the presiding officer shall give all parties an opportunity to
1783 challenge or rebut it and, on motion of any party, the presiding
1784 officer shall require the statement to be given under oath or

1785 affirmation.

1786 (d) The presiding officer may conduct all or part of
1787 the hearing by telephone, television, or other electronic means,
1788 if each participant in the hearing has an opportunity to
1789 participate in, to hear, and, if technically and practicably
1790 feasible, to see the entire proceeding while it is taking place.

1791 (e) The presiding officer shall cause all proceedings
1792 at the hearing to be recorded and preserved, stenographically,
1793 mechanically or electronically, by any means technically and
1794 practicably feasible, and at the agency's expense. The agency is
1795 not required, at its expense, to prepare a transcript, unless
1796 required to do so by a provision of law. Upon written request,
1797 the agency shall make available to any party to the proceeding,
1798 for a reasonable cost of reproduction, a copy of any electronic
1799 recording of the proceeding. Any party, at the party's expense,
1800 may cause a qualified reporter to prepare a transcript from the
1801 agency's record or to appear at the hearing to record the
1802 proceedings stenographically, or cause additional electronic
1803 recordings to be made during the hearing if the making of the
1804 additional recordings does not cause undue distraction or
1805 disruption.

1806 (f) The hearing is open to public observation, except
1807 for the parts that the presiding officer rules should be closed
1808 pursuant to a provision of law authorizing closure, imposing
1809 confidentiality requirements or protecting privacy rights. To the
1810 extent that a hearing is conducted by telephone, television, or
1811 other electronic means, and is not closed, the availability of
1812 public observation is satisfied by giving members of the public an
1813 opportunity, at reasonable times, to hear or inspect the agency's
1814 record, and to inspect any transcript obtained by the agency.
1815 Members of the public, including the news media, may record,
1816 photograph, broadcast, videotape or telecast all or any part of
1817 the hearing that is otherwise open to the public. The presiding

1818 officer has full authority to provide such restrictions as will
1819 avoid disruption or interference with the orderly conduct of the
1820 hearing or with any other person's participation in or observance
1821 of the hearing.

1822 SECTION 44. The following shall be codified as Section
1823 25-43-4.213, Mississippi Code of 1972:

1824 25-43-4.213. **Evidence; Official Notice.**

1825 (1) Within his discretion the presiding officer may receive
1826 and consider such evidence as reasonably prudent persons are
1827 accustomed to relying on in the conduct of their serious affairs
1828 even if such evidence would not be admissible in the trial of a
1829 civil action. To this end, the presiding officer may consider the
1830 Mississippi Rules of Evidence for guidance but should relax the
1831 formal provisions and requisites of those rules, except rules
1832 providing evidentiary privileges. The presiding officer shall
1833 respect and enforce any provision of law providing privileges,
1834 including the deliberative process privilege, imposing
1835 confidentiality requirements or protecting privacy rights, trade
1836 secrets, and other similar interests, and may enter protective
1837 orders to those ends, except that the person for whose benefit any
1838 such provision of law has been made may waive that protection.
1839 Any party waives any privacy right and any other privilege, with
1840 the exception of the lawyer-client privilege as defined in the
1841 Mississippi Rules of Evidence and the deliberative process
1842 privilege, with respect to evidence relevant to any issue, claim
1843 or defense the party asserts or puts in issue in the proceeding.
1844 The presiding officer may enter an appropriate protective order to
1845 prevent use or disclosure of such evidence outside the context of
1846 the adjudicative proceeding or judicial review thereof.

1847 (2) Upon proper objection, and in the absence of waiver, the
1848 presiding officer shall exclude evidence that is irrelevant,
1849 immaterial, unduly repetitious, or excludable on constitutional or
1850 statutory grounds or on the basis of any evidentiary privilege

1851 recognized in the courts of this state, or any other provision of
1852 law imposing confidentiality requirements or protecting privacy
1853 rights. In the absence of proper objection, the presiding officer
1854 acting *sus spor*te may exclude evidence that is redundant,
1855 repetitious or otherwise objectionable. Evidence may not be
1856 excluded solely because it is hearsay. If evidence is excluded by
1857 the hearing officer, the party offering the evidence may make an
1858 offer of proof for the record.

1859 (3) All testimony of parties and witnesses must be made
1860 under oath or affirmation.

1861 (4) Statements presented by nonparties in accordance with
1862 Section 25-43-4.212(c) may be received as evidence.

1863 (5) Subject to any applicable provision of law, including
1864 agency rule, any part of the testimony or other evidence may be
1865 received in written form, including prefiled direct testimony of
1866 witnesses who will appear at the hearing, if doing so will
1867 expedite the hearing without substantial prejudice to the
1868 interests of any party, subject to any applicable agency rule.

1869 (6) Documentary evidence may be received in the form of a
1870 copy or excerpt. Upon request, parties must be given an
1871 opportunity to compare the copy with the original if available.

1872 (7) Official notice may be taken of (a) any fact that could
1873 be judicially noticed in the courts of this state, (b) the record
1874 of other proceedings before the agency, (c) technical or
1875 scientific matters within the agency's specialized knowledge, and
1876 (d) codes or standards that have been adopted by an agency of the
1877 United States, of this state or of another state, or by a
1878 nationally recognized organization or association. Parties must
1879 be notified before or during the hearing, or before the issuance
1880 of any initial or final order that is based in whole or in part on
1881 facts or material noticed, of the specific facts or material
1882 noticed and the source thereof, including any staff memoranda and
1883 data, and be afforded an opportunity to contest and rebut the

1884 facts or material so noticed.

1885 (8) The presiding officer should consider the agency's
1886 expertise, technical competence, and specialized knowledge in the
1887 evaluation of the evidence.

1888 SECTION 45. The following shall be codified as Section
1889 25-43-4.214, Mississippi Code of 1972:

1890 25-43-4.214. **Ex parte Communications.**

1891 (1) Except as provided in subsection (2) or (3) of this
1892 section or unless required for the disposition of ex parte matters
1893 specifically authorized by statute, a presiding officer serving in
1894 an adjudicative proceeding, and any person or persons with
1895 authority to determine the outcome of such proceeding, or the
1896 agency head that may eventually review the matter on behalf of the
1897 agency, may not communicate, directly or indirectly, regarding any
1898 issue in the proceeding, while the proceeding is pending at either
1899 the adjudicative level or agency review level, with any party,
1900 with any representative of a party, with any person who has a
1901 direct or indirect interest in the outcome of the proceeding, or
1902 with any person who presided at a previous stage of the
1903 proceeding, without notice and opportunity for all parties to
1904 participate in the communication.

1905 (2) A presiding officer or any other person within
1906 subsection (1) may communicate with a party or representative
1907 regarding scheduling of hearings or other routine ministerial
1908 details not bearing on the issues in the proceeding.

1909 (3) A member of a multi-member panel of presiding officers
1910 may communicate with other members of the panel regarding a matter
1911 pending before the panel, and any presiding officer may receive
1912 aid from staff assistants if the assistants do not (a) receive ex
1913 parte communications of a type that the presiding officer would be
1914 prohibited from receiving or (b) furnish, augment, diminish, or
1915 modify the evidence in the record.

1916 (4) Unless required for the disposition of ex parte matters

1917 specifically authorized by statute, no party to an adjudicative
1918 proceeding, no representative of a party, and no person who has a
1919 direct or indirect interest in the outcome of the proceeding or
1920 who presided at a previous stage of the proceeding, may
1921 communicate, directly or indirectly, in connection with any issue
1922 in that proceeding, while the proceeding is pending at either the
1923 initial adjudicative level or agency review level, with any person
1924 serving as presiding officer, or with any person or persons with
1925 authority to determine the outcome of such proceeding, or with any
1926 agency head who may eventually review the matter on behalf of the
1927 agency, without notice and opportunity for all parties to
1928 participate in the communication.

1929 (5) If, before serving as presiding officer in an
1930 adjudicative proceeding, a person receives an ex parte
1931 communication of a type that could not properly be received while
1932 serving, the person, promptly after starting to serve, shall
1933 disclose the communication in the manner prescribed in subsection
1934 (6) of this section.

1935 (6) A presiding officer or other person who receives an ex
1936 parte communication prohibited by this section shall place on the
1937 record of the pending matter all written communications received,
1938 all written responses to the communications, and a memorandum
1939 stating the substance of all oral communications received, all
1940 responses made, and the identity of each person from whom the
1941 presiding officer or other person received an ex parte
1942 communication, and shall serve notice on all parties that these
1943 matters have been placed on the record. Any party desiring to
1944 rebut the ex parte communication must be allowed to do so, upon
1945 requesting the opportunity for rebuttal within ten (10) days after
1946 service of notice of the communication and its substance.

1947 (7) If necessary to eliminate the effect of an ex parte
1948 communication received in violation of this section, a presiding
1949 officer or other person who receives the communication may be

1950 disqualified and the portions of the record pertaining to the
1951 communication may be sealed by protective order.

1952 (8) Any party may report any willful violation of this
1953 section to appropriate authorities for any disciplinary
1954 proceedings provided by law. In addition, each agency by rule may
1955 provide for appropriate sanctions, including default, for any
1956 violations of this section.

1957 SECTION 46. The following shall be codified as Section
1958 25-43-4.215, Mississippi Code of 1972:

1959 25-43-4.215. **Separation of Functions.**

1960 (1) A person who has served as investigator, prosecutor or
1961 advocate in an adjudicative proceeding or in its preadjudicative
1962 stage may not serve as presiding officer or assist or advise a
1963 presiding officer in the same proceeding.

1964 (2) A person who is subject to the authority or direction,
1965 of one who has served as investigator, prosecutor, or advocate in
1966 an adjudicative proceeding or in its preadjudicative stage may not
1967 serve as presiding officer or assist or advise a presiding officer
1968 in the same proceeding.

1969 (3) A person who has participated in a determination of
1970 probable cause or other equivalent preliminary determination in an
1971 adjudicative proceeding may serve as presiding officer or assist
1972 or advise a presiding officer in the same proceeding, unless a
1973 party demonstrates grounds for disqualification in accordance with
1974 Section 25-43-4.202.

