

By: Senator(s) Ross

To: Judiciary

SENATE BILL NO. 2448

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

89 **ARTICLE I**

90 **GENERAL PROVISIONS**

91 SECTION 1. The following shall be codified as Section
92 25-43-1.101, Mississippi Code of 1972:

93 25-43-1.101. **Title; Statement of Purpose.**

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

96 (2) This chapter is intended to provide a minimum procedural
97 code for the operation of all state agencies when they take action
98 affecting the rights and duties of the public. Nothing in this
99 chapter shall be construed as invalidating any rule or regulation
100 adopted before July 1, 2004, if such rule or regulation was
101 properly adopted in accordance with the law as it existed at the
102 time of adoption. Nothing in this chapter is meant to discourage
103 agencies from adopting procedures providing greater protections to
104 the public or conferring additional rights upon the public; and
105 save for express provisions of this chapter to the contrary,
106 nothing in this chapter is meant to abrogate in whole or in part
107 any statute prescribing procedural duties for an agency which are
108 greater than or in addition to those provided here. This chapter
109 is meant to apply to all rule-making and adjudicative proceedings
110 and all suits for the judicial review of agency action that are
111 not specifically excluded from this chapter or some portion
112 thereof by its express terms or by the express terms of another
113 chapter.

114 The purposes of the Mississippi Administrative Procedures Law
115 are: To provide legislative oversight of powers and duties
116 delegated to administrative agencies; to increase public
117 accountability of administrative agencies; to simplify government
118 by assuring a uniform minimum procedure to which all agencies will
119 be held in the conduct of their most important functions; to
120 increase public access to governmental information; to increase
121 public participation in the formulation of administrative rules;
122 to increase the fairness of agencies in their conduct of contested
123 case proceedings; and to simplify the process of judicial review
124 of agency action as well as increase its ease and availability.
125 In accomplishing its objectives, the intention of this chapter is
126 to strike a fair balance between these purposes and the need for
127 efficient, economical and effective government administration.
128 The chapter is not meant to alter the substantive rights of any

129 person or agency. Its impact is limited to procedural rights with
130 the expectation that better substantive results will be achieved
131 in the everyday conduct of state government by improving the
132 process by which those results are attained.

133 (3) From and after July 1, 2004, any reference to the
134 Mississippi Administrative Procedure Act, the Mississippi
135 Administrative Procedures Act, the Mississippi Administrative
136 Procedure Law, or the Mississippi Administrative Procedures Law,
137 being Sections 25-43-1, et seq., Mississippi Code of 1972, shall
138 be deemed to mean and refer to this chapter.

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

141 25-43-1.102. **Definitions.**

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

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

158 (b) "Agency" means a board, commission, department,
159 officer or other administrative unit of this state, including the
160 agency head, and one or more members of the agency head or agency
161 employees directly or indirectly purporting to act on behalf or

162 under the authority of the agency head. The term does not include
163 the Legislature or any of its component units, the judiciary or
164 any of its component units or the Governor. The term does not
165 include a political subdivision of the state or any of the
166 administrative units of a political subdivision. To the extent it
167 purports to exercise authority subject to any provision of this
168 chapter, an administrative unit otherwise qualifying as an
169 "agency" must be treated as a separate agency even if the unit is
170 located within or subordinate to another agency.

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

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

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

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

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

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

193 (f) "Agency record" means the official record of an
194 agency adjudicative proceeding pursuant to Section 25-43-4.222 and

195 the official rule-making record of an agency pursuant to Section
196 25-43-3.112.

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

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

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

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

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

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

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

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

224 (o) "Order" means an agency action of particular
225 applicability that determines the legal rights, duties,
226 privileges, immunities or other legal interests of one or more
227 specific persons. An order shall be in writing signed by a person

228 with authority to render the order, or if more than one (1) person
229 has such authority by at least that number of such persons as
230 jointly have the authority to render the order, or by a person
231 authorized to render the order on behalf of all such persons. The
232 term does not include an executive order issued by the Governor
233 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
234 General pursuant to Section 7-5-25, an opinion issued by the
235 Ethics Commission pursuant to Section 25-4-17, or a declaratory
236 opinion rendered in accordance with Section 25-43-2.103.

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

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

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

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

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

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

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

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

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

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

263 (t) "Provision of law" or "law" means the whole or a
264 part of the federal or state Constitution, or of any federal or
265 state (i) statute, (ii) case law or common law, (iii) rule of
266 court, (iv) executive order, or (v) rule or order of an
267 administrative agency.

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

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

277 (i) Law or policy, or

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

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

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

292 a. Enable law violators to avoid
293 detection;

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

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

298 3. A regulation or statement that only
299 establishes specific prices to be charged for particular goods or
300 services sold by an agency;

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

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

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

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

317 8. An agency budget;

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

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

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

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

329 25-43-1.103. **Applicability and Relation to Other Law.**

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

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

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

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

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

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

350 25-43-1.104. **Suspension of Chapter's Provisions When**
351 **Necessary to Avoid Loss of Federal Funds or Services.**

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

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

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

368 25-43-1.105. **Waiver of Rights.**

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

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

374 25-43-1.106. **Filings with Agency; Service; Computation of**
375 **Time.**

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

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

390 (2) (a) Whenever service is required by this article, and
391 whether the service is made by a party, an agency, or a presiding

392 officer, service of orders, notices, pleadings, motions, and other
393 documents upon a party shall be made by delivering a copy to the
394 party, by transmitting it to the party by electronic means,
395 including but not limited to facsimile transfer or e-mail, or by
396 mailing it to the party at the party's last known address.
397 Delivery of a copy means handing it to a party, leaving it at the
398 office of a party with a person in charge thereof, or leaving it
399 at the dwelling house or usual place of abode of the party with
400 some person of suitable age and discretion then residing therein.
401 Service by electronic means is complete when the electronic
402 equipment being used by the party being served acknowledges
403 receipt of the material. If the equipment used by the party being
404 served does not automatically acknowledge the transmission,
405 service is not complete until the sending party obtains an
406 acknowledgment from the recipient. Service by mail is complete
407 upon mailing.

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

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

418 (3) (a) In computing any period of time prescribed or
419 allowed by this article, by order of an agency, or by any
420 applicable statute or agency rule, the day of the act, event or
421 default from which the designated period of time begins to run
422 shall not be included. The last day of the period so computed
423 shall be included, unless it is a Saturday, a Sunday, or a legal
424 holiday, as defined by statute, or any other day when the agency's

425 office is in fact closed, whether with or without legal authority,
426 in which event the period runs until the end of the next day which
427 is not a Saturday, a Sunday, a legal holiday, or any other day
428 when the agency's office is closed. When the period of time
429 prescribed or allowed is less than seven (7) days, intermediate
430 Saturdays, Sundays, and legal holidays shall be excluded in the
431 computation. In the event any legal holiday falls on a Sunday,
432 the next following day shall be a legal holiday.

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

438 **ARTICLE II**

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

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

442 25-43-2.101. **Publication, Compilation, Indexing and Public**
443 **Inspection of Rules.**

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

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

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

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

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

462 (3) The Secretary of State shall cause an administrative
463 bulletin to be published in a format and at such regular intervals
464 as the Secretary of State shall prescribe by rule. Upon proper
465 filing of newly adopted rules, the Secretary of State shall
466 publish them as expeditiously as possible. The administrative
467 bulletin must contain:

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

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

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

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

486 (5) (a) The Secretary of State shall cause an
487 administrative code to be compiled, indexed by subject and
488 published in a format prescribed by the Secretary of State by

489 rule. All of the effective rules of each agency must be published
490 and indexed in that publication. The Secretary of State shall
491 also cause supplements to the administrative code to be published
492 in a format and at such regular intervals as the Secretary of
493 State shall prescribe by rule.

494 (b) The Secretary of State is hereby authorized to
495 contract with a reputable and competent publishing company on such
496 terms and conditions and at such prices as he may deem proper to
497 digest, compile, annotate, index and publish the state agency
498 rules and regulations.

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

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

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

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

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

520 (c) The administrative bulletin or code contains a
521 notice stating in detail the specific subject matter of the

522 omitted proposed or adopted rule and how a copy of the omitted
523 material may be obtained.

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

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

534 25-43-2.102. **Public Inspection and Indexing of Agency**
535 **Orders.**

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

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

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

549 25-43-2.103. **Declaratory Opinions.**

550 (1) Any person with a substantial interest in the subject
551 matter may make a written request of an agency for a declaratory
552 opinion as to the applicability to specified circumstances of a
553 statute, rule or order within the primary jurisdiction of the
554 agency. An agency, through the agency head or its designee(s) by

555 rule, shall issue a declaratory opinion in response to a written
556 request for that opinion unless the agency determines that
557 issuance of the opinion under the circumstances would be contrary
558 to a rule adopted in accordance with subsection (2) of this
559 section.

560 (2) Each agency shall issue rules that provide for: (a) the
561 form, contents and filing of written requests for declaratory
562 opinions; (b) the procedural rights of persons in relation to the
563 written requests and (c) the disposition of the written requests.
564 Those rules must describe the classes of circumstances in which
565 the agency will not issue a declaratory opinion.

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

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

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

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

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

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

621 **RULE MAKING**

622 **ADOPTION AND EFFECTIVENESS OF RULES**

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

625 25-43-3.101. **Advice on Possible Rules before Notice of**
626 **Proposed Rule Adoption.**

627 (1) In addition to seeking information by other methods, an
628 agency, before filing of a notice of proposed rule adoption under
629 Section 25-43-3.103, may solicit comments from the public on a
630 subject matter of possible rule making under active consideration
631 within the agency by causing notice to be filed with the Secretary
632 of State for publication in the administrative bulletin of the
633 subject matter and indicating where, when and how persons may
634 comment.

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

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

643 25-43-3.102. **Public Rule-making Docket.**

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

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

651 (3) The rule-making docket must list each pending
652 rule-making proceeding. A rule-making proceeding is pending from
653 the time it is commenced, by proper filing with the Secretary of

654 State of a notice of proposed rule adoption, to the time it is
655 terminated by the filing with the Secretary of State of a notice
656 of termination or the rule becoming effective. For each pending
657 rule-making proceeding, the docket must indicate:

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

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

661 (c) Where written submissions or written requests for
662 an opportunity to make oral presentations on the proposed rule may
663 be inspected;

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

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

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

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

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

673 (i) When the rule will become effective.