1975 (4) A person may serve as presiding officer at successive
1976 stages of the same adjudicative proceeding, unless a party
1977 demonstrates grounds for disqualification in accordance with
1978 Section 25-43-4.202.

1979 SECTION 47. The following shall be codified as Section
1980 25-43-4.216, Mississippi Code of 1972:

1981 25-43-4.216. **Final Order; Initial Order.**

1982 (1) If the presiding officer is the agency head, the

1983 presiding officer shall issue a final order.

1984 (2) If the presiding officer is not the agency head, the
1985 presiding officer shall issue an initial order, which becomes a
1986 final order unless reviewed in accordance with Section
1987 25-43-4.217.

1988 (3) A final order or initial order must include, separately
1989 stated:

1990 (a) Findings of fact;
1991 (b) Conclusions of law;
1992 (c) Reasoned application of law to facts; and
1993 (d) Policy reasons for the decision if it is an
1994 exercise of the agency's discretion, for all aspects of the order,
1995 including the remedy prescribed and, if applicable, the action
1996 taken on a motion for stay of effectiveness. Findings of fact, if
1997 set forth in language that is no more than mere repetition or
1998 paraphrase of the relevant provision of law, must be accompanied
1999 by a concise and explicit statement of the underlying facts of
2000 record to support the findings. The order must also include a
2001 statement of the available procedures and time limits for seeking
2002 reconsideration or other administrative relief. An initial order
2003 must include a statement of any circumstances under which the
2004 initial order, without further notice, may become a final order.

2005 (4) Findings of fact must be based on the evidence of record
2006 in the adjudicative proceeding and on matters officially noticed
2007 in that proceeding. Findings may be based upon the kind of
2008 evidence on which reasonably prudent persons are accustomed to
2009 rely in the conduct of their serious affairs and may be based on
2010 such evidence even if it would be inadmissible in a civil trial.
2011 The presiding officer may utilize his experience, technical
2012 competence, and specialized knowledge in evaluating evidence. The
2013 presiding officer should consider the legislative facts and policy
2014 judgments underlying and justifying the rule of law that is
2015 applicable to the issues at the hearing.

2016 (5) If a person serving or designated to serve as presiding
2017 officer becomes unavailable, for any reason, before issuance of
2018 the final order or initial order, a substitute presiding officer
2019 must be appointed as provided in Section 25-43-4.202. The
2020 substitute presiding officer shall use any existing record and may
2021 conduct any further proceedings appropriate in the interests of
2022 justice.

2023 (6) The presiding officer may allow the parties a designated
2024 amount of time after conclusion of the hearing for the submission
2025 of proposed findings and conclusions.

2026 (7) A final order or initial order pursuant to this section
2027 must be issued in writing within ninety (90) days after conclusion
2028 of the hearing or after submission of proposed findings in
2029 accordance with subsection (6) of this section unless this period
2030 is waived or extended with the written consent of all parties or
2031 for good cause shown.

2032 (8) The presiding officer shall serve copies of the final
2033 order or initial order on each party and on the agency head. The
2034 presiding officer may direct the agency to serve the final order
2035 or initial order.

2036 SECTION 48. The following shall be codified as Section
2037 25-43-4.217, Mississippi Code of 1972:

2038 25-43-4.217. **Review of Initial Order; Exceptions to**
2039 **Reviewability.**

2040 (1) The agency head, upon its own motion may, and upon
2041 motion by any party for review by the agency head shall, review an
2042 initial order, except to the extent that:

2043 (a) A provision of law precludes or limits agency
2044 review of the initial order; or

2045 (b) The agency head, in the exercise of discretion
2046 conferred by a provision of law:

2047 (i) Determines to review some but not all issues,
2048 or not to exercise any review;

2049 (ii) Delegates its authority to review the initial
2050 order to one or more persons; or

2051 (iii) Authorizes one or more persons to review the
2052 initial order, subject to further review by the agency head.

2053 (2) A motion for review from an initial order must be filed
2054 with the agency head, or with any person designated for this
2055 purpose by rule of the agency, and served on all parties within
2056 twenty (20) days after issuance of the initial order. If the
2057 agency head on its own motion decides to review an initial order,
2058 the agency head shall serve on all parties notice of its intention
2059 to review the initial order within twenty (20) days after its
2060 issuance.

2061 (3) The twenty (20) day period for a party to file a motion
2062 for review by the agency head or for the agency head to serve
2063 notice of its intention to review an initial order on the agency
2064 head's own motion is tolled by the filing of a timely motion for
2065 reconsideration of the initial order pursuant to Section
2066 25-43-4.219, and a new twenty-day period starts to run upon
2067 disposition of the motion for reconsideration. If an initial
2068 order is subject both to a timely motion for reconsideration and
2069 to a motion for review or to review by the agency head on its own
2070 motion, the motion for reconsideration must be disposed of first,
2071 unless the agency head determines that action on the motion for
2072 reconsideration has been unreasonably delayed.

2073 (4) A party filing a motion for agency review must state its
2074 basis within the motion. If the agency head on its own motion
2075 serves notice of its intent to review an initial order, the agency
2076 head shall identify the issues that it intends to review.

2077 (5) The reviewing officer, the agency head or other
2078 appropriate presiding officer for the review of an initial order,
2079 shall exercise all the decision-making power that the presiding
2080 officer would have had to issue a final order had the presiding
2081 officer presided over the hearing, except to the extent that the

2082 issues subject to review are limited by a provision of law or by
2083 the agency head or other presiding officer upon notice to all
2084 parties.

2085 (6) The reviewing officer, the agency head or other
2086 presiding officer reviewing the matter, shall afford each party an
2087 opportunity to present written briefs and may afford each party an
2088 opportunity to present oral argument. The reviewing officer in
2089 his discretion may allow supplemental briefs and briefs in the
2090 nature of amicus curiae briefs.

2091 (7) Before issuing a final order, the agency head or other
2092 reviewing officer may cause a transcript to be prepared, at the
2093 agency's expense, of such portions of the proceeding under review
2094 as the agency head or reviewing officer considers necessary.

2095 (8) The agency head or other reviewing officer may issue a
2096 final order disposing of the proceeding or may remand the matter
2097 for further proceedings with instructions to the presiding officer
2098 who issued the initial order. Upon remanding a matter, the agency
2099 head or other presiding officer reviewing the matter may order
2100 such temporary relief as may be authorized and appropriate.

2101 (9) A final order or an order remanding the matter for
2102 further proceedings must be issued in writing within sixty (60)
2103 days after service of the last brief or oral argument, if any,
2104 whichever is later, unless that period is waived or extended with
2105 the written consent of all parties or for good cause shown.

2106 (10) A final order or an order remanding the matter for
2107 further proceedings under this section must identify any
2108 difference between this order and the initial order and must
2109 include, or incorporate by express reference to the initial order,
2110 all the matters required by Section 25-43-216(c).

2111 (11) Upon remand, the presiding officer shall issue in
2112 writing an initial order resolving the matter on remand within
2113 sixty (60) days after service of the order of remand, unless this
2114 period is waived or extended with the written consent of all of

2115 the parties or for good cause shown.

2116 (12) The agency head or other presiding officer reviewing
2117 the matter shall serve copies of the final order or order
2118 remanding the matter for further proceedings on each party and, if
2119 issued by other presiding officer, on the agency head.

2120 SECTION 49. The following shall be codified as Section
2121 25-43-4.218, Mississippi Code of 1972:

2122 25-43-4.218. **Stay.**

2123 (1) Except as otherwise provided by law, no action for
2124 enforcement of a final order may be taken until the expiration of
2125 ten (10) days after the later of (a) the issuance of the order or
2126 (b) the issuance of the final disposition of a motion made under
2127 Section 25-43-4.219.

2128 (2) A party may move for a stay of effectiveness of an
2129 initial or final order within ten (10) days after its issuance
2130 unless otherwise provided by statute or stated in the initial or
2131 final order. The agency head or other presiding officer may take
2132 action on the motion for stay, either before or after the
2133 effective date of the initial or final order, and, if the stay is
2134 granted, provide appropriate terms that must be satisfied before
2135 the stay becomes effective.

2136 SECTION 50. The following shall be codified as Section
2137 25-43-4.219, Mississippi Code of 1972:

2138 25-43-4.219. **Alteration; Amendment; Reconsideration.**

2139 Unless otherwise provided by statute or rule:

2140 (a) Any party, within twenty (20) days after issuance
2141 of an initial order or final order, may move for alteration,
2142 amendment, or reconsideration of the order, in whole or in part,
2143 stating the specific grounds upon which relief is requested. The
2144 filing of the motion is not a prerequisite for seeking
2145 administrative or judicial review.

2146 (b) The motion must be disposed of by the same person
2147 or persons who issued the initial order or final order, if

2148 available.

2149 (c) The agency head or presiding officer that issued
2150 the initial order or final order shall issue a written order
2151 denying the motion; granting the motion and altering, amending, or
2152 otherwise modifying the initial order or final order; or granting
2153 the motion and setting the matter for further proceedings. The
2154 motion may be granted, in whole or in part, only if the agency
2155 head or other presiding officer states, in the written order,
2156 findings of fact, conclusions of law, reasoned application of law
2157 to fact, and policy reasons for the decision if it is an exercise
2158 of the agency's discretion, to justify the order. The motion is
2159 deemed to have been denied if the agency head or other presiding
2160 officer does not serve an order disposing of it within twenty (20)
2161 days after the filing of the motion.

2162 SECTION 51. The following shall be codified as Section
2163 25-43-4.220, Mississippi Code of 1972:

2164 25-43-4.220. **Review by Superior Agency.**

2165 If, pursuant to statute, an agency may review the final order
2166 of another agency, the review is deemed to be a continuous
2167 proceeding as if before a single agency. The final order of the
2168 first agency is treated as an initial order, and the second agency
2169 functions as though it were reviewing an initial order in
2170 accordance with Section 25-43-4.217.

2171 SECTION 52. The following shall be codified as Section
2172 25-43-4.221, Mississippi Code of 1972:

2173 25-43-4.221. **Effectiveness of Orders.**

2174 (1) Unless a later date is stated in a final order or a stay
2175 is granted, a final order is effective twenty (20) days after
2176 issuance, but:

2177 (a) A party may not be required to comply with a final
2178 order unless the party has been served with or otherwise has
2179 actual knowledge of the final order;

2180 (b) A nonparty may not be required to comply with a

2181 final order unless the agency has made the final order available
2182 for public inspection and copying or the nonparty has actual
2183 knowledge of the final order.

2184 (2) Unless a later date is stated in an initial order or a
2185 stay is granted, the time when an initial order becomes a final
2186 order in accordance with Section 25-43-4.216 is determined as
2187 follows:

2188 (a) When the initial order is issued, if administrative
2189 review is unavailable;

2190 (b) When the agency head issues an order stating, after
2191 a motion for review has been filed, that review will not be
2192 exercised, if discretion is available to make a determination to
2193 this effect; or

2194 (c) Twenty (20) days after issuance of the initial
2195 order, if:

2196 (i) No party has filed a motion for administrative
2197 review;

2198 (ii) No party has filed a motion to alter, amend
2199 or reconsider the order; and

2200 (iii) The agency head has not given written notice
2201 of its intention to exercise review.

2202 (3) Unless a later date is stated in an initial order or a
2203 stay is granted, an initial order that becomes a final order in
2204 accordance with subsection (2) of this section and Section
2205 25-43-4.216 is effective after becoming a final order, but:

2206 (a) A party may not be required to comply with the
2207 final order unless the party has been served with or has actual
2208 knowledge of the initial order or of an order stating that review
2209 will not be exercised; and

2210 (b) A nonparty may not be required to comply with the
2211 final order unless the agency has made the initial order available
2212 for public inspection and copying or the nonparty has actual
2213 knowledge of the initial order or of an order stating that review

2214 will not be exercised.

2215 (4) This section does not preclude an agency from taking
2216 immediate action to protect the public interest in accordance with
2217 Section 25-43-4.601.

2218 SECTION 53. The following shall be codified as Section
2219 25-43-4.222, Mississippi Code of 1972:

2220 25-43-4.222. **Agency Record.**

2221 (1) An agency shall maintain an official record of each
2222 adjudicative proceeding under this part.

2223 (2) The agency record consists of all matters received by
2224 the agency pertaining to the proceeding, which may include but are
2225 not limited to:

2226 (a) Applications for adjudicative proceedings and
2227 amendments thereto;

2228 (b) Notices of all proceedings;

2229 (c) Any prehearing order;

2230 (d) Any pleadings, motions, requests, and intermediate
2231 rulings;

2232 (e) Evidence received or considered;

2233 (f) A statement of matters officially noticed;

2234 (g) Any public comment received by the agency;

2235 (h) Any comment received by the agency from another
2236 agency, including federal agencies;

2237 (i) Proffers of evidence and objections and rulings
2238 thereon;

2239 (j) Proposed findings and conclusions, requested
2240 orders, and exceptions;

2241 (k) The record prepared for the presiding officer at
2242 the hearing, together with any transcript of all or part of the
2243 hearing considered before final disposition of the proceeding;

2244 (l) Staff memoranda, data or recommendations submitted
2245 to the presiding officer, unless prepared and submitted by
2246 personal assistants and not inconsistent with Section

2247 25-43-4.214(3);

2248 (m) Matters placed on the record after an ex parte
2249 communication;

2250 (n) Any and all other matters filed with the agency by
2251 any person with the apparent purpose of affecting the outcome of
2252 the proceeding; and

2253 (o) Any final order, initial order, or order of
2254 alteration, amendment or reconsideration.

2255 (3) Except to the extent that this chapter or another
2256 statute provides otherwise, the agency record constitutes the
2257 exclusive basis for agency action in adjudicative proceedings
2258 under this part and for judicial review thereof.

2259 (4) Upon appropriate and timely suggestion, the agency may
2260 require or permit subsequent corrections or additions to the
2261 agency record.

2262 (5) Upon request and as may be required by law, on judicial
2263 review, civil enforcement or otherwise, the agency shall prepare
2264 the agency record. The agency has the exclusive responsibility to
2265 prepare and exclusive authority to certify the record or any part
2266 thereof, including but not limited to any transcript of
2267 proceedings, and the agency's certificate shall be accepted by the
2268 court and by any other agency.

2269 (6) Subject to the limitations of this chapter, an agency
2270 may by rule provide the formal process for its preparation and
2271 certification of the agency record.

2272 **PART III**

2273 **DIVISION OF INDEPENDENT HEARING OFFICERS**

2274 SECTION 54. The following shall be codified as Section
2275 25-43-4.301, Mississippi Code of 1972:

2276 **25-43-4.301. Division of Independent Hearing Officers -**
2277 **Creation, Powers, Duties.**

2278 (1) There is created the Division of Independent Hearing
2279 Officers within the Executive Department of the government of the

2280 State of Mississippi, to be headed by a director appointed by the
2281 Governor by and with the consent of the Senate. The director
2282 shall be a lawyer who was licensed to practice law at least five
2283 (5) years prior to appointment and who is an active
2284 member of The Mississippi Bar. The director shall receive an
2285 annual salary set by the Legislature.

2286 (2) The Division of Independent Hearing Officers shall
2287 employ persons as necessary to service the needs of agencies for
2288 hearing officers to conduct adjudicative proceedings as required
2289 by this chapter or other provision of law. The division may
2290 employ persons as full-time employees of the division or as
2291 part-time employees of the division. The division may engage the
2292 services of persons on any other contractual basis. The director
2293 may serve as a hearing officer. The division will ordinarily
2294 provide hearing officers to preside at adjudicative proceedings
2295 only where requested by an agency and where an agency is an
2296 interested party to the proceedings and not merely a neutral
2297 arbiter with no significant stake in the outcome of the
2298 proceedings beyond an interest that the proceedings be promptly,
2299 efficiently, fairly, and justly administered.

2300 (3) The Division of Independent Hearing Officers is
2301 authorized to hire persons with the following qualifications:

2302 (a) Attorneys licensed to practice law for a minimum of
2303 five (5) years;

2304 (b) Certified public accountants with a minimum of five
2305 (5) years of professional experience;

2306 (c) Such other qualified professionals in areas other
2307 than law and accounting as needed by the agencies requiring the
2308 services of hearing officers whose services have been engaged or
2309 contracted for by the Division of Independent Hearing Officers.

2310 (4) The persons whose services are engaged by the division
2311 to preside at adjudicative proceedings shall be known as hearing
2312 officers.

2313 (5) The division may furnish hearing officers to any agency
2314 on a contractual basis and charge the agency reasonable fees for
2315 the services rendered. Any agency receiving the services of
2316 hearing officers provided by the division is authorized to pay the
2317 fees charged by the division.

2318 (6) The division shall have authority:

2319 (a) To further specify qualifications for hearing
2320 officers as the needs of agencies become known, to establish
2321 salaries for the hearing officers, procedures by which applicants
2322 will be considered for employment, and the manner in which public
2323 notice of vacancies in the staff of the division will be given;

2324 (b) To enter into contracts with qualified persons who
2325 will serve as part-time hearing officers on such terms and
2326 conditions as may be appropriate and agreed upon subject to the
2327 provisions of this chapter;

2328 (c) To establish procedures for agencies to request and
2329 for the director to assign hearing officers consistent with this
2330 chapter;

2331 (d) To receive, consider and respond to agency needs
2332 for hearing officers with special education, training and
2333 experience in the area or field in which the agency is charged
2334 with regulatory and administrative responsibilities;

2335 (e) To solicit and receive from agencies
2336 recommendations for individuals who may serve as hearing officers,
2337 part-time hearing officers or contract hearing officers;

2338 (f) From time to time, to survey the agencies and a
2339 representative sampling of persons regulated by the respective
2340 agencies to discover the history, experience, current requirements
2341 and future needs of and for hearing officers in adjudicative
2342 proceedings and, with the cooperation of the agencies, to assess
2343 the professional quality, experience and performance of hearing
2344 officers;

2345 (g) To establish internal procedures that apply only

2346 within the division and adopt forms consistent with this chapter,
2347 the model rules of procedure, and other provision of law, to
2348 govern the hearing officers and to assure their independence in
2349 the performance of their duties;

2350 (h) To establish, implement and enforce policies and
2351 standards for the fair, speedy and cost-effective determination of
2352 each matter requiring an adjudicative proceeding under this
2353 chapter or other provision of law;

2354 (i) To establish standards and procedures for the
2355 evaluation, training, promotion, and discipline of the hearing
2356 officers;

2357 (j) To convene conferences, continuing legal,
2358 regulatory and administrative education programs and training
2359 seminars in the fields of administrative law, public regulation,
2360 and public administration;

2361 (k) To participate in, and expend any funds available
2362 to it, to enable its hearing officers and other employees to
2363 participate in conferences in state and out of state for
2364 continuing legal, regulatory and administrative education and
2365 training, colleges, seminars and other programs;

2366 (l) To maintain a library for use by the division, its
2367 employees, contractors, agencies and the public;

2368 (m) To accept monies, gifts, grants, equipment or
2369 services from any public or private source and use those for any
2370 purpose authorized by this section;

2371 (n) To cooperate with any individual or public agency,
2372 whether state or federal, or with any law school, school of
2373 political science, government, public administration, business or
2374 other similar school, public or private, to improve the quality of
2375 administrative law, public regulation and public administration in
2376 this state;

2377 (o) To maintain records, compile statistics and
2378 otherwise gather and keep information reasonably necessary to

2379 maintain and enhance the quality of administrative law, public
2380 regulation and public administration in this state;

2381 (p) To employ such personnel as may be necessary to
2382 carry out its duties and responsibilities;

2383 (q) To engage such persons and acquire such equipment
2384 as may be reasonably necessary to record and preserve in any
2385 technically and practicably feasible manner all matters and
2386 proceedings had at any adjudicative hearing and to assist the
2387 agency in preparing the record under Section 25-43-4.222(5) and
2388 generally to facilitate the preparation of the agency record of
2389 any such proceeding for administrative review, judicial review,
2390 civil enforcement or other purposes;

2391 (r) To purchase, lease or otherwise acquire the use of
2392 office space and equipment and maintain the same as may be
2393 reasonably necessary;

2394 (s) To prepare an annual budget for the operation of
2395 the division, to make appropriate and timely requests for funding,
2396 and to administer and otherwise oversee the implementation of such
2397 funding requests and budget;

2398 (t) To adopt rules to implement the powers and
2399 authorities conferred upon the division by law;

2400 (u) To otherwise implement the provisions of this
2401 section and rules adopted under the authority of the division.