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

676 25-43-3.103. **Notice of Proposed Rule Adoption.**

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

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

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

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

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

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

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

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

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

706 25-43-3.104. **Public Participation.**

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

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

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

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

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

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

742 25-43-3.105. **Economic Impact Statement, Requirement and**
743 **Conditions.**

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

752 persons required to comply with that rule exceeds One Hundred
753 Thousand Dollars (\$100,000.00).

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

760 (a) A description of the need for and the benefits
761 which will likely accrue as the result of the proposed action;

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

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

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

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

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

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

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

783 (3) No rule or regulation shall be declared invalid based on
784 a challenge to the economic impact statement for the rule unless

785 the issue is raised in the agency proceeding. No person shall
786 have standing to challenge a rule, based upon the economic impact
787 statement or lack thereof, unless that person provided the agency
788 with information sufficient to make the agency aware of specific
789 concerns regarding the statement in an oral proceeding or in
790 written comments regarding the rule. The grounds for invalidation
791 of an agency action, based upon the economic impact statement, are
792 limited to the agency's failure to adhere to the procedure for
793 preparation of the economic impact statement as provided in this
794 section, or the agency's failure to consider information submitted
795 to the agency regarding specific concerns about the statement, if
796 that failure substantially impairs the fairness of the rule-making
797 proceeding.

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

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

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

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

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

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

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

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

824 25-43-3.106. **Time and Manner of Rule Adoption.**

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

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

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

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

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

842 25-43-3.107. **Variance between Adopted Rule and Published
843 Notice of Proposed Rule Adoption.**

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

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

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

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

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

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

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

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

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

872 25-43-3.108. **Exemption from Public Rule-making Procedures**
873 **for Temporary Rules.**

874 (1) To the extent an agency for good cause finds that any
875 requirements of Sections 25-43-3.103 through 25-43-3.107 are
876 unnecessary, impracticable or contrary to the public interest in
877 the process of adopting a temporary rule, those requirements do
878 not apply. The agency shall incorporate the required finding and
879 a brief statement of its supporting reasons in each temporary rule
880 adopted in reliance on this subsection. The supporting reasons
881 for the issuance of a temporary rule in accordance with this
882 provision may include, but are not limited to, a serious and

883 unforeseen threat to the public health, safety or welfare; an
884 impending effective date of a recent act of the Legislature of the
885 State of Mississippi or the United States Congress that requires
886 the issuance of implementing or conforming rules or regulations;
887 an impending effective date of a regulation recently issued by an
888 agency or authority of the federal government of the United States
889 that requires the issuance of implementing or conforming rules or
890 regulations; or a court order or other controlling judicial
891 decision that requires the issuance of implementing or conforming
892 rules or regulations. Unless a shorter period of time is stated
893 in the temporary rule, a temporary rule shall expire no later than
894 one hundred eighty (180) days after adoption. A temporary rule
895 may not be renewed after its expiration or early termination by
896 the agency. However, an agency may adopt a rule which is
897 identical or similar to a temporary rule to become effective
898 following the expiration or early termination of the temporary
899 rule, provided that the rule is adopted in accordance with the
900 requirements of Sections 25-43-3.103 through 25-43-3.107.

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

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

908 25-43-3.109. **Contents, Style, and Form of Rule.**

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

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

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

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

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

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

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

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

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

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

947 25-43-3.110. **Agency Rule-making Record.**

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

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

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

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

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

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

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

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

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

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

990 (4) Upon judicial review, the record required by this
991 section constitutes the official agency rule-making record with
992 respect to a rule. Except as otherwise required by a provision of
993 law, the agency rule-making record need not constitute the
994 exclusive basis for agency action on that rule or for judicial
995 review thereof.

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

998 25-43-3.111. **Invalidity of Rules Not Adopted According to**
999 **Article; Time Limitation.**

1000 (1) A rule adopted after July 1, 2001, is invalid unless
1001 adopted in substantial compliance with the provisions of Sections
1002 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a
1003 notice of proposed rule adoption to any person as required by
1004 Section 25-43-3.103(2) does not invalidate a rule.

1005 (2) An action to contest the validity of a rule on the
1006 grounds of its noncompliance with any provision of Sections
1007 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
1008 year after the effective date of the rule.

1009 SECTION 23. The following shall be codified as Section
1010 25-43-3.112, Mississippi Code of 1972:

1011 25-43-3.112. **Filing of Rules.**

1012 An agency shall file in the Office of the Secretary of State
1013 each rule it adopts and all rules existing on July 1, 2001, that
1014 have not previously been filed. The filing must be done as soon
1015 after adoption of the rule as is practicable. At the time of
1016 filing, each rule adopted after July 1, 2001, must have included
1017 in or attached to it the material set out in Section 25-43-3.109.
1018 The Secretary of State shall affix to each rule and statement a
1019 certification of the date of filing and keep a permanent register
1020 open to public inspection of all filed rules and attached
1021 material. In filing a rule, each agency shall use a standard
1022 format prescribed by the Secretary of State.

1023 SECTION 24. The following shall be codified as Section
1024 25-43-3.113, Mississippi Code of 1972:

1025 25-43-3.113. **Effective Date of Rules.**

1026 (1) Except to the extent subsection (2) or (3) of this
1027 section provides otherwise, each rule adopted after July 1, 2001,
1028 becomes effective thirty (30) days after its proper filing in the
1029 Office of the Secretary of State.

1030 (2) (a) A rule becomes effective on a date later than that
1031 established by subsection (1) of this section if a later date is
1032 required by another statute or specified in the rule.

1033 (b) A rule may become effective immediately upon its
1034 filing or on any subsequent date earlier than that established by
1035 subsection (1) of this section if the agency establishes such an
1036 effective date and finds that:

1037 (i) It is required by constitution, statute or
1038 court order;

1039 (ii) The rule only confers a benefit or removes a
1040 restriction on the public or some segment thereof;

1041 (iii) The rule only delays the effective date of
1042 another rule that is not yet effective; or

1043 (iv) The earlier effective date is necessary
1044 because of imminent peril to the public health, safety or welfare.

1045 (c) The finding and a brief statement of the reasons
1046 therefor required by paragraph (b) of this subsection must be made
1047 a part of the rule. In any action contesting the effective date
1048 of a rule made effective under paragraph (b) of this subsection,
1049 the burden is on the agency to justify its finding.

1050 (d) A temporary rule may become effective immediately
1051 upon its filing or on any subsequent date earlier than that
1052 established by subsection (1) of this section.

1053 (e) Each agency shall make a reasonable effort to make
1054 known to persons who may be affected by it a rule made effective
1055 before any date established by subsection (1) of this section.

1056 (3) This section does not relieve an agency from compliance
1057 with any provision of law requiring that some or all of its rules
1058 be approved by other designated officials or bodies before they
1059 become effective.

1060 SECTION 25. The following shall be codified as Section
1061 25-43-3.114, Mississippi Code of 1972:

1062 25-43-3.114. **Review by Agency.**

1063 At least every five (5) years, each agency shall review all
1064 of its rules to determine whether any rule should be repealed,
1065 amended or a new rule adopted.

1066 **ARTICLE IV**

1067 **ADJUDICATIVE PROCEEDINGS**

1068 **PART I**

1069 **AVAILABILITY OF ADJUDICATIVE PROCEEDINGS;**

1070 **APPLICATIONS; LICENSES**

1071 SECTION 26. The following shall be codified as Section
1072 25-43-4.101, Mississippi Code of 1972:

1073 25-43-4.101. **Adjudicative Proceedings - When Required;**
1074 **Exceptions.**

1075 (1) An agency shall conduct an adjudicative proceeding as
1076 the process for formulating and issuing an order, unless the order
1077 is a decision:

1078 (a) To issue or not to issue a complaint, demand,
1079 charge of violation or other obligation, summons, assessment or
1080 similar accusation subject to administrative review;

1081 (b) To initiate or not to initiate an investigation,
1082 prosecution, or other proceeding before the agency, another
1083 agency, or a court;

1084 (c) Under Section 25-43-4.103, not to conduct an
1085 adjudicative proceeding;

1086 (d) To issue notice of intent to take agency action;

1087 (e) To issue a license where by law the applicant is
1088 entitled to an adjudicative proceeding if the license is denied,
1089 or where after issuance of the license by law there is provided an
1090 opportunity for an adjudicative proceeding upon application of an
1091 interested person;

1092 (f) To take an agency action where after the agency
1093 action is taken by law there is provided an opportunity for the
1094 person affected for an adjudicative proceeding before the
1095 Mississippi Employee Appeals Board;

1096 (g) To issue an order granting the request of the
1097 agency staff which may take effect only upon authorization by the
1098 agency head;

1099 (h) To take an action with respect to a prisoner,
1100 student, public employee or a licensee without continuing or
1101 permanent impact thereafter, such as a reprimand, warning,
1102 disciplinary report or purely verbal sanction without continuing
1103 impact;

1104 (i) To take an action with respect to a student that is
1105 not a suspension or expulsion from school or does not affect a
1106 grade or academic credit to which the student would otherwise be
1107 entitled;

1108 (j) To open or close a season for hunting or fishing,
1109 or to set limits for kill or catch;

1110 (k) To restrict access to levees protecting against
1111 rivers at flood stage;

1112 (l) Under Sections 93-11-155 et seq., to suspend a
1113 state-issued license;

1114 (m) To acquire, administer or dispose of interests in
1115 real or personal property, except where by another provision of
1116 law a party with standing may complain of agency action; or

1117 (n) To take action in a nonregulatory matter which is
1118 in the normal scope of business of the agency, including entering
1119 into contracts or agreements with any other state or federal
1120 agency, or with any private person, organization or group capable
1121 of contracting, if it finds such action to be in the public
1122 interest, except where by another provision of law a party with
1123 standing may complain of agency action; to accept gifts, trusts,
1124 bequests, grants, endowments or transfers of property of any kind;
1125 to receive monies coming to it by way of fees for services or by
1126 appropriations; to employ, qualified professional personnel, and
1127 such other technical and clerical staff as may be required for the
1128 operation of the agency.