2402 **PART IV**

2403 **INFORMAL ADJUDICATIVE HEARING**

2404 SECTION 55. The following shall be codified as Section
2405 25-43-4.401, Mississippi Code of 1972:

2406 25-43-4.401. **Informal Adjudicative Hearing - Applicability.**

2407 (1) An agency may use an informal adjudicative hearing if
2408 its use in the circumstances does not violate any provision of law
2409 and the matter is entirely within one or more categories for which
2410 the agency by rule has adopted this part; however, those
2411 categories may include only the following:

2412 (a) A matter in which there is no genuine issue of
2413 material fact; or

2414 (b) A matter in which there is a genuine issue of
2415 material fact, if the matter involves only;

2416 (i) A claim for unemployment compensation benefits
2417 within Title 71, Chapter 5, Article 11, Mississippi Code of 1972;

2418 (ii) A disciplinary sanction against a prisoner;

2419 (iii) A disciplinary sanction against a student
2420 which may involve expulsion from an academic institution or
2421 suspension for more than ten (10) days;

2422 (iv) A disciplinary sanction against a public
2423 employee which does not involve discharge from employment or
2424 suspension for more than ten (10) days;

2425 (v) A disciplinary sanction against a licensee
2426 which does not involve revocation, suspension, annulment,
2427 withdrawal, or amendment of a license or does not involve a
2428 potential penalty of more than Five Thousand Dollars (\$5,000.00);

2429 (vi) Revocation or suspension of a hunting,
2430 fishing, trapping or other similar license issued under Title 49,
2431 Chapter 7, Mississippi Code of 1972; or

2432 (vii) Any other matter that involves an amount in
2433 controversy of not more than Five Thousand Dollars (\$5,000.00);

2434 (c) A matter in which all of the parties give their
2435 informed consent and agreement that an informal adjudicative
2436 hearing may be used.

2437 (2) The agency may by rule adopt and implement this part.

2438 SECTION 56. The following shall be codified as Section
2439 25-43-4.402, Mississippi Code of 1972:

2440 25-43-4.402. Informal Adjudicative Hearing - Procedures.

2441 The procedures of this chapter pertaining to formal
2442 adjudicative hearings apply to an informal adjudicative hearing,
2443 except to the following extent:

2444 (a) If a matter is initiated as an informal

2445 adjudicative hearing, no prehearing conference may be held.

2446 (b) The provisions of Section 25-43-4.210 do not apply
2447 to informal adjudicative hearings insofar as those provisions
2448 authorize the issuance and enforcement of subpoenas and discovery
2449 orders, but do apply to informal adjudicative hearings insofar as
2450 those provisions authorize the presiding officer to issue
2451 protective orders at the request of any party or upon the
2452 presiding officer's motion.

2453 (c) Sections 25-43-4.212(a), (b) and (c) and
2454 25-43-4.213 do not apply; but:

2455 (i) The presiding officer shall regulate the
2456 course of the proceedings;

2457 (ii) Only the parties may testify and present
2458 exhibits or other evidence except that the presiding officer for
2459 good cause shown may allow others to testify and present exhibits
2460 or other evidence; and

2461 (iii) The parties may comment on the issues.

2462 SECTION 57. The following shall be codified as Section
2463 25-43-4.403, Mississippi Code of 1972:

2464 25-43-4.403. **Informal Adjudicative Hearing - Proposed Proof.**

2465 (1) If the presiding officer has reason to believe that
2466 there are genuine issues of material fact, the presiding officer
2467 may require any party to state the identity of the witnesses or
2468 other sources through whom the party would propose to present
2469 proof if the proceeding were converted to a formal adjudicative
2470 hearing, but the presiding officer shall respect and enforce any
2471 provision of law providing privileges, including the deliberative
2472 process privilege, imposing confidentiality requirements or
2473 protecting privacy rights, trade secrets, and other similar
2474 interests, and may enter protective orders to those ends, except
2475 that the person for whose benefit any such provision of law has
2476 been made may waive that protection. Any party waives any privacy
2477 right or any other privilege, with the exception of the

2478 lawyer-client privilege as defined in the Mississippi Rules of
2479 Evidence, and the deliberative process privilege, with respect to
2480 evidence relevant to any issue, claim or defense the party asserts
2481 or puts in issue in the proceeding. The presiding officer may
2482 enter an appropriate protective order to prevent use or disclosure
2483 of such evidence outside the context of the adjudicative
2484 proceeding or judicial review thereof.

2485 (2) If a party has reason to believe that essential facts
2486 must be obtained in order to permit an adequate presentation of
2487 the case, the party may inform the presiding officer regarding the
2488 general nature of the facts and the sources from whom the party
2489 would propose to obtain those facts if the proceeding were
2490 converted to a formal adjudicative hearing.

2491 **PART V**

2492 **BASIC ADJUDICATIVE PROCEEDINGS**

2493 SECTION 58. The following shall be codified as Section
2494 25-43-4.501, Mississippi Code of 1972:

2495 25-43-4.501. **Basic Adjudicative Proceedings -**
2496 **Applicability.**

2497 (1) An agency may use a basic adjudicative proceeding if its
2498 use in the circumstances does not violate any provision of law and
2499 the matter is entirely within one or more categories for which the
2500 agency by rule has adopted Sections 25-43-4.502 through
2501 25-43-4.505; however, these categories may include only the
2502 following:

2503 (a) A matter in which the protection of the public
2504 interest does not require the agency to serve notice and give an
2505 opportunity to participate to persons other than the parties;

2506 (b) A disciplinary sanction against a student which is
2507 not expulsion from an academic institution and is potentially a
2508 suspension for ten (10) days or less;

2509 (c) A matter in which the amount in controversy is not
2510 more than One Hundred Dollars (\$100.00);

2511 (d) The denial of an application after the applicant
2512 has abandoned the application;

2513 (e) The denial of an application for admission to an
2514 educational institution or for employment by an agency;

2515 (f) The denial, in whole or in part, of an application
2516 if the applicant has an opportunity for administrative review in
2517 accordance with Section 25-43-4.503;

2518 (g) A matter that may be resolved solely on the basis
2519 of inspection, examinations, or tests;

2520 (h) Any matter having only trivial potential impact
2521 upon the affected parties; or

2522 (i) A matter in which all of the parties have given
2523 their informed consent and agreement that a basic adjudicative
2524 hearing may be used.

2525 (2) An agency may by rule adopt and implement this part.

2526 SECTION 59. The following shall be codified as Section
2527 25-43-4.502, Mississippi Code of 1972:

2528 25-43-4.502. **Basic Adjudicative Proceedings - Procedures.**

2529 (1) The agency head, one or more members of the agency head,
2530 one or more hearing officers or administrative judges employed or
2531 appointed by the agency, or one or more hearing officers assigned
2532 by the Division of Independent Hearing Officers in accordance with
2533 Section 25-43-4.301, or any combination thereof, in the discretion
2534 of the agency head, may be the presiding officer. Unless
2535 prohibited by law, a person exercising authority over the matter
2536 is the presiding officer.

2537 (2) If the proceeding involves a monetary matter or a
2538 reprimand, warning, disciplinary report, or other sanction:

2539 (a) The presiding officer, before taking action, shall
2540 give each party an opportunity to be informed of the agency's view
2541 of the matter and to explain the party's view of the matter; and

2542 (b) The presiding officer, at the time any unfavorable
2543 action is taken, shall give each party a brief statement of

2544 findings of fact, conclusions of law, and policy reasons for the
2545 decision if it is an exercise of the agency's discretion, to
2546 justify the action, and a notice of any available administrative
2547 review.

2548 (3) The agency, by reasonable means, shall serve a copy of
2549 the order in a basic adjudicative proceeding on each party. The
2550 order must include at least a statement of the agency's action and
2551 a notice of any available administrative review.

2552 (4) If after reasonable advance notice of a basic
2553 adjudicative hearing, a party fails to attend or participate in
2554 the hearing, the presiding officer may declare the party in
2555 default and enter a default order. The agency must promptly serve
2556 the default order on the party found in default. For good cause,
2557 the presiding officer may modify or rescind the default order.

2558 (5) An agency may by rule provide for additional procedures
2559 for basic adjudicative proceedings, not inconsistent with this
2560 chapter or other provision of law.

2561 SECTION 60. The following shall be codified as Section
2562 25-43-4.503, Mississippi Code of 1972:

2563 25-43-4.503. **Administrative Review of Basic Adjudicative**
2564 **Proceedings - Applicability.**

2565 Unless prohibited by any provision of law, an agency, on its
2566 own motion, may conduct administrative review of an order
2567 resulting from basic adjudicative proceedings, and shall conduct
2568 this review upon the written request of a party if the agency
2569 receives the request within twenty (20) days after serving notice
2570 under Section 25-5-4.502(3).

2571 SECTION 61. The following shall be codified as Section
2572 25-43-4.504, Mississippi Code of 1972:

2573 25-43-4.504. **Administrative Review of Basic Adjudicative**
2574 **Proceedings - Procedures.**

2575 Unless otherwise provided by statute or rule:

2576 (a) An agency need not serve notification of the

2577 pendency of administrative review to any person who did not
2578 request the review, but the agency may not take any action on
2579 review less favorable to any party than the original order without
2580 giving that party notice and an opportunity to explain that
2581 party's view of the matter.

2582 (b) The reviewing officer, in the discretion of the
2583 agency head, may be any person who could have presided at the
2584 basic adjudicative proceeding, but the reviewing officer must be
2585 one who is authorized to grant appropriate relief upon review.

2586 (c) The reviewing officer shall give each party an
2587 opportunity to explain the party's view of the matter unless the
2588 party's view is apparent from the written materials in the file
2589 submitted to the reviewing officer. The reviewing officer shall
2590 make any inquiries necessary to ascertain whether the proceeding
2591 must be converted to an informal adjudicative hearing or a formal
2592 adjudicative hearing.