1129 (2) This article does not apply to rule-making proceedings
1130 unless a statute other than contained in this chapter expressly so
1131 requires.

1132 (3) This article does not apply to a public hearing held by
1133 an agency where the principal purpose of such hearing is to invite
1134 the public to appear and receive information or provide comment on
1135 a proposed agency action.

1136 (4) This article provides minimum standards for adjudicative
1137 proceedings. Nothing in this article provides that an agency may
1138 not employ additional procedures as may be required or permitted
1139 by other law, including valid agency rules that the agency may
1140 make, so long as the rights conferred by this article are not
1141 prejudiced.

1142 (5) Except as provided otherwise in this chapter or another
1143 provision of law, an agency may conduct an adjudicative proceeding
1144 as the process for resolving any matter within the jurisdiction of
1145 the agency. If an agency commences an adjudicative proceeding in
1146 any matter, that proceeding shall be governed by this article
1147 unless the parties agree otherwise.

1148 (6) In the case of an agency that is subject to the
1149 regulatory requirements of an agency or department of the United
1150 States, an adjudicative proceeding conducted by the state agency
1151 that conforms to the requirements of the agency or department of
1152 the United States that the state agency is mandated to follow may,
1153 at the election of the state agency made in advance of the
1154 proceeding, be deemed to satisfy the requirements of this article
1155 respecting adjudicative proceedings, provided that any
1156 adjudicative proceeding so conducted shall conform to the
1157 provisions of this article that are not materially inconsistent
1158 with or substantially duplicative of the requirements of the
1159 agency or department of the United States. Any agency may
1160 implement the provisions of this section by rule. The final order
1161 of the state agency in any proceeding conducted under this
1162 subsection shall be subject to judicial review in accordance with
1163 Article V, Part I of this act.

1164 SECTION 27. The following shall be codified as Section
1165 25-43-4.102, Mississippi Code of 1972:

1166 25-43-4.102. **Adjudicative Proceedings - Commencement.**

1167 (1) An agency may commence an adjudicative proceeding at any
1168 time with respect to a matter within the jurisdiction of the
1169 agency.

1170 (2) An agency shall commence an adjudicative proceeding upon
1171 the application of any person responding to a complaint, demand,
1172 denial of a benefit, notice of agency action affecting that
1173 person, charge of violation or other obligation, summons,

1174 assessment or similar accusation served on that person by the
1175 agency.

1176 (3) In addition to its obligations provided in paragraph
1177 (b), an agency shall commence an adjudicative proceeding upon the
1178 application of any person, unless:

1179 (a) The agency lacks jurisdiction of the subject
1180 matter;

1181 (b) Resolution of the matter requires the agency to
1182 exercise discretion within the scope of Section 25-43-4.101(1),
1183 subject to the provision of subsection (2) of this section;

1184 (c) The Constitution or a statute vests the agency with
1185 discretion to conduct or not to conduct an adjudicative proceeding
1186 before issuing an order to resolve the matter and, in the exercise
1187 of that discretion, the agency has determined not to conduct an
1188 adjudicative proceeding;

1189 (d) Resolution of the matter will not require the
1190 agency to issue an order that may adjudge the applicant's legal
1191 rights, duties, privileges, immunities, or other legal interests;

1192 (e) The applicant claims only (i) that he is a citizen,
1193 a voter, or a taxpayer, or (ii) that he has an interest that the
1194 law be enforced, and nothing more;

1195 (f) The matter was not timely submitted to the agency;
1196 or

1197 (g) The matter was not submitted in a form
1198 substantially complying with any applicable provision of law, and
1199 was not amended within a reasonable time so that it substantially
1200 complies with any applicable provision of law. Any timely
1201 amendment relates back to the date of the original application.

1202 (4) (a) An application for an agency to issue an order is
1203 deemed to include an application for the agency to conduct
1204 appropriate adjudicative proceedings, whether or not the applicant
1205 expressly requests those proceedings.

1206 (b) An application for an agency to conduct an
1207 adjudicative proceeding shall be deemed to include an application
1208 for the agency to issue an appropriate order, whether or not the
1209 applicant expressly requests the agency to issue an order.

1210 (5) An adjudicative proceeding commences when the agency:

1211 (a) Serves notice on a party that a prehearing
1212 conference, hearing, or other stage of an adjudicative proceeding
1213 will be conducted; or

1214 (b) Begins to take action on a matter that
1215 appropriately may be determined by an adjudicative proceeding,
1216 unless the action is:

1217 (i) An investigation for the purpose of
1218 determining whether an adjudicative proceeding should be
1219 conducted; or

1220 (ii) A decision which, under Section
1221 25-43-4.101(1), the agency may make without conducting an
1222 adjudicative proceeding.

1223 SECTION 28. The following shall be codified as Section
1224 25-43-4.103, Mississippi Code of 1972:

1225 25-43-4.103. **Decision Not to Conduct Adjudicative**
1226 **Proceeding.**

1227 If an agency decides not to conduct an adjudicative
1228 proceeding in response to an application, the agency shall serve
1229 on any applicant therefor a copy of its decision in writing, with
1230 a brief statement of the agency's reasons and of any
1231 administrative review available to the applicant.

1232 SECTION 29. The following shall be codified as Section
1233 25-43-4.104, Mississippi Code of 1972:

1234 25-43-4.104. **Agency Action on Applications.**

1235 (1) Except to the extent that the time limits in this
1236 subsection are inconsistent with limits established by another
1237 statute for any stage of a proceeding, an agency shall process an
1238 application for an order, as follows:

1239 (a) Within thirty (30) days after receipt of the
1240 application, the agency shall examine the application, notify the
1241 applicant of any apparent errors or omissions, request any
1242 additional information the agency wishes to obtain and is
1243 permitted by law to require, and notify the applicant of the name,
1244 official title, mailing address and telephone number of an agency
1245 member or employee who may be contacted regarding the status of
1246 the application or other procedural information relating to the
1247 matter.

1248 (b) Any timely response the applicant makes to a timely
1249 request made by the agency pursuant to paragraph (a) shall relate
1250 back to the date of the original application.

1251 (c) Except in situations governed by paragraph (d),
1252 within and no later than ninety (90) days after receipt of the
1253 application or of a response to a timely request made by the
1254 agency pursuant to paragraph (a), whichever is later, the agency
1255 shall:

1256 (i) Approve or deny the application, in whole or
1257 in part, on the basis of emergency or basic adjudicative
1258 proceedings, if those proceedings are available under this chapter
1259 for disposition of the matter;

1260 (ii) Commence a formal adjudicative hearing or an
1261 informal adjudicative hearing in accordance with this chapter; or

1262 (iii) Dispose of the application in accordance
1263 with Section 25-43-4.103.

1264 (d) If the application pertains to subject matter that
1265 is not available when the application is filed but may be
1266 available in the future, the agency may proceed to make a
1267 determination of eligibility within the time provided in paragraph
1268 (c) of this subsection. If the agency determines that the
1269 applicant is eligible, the agency shall maintain the application
1270 on the agency's list of eligible applicants as provided by law

1271 and, upon request, shall notify the applicant of the status of the
1272 application.

1273 (2) If a timely and sufficient application has been made for
1274 renewal of a license with reference to any activity of a
1275 continuing nature, and if at the time of the application, the
1276 license is held by applicant in good standing, the existing
1277 license does not expire until the agency has taken final action
1278 upon the application for renewal or, if the agency's action is
1279 unfavorable, until the last day for seeking judicial review of the
1280 agency's action or a later date fixed by the court.

1281 SECTION 30. The following shall be codified as Section
1282 25-43-4.105, Mississippi Code of 1972:

1283 25-43-4.105. **Agency Action Against Licensees.**

1284 An agency may not revoke, suspend, modify, annul, withdraw,
1285 or amend a license unless the agency first serves notice of the
1286 anticipated action on the licensee and affords a reasonable
1287 opportunity for an appropriate adjudicative proceeding in
1288 accordance with this chapter and any other applicable statute.
1289 This section does not preclude an agency from (1) taking immediate
1290 action to protect the public interest in accordance with Section
1291 25-43-4.601 or (2) adopting rules otherwise within the scope of
1292 its authority, pertaining to a class of licensees, including rules
1293 affecting the existing licenses of a class of licensees.

1294 SECTION 31. The following shall be codified as Section
1295 25-43-4.106, Mississippi Code of 1972:

1296 25-43-4.106. **Informal Settlements; Alternative Dispute
1297 Resolution; Waiver.**

1298 (1) Unless precluded by statute, parties are encouraged to
1299 consider settlement, including the entry of a consent order, in a
1300 matter that may lead to adjudicative proceedings according to the
1301 provisions of this article. Unless precluded by statute, agencies
1302 may make rules that may regulate and facilitate settlements of
1303 matters prior to the commencement of and in the course of

1304 adjudicative proceedings. This subsection shall not be construed
1305 to require any party to an adjudicative proceeding to utilize any
1306 such settlement procedures or to settle the matter.

1307 (2) Unless precluded by statute, parties are encouraged to
1308 consider alternative dispute resolution as a means that may
1309 resolve a matter that may lead to adjudicative proceedings.
1310 Unless precluded by statute, agencies may make rules that may
1311 regulate and facilitate alternative dispute resolution of matters
1312 prior to the commencement of or in the course of adjudicative
1313 proceedings. This subsection shall not be construed to require
1314 any party to utilize alternative dispute resolution.

1315 (3) Unless precluded by statute, the parties to an
1316 adjudicative proceeding may, by written instrument manifesting an
1317 informed consent and agreement, enter a consent order resolving
1318 all or part of an adjudicative proceeding.

1319 (4) Unless precluded by statute, the parties to an
1320 adjudicative proceeding may, by written stipulation manifesting an
1321 informed consent and agreement, waive any provision of this
1322 article relating to such proceeding.