2593 (d) The reviewing officer may issue an order disposing
2594 of the proceeding in any manner that was available to the
2595 presiding officer at the basic adjudicative proceeding, or the
2596 reviewing officer may remand the matter for further proceedings,
2597 with or without conversion to an informal adjudicative hearing or
2598 a formal adjudicative hearing.

2599 (e) The order on review must be in writing, including a
2600 brief statement of reasons for the decision, and a notice of any
2601 further available administrative review.

2602 (f) A request for administrative review is deemed to
2603 have been denied if the reviewing officer does not dispose of the
2604 matter or remand it for further proceedings within twenty (20)
2605 days after the request is submitted.

2606 SECTION 62. The following shall be codified as Section
2607 25-43-4.505, Mississippi Code of 1972:

2608 25-43-4.505. **Agency Record of Basic Adjudicative Proceedings**
2609 **and Administrative Review.**

2610 (1) The agency record consists of any documents regarding
2611 the matter that were considered or prepared by the presiding
2612 officer for the basic adjudicative proceeding or by the reviewing
2613 officer for any review. The agency shall maintain these documents
2614 as its official record.

2615 (2) Unless otherwise required by a provision of law, the
2616 agency record need not constitute the exclusive basis for agency
2617 action in basic adjudicative proceedings or for judicial review
2618 thereof.

2619 **PART VI**

2620 **EMERGENCY ADJUDICATIVE PROCEEDINGS**

2621 SECTION 63. The following shall be codified as Section
2622 25-43-4.601, Mississippi Code of 1972:

2623 25-43-4.601. **Emergency Adjudicative Proceedings.**

2624 (1) An agency may use emergency adjudicative proceedings in
2625 a situation involving a clear and present danger to the public
2626 health, safety or welfare requiring immediate agency action.
2627 Subject to this chapter and other applicable law, an agency may
2628 provide by rule for the use of emergency adjudicative proceedings,
2629 including rules providing for the delegation of initial
2630 decision-making authority.

2631 (2) Except as provided in subsection (3) of this section, an
2632 agency may take only such action as is necessary to prevent or
2633 avoid a clear and present danger to the public health, safety or
2634 welfare that justifies use of emergency adjudication.

2635 (3) An agency may comply with more stringent immediate
2636 requirements of federal law or regulation or with any interstate
2637 compact.

2638 (4) An agency may respect any party's due process right to
2639 reasonable advance notice and the opportunity to be heard.

2640 (5) The agency shall issue an order, including a brief
2641 statement of findings of fact, conclusions of law, and policy
2642 reasons for the decision if it is an exercise of the agency's

2643 discretion, to justify the finding of a clear and present danger
2644 and the agency's decision to take the specific action.

2645 (6) The agency shall give such notice as is practicable to
2646 persons who are required to comply with the order. The order is
2647 effective when served.

2648 (7) After service of an order pursuant to this section, any
2649 person subject to the order may, upon the filing of a written
2650 request, require the agency to provide within three (3) days of
2651 filing the request an emergency hearing before a person or persons
2652 assigned by the Division of Independent Hearing Officers who shall
2653 hear the person subject to the order present any matter in
2654 objection to the order and who shall hear the agency on any matter
2655 in support and justification of the order. The hearing may be
2656 continued at the request of the person subject to the order.
2657 After hearing these matters, the hearing officer shall have
2658 authority to modify the order subject to the criteria of
2659 subsections (2) and (3) of this section.

2660 (8) After issuing an order pursuant to this section, the
2661 agency shall treat the matter as a preference case and expedite
2662 the proceedings, as feasible, to complete any proceedings that
2663 would be required if the matter did not involve a clear and
2664 present danger.

2665 (9) The agency record consists of any documents regarding
2666 the matter that were considered or prepared by the agency. The
2667 agency shall maintain these documents as its official record.

2668 (10) Unless otherwise required by a provision of law, the
2669 agency record need not constitute the exclusive basis for agency
2670 action in emergency adjudicative proceedings or for judicial
2671 review thereof.

2672 **ARTICLE V**

2673 **JUDICIAL REVIEW AND CIVIL ENFORCEMENT**

2674 **PART I**

2675 **JUDICIAL REVIEW**

2676 SECTION 64. The following shall be codified as Section
2677 25-43-5.101, Mississippi Code of 1972:

2678 25-43-5.101. **Relationship Between this chapter and Other Law**
2679 **on Judicial Review and Other Judicial Remedies.**

2680 (1) Except as provided in subsection (3),(4),(5) or (6) of
2681 this section, this chapter establishes the exclusive means of
2682 judicial review of agency action.

2683 (2) Proceedings for judicial review shall be governed by the
2684 Mississippi Rules of Appellate Procedure. Any matter of practice
2685 or procedure respecting judicial review of agency action which is
2686 not addressed by the Mississippi Rules of Appellate Procedure
2687 shall be governed by this chapter.

2688 (3) If the relief available under this chapter is not equal
2689 or substantially equivalent to the relief otherwise available
2690 under law, the relief otherwise available and the related
2691 procedures supersede and supplement this chapter to the extent
2692 reasonably necessary for their effectuation. The applicable
2693 provisions of this chapter and other law must be combined and
2694 harmonized to the extent reasonably practicable to govern a single
2695 proceeding or, if the court orders, two (2) or more separate
2696 proceedings, but no type of relief may be sought in a combined
2697 proceeding after expiration of the time limit for doing so.

2698 (4) Proceedings for declaratory judgments and injunctive
2699 relief respecting agency action, where expressly allowed by a
2700 statute other than as contained in this chapter, shall be governed
2701 by the Mississippi Rules of Civil Procedure and other applicable
2702 law.

2703 (5) Proceedings for extraordinary writs such as writs of
2704 mandamus and prohibition with regard to agency action may be
2705 brought only before the Supreme Court or the Court of Appeals.
2706 Such proceedings shall be governed by Mississippi Code, Title 11,
2707 Chapter 41, the Mississippi Rules of Appellate Procedure and other
2708 provisions of law. In a proceeding for judicial review a party,

2709 in addition or in the alternative, may seek an extraordinary writ.

2710 (6) Upon the motion of a party, or upon the court's own
2711 motion, acting sua sponte, a proceeding for judicial review of
2712 agency action may be converted to an application for an
2713 extraordinary writ, and, conversely, an application for an
2714 extraordinary writ may be converted to a proceeding for judicial
2715 review. In the event of conversion, the converted action shall
2716 relate back to the time of the original action.

2717 (7) Declaratory opinions issued pursuant to Section
2718 25-43-2.103 are not subject to judicial review.

2719 (8) "Party to judicial review or civil enforcement
2720 proceedings," or "party" in contexts so indicating, means:

2721 (a) A person who files a notice of judicial review or a
2722 complaint for civil enforcement;

2723 (b) A person named as a party in a proceeding for
2724 judicial review or civil enforcement or allowed to participate as
2725 a party in the proceeding; and

2726 (c) The agency in a proceeding for judicial review or
2727 civil enforcement.

2728 SECTION 65. The following shall be codified as Section
2729 25-43-5.102, Mississippi Code of 1972:

2730 25-43-5.102. **Final Agency Action Reviewable.**

2731 A person who qualifies under this chapter regarding (a)
2732 standing (Section 25-43-5.106), (b) exhaustion of administrative
2733 remedies (Section 25-43-5.107), and (c) time for filing the notice
2734 of judicial review (Section 25-43-5.108), and other applicable
2735 provisions of law regarding bond, compliance, and other
2736 preconditions, is entitled to judicial review of final agency
2737 action, whether or not the person has sought judicial review of
2738 any related nonfinal agency action.

2739 SECTION 66. The following shall be codified as Section
2740 25-43-5.103, Mississippi Code of 1972:

2741 25-43-5.103. **Nonfinal Agency Action Reviewable.**

2742 Except as provided in Sections 25-43-5.101(3), (4), (5) and
2743 (6), a person is entitled to judicial review of nonfinal agency
2744 action only if:

2745 (a) It appears likely that the person will qualify
2746 under Section 25-43-5.102 for judicial review of the related final
2747 agency action;

2748 (b) The person has applied to the agency for an order
2749 for judicial review of nonfinal agency action and the agency has
2750 granted or denied the application, provided that the agency
2751 ordinarily should give its reasons for granting or denying the
2752 application; and

2753 (c) The criteria of the Mississippi Rules of Appellate
2754 Procedure respecting interlocutory appeals or of the Mississippi
2755 Rules of Civil Procedure respecting a judgment upon multiple
2756 claims or involving multiple parties are satisfied.

2757 SECTION 67. The following shall be codified as Section
2758 25-43-5.104, Mississippi Code of 1972:

2759 25-43-5.104. **Jurisdiction.**

2760 (1) The Mississippi Court of Appeals has authority to
2761 conduct judicial review except as provided:

2762 (a) In Title 77, in the case of judicial review of
2763 agency action of the Mississippi Public Service Commission;

2764 (b) In Sections 71-5-529, 71-5-531, 71-5-533 in the
2765 case of judicial review of agency action of the Mississippi
2766 Employment Security Commission; and

2767 (c) In Sections 25-43-5.101(3), (4), (5) and (6).

2768 (2) If evidence is to be adduced in the court in accordance
2769 with Section 25-43-5.114(1), the court may remand the matter:

2770 (a) To the agency with appropriate directions; or

2771 (b) If the court determines in its sound discretion
2772 that the nature of one or more issues upon which new evidence may
2773 be taken is such that remand to the agency would be inappropriate,
2774 to a master as provided by the Mississippi Rules of Civil

2775 Procedure, provided that, in addition to the provisions of the
2776 Mississippi Rules of Civil Procedure:

2777 (i) Any person eligible for appointment as a
2778 special judge under Section 9-1-105(6) is eligible for appointment
2779 as a master; or

2780 (ii) The Division of Independent Hearing Officers
2781 may supply a person who becomes eligible for appointment as a
2782 master.

2783 (3) Except as provided otherwise by this chapter or other
2784 statute, an agency retains jurisdiction as may be appropriate,
2785 convenient and otherwise necessary pending judicial review.

2786 SECTION 68. The following shall be codified as Section
2787 25-43-5.105, Mississippi Code of 1972:

2788 25-43-5.105. **Notice of Judicial Review; Relief Available.**

2789 (1) Except as provided in Title 77, and in Sections
2790 71-5-529, 71-5-531 and 71-5-533, judicial review is initiated by
2791 filing a notice of judicial review in the Court of Appeals.
2792 Failure of a party initiating a proceeding for judicial review to
2793 take any step other than the timely filing of a notice of judicial
2794 review does not affect the perfection of the proceeding for
2795 judicial review, but is grounds only for such action as the court
2796 deems appropriate, which may include dismissal of the proceeding
2797 for judicial review.

2798 (2) A party initiating a proceeding for judicial review may
2799 seek any type of relief available under Section 25-43-5.101(3),
2800 (4), (5) or (6) or 25-43-5.117 or other law.

2801 SECTION 69. The following shall be codified as Section
2802 25-43-5.106, Mississippi Code of 1972:

2803 25-43-5.106. **Standing.**

2804 (1) The following persons have standing to obtain judicial
2805 review of final or nonfinal agency action:

2806 (a) A person to whom the agency action is specifically
2807 directed;

2808 (b) A person who was a party to the agency proceedings
2809 that led to the agency action;

2810 (c) If the agency action, review of which is sought, is
2811 a rule, a person subject to that rule or an association some of
2812 whose members are subject to that rule;

2813 (d) A person eligible for standing under another
2814 provision of law; or

2815 (e) A person otherwise aggrieved or adversely affected
2816 by the agency action or an association one or more of whose
2817 members are aggrieved or adversely affected by the agency action.

2818 For purposes of this paragraph, no person has standing as one
2819 otherwise aggrieved or adversely affected unless:

2820 (i) The agency action has arguably affected or is
2821 arguably likely to affect that person;

2822 (ii) That person's asserted interests are arguably
2823 among those that the agency was required to consider when it
2824 engaged in the agency action review of which is sought; and

2825 (iii) A judgment in favor of that person may
2826 substantially eliminate or redress the arguable effect to or upon
2827 that person caused or arguably likely to be caused by the agency
2828 action.

2829 (2) A claim that the decision in a proceeding for judicial
2830 review may be given precedential effect that may affect a person
2831 is, without more, insufficient grounds upon which the court may
2832 find that the person has standing. Even though he may lack
2833 standing, the person may apply for leave to file a brief as amicus
2834 curiae under the Mississippi Rules of Appellate Procedure.

2835 (3) A claim (1) that he is a citizen, a voter or a taxpayer
2836 or (2) that he has an interest that the law be enforced is,
2837 without more, insufficient grounds upon which the court may find
2838 that a person has standing.

2839 SECTION 70. The following shall be codified as Section
2840 25-43-5.107, Mississippi Code of 1972:

2841 25-43-5.107. **Exhaustion of Administrative Remedies.**

2842 A person may file a notice of judicial review under this
2843 chapter only after exhausting all administrative remedies
2844 available within the agency review of whose action is being sought
2845 and within any other agency authorized to exercise administrative
2846 review, but:

2847 (a) A person seeking judicial review of a rule need not
2848 have participated in the rule-making proceeding upon which that
2849 rule is based, or have moved for its amendment or repeal;

2850 (b) A person seeking judicial review need not exhaust
2851 administrative remedies to the extent that this chapter or any
2852 other law provides that exhaustion is not required; or

2853 (c) The court may relieve a person seeking judicial
2854 review of the requirement to exhaust any or all administrative
2855 remedies, to the extent that the administrative remedies are
2856 inadequate, or requiring their exhaustion would result in
2857 irreparable harm disproportionate to the public benefit derived
2858 from requiring exhaustion.

2859 SECTION 71. The following shall be codified as Section
2860 25-43-5.108, Mississippi Code of 1972:

2861 25-43-5.108. **Time for Filing Notice of Judicial Review.**

2862 Subject to other requirements of this chapter or of any other
2863 law:

2864 (a) A notice of judicial review of a rule may be filed
2865 at any time, except as limited by Section 25-43-3.113(2).

2866 (b) A notice of judicial review of an order is not
2867 timely unless filed within thirty (30) days after issuance of the
2868 written order by a person authorized to act for the agency.

2869 (c) The time for filing notice of judicial review is
2870 extended during the pendency of the person's timely attempts to
2871 exhaust administrative remedies.

2872 SECTION 72. The following shall be codified as Section
2873 25-43-5.109, Mississippi Code of 1972:

2874 25-43-5.109. **Notice of Judicial Review - Filing and**
2875 **Contents.**

2876 (1) Except as provided in Title 77, and in Sections
2877 71-5-529, 71-5-31 and 71-5-533, a notice of judicial review must
2878 be filed with the clerk of the Court of Appeals, who is the clerk
2879 of the Supreme Court.

2880 (2) A notice of judicial review should set forth:

2881 (a) The name and mailing address of each person seeking
2882 judicial review;

2883 (b) The name and mailing address of the agency whose
2884 action is at issue;

2885 (c) Identification of the agency action at issue,
2886 together with a duplicate copy, summary or brief description of
2887 the agency action; and

2888 (d) Identification of persons who were parties to, or
2889 persons who participated in, any adjudicative proceedings that led
2890 to the agency action.

2891 (3) A notice of judicial review in substantial compliance
2892 with the requirements of subsection (2) of this section may not be
2893 dismissed for failure of complete compliance. Judicial review
2894 shall not be denied for informality of form or title of the notice
2895 of judicial review.

2896 SECTION 73. The following shall be codified as Section
2897 25-43-5.110, Mississippi Code of 1972:

2898 25-43-5.110. **Notice of Judicial Review - Service and**
2899 **Notification.**

2900 A person filing a notice of judicial review shall,
2901 contemporaneously therewith, serve a copy of the notice in the
2902 manner provided for service of papers by Section 25-43-4.108
2903 respecting service:

2904 (a) Upon the agency review of whose action is sought;
2905 and

2906 (b) Upon all other parties to, or persons who

2907 participated in, any adjudicative proceedings that led to the
2908 agency action.

2909 SECTION 74. The following shall be codified as Section
2910 25-43-5.111, Mississippi Code of 1972:

2911 25-43-5.111. **Stay and Other Temporary Remedies Pending Final**
2912 **Disposition.**

2913 (1) Unless otherwise provided by law or by order of the
2914 court for good cause shown, no proceedings for enforcement of
2915 final agency action ordering monetary payment may be taken until
2916 the expiration of thirty (30) days after (a) the final agency
2917 action is taken or (b) the disposition of a motion for
2918 reconsideration of the final agency action made under Section
2919 25-43-4.219, whichever last occurs.

2920 (2) Unless otherwise provided by law, the agency may grant a
2921 stay on appropriate terms or other temporary remedies during the
2922 pendency of judicial review.

2923 (3) A party may move the court, during the pendency of
2924 judicial review, for interlocutory review of the agency's action
2925 on an application for stay or other temporary remedies.

2926 (4) If the agency has found that its action on an
2927 application for stay or other temporary remedies is justified to
2928 protect against a clear and present threat to the public health,
2929 safety, or welfare, the court may not grant relief unless it finds
2930 that:

2931 (a) The applicant is likely to prevail when the court
2932 finally disposes of the matter;

2933 (b) Without relief the applicant will suffer
2934 irreparable injury;

2935 (c) The grant of relief to the applicant will not
2936 substantially harm other parties to the proceedings; and

2937 (d) The threat to the public health, safety or welfare
2938 relied on by the agency is not sufficiently serious to justify the
2939 agency's action in the circumstances.

2940 (5) If subsection (4) of this section does not apply, the
2941 court shall grant relief if it finds that the agency's action on
2942 the application for stay or the terms thereof or other temporary
2943 remedies was unreasonable in the circumstances.

2944 (6) If the court determines that relief should be granted
2945 from the agency's action on an application for stay or other
2946 temporary remedies, the court may remand the matter to the agency
2947 with directions to deny a stay, to grant a stay on appropriate
2948 terms, or to grant other temporary remedies, or the court may
2949 issue an order denying a stay, granting a stay on appropriate
2950 terms, or granting other temporary remedies.

2951 SECTION 75. The following shall be codified as Section
2952 25-43-5.112, Mississippi Code of 1972:

2953 25-43-5.112. **Limitation on New Issues.**

2954 (1) A person may obtain judicial review of an issue that was
2955 not raised before the agency, only to the extent that:

2956 (a) The agency did not have jurisdiction to grant an
2957 adequate remedy based on a determination of the issue; and

2958 (b) The agency action subject to judicial review is a
2959 rule, and the person has not been a party in adjudicative
2960 proceedings that provided an adequate opportunity to raise the
2961 issue.

2962 (2) The court may notice plain error as in other cases.

2963 SECTION 76. The following shall be codified as Section
2964 25-43-5.113, Mississippi Code of 1972:

2965 25-43-5.113. **Judicial Review of Facts Confined to Record for**
2966 **Judicial Review and Additional Evidence Taken Pursuant to Act.**

2967 Judicial review of disputed issues of fact must be confined
2968 to the agency record for judicial review as defined in this
2969 chapter, supplemented by additional evidence taken pursuant to
2970 this chapter or judicially noticed consistent with Section
2971 25-43-4.213(7).

2972 SECTION 77. The following shall be codified as Section

2973 25-43-5.114, Mississippi Code of 1972:

2974 25-43-5.114. **New Evidence Taken by Court or Agency Before**
2975 **Final Disposition.**

2976 (1) The court, in its discretion assisted by the agency or
2977 by a master as provided in Section 25-43-5.104(2), may receive
2978 evidence, in addition to that contained in the agency record for
2979 judicial review, only if it relates to the validity of the agency
2980 action at the time it was taken and is needed to decide disputed
2981 issues regarding:

2982 (a) Improper constitution as a decision-making body, or
2983 improper motive or behavior on grounds for disqualification, of
2984 those taking the agency action;

2985 (b) The apparent reliance by the agency taking the
2986 agency action on facts or evidence not included in the record;

2987 (c) Unlawfulness of procedure or of decision-making
2988 process;

2989 (d) A failure by the agency to explain its action where
2990 such failure may frustrate judicial review;

2991 (e) The explanation of technical terms or complex
2992 subjects;

2993 (f) The apparent failure of the agency to consider
2994 adequately some reasonable alternative to the agency action; or

2995 (g) Any material fact that was not required by any
2996 provision of law to be determined exclusively on an agency record
2997 of a type reasonably suitable for judicial review.