1323 **PART II**

1324 **FORMAL ADJUDICATIVE HEARING**

1325 SECTION 32. The following shall be codified as Section
1326 25-43-4.201, Mississippi Code of 1972:

1327 25-43-4.201. **Applicability.**

1328 An adjudicative proceeding is governed by this part, except
1329 as otherwise provided by:

1330 (a) A statute other than one contained in this chapter;

1331 (b) A rule lawfully made pursuant to such statute,
1332 where such rule is not inconsistent with the standards in this
1333 chapter or an applicable statute other than one contained in this
1334 chapter;

1335 (c) A rule that adopts the procedures for the informal
1336 adjudicative hearing or basic adjudicative proceeding in

1337 accordance with the standards provided in this chapter for those
1338 proceedings;

1339 (d) Section 25-43-4.601 pertaining to emergency
1340 adjudicative proceedings; or

1341 (e) Section 25-43-2.103 pertaining to proceedings for
1342 declaratory opinions.

1343 SECTION 33. The following shall be codified as Section
1344 25-43-4.202, Mississippi Code of 1972:

1345 25-43-4.202. **Presiding Officer - Disqualification;**
1346 **Substitution.**

1347 (1) "Presiding officer" means a person or persons acting in
1348 accordance with this section.

1349 (2) The agency head, one or more members of the agency head,
1350 one or more hearing officers or administrative judges employed or
1351 appointed by the agency, or one or more hearing officers assigned
1352 by the Division of Independent Hearing Officers in accordance with
1353 Section 25-43-4.301, or any combination thereof, in the discretion
1354 of the agency head, may be the presiding officer.

1355 (3) Ordinarily, the presiding officer should be, but is not
1356 required to be a person or persons assigned by the Division of
1357 Independent Hearing Officers:

1358 (a) Unless the agency head is the presiding officer, or

1359 (b) Unless the agency is essentially neutral regarding
1360 the outcome of the proceeding and the agency's primary interest is
1361 that the proceeding be fair, speedy and cost-effective; provided,
1362 however, that nothing in this article shall prohibit any agency
1363 from using hearing officers who may be employed or appointed by
1364 the agency. Hearing officers utilized by the agency who are not
1365 employed or otherwise engaged by the division shall have the same
1366 qualifications as those engaged by the division.

1367 (4) Any person serving or designated to serve alone or with
1368 others as presiding officer is subject to disqualification for
1369 bias, prejudice, interest, or any other cause provided in this

1370 chapter or for which a judge is or may be disqualified in a civil
1371 action.

1372 (5) Any party may move to disqualify a person promptly after
1373 receipt of notice indicating that the person will preside or
1374 promptly upon discovering facts establishing grounds for
1375 disqualification, whichever is later.

1376 (6) A person whose disqualification is requested shall
1377 determine whether to grant the motion, stating facts and reasons
1378 for the determination.

1379 (7) If a substitute is required for a person who is
1380 disqualified or becomes unavailable for any other reason, the
1381 substitute may be appointed as provided in subsections (2) and (3)
1382 of this section.

1383 (8) Any action taken by a duly-appointed substitute for a
1384 disqualified or unavailable person is as effective as if taken by
1385 the latter.

1386 SECTION 34. The following shall be codified as Section
1387 25-43-4.203, Mississippi Code of 1972:

1388 25-43-4.203. **Representation.**

1389 (1) Any party may participate in the hearing in person or,
1390 if the party is a corporation or other artificial person, by its
1391 duly authorized representative.

1392 (2) Whether or not participating in person, any party may be
1393 advised and represented at the party's own expense by a lawyer or,
1394 except as limited but not prohibited by agency rule, by any other
1395 representative. The agency may implement this subsection by rule
1396 designating the qualifications of representative(s) that may
1397 appear on behalf of a party and what binding effect the actions of
1398 the representative(s) will have on the party so represented.

1399 (3) Any application, pleading, or other document prepared by
1400 a lawyer or other representative of a party shall contain the
1401 typed or printed name, mailing address (including fax number and

1402 e-mail address, if available), and telephone number of the
1403 preparer.

1404 SECTION 35. The following shall be codified as Section
1405 25-43-4.204, Mississippi Code of 1972:

1406 25-43-4.204. **Prehearing Conference - Availability; Notice.**

1407 (1) Any party may request a prehearing conference. In
1408 response to a request by a party, or on the presiding officer's
1409 own motion, the presiding officer may determine, subject to any
1410 applicable agency rules, that a prehearing conference will be
1411 conducted.

1412 (2) If the prehearing conference is to be conducted:

1413 (a) The presiding officer shall promptly notify the
1414 agency that a prehearing conference will be conducted. The
1415 presiding officer shall conduct the prehearing conference except
1416 as provided by agency rule or unless that presiding officer is
1417 disqualified or becomes unavailable for any other reason.

1418 (b) The presiding officer shall set the time and place
1419 of the prehearing conference, subject to any applicable agency
1420 rules, and direct the agency to serve notice of the prehearing
1421 conference to all parties and to all persons who have motions to
1422 intervene pending in the matter. The agency shall also serve
1423 notice to other persons entitled to notice under any provision of
1424 law or agency rule.

1425 (c) The notice must include:

1426 (i) The official agency file or other reference
1427 number and the style of the proceeding;

1428 (ii) A statement of the time, place, and nature of
1429 the prehearing conference;

1430 (iii) A statement of the legal authority and
1431 jurisdiction under which the hearing is to be held;

1432 (iv) The name, official title, and mailing address
1433 of the presiding officer for the prehearing conference;

1434 (v) The name, official title, and mailing address
1435 (including fax number and e-mail address, if available) of any
1436 counsel or employee who has been designated to appear for the
1437 agency;

1438 (vi) The names and mailing addresses of all
1439 parties and other persons to whom notice is being given;

1440 (vii) The name, official title, mailing address
1441 (including fax number and e-mail address, if available), and
1442 telephone number of the agency employee or other person who may be
1443 able to answer procedural questions about the prehearing
1444 conference;

1445 (viii) A statement that at the prehearing
1446 conference the proceeding, without further notice, may be
1447 converted into an informal adjudicative hearing or basic
1448 adjudicative proceeding for disposition of the matter as provided
1449 by this chapter; and

1450 (ix) A statement with an explanation of its
1451 consequences that a party who fails to attend or participate in a
1452 prehearing conference, hearing, or other stage of an adjudicative
1453 proceeding may be held in default under this chapter.

1454 (d) The notice may include any other matters that the
1455 presiding officer considers desirable to expedite the proceedings,
1456 subject to any applicable provision of law including agency rules.

1457 SECTION 36. The following shall be codified as Section
1458 25-43-4.205, Mississippi Code of 1972:

1459 25-43-4.205. **Prehearing Conference - Procedure; Prehearing**
1460 **Order.**

1461 (1) The presiding officer may conduct all or part of the
1462 prehearing conference by telephone, television, or other
1463 electronic means if each participant in the prehearing conference
1464 has an opportunity to participate in, to hear, and, if technically
1465 and practicably feasible, to see the entire proceeding while it is
1466 taking place.

1467 (2) Any matters respecting the fair, speedy and
1468 cost-effective determination of the issues may be considered at
1469 the prehearing conference, including without limitation such
1470 matters as:

- 1471 (a) Conversion of the proceeding to another type;
- 1472 (b) Use of alternative dispute resolution;
- 1473 (c) Whether there are other persons to be joined if
1474 feasible;
- 1475 (d) Any motions, petitions or other applications;
- 1476 (e) Exploration of settlement possibilities;
- 1477 (f) Preparation of stipulations;
- 1478 (g) Clarification of issues;
- 1479 (h) Identity and limitation of the number of witnesses;
- 1480 (i) Identity and authenticity of exhibits;
- 1481 (j) Objections to proffers of evidence;
- 1482 (k) Determination of the extent to which direct
1483 evidence, rebuttal evidence, or cross-examination will be
1484 presented in written form;
- 1485 (l) Determination of the extent to which telephone,
1486 television, or other electronic means may be used to conduct the
1487 hearing as a substitute for proceedings in person;
- 1488 (m) Order of presentation of evidence and
1489 cross-examination;
- 1490 (n) Rulings regarding issuance of subpoenas;
- 1491 (o) Matters regarding discovery, the adequacy of
1492 responses to discovery, orders compelling discovery, or protective
1493 orders as may be appropriate; and
- 1494 (p) Such other matters as may aid in the conduct of the
1495 proceeding or the disposition of the matter.

1496 (3) If a prehearing conference is held, the presiding
1497 officer shall issue a prehearing order incorporating and
1498 memorializing the matters determined at the prehearing conference.

1499 The presiding officer may require that the agency and the parties
1500 assist in preparing the prehearing order.

1501 (4) If a prehearing conference is not held, the presiding
1502 officer may issue a prehearing order, based on the pleadings, to
1503 regulate the conduct of the proceedings.

1504 (5) Whether a prehearing conference is held or not, the
1505 presiding officer, subject to any applicable agency rules, may
1506 require the parties, jointly or severally, to prepare a prehearing
1507 statement or order addressing such matters as set out in
1508 subsection (2) of this section. Any prehearing statement shall be
1509 included within "prehearing order" for purposes of this article.

1510 SECTION 37. The following shall be codified as Section
1511 25-43-4.206, Mississippi Code of 1972:

1512 25-43-4.206. **Notice of Hearing.**

1513 (1) The presiding officer for the hearing shall set the time
1514 and place of the hearing, subject to any applicable agency rules,
1515 and direct the agency to serve notice of the hearing on all
1516 parties, all persons who have written motions to intervene pending
1517 in the matter, and any other person entitled to notice under any
1518 provision of law.

1519 (2) The notice may include a copy of any prehearing order
1520 issued in the matter.