2998 (2) The court may remand a matter to the agency or a master,
2999 before final disposition of a proceeding for judicial review, with
3000 directions that the agency conduct fact-finding and other
3001 proceedings the court considers necessary, within such time limits
3002 as the court may prescribe, and that the agency or a master take
3003 such further action on the basis thereof as the court directs, if:

3004 (a) The agency was required by this chapter or any
3005 other provision of law to base its action on a record of a type

3006 reasonably suitable for judicial review, but the agency failed to
3007 prepare or preserve an adequate record;

3008 (b) The court finds that (i) new evidence has become
3009 available that relates to the validity of the agency action at the
3010 time it was taken, that one or more of the parties did not know
3011 and was under no duty to discover, or did not know and was under a
3012 duty to discover but could not reasonably have discovered, until
3013 after the agency action, and (ii) the interests of justice would
3014 be served by remand to the agency;

3015 (c) The agency improperly excluded or omitted evidence
3016 from the record; or

3017 (d) A relevant provision of law changed after the
3018 agency action and the court determines that the new provision may
3019 control the outcome.

3020 (3) The court may take judicial notice of adjudicative facts
3021 consistent with the Mississippi Rules of Evidence and Section
3022 25-43-4.213(g).

3023 SECTION 78. The following shall be codified as Section
3024 25-43-5.115, Mississippi Code of 1972:

3025 25-43-5.115. **Agency Record for Judicial Review - Contents,**
3026 **Preparation, Transmittal, Cost.**

3027 (1) In the event of judicial review of agency action, the
3028 agency shall have full and exclusive authority and responsibility
3029 of preparing the agency record and certifying the agency record to
3030 the court. Subject only to the limitations of this part, an
3031 agency may by rule provide the formal process for its preparation
3032 and certification of the agency record.

3033 (2) Within thirty (30) days after service of notice of
3034 judicial review, or within further time allowed by the court or by
3035 other provision of law, the agency shall transmit to the clerk of
3036 the Court of Appeals the agency record certified by the agency for
3037 judicial review of the agency action, consisting of any agency
3038 documents expressing the agency action, other documents identified

3039 by the agency as having been considered by it before its action
3040 and used as a basis for its action, and any other material
3041 described in this chapter as the agency record for the type of
3042 agency action at issue, subject to the provisions of this section.

3043 (3) If part of the record has been preserved without a
3044 transcript, the agency shall prepare a transcript for inclusion in
3045 the record transmitted to the court, except for portions that the
3046 parties stipulate to omit in accordance with subsection (5) of
3047 this section. The word "transcript" includes a written
3048 transcript, a printed transcript, and an audible audiotape or
3049 videotape that is indexed and annotated so that it is readily
3050 accessible.

3051 (4) The agency may charge the person filing the notice of
3052 judicial review with the reasonable cost of preparing the record
3053 and any necessary copies and transcripts for transmittal to the
3054 court. A failure by the person seeking judicial review to pay any
3055 of this cost to the agency does not relieve the agency from the
3056 responsibility for timely preparation of the record, including any
3057 transcript and transmittal to the court. The agency may set
3058 criteria and terms for payment of costs of the record. The agency
3059 may by rule implement and elaborate this subsection.

3060 (5) By stipulation of all parties to the review proceedings,
3061 the record may be shortened, summarized, supplemented or
3062 organized.

3063 (6) The court may tax the cost of preparing transcripts and
3064 copies for the record:

3065 (a) Against a party who unreasonably refuses to
3066 stipulate to shorten, summarize, or organize the record;

3067 (b) As provided by Section 25-43-5.117; or

3068 (c) In accordance with any other provision of law.

3069 (7) Additions to the record pursuant to Section 25-43-5.114
3070 must be made as ordered by the court.

3071 (8) The court may require or permit subsequent corrections

3072 or additions to the record.

3073 SECTION 79. The following shall be codified as Section
3074 25-43-5.116, Mississippi Code of 1972:

3075 25-43-5.116. **Scope of Review; Grounds for Invalidity.**

3076 (1) Except to the extent that this chapter provides
3077 otherwise:

3078 (a) The burden of demonstrating the invalidity of
3079 agency action is on the party asserting invalidity; and

3080 (b) The validity of agency action must be determined in
3081 accordance with the standards of review provided in this section,
3082 as applied to the agency action at the time it was taken.

3083 (2) The court should make a separate and distinct ruling on
3084 each material issue on which the court's decision is based.

3085 (3) The court shall grant relief from agency action only if
3086 it determines that a person seeking judicial relief may have been
3087 prejudiced by any one or more of the following:

3088 (a) The agency action, or the law on which the agency
3089 action is based, is unconstitutional on its face or as applied.

3090 (b) The agency has acted beyond the jurisdiction
3091 conferred by any provision of law.

3092 (c) The agency has not decided all issues requiring
3093 resolution.

3094 (d) The agency has erroneously interpreted or applied
3095 or failed to apply the law.

3096 (e) The agency has engaged in an unlawful procedure or
3097 decision-making process, or has failed to follow prescribed
3098 procedure.

3099 (f) The persons taking the agency action were not
3100 constituted as a decision-making body as required by law, were
3101 motivated by an improper purpose, or were subject to
3102 disqualification.

3103 (g) The agency action is based on a determination of
3104 fact, made or implied by the agency, that is not supported by

3105 evidence that is substantial when viewed in light of the whole
3106 record before the court, which includes the agency record for
3107 judicial review, supplemented by any additional evidence received
3108 or noticed by the court under this chapter.

3109 (h) The agency action is:

3110 (i) Outside the range of discretion delegated to
3111 the agency law;

3112 (ii) Agency action, other than a rule, that is
3113 inconsistent with a rule of the agency;

3114 (iii) Agency action, other than a rule, that is
3115 inconsistent with the agency's prior practice unless the agency
3116 justifies the inconsistency by stating facts and reasons to
3117 demonstrate a fair and rational basis for the inconsistency; or

3118 (iv) Otherwise unreasonable, arbitrary or
3119 capricious.

3120 (4) In performing its review under subsection (3) of this
3121 section, the court shall give substantial deference to the view of
3122 the agency with respect to particular matters that have been
3123 vested by a law within the discretion of the agency.

3124 SECTION 80. The following shall be codified as Section
3125 25-43-5.117, Mississippi Code of 1972:

3126 25-43-5.117. **Type of Relief.**

3127 (1) The court may award damages or compensation only to the
3128 extent expressly authorized by another provision of law.

3129 (2) The court may grant other appropriate relief, whether
3130 mandatory, prohibitory, injunctive or declaratory; preliminary or
3131 final; temporary or permanent; equitable or legal. In granting
3132 relief, the court may order agency action required by law, order
3133 agency exercise of discretion required by law, set aside or modify
3134 agency action, enjoin or stay the effectiveness of agency action,
3135 remand the matter for further proceedings, issue a declaratory
3136 judgment or take any other action that is authorized and
3137 appropriate.

3138 (3) The court may also grant necessary and ancillary relief
3139 to redress the effects of agency action wrongfully taken or
3140 withheld, but the court may award attorney's fees or witness fees
3141 only to the extent authorized by other law.

3142 (4) If the court sets aside or modifies agency action or
3143 remands the matter to the agency for further proceedings, the
3144 court may make any interlocutory order it finds necessary to
3145 preserve or protect the interests of the parties and the public
3146 pending further proceedings or agency action.

3147 SECTION 81. The following shall be codified as Section
3148 25-43-5.118, Mississippi Code of 1972:

3149 25-43-5.118. **Decisions of Court of Appeals Reviewable by**
3150 **Writ of Certiorari.**

3151 Decisions on proceedings for judicial review of agency action
3152 made in the Court of Appeals are subject to review in the Supreme
3153 Court as provided by the Mississippi Rules of Appellate Procedure.

3154 SECTION 82. The following shall be codified as Section
3155 25-43-5.119, Mississippi Code of 1972:

3156 25-43-5.119. **Filed Rate Doctrine.**

3157 (1) If a person offering a service to the public:

3158 (a) Is required by law to file with an agency to whose
3159 regulatory jurisdiction the person is subject a rate or tariff or
3160 the terms or conditions for the provision of that service, and

3161 (b) Has filed with the agency a rate or tariff or the
3162 terms or conditions relating in any way to the provision of the
3163 service, and the agency has accepted the filing and has not
3164 disapproved the filing within the time allowed by law, and the
3165 time for judicial review of the agency action in approving or in
3166 failing to disapprove the filing has expired, the filing is final
3167 and in full force and effect for the period of time provided by
3168 law.

3169 (2) A rate or tariff or terms or conditions that have become
3170 final, either in the manner described in subsection (1) of this

3171 section or as a result of being lawfully ordered into effect by
3172 the agency, may be subject to review and reconsideration by the
3173 agency prospectively only and as provided by another provision of
3174 law.

3175 (3) In the case of a rate or tariff or the terms or
3176 conditions for the provision of a service that have become final,
3177 in the manner described in subsection (1) or (2) of this section,
3178 a claim by the agency or by any other person that the rate or
3179 tariff or terms or conditions are invalid or unenforceable for any
3180 of the grounds set forth in Section 25-43-5.116(3)(b), (c), (d),
3181 (e), (f), (g) or (h) may be made only in the form of a request
3182 that the agency, acting prospectively only, review and reconsider
3183 the filing as provided by another provision of law.

3184 (4) The acts or omissions of a person in the provision of a
3185 service pursuant to a filed rate or tariff, or terms or conditions
3186 that have become final in the manner described in subsection (1)
3187 or (2) of this section shall be subject to judicial review, civil
3188 enforcement or collateral attack only on grounds:

3189 (a) (i) The rate or tariff or terms or conditions, or
3190 (ii) the agency action in approving or in failing to disapprove
3191 the rate or tariff or terms, conditions or provisions, or (iii)
3192 the law on which the agency action is based, is unconstitutional
3193 on its face or as applied; or

3194 (b) The person has deviated from the filed rate tariff
3195 or terms or conditions in the provision of the service.

3196 PART II

3197 CIVIL ENFORCEMENT

3198 SECTION 83. The following shall be codified as Section
3199 25-43-5.201, Mississippi Code of 1972:

3200 25-43-5.201. **Complaint by Agency for Civil Enforcement of**
3201 **Rule or Order.**

3202 (1) In addition to other remedies provided by law:

3203 (a) An agency may seek enforcement of its rule or

3204 order, including a subpoena or other order compelling the
3205 testimony of persons, the production of documents or other
3206 discovery, by filing a complaint for civil enforcement in the
3207 chancery court.

3208 (b) The complaint must name, as defendants, each person
3209 against whom the agency seeks to obtain civil enforcement.

3210 (c) Venue is determined as in other civil cases.

3211 (d) A complaint for civil enforcement filed by an
3212 agency may request, and the court may grant, declaratory relief,
3213 temporary or permanent injunctive relief, any penalty, sanction or
3214 other civil remedy provided by law or any combination of the
3215 foregoing.

3216 (2) In the case of an order, and in addition to other
3217 remedies provided by law:

3218 (a) A copy of a written order certified by the agency
3219 may be filed in the office of the circuit clerk of any county in
3220 this state. The circuit clerk shall enroll the order in the
3221 judgment roll and shall otherwise treat the order in the same
3222 manner as a judgment of the circuit court of any county in this
3223 state. An order so filed and enrolled has the same effect and is
3224 subject to the same procedures, defenses and proceedings for
3225 reopening, vacating or staying as a judgment of a circuit court of
3226 any county in this state and may be enforced or satisfied in like
3227 manner.

3228 (b) At the time of the filing of the order with the
3229 circuit clerk, the agency, party or person filing same shall serve
3230 notice of the filing upon each party or person against whom
3231 enforcement is sought in the manner provided for service of papers
3232 in a civil action by the Mississippi Rules of Civil Procedure.

3233 SECTION 84. The following shall be codified as Section
3234 25-43-5.202, Mississippi Code of 1972:

3235 25-43-5.202. **Complaint by Qualified Person for Civil**
3236 **Enforcement of Agency's Order.**

3237 (1) Any person who would qualify under this chapter as
3238 having standing to seek judicial review of an agency's failure to
3239 enforce its order may file a complaint for civil enforcement of
3240 that order in the chancery court, but the action may not be
3241 commenced:

3242 (a) Until at least thirty (30) days after the person
3243 has given notice of the alleged violation or failure and of the
3244 person's intent to seek civil enforcement to the agency head of
3245 the agency that issued the order, to the Attorney General, and to
3246 each person against whom the person filing the complaint seeks
3247 civil enforcement;

3248 (b) If the agency has filed and is diligently
3249 prosecuting a complaint for civil enforcement of the same order
3250 against the same defendant or defendants; provided, however, that
3251 the person may move to intervene in the pending civil enforcement
3252 proceeding as provided by the Mississippi Rules of Civil
3253 Procedure; or

3254 (c) If a notice of judicial review of the same order
3255 has been filed and is pending in court; provided, however, that
3256 the person may move to intervene in the pending judicial review
3257 proceeding if the person has standing under Section 25-43-5.106 or
3258 as provided by the Mississippi Rules of Appellate Procedure.

3259 (2) The complaint must name, as defendants, the agency whose
3260 order is sought to be enforced and each person against whom the
3261 person filing the complaint seeks civil enforcement. The court
3262 may realign the parties as may be appropriate.

3263 (3) The agency whose order is sought to be enforced may move
3264 to dismiss on the grounds that the complaint fails to qualify
3265 under this section or that enforcement would be contrary to the
3266 lawful policy of the agency. The court shall grant the motion to
3267 dismiss unless the person filing the complaint demonstrates that
3268 (i) the complaint qualifies under this section and (ii) the
3269 agency's failure to enforce its order is based on an exercise of

3270 discretion that is improper on one or more of the grounds provided
3271 in Section 25-43-5.116(3)(h).

3272 (4) Except to the extent authorized by law, a complaint for
3273 civil enforcement filed under this part may not request, and the
3274 court may not grant, any monetary relief or require any monetary
3275 payment apart from taxable costs.

3276 SECTION 85. The following shall be codified as Section
3277 25-43-5.203, Mississippi Code of 1972:

3278 25-43-5.203. **Defenses; Limitation on New Issues and New**
3279 **Evidence.**

3280 (1) A defendant, who would be qualified under Sections
3281 25-43-5.106, 25-43-5.107 and 25-43-5.108 to do so in a proceeding
3282 for judicial review, may assert, in a proceeding for civil
3283 enforcement:

3284 (a) That the rule or order sought to be enforced is
3285 invalid on any of the grounds stated in Section 25-43-5.116(3) and
3286 (4). If that defense is raised, the court may consider issues and
3287 receive evidence only within the limitations provided by Sections
3288 25-43-5.112, 25-43-5.113 and 25-43-5.114; and

3289 (b) Any of the following defenses on which the court,
3290 to the extent necessary for the determination of the matter, may
3291 take new evidence:

3292 (i) The rule or order does not apply to the party;

3293 (ii) The party has not violated the rule or order;

3294 (iii) The party has violated the rule or order but
3295 has subsequently complied, but a party who establishes this
3296 defense is not necessarily relieved from any sanction provided by
3297 law for past violations; or

3298 (iv) Other defenses, if any, allowed by law.

3299 (2) Except as expressly provided in this section, a
3300 defendant may not assert as a defense in a proceeding for civil
3301 enforcement any fact or issue that the defendant had an
3302 opportunity to assert before the agency or a court on judicial

3303 review and did not, or upon which the final determination of the
3304 agency or court on judicial review was adverse to the defendant.

3305 SECTION 86. The following shall be codified as Section
3306 25-43-5.204, Mississippi Code of 1972:

3307 25-43-5.204. **Rules of Practice, Procedure and Evidence;**
3308 **Incorporation of Certain Provisions on Judicial Review.**

3309 Proceedings for civil enforcement are governed by:

3310 (a) The Mississippi Rules of Civil Procedure;

3311 (b) The Mississippi Rules of Evidence;

3312 (c) Any other valid and applicable rule of practice or
3313 procedure; and

3314 (d) Unless inconsistent with a rule or rules by its
3315 terms applicable to such proceedings, the provisions of this
3316 chapter.

3317 SECTION 87. The following shall be codified as Section
3318 25-43-5.205, Mississippi Code of 1972:

3319 25-43-5.205. **Review by Supreme Court.**

3320 Judgments and orders on complaints for civil enforcement are
3321 reviewable by the Supreme Court or by the Court of Appeals, as in
3322 other civil cases.

3323 SECTION 88. Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6,
3324 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and
3325 25-43-19, Mississippi Code of 1972, which create the Mississippi
3326 Administrative Procedures Law, provide definitions for terms used
3327 in such law, prescribe procedures that must be followed by
3328 agencies in the adoption, amendment and repeal of agency rules,
3329 require the filing of an economic impact statement for the
3330 adoption of a rule, require filing and notice before such rules
3331 may become effective, require agencies to index all effective
3332 rules adopted, provide that revocation or suspension of any
3333 license shall not be effective unless notice of such intended
3334 action is given to the licensee, and require agencies to adopt
3335 procedures to assure that opponents of proposed rules have the

3336 opportunity to present their views and review adverse rulings, are
3337 repealed.

3338 SECTION 89. Sections 37-45-39, 37-45-59 and 37-45-61,
3339 Mississippi Code of 1972, which provide for the preservation of
3340 the reporter's notes, transcription and preparation of the record
3341 for appeal, and further appeal to the Supreme Court in certain
3342 hearings held before the State Department of Education, are
3343 repealed.

3344 SECTION 90. Section 41-51-27, Mississippi Code of 1972,
3345 which deals with the record in hearings held under the Animal and
3346 Poultry By-Products Disposal Law of 1964, is repealed.

3347 SECTION 91. Sections 49-27-43, 49-27-45 and 49-27-47,
3348 Mississippi Code of 1972, which deal with appeal to the chancery
3349 court under the provisions of the Coastal Protection Wetlands Act,
3350 are repealed.

3351 SECTION 92. Section 53-1-45, Mississippi Code of 1972, which
3352 deals with appeals to the Supreme Court in the matter of a hearing
3353 held before the State Oil and Gas Board, is repealed.

3354 SECTION 93. Sections 63-17-91 and 63-17-93, Mississippi Code
3355 of 1972, which deal with hearings held under the Mississippi Motor
3356 Vehicle Commission Law, are repealed.

3357 SECTION 94. Section 65-2-17, Mississippi Code of 1972, which
3358 deals with the appeal to the Supreme Court from a decision of the
3359 circuit court in an appeal from a hearing held by the state
3360 highway arbitration board, is repealed.

3361 SECTION 95. Section 83-53-35, Mississippi Code of 1972,
3362 which prescribes the issuance of an order following a hearing
3363 before the Commissioner of Insurance concerning credit life and
3364 credit disability insurance, is repealed.

3365 SECTION 96. Every agency as defined in this act shall, no
3366 later than July 1, 2002, file with the Secretary of the Senate and
3367 the Clerk of the House a report which outlines any conflicts
3368 between this act and any other laws affecting the agency. This

3369 report shall include proposed legislation to bring the other laws
3370 into conformity with the requirements of this act. The Secretary
3371 of State shall, no later than July 1, 2000, file with the
3372 Secretary of the Senate and the Clerk of the House a list of
3373 sections which the Secretary of State believes conflict with this
3374 act. The Secretary of the Senate and the Clerk of the House shall
3375 maintain a list of agencies which have complied with this section.
3376 SECTION 97. Section 96 of this act shall take effect and be
3377 in force from and after its passage, and the remainder of this act
3378 shall take effect and be in force from and after July 1, 2003, and
3379 shall stand repealed on July 1, 2004.