1521 (3) To the extent not included in a prehearing order
1522 accompanying it, the notice must include:

1523 (a) The official agency file or other reference number
1524 and the style of the proceeding;

1525 (b) A statement of the time, place, and nature of the
1526 hearing;

1527 (c) A statement of the legal authority and jurisdiction
1528 under which the hearing is to be held;

1529 (d) The name, official title, and mailing address of
1530 the presiding officer;

1531 (e) The name, official title, mailing address
1532 (including fax number and e-mail address, if available) and
1533 telephone number of any counsel or employee who has been
1534 designated to appear for the agency;

1535 (f) The names and mailing addresses of all parties and
1536 other persons to whom notice is being given;

1537 (g) The name, official title, mailing address
1538 (including fax number and e-mail address, if available) and
1539 telephone number of the agency employee(s) or other person who may
1540 be able to answer procedural questions about the hearing;

1541 (h) A statement with an explanation of its consequences
1542 that a party who fails to attend or participate in a prehearing
1543 conference, hearing, or other stage of an adjudicative proceeding
1544 may be held in default.

1545 (4) The notice may include any other matters the agency or
1546 presiding officer considers appropriate to expedite and facilitate
1547 the proceedings.

1548 SECTION 38. The following shall be codified as Section
1549 25-43-4.207, Mississippi Code of 1972:

1550 25-43-4.207. **Pleadings; Briefs; Motions.**

1551 (1) The presiding officer, at all stages of the proceedings,
1552 and subject to any applicable provision of law, including agency
1553 rules, shall give all parties fair opportunity to file pleadings,
1554 and amendments thereto, motions, responses, objections, and other
1555 statements of position as may be required by agency rule. A
1556 timely amendment to a pleading relates back to the date of the
1557 original pleading.

1558 (2) The presiding officer, at appropriate stages of the
1559 proceedings, and subject to any applicable provision of law,
1560 including agency rules, may give all parties fair opportunity to
1561 file briefs, proposed findings of fact and conclusions of law, and
1562 proposed initial or final orders.

1563 (3) A party shall serve copies of any pleading, motion,
1564 brief or other paper that the party files in the proceeding on all
1565 other parties by any means provided in this chapter and, in
1566 addition, by any means provided by agency rule.

1567 SECTION 39. The following shall be codified as Section
1568 25-43-4.208, Mississippi Code of 1972:

1569 25-43-4.208. **Default.**

1570 (1) If a party fails to attend or participate in a duly
1571 noticed prehearing conference, hearing, or other stage of a formal
1572 adjudicative proceeding, the presiding officer may serve upon all
1573 parties written notice of a proposed default order, including a
1574 statement of the grounds, or, if the presiding officer so directs,
1575 the agency must serve such proposed default order.

1576 (2) Within ten (10) days after service of a proposed default
1577 order, the party against whom it is proposed to be issued may
1578 object in writing to the issuance of the proposed default order
1579 and state the grounds of the objection. During the time within
1580 which a party may file a written objection under this subsection,
1581 the presiding officer may adjourn the proceedings or conduct them
1582 without the participation of the party against whom a proposed
1583 default order may be issued, having due regard for the interests
1584 of justice and fairness and the orderly and prompt conduct of the
1585 proceedings.

1586 (3) The presiding officer shall either issue or deny the
1587 default order promptly after expiration of the time within which
1588 the party may object under subsection (2) of this section.

1589 (4) After issuing a default order, the presiding officer
1590 shall conduct any further proceedings necessary to complete the
1591 proceeding without the participation of the party in default and
1592 shall determine all issues in the proceeding, including those
1593 affecting the defaulting party. The presiding officer may allow
1594 the defaulting party to participate in the proceeding subject to
1595 the terms and conditions of the default order.

1596 SECTION 40. The following shall be codified as Section
1597 25-43-4.209, Mississippi Code of 1972:

1598 25-43-4.209. **Intervention - Persons Needed for Full and Fair**
1599 **Determination.**

1600 (1) Subject to any applicable provision of law or agency
1601 rule, the presiding officer shall grant a motion to intervene in
1602 an adjudicative proceeding if the motion is filed with the agency,
1603 with copies served on all parties named in the official notice of
1604 the hearing, at least ten (10) days before the hearing, or, for
1605 good cause and having due regard for the interests of the agency
1606 and the parties, less than ten (10) days before the hearing; and

1607 (a) The motion states facts demonstrating that the
1608 movant's legal rights, duties, privileges, immunities, or other
1609 legal interests may be affected by the outcome of the proceeding
1610 or that the movant qualifies as an intervener under any provision
1611 of law; or

1612 (b) The movant's asserted interests are among those the
1613 agency is required to consider in the proceeding; and

1614 (c) The presiding officer determines that the interests
1615 of justice and the orderly and prompt conduct of the proceeding
1616 will not be impaired by allowing the intervention.

1617 (2) Upon filing a motion to intervene, the would be
1618 intervener becomes a person who, pending ruling on the motion,
1619 should receive all notices provided thereafter to parties and all
1620 papers the parties may thereafter file and serve.

1621 (3) The fact that a person moving to intervene in a
1622 proceeding claims (1) that he is a citizen, a voter or a taxpayer
1623 or (2) that he has an interest that the law be enforced is,
1624 without more, insufficient grounds upon which the presiding
1625 officer may grant a motion to intervene.

1626 (4) The presiding officer may grant a motion to intervene at
1627 any time, upon determining that the intervention sought is in the

1628 interests of justice and fairness and will not impair the orderly
1629 and prompt conduct of the proceedings.

1630 (5) An association of persons, some of whose members are
1631 eligible for intervention, may be allowed to intervene upon the
1632 same showing and subject to the same conditions as its members who
1633 may be eligible to intervene.

1634 (6) If a movant qualifies for intervention, the presiding
1635 officer may impose conditions upon the intervener's participation
1636 in the proceedings, subject to any applicable provision of law,
1637 including agency rules, either at the time that intervention is
1638 granted or at any subsequent time. Conditions may include:

1639 (a) Limiting the intervener's participation to
1640 designated issues in which the intervener has a particular
1641 interest;

1642 (b) Limiting the intervener's use of discovery,
1643 subpoenas, cross-examination, and other procedures so as to
1644 promote the orderly and prompt conduct of the proceedings; and

1645 (c) Requiring two (2) or more interveners to combine
1646 their presentations of evidence and argument, cross-examination,
1647 discovery, and other participation in the proceedings.

1648 (7) The presiding officer shall issue an order granting or
1649 denying each pending motion to intervene, specifying any
1650 conditions, and briefly stating the reasons for the order. The
1651 presiding officer may modify the order at any time, briefly
1652 stating the reasons for the order.

1653 (8) A person who is subject to the jurisdiction of the
1654 agency shall be joined as a party in the proceeding if:

1655 (a) In the person's absence complete relief cannot be
1656 accorded among those already parties, or

1657 (b) The person claims an interest relating to the
1658 subject of the proceeding and is so situated that the disposition
1659 of the proceeding in the person's absence may (i) as a practical
1660 matter impair or impede the person's ability to protect that

1661 interest or (ii) leave any of the parties subject to a substantial
1662 risk of incurring double, multiple, or otherwise inconsistent
1663 obligations by reason of the person's claimed interest. If the
1664 person has not been so joined, the presiding officer may order
1665 that the person be made a party and summoned to appear.

1666 (9) After entry of an order allowing intervention or for
1667 joinder, the intervener or the person being joined shall be a
1668 party, subject to any conditions provided under the authority of
1669 subsection (6) of this section.

1670 SECTION 41. The following shall be codified as Section
1671 25-43-4.210, Mississippi Code of 1972:

1672 25-43-4.210. **Subpoenas; Discovery Orders; Protective Orders.**

1673 (1) Prehearing discovery is authorized in formal
1674 adjudicative proceedings under this part. The presiding officer,
1675 at the request of any party or upon the presiding officer's own
1676 motion, and subject to any applicable provision of law, including
1677 agency rules, may but is not required to allow discovery and issue
1678 protective orders, compel discovery, or grant sanctions in
1679 accordance with the Mississippi Rules of Civil Procedure as if the
1680 proceeding were a civil action governed by the Mississippi Rules
1681 of Civil Procedure.

1682 (2) Each agency is authorized to issue subpoenas. The
1683 subpoena power of each agency extends throughout the entire State
1684 of Mississippi. The presiding officer, at the request of any
1685 party shall, or upon the presiding officer's own motion may,
1686 direct the agency to issue subpoenas. Every subpoena shall be
1687 issued by the agency, shall state the name and address of the
1688 agency, the official agency file or other reference number, and
1689 the style of the proceeding, and shall command each person to whom
1690 it is directed to attend and give testimony, or to produce and
1691 permit inspection, testing and copying of designated books,
1692 documents or tangible things in the possession, custody or control
1693 of that person, or to which that person has reasonable access, or

1694 to permit inspection or testing of premises, at a time that may be
1695 before or at a hearing and at a place therein specified. Pursuant
1696 to agency rule, the subpoena may be issued by the person
1697 designated by agency rule to issue subpoenas on behalf of the
1698 agency or by the presiding officer, but otherwise in blank, to a
1699 party requesting it, who shall fill it in before service. A
1700 command to produce evidence or to permit inspection may be joined
1701 with a command to appear at hearing or at deposition, or may be
1702 issued separately.

1703 (3) Subpoenas and other orders issued under this section may
1704 be enforced pursuant to the provisions of this chapter on civil
1705 enforcement of agency action. A subpoena shall be treated as an
1706 order for purposes of civil enforcement subpoenas.

1707 (4) Witnesses subpoenaed to appear in agency proceedings
1708 shall receive at least the same fees and mileage as witnesses in
1709 civil actions in courts of record.

1710 (5) A subpoena may be served by a sheriff, or by sheriff's
1711 deputy, or by a representative of the agency, or by any other
1712 person who is not less than eighteen (18) years of age, and his or
1713 her return endorsed thereon shall be prima facie proof of service,
1714 or the person served may acknowledge service in writing on the
1715 subpoena. Service of the subpoena shall be executed upon the
1716 witness personally. Proof of service shall be made by filing with
1717 the agency from which the subpoena was issued a statement,
1718 certified by the person who made the service, setting forth the
1719 date and manner of service, the address, including the city and
1720 county in which it was served, and the names of the person or
1721 persons served.

1722 (6) The agency may adopt rules that implement and elaborate
1723 this section.

1724 SECTION 42. The following shall be codified as Section
1725 25-43-4.211, Mississippi Code of 1972:

1726 25-43-4.211. **Agency Records; Staff Recommendations;**
1727 **Proceedings.**

1728 (1) An agency that relies on a witness in an adjudicative
1729 proceeding, whether or not an agency employee, who has made prior
1730 statements or reports with respect to the subject matter of the
1731 witness' testimony, shall, on request, promptly make such
1732 statements or reports available to parties, unless those
1733 statements or reports are otherwise expressly protected from
1734 disclosure by another provision of law. Identifiable agency
1735 records that are relevant to disputed material facts involved in
1736 an adjudicative proceeding, shall, upon request, promptly be made
1737 available to a party unless the requested records are expressly
1738 protected from disclosure by another provision of law. The
1739 provisions of this subsection are independent of and in addition
1740 to any provisions of the Mississippi Public Records Act.

1741 (2) Not less than ten (10) days before a hearing under this
1742 part, the agency staff shall serve upon all parties any
1743 recommendation the staff will make at the hearing, including the
1744 substance of the facts and circumstances supporting the
1745 recommendation, and identification of all persons who have
1746 provided facts or opinions upon which the staff recommendation is
1747 based, and a summary of the grounds for each such opinion. The
1748 agency staff shall serve upon all parties all other materials it
1749 provides to the presiding officer.

1750 (3) In the discretion of and within such time frames as he
1751 may deem appropriate, the presiding officer may allow discovery
1752 with respect to the staff recommendation and other materials the
1753 staff provides to the presiding officer.

1754 (4) The agency may adopt rules that implement and elaborate
1755 this section.

1756 SECTION 43. The following shall be codified as Section
1757 25-43-4.212, Mississippi Code of 1972:

1758 25-43-4.212. **Procedure at Hearing.**

1759 At a hearing:

1760 (a) The presiding officer shall regulate the course of
1761 the proceedings in conformity with any prehearing order and
1762 subject to any applicable provision of law, including agency rule.
1763 The presiding officer may expedite the proceedings, grant
1764 continuances, recess or bifurcate hearings, and shall exercise
1765 reasonable control over the mode and order of questioning
1766 witnesses and presenting evidence so as to (i) make the
1767 questioning and presentation effective for the ascertainment of
1768 the facts, (ii) avoid needless consumption of time, (iii) protect
1769 privacy rights, trade secrets, and other similar interests created
1770 by another provision of law, and (iv) protect witnesses from
1771 harassment or undue embarrassment.

1772 (b) To the extent necessary for full disclosure of all
1773 relevant facts and issues, the presiding officer shall afford to
1774 all parties the opportunity to respond, present evidence and
1775 argument, conduct cross-examination, and submit rebuttal evidence,
1776 except as restricted by a limited grant of intervention, by agency
1777 rule, or by a prehearing order.

1778 (c) The presiding officer may give nonparties an
1779 opportunity to present oral or written statements. If the
1780 presiding officer proposes to consider a statement by a nonparty,
1781 the presiding officer shall give all parties an opportunity to
1782 challenge or rebut it and, on motion of any party, the presiding
1783 officer shall require the statement to be given under oath or
1784 affirmation.

1785 (d) The presiding officer may conduct all or part of
1786 the hearing by telephone, television, or other electronic means,
1787 if each participant in the hearing has an opportunity to
1788 participate in, to hear, and, if technically and practicably
1789 feasible, to see the entire proceeding while it is taking place.

1790 (e) The presiding officer shall cause all proceedings
1791 at the hearing to be recorded and preserved, stenographically,

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

1805 (f) The hearing is open to public observation, except
1806 for the parts that the presiding officer rules should be closed
1807 pursuant to a provision of law authorizing closure, imposing
1808 confidentiality requirements or protecting privacy rights. To the
1809 extent that a hearing is conducted by telephone, television, or
1810 other electronic means, and is not closed, the availability of
1811 public observation is satisfied by giving members of the public an
1812 opportunity, at reasonable times, to hear or inspect the agency's
1813 record, and to inspect any transcript obtained by the agency.
1814 Members of the public, including the news media, may record,
1815 photograph, broadcast, videotape or telecast all or any part of
1816 the hearing that is otherwise open to the public. The presiding
1817 officer has full authority to provide such restrictions as will
1818 avoid disruption or interference with the orderly conduct of the
1819 hearing or with any other person's participation in or observance
1820 of the hearing.

1821 SECTION 44. The following shall be codified as Section
1822 25-43-4.213, Mississippi Code of 1972:

1823 25-43-4.213. **Evidence; Official Notice.**

1824 (1) Within his discretion the presiding officer may receive
1825 and consider such evidence as reasonably prudent persons are
1826 accustomed to relying on in the conduct of their serious affairs
1827 even if such evidence would not be admissible in the trial of a
1828 civil action. To this end, the presiding officer may consider the
1829 Mississippi Rules of Evidence for guidance but should relax the
1830 formal provisions and requisites of those rules, except rules
1831 providing evidentiary privileges. The presiding officer shall
1832 respect and enforce any provision of law providing privileges,
1833 including the deliberative process privilege, imposing
1834 confidentiality requirements or protecting privacy rights, trade
1835 secrets, and other similar interests, and may enter protective
1836 orders to those ends, except that the person for whose benefit any
1837 such provision of law has been made may waive that protection.
1838 Any party waives any privacy right and any other privilege, with
1839 the exception of the lawyer-client privilege as defined in the
1840 Mississippi Rules of Evidence and the deliberative process
1841 privilege, with respect to evidence relevant to any issue, claim
1842 or defense the party asserts or puts in issue in the proceeding.
1843 The presiding officer may enter an appropriate protective order to
1844 prevent use or disclosure of such evidence outside the context of
1845 the adjudicative proceeding or judicial review thereof.

1846 (2) Upon proper objection, and in the absence of waiver, the
1847 presiding officer shall exclude evidence that is irrelevant,
1848 immaterial, unduly repetitious, or excludable on constitutional or
1849 statutory grounds or on the basis of any evidentiary privilege
1850 recognized in the courts of this state, or any other provision of
1851 law imposing confidentiality requirements or protecting privacy
1852 rights. In the absence of proper objection, the presiding officer
1853 acting *sus sponte* may exclude evidence that is redundant,
1854 repetitious or otherwise objectionable. Evidence may not be
1855 excluded solely because it is hearsay. If evidence is excluded by

1856 the hearing officer, the party offering the evidence may make an
1857 offer of proof for the record.

1858 (3) All testimony of parties and witnesses must be made
1859 under oath or affirmation.

1860 (4) Statements presented by nonparties in accordance with
1861 Section 25-43-4.212(c) may be received as evidence.

1862 (5) Subject to any applicable provision of law, including
1863 agency rule, any part of the testimony or other evidence may be
1864 received in written form, including prefiled direct testimony of
1865 witnesses who will appear at the hearing, if doing so will
1866 expedite the hearing without substantial prejudice to the
1867 interests of any party, subject to any applicable agency rule.

1868 (6) Documentary evidence may be received in the form of a
1869 copy or excerpt. Upon request, parties must be given an
1870 opportunity to compare the copy with the original if available.

1871 (7) Official notice may be taken of (a) any fact that could
1872 be judicially noticed in the courts of this state, (b) the record
1873 of other proceedings before the agency, (c) technical or
1874 scientific matters within the agency's specialized knowledge, and
1875 (d) codes or standards that have been adopted by an agency of the
1876 United States, of this state or of another state, or by a
1877 nationally recognized organization or association. Parties must
1878 be notified before or during the hearing, or before the issuance
1879 of any initial or final order that is based in whole or in part on
1880 facts or material noticed, of the specific facts or material
1881 noticed and the source thereof, including any staff memoranda and
1882 data, and be afforded an opportunity to contest and rebut the
1883 facts or material so noticed.

1884 (8) The presiding officer should consider the agency's
1885 expertise, technical competence, and specialized knowledge in the
1886 evaluation of the evidence.

1887 SECTION 45. The following shall be codified as Section
1888 25-43-4.214, Mississippi Code of 1972:

1889 25-43-4.214. **Ex parte Communications.**

1890 (1) Except as provided in subsection (2) or (3) of this
1891 section or unless required for the disposition of ex parte matters
1892 specifically authorized by statute, a presiding officer serving in
1893 an adjudicative proceeding, and any person or persons with
1894 authority to determine the outcome of such proceeding, or the
1895 agency head that may eventually review the matter on behalf of the
1896 agency, may not communicate, directly or indirectly, regarding any
1897 issue in the proceeding, while the proceeding is pending at either
1898 the adjudicative level or agency review level, with any party,
1899 with any representative of a party, with any person who has a
1900 direct or indirect interest in the outcome of the proceeding, or
1901 with any person who presided at a previous stage of the
1902 proceeding, without notice and opportunity for all parties to
1903 participate in the communication.

1904 (2) A presiding officer or any other person within
1905 subsection (1) may communicate with a party or representative
1906 regarding scheduling of hearings or other routine ministerial
1907 details not bearing on the issues in the proceeding.

1908 (3) A member of a multi-member panel of presiding officers
1909 may communicate with other members of the panel regarding a matter
1910 pending before the panel, and any presiding officer may receive
1911 aid from staff assistants if the assistants do not (a) receive ex
1912 parte communications of a type that the presiding officer would be
1913 prohibited from receiving or (b) furnish, augment, diminish, or
1914 modify the evidence in the record.

1915 (4) Unless required for the disposition of ex parte matters
1916 specifically authorized by statute, no party to an adjudicative
1917 proceeding, no representative of a party, and no person who has a
1918 direct or indirect interest in the outcome of the proceeding or
1919 who presided at a previous stage of the proceeding, may
1920 communicate, directly or indirectly, in connection with any issue
1921 in that proceeding, while the proceeding is pending at either the

1922 initial adjudicative level or agency review level, with any person
1923 serving as presiding officer, or with any person or persons with
1924 authority to determine the outcome of such proceeding, or with any
1925 agency head who may eventually review the matter on behalf of the
1926 agency, without notice and opportunity for all parties to
1927 participate in the communication.

1928 (5) If, before serving as presiding officer in an
1929 adjudicative proceeding, a person receives an ex parte
1930 communication of a type that could not properly be received while
1931 serving, the person, promptly after starting to serve, shall
1932 disclose the communication in the manner prescribed in subsection
1933 (6) of this section.

1934 (6) A presiding officer or other person who receives an ex
1935 parte communication prohibited by this section shall place on the
1936 record of the pending matter all written communications received,
1937 all written responses to the communications, and a memorandum
1938 stating the substance of all oral communications received, all
1939 responses made, and the identity of each person from whom the
1940 presiding officer or other person received an ex parte
1941 communication, and shall serve notice on all parties that these
1942 matters have been placed on the record. Any party desiring to
1943 rebut the ex parte communication must be allowed to do so, upon
1944 requesting the opportunity for rebuttal within ten (10) days after
1945 service of notice of the communication and its substance.

1946 (7) If necessary to eliminate the effect of an ex parte
1947 communication received in violation of this section, a presiding
1948 officer or other person who receives the communication may be
1949 disqualified and the portions of the record pertaining to the
1950 communication may be sealed by protective order.

1951 (8) Any party may report any willful violation of this
1952 section to appropriate authorities for any disciplinary
1953 proceedings provided by law. In addition, each agency by rule may

1954 provide for appropriate sanctions, including default, for any
1955 violations of this section.

1956 SECTION 46. The following shall be codified as Section
1957 25-43-4.215, Mississippi Code of 1972:

1958 25-43-4.215. **Separation of Functions.**

1959 (1) A person who has served as investigator, prosecutor or
1960 advocate in an adjudicative proceeding or in its preadjudicative
1961 stage may not serve as presiding officer or assist or advise a
1962 presiding officer in the same proceeding.

1963 (2) A person who is subject to the authority or direction,
1964 of one who has served as investigator, prosecutor, or advocate in
1965 an adjudicative proceeding or in its preadjudicative stage may not
1966 serve as presiding officer or assist or advise a presiding officer
1967 in the same proceeding.

1968 (3) A person who has participated in a determination of
1969 probable cause or other equivalent preliminary determination in an
1970 adjudicative proceeding may serve as presiding officer or assist
1971 or advise a presiding officer in the same proceeding, unless a
1972 party demonstrates grounds for disqualification in accordance with
1973 Section 25-43-4.202.

1974 (4) A person may serve as presiding officer at successive
1975 stages of the same adjudicative proceeding, unless a party
1976 demonstrates grounds for disqualification in accordance with
1977 Section 25-43-4.202.

1978 SECTION 47. The following shall be codified as Section
1979 25-43-4.216, Mississippi Code of 1972:

1980 25-43-4.216. **Final Order; Initial Order.**

1981 (1) If the presiding officer is the agency head, the
1982 presiding officer shall issue a final order.

1983 (2) If the presiding officer is not the agency head, the
1984 presiding officer shall issue an initial order, which becomes a
1985 final order unless reviewed in accordance with Section
1986 25-43-4.217.

1987 (3) A final order or initial order must include, separately
1988 stated:

1989 (a) Findings of fact;

1990 (b) Conclusions of law;

1991 (c) Reasoned application of law to facts; and

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

2004 (4) Findings of fact must be based on the evidence of record
2005 in the adjudicative proceeding and on matters officially noticed
2006 in that proceeding. Findings may be based upon the kind of
2007 evidence on which reasonably prudent persons are accustomed to
2008 rely in the conduct of their serious affairs and may be based on
2009 such evidence even if it would be inadmissible in a civil trial.
2010 The presiding officer may utilize his experience, technical
2011 competence, and specialized knowledge in evaluating evidence. The
2012 presiding officer should consider the legislative facts and policy
2013 judgments underlying and justifying the rule of law that is
2014 applicable to the issues at the hearing.

2015 (5) If a person serving or designated to serve as presiding
2016 officer becomes unavailable, for any reason, before issuance of
2017 the final order or initial order, a substitute presiding officer
2018 must be appointed as provided in Section 25-43-4.202. The
2019 substitute presiding officer shall use any existing record and may

2020 conduct any further proceedings appropriate in the interests of
2021 justice.

2022 (6) The presiding officer may allow the parties a designated
2023 amount of time after conclusion of the hearing for the submission
2024 of proposed findings and conclusions.

2025 (7) A final order or initial order pursuant to this section
2026 must be issued in writing within ninety (90) days after conclusion
2027 of the hearing or after submission of proposed findings in
2028 accordance with subsection (6) of this section unless this period
2029 is waived or extended with the written consent of all parties or
2030 for good cause shown.

2031 (8) The presiding officer shall serve copies of the final
2032 order or initial order on each party and on the agency head. The
2033 presiding officer may direct the agency to serve the final order
2034 or initial order.

2035 SECTION 48. The following shall be codified as Section
2036 25-43-4.217, Mississippi Code of 1972:

2037 25-43-4.217. **Review of Initial Order; Exceptions to**
2038 **Reviewability.**

2039 (1) The agency head, upon its own motion may, and upon
2040 motion by any party for review by the agency head shall, review an
2041 initial order, except to the extent that:

2042 (a) A provision of law precludes or limits agency
2043 review of the initial order; or

2044 (b) The agency head, in the exercise of discretion
2045 conferred by a provision of law:

2046 (i) Determines to review some but not all issues,
2047 or not to exercise any review;

2048 (ii) Delegates its authority to review the initial
2049 order to one or more persons; or

2050 (iii) Authorizes one or more persons to review the
2051 initial order, subject to further review by the agency head.

2052 (2) A motion for review from an initial order must be filed
2053 with the agency head, or with any person designated for this
2054 purpose by rule of the agency, and served on all parties within
2055 twenty (20) days after issuance of the initial order. If the
2056 agency head on its own motion decides to review an initial order,
2057 the agency head shall serve on all parties notice of its intention
2058 to review the initial order within twenty (20) days after its
2059 issuance.

2060 (3) The twenty (20) day period for a party to file a motion
2061 for review by the agency head or for the agency head to serve
2062 notice of its intention to review an initial order on the agency
2063 head's own motion is tolled by the filing of a timely motion for
2064 reconsideration of the initial order pursuant to Section
2065 25-43-4.219, and a new twenty-day period starts to run upon
2066 disposition of the motion for reconsideration. If an initial
2067 order is subject both to a timely motion for reconsideration and
2068 to a motion for review or to review by the agency head on its own
2069 motion, the motion for reconsideration must be disposed of first,
2070 unless the agency head determines that action on the motion for
2071 reconsideration has been unreasonably delayed.

2072 (4) A party filing a motion for agency review must state its
2073 basis within the motion. If the agency head on its own motion
2074 serves notice of its intent to review an initial order, the agency
2075 head shall identify the issues that it intends to review.

2076 (5) The reviewing officer, the agency head or other
2077 appropriate presiding officer for the review of an initial order,
2078 shall exercise all the decision-making power that the presiding
2079 officer would have had to issue a final order had the presiding
2080 officer presided over the hearing, except to the extent that the
2081 issues subject to review are limited by a provision of law or by
2082 the agency head or other presiding officer upon notice to all
2083 parties.

2084 (6) The reviewing officer, the agency head or other
2085 presiding officer reviewing the matter, shall afford each party an
2086 opportunity to present written briefs and may afford each party an
2087 opportunity to present oral argument. The reviewing officer in
2088 his discretion may allow supplemental briefs and briefs in the
2089 nature of amicus curiae briefs.

2090 (7) Before issuing a final order, the agency head or other
2091 reviewing officer may cause a transcript to be prepared, at the
2092 agency's expense, of such portions of the proceeding under review
2093 as the agency head or reviewing officer considers necessary.

2094 (8) The agency head or other reviewing officer may issue a
2095 final order disposing of the proceeding or may remand the matter
2096 for further proceedings with instructions to the presiding officer
2097 who issued the initial order. Upon remanding a matter, the agency
2098 head or other presiding officer reviewing the matter may order
2099 such temporary relief as may be authorized and appropriate.

2100 (9) A final order or an order remanding the matter for
2101 further proceedings must be issued in writing within sixty (60)
2102 days after service of the last brief or oral argument, if any,
2103 whichever is later, unless that period is waived or extended with
2104 the written consent of all parties or for good cause shown.

2105 (10) A final order or an order remanding the matter for
2106 further proceedings under this section must identify any
2107 difference between this order and the initial order and must
2108 include, or incorporate by express reference to the initial order,
2109 all the matters required by Section 25-43-216(c).

2110 (11) Upon remand, the presiding officer shall issue in
2111 writing an initial order resolving the matter on remand within
2112 sixty (60) days after service of the order of remand, unless this
2113 period is waived or extended with the written consent of all of
2114 the parties or for good cause shown.

2115 (12) The agency head or other presiding officer reviewing
2116 the matter shall serve copies of the final order or order

2117 remanding the matter for further proceedings on each party and, if
2118 issued by other presiding officer, on the agency head.

2119 SECTION 49. The following shall be codified as Section
2120 25-43-4.218, Mississippi Code of 1972:

2121 25-43-4.218. **Stay.**

2122 (1) Except as otherwise provided by law, no action for
2123 enforcement of a final order may be taken until the expiration of
2124 ten (10) days after the later of (a) the issuance of the order or
2125 (b) the issuance of the final disposition of a motion made under
2126 Section 25-43-4.219.

2127 (2) A party may move for a stay of effectiveness of an
2128 initial or final order within ten (10) days after its issuance
2129 unless otherwise provided by statute or stated in the initial or
2130 final order. The agency head or other presiding officer may take
2131 action on the motion for stay, either before or after the
2132 effective date of the initial or final order, and, if the stay is
2133 granted, provide appropriate terms that must be satisfied before
2134 the stay becomes effective.

2135 SECTION 50. The following shall be codified as Section
2136 25-43-4.219, Mississippi Code of 1972:

2137 25-43-4.219. **Alteration; Amendment; Reconsideration.**

2138 Unless otherwise provided by statute or rule:

2139 (a) Any party, within twenty (20) days after issuance
2140 of an initial order or final order, may move for alteration,
2141 amendment, or reconsideration of the order, in whole or in part,
2142 stating the specific grounds upon which relief is requested. The
2143 filing of the motion is not a prerequisite for seeking
2144 administrative or judicial review.

2145 (b) The motion must be disposed of by the same person
2146 or persons who issued the initial order or final order, if
2147 available.

2148 (c) The agency head or presiding officer that issued
2149 the initial order or final order shall issue a written order

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

2161 SECTION 51. The following shall be codified as Section
2162 25-43-4.220, Mississippi Code of 1972:

2163 25-43-4.220. **Review by Superior Agency.**

2164 If, pursuant to statute, an agency may review the final order
2165 of another agency, the review is deemed to be a continuous
2166 proceeding as if before a single agency. The final order of the
2167 first agency is treated as an initial order, and the second agency
2168 functions as though it were reviewing an initial order in
2169 accordance with Section 25-43-4.217.

2170 SECTION 52. The following shall be codified as Section
2171 25-43-4.221, Mississippi Code of 1972:

2172 25-43-4.221. **Effectiveness of Orders.**

2173 (1) Unless a later date is stated in a final order or a stay
2174 is granted, a final order is effective twenty (20) days after
2175 issuance, but:

2176 (a) A party may not be required to comply with a final
2177 order unless the party has been served with or otherwise has
2178 actual knowledge of the final order;

2179 (b) A nonparty may not be required to comply with a
2180 final order unless the agency has made the final order available
2181 for public inspection and copying or the nonparty has actual
2182 knowledge of the final order.

2183 (2) Unless a later date is stated in an initial order or a
2184 stay is granted, the time when an initial order becomes a final
2185 order in accordance with Section 25-43-4.216 is determined as
2186 follows:

2187 (a) When the initial order is issued, if administrative
2188 review is unavailable;

2189 (b) When the agency head issues an order stating, after
2190 a motion for review has been filed, that review will not be
2191 exercised, if discretion is available to make a determination to
2192 this effect; or

2193 (c) Twenty (20) days after issuance of the initial
2194 order, if:

2195 (i) No party has filed a motion for administrative
2196 review;

2197 (ii) No party has filed a motion to alter, amend
2198 or reconsider the order; and

2199 (iii) The agency head has not given written notice
2200 of its intention to exercise review.

2201 (3) Unless a later date is stated in an initial order or a
2202 stay is granted, an initial order that becomes a final order in
2203 accordance with subsection (2) of this section and Section
2204 25-43-4.216 is effective after becoming a final order, but:

2205 (a) A party may not be required to comply with the
2206 final order unless the party has been served with or has actual
2207 knowledge of the initial order or of an order stating that review
2208 will not be exercised; and

2209 (b) A nonparty may not be required to comply with the
2210 final order unless the agency has made the initial order available
2211 for public inspection and copying or the nonparty has actual
2212 knowledge of the initial order or of an order stating that review
2213 will not be exercised.

2214 (4) This section does not preclude an agency from taking
2215 immediate action to protect the public interest in accordance with
2216 Section 25-43-4.601.

2217 SECTION 53. The following shall be codified as Section
2218 25-43-4.222, Mississippi Code of 1972:

2219 25-43-4.222. **Agency Record.**

2220 (1) An agency shall maintain an official record of each
2221 adjudicative proceeding under this part.

2222 (2) The agency record consists of all matters received by
2223 the agency pertaining to the proceeding, which may include but are
2224 not limited to:

2225 (a) Applications for adjudicative proceedings and
2226 amendments thereto;

2227 (b) Notices of all proceedings;

2228 (c) Any prehearing order;

2229 (d) Any pleadings, motions, requests, and intermediate
2230 rulings;

2231 (e) Evidence received or considered;

2232 (f) A statement of matters officially noticed;

2233 (g) Any public comment received by the agency;

2234 (h) Any comment received by the agency from another
2235 agency, including federal agencies;

2236 (i) Proffers of evidence and objections and rulings
2237 thereon;

2238 (j) Proposed findings and conclusions, requested
2239 orders, and exceptions;

2240 (k) The record prepared for the presiding officer at
2241 the hearing, together with any transcript of all or part of the
2242 hearing considered before final disposition of the proceeding;

2243 (l) Staff memoranda, data or recommendations submitted
2244 to the presiding officer, unless prepared and submitted by
2245 personal assistants and not inconsistent with Section
2246 25-43-4.214(3);

2247 (m) Matters placed on the record after an ex parte
2248 communication;

2249 (n) Any and all other matters filed with the agency by
2250 any person with the apparent purpose of affecting the outcome of
2251 the proceeding; and

2252 (o) Any final order, initial order, or order of
2253 alteration, amendment or reconsideration.

2254 (3) Except to the extent that this chapter or another
2255 statute provides otherwise, the agency record constitutes the
2256 exclusive basis for agency action in adjudicative proceedings
2257 under this part and for judicial review thereof.

2258 (4) Upon appropriate and timely suggestion, the agency may
2259 require or permit subsequent corrections or additions to the
2260 agency record.

2261 (5) Upon request and as may be required by law, on judicial
2262 review, civil enforcement or otherwise, the agency shall prepare
2263 the agency record. The agency has the exclusive responsibility to
2264 prepare and exclusive authority to certify the record or any part
2265 thereof, including but not limited to any transcript of
2266 proceedings, and the agency's certificate shall be accepted by the
2267 court and by any other agency.

2268 (6) Subject to the limitations of this chapter, an agency
2269 may by rule provide the formal process for its preparation and
2270 certification of the agency record.

2271 **PART III**

2272 **DIVISION OF INDEPENDENT HEARING OFFICERS**

2273 SECTION 54. The following shall be codified as Section
2274 25-43-4.301, Mississippi Code of 1972:

2275 25-43-4.301. **Division of Independent Hearing Officers -**
2276 **Creation, Powers, Duties.**

2277 (1) There is created the Division of Independent Hearing
2278 Officers within the Executive Department of the government of the
2279 State of Mississippi, to be headed by a director appointed by the

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

2285 (2) The Division of Independent Hearing Officers shall
2286 employ persons as necessary to service the needs of agencies for
2287 hearing officers to conduct adjudicative proceedings as required
2288 by this chapter or other provision of law. The division may
2289 employ persons as full-time employees of the division or as
2290 part-time employees of the division. The division may engage the
2291 services of persons on any other contractual basis. The director
2292 may serve as a hearing officer. The division will ordinarily
2293 provide hearing officers to preside at adjudicative proceedings
2294 only where requested by an agency and where an agency is an
2295 interested party to the proceedings and not merely a neutral
2296 arbiter with no significant stake in the outcome of the
2297 proceedings beyond an interest that the proceedings be promptly,
2298 efficiently, fairly, and justly administered.

2299 (3) The Division of Independent Hearing Officers is
2300 authorized to hire persons with the following qualifications:

2301 (a) Attorneys licensed to practice law for a minimum of
2302 five (5) years;

2303 (b) Certified public accountants with a minimum of five
2304 (5) years of professional experience;

2305 (c) Such other qualified professionals in areas other
2306 than law and accounting as needed by the agencies requiring the
2307 services of hearing officers whose services have been engaged or
2308 contracted for by the Division of Independent Hearing Officers.

2309 (4) The persons whose services are engaged by the division
2310 to preside at adjudicative proceedings shall be known as hearing
2311 officers.

2312 (5) The division may furnish hearing officers to any agency
2313 on a contractual basis and charge the agency reasonable fees for
2314 the services rendered. Any agency receiving the services of
2315 hearing officers provided by the division is authorized to pay the
2316 fees charged by the division.

2317 (6) The division shall have authority:

2318 (a) To further specify qualifications for hearing
2319 officers as the needs of agencies become known, to establish
2320 salaries for the hearing officers, procedures by which applicants
2321 will be considered for employment, and the manner in which public
2322 notice of vacancies in the staff of the division will be given;

2323 (b) To enter into contracts with qualified persons who
2324 will serve as part-time hearing officers on such terms and
2325 conditions as may be appropriate and agreed upon subject to the
2326 provisions of this chapter;

2327 (c) To establish procedures for agencies to request and
2328 for the director to assign hearing officers consistent with this
2329 chapter;

2330 (d) To receive, consider and respond to agency needs
2331 for hearing officers with special education, training and
2332 experience in the area or field in which the agency is charged
2333 with regulatory and administrative responsibilities;

2334 (e) To solicit and receive from agencies
2335 recommendations for individuals who may serve as hearing officers,
2336 part-time hearing officers or contract hearing officers;

2337 (f) From time to time, to survey the agencies and a
2338 representative sampling of persons regulated by the respective
2339 agencies to discover the history, experience, current requirements
2340 and future needs of and for hearing officers in adjudicative
2341 proceedings and, with the cooperation of the agencies, to assess
2342 the professional quality, experience and performance of hearing
2343 officers;

2344 (g) To establish internal procedures that apply only
2345 within the division and adopt forms consistent with this chapter,
2346 the model rules of procedure, and other provision of law, to
2347 govern the hearing officers and to assure their independence in
2348 the performance of their duties;

2349 (h) To establish, implement and enforce policies and
2350 standards for the fair, speedy and cost-effective determination of
2351 each matter requiring an adjudicative proceeding under this
2352 chapter or other provision of law;

2353 (i) To establish standards and procedures for the
2354 evaluation, training, promotion, and discipline of the hearing
2355 officers;

2356 (j) To convene conferences, continuing legal,
2357 regulatory and administrative education programs and training
2358 seminars in the fields of administrative law, public regulation,
2359 and public administration;

2360 (k) To participate in, and expend any funds available
2361 to it, to enable its hearing officers and other employees to
2362 participate in conferences in state and out of state for
2363 continuing legal, regulatory and administrative education and
2364 training, colleges, seminars and other programs;

2365 (l) To maintain a library for use by the division, its
2366 employees, contractors, agencies and the public;

2367 (m) To accept monies, gifts, grants, equipment or
2368 services from any public or private source and use those for any
2369 purpose authorized by this section;

2370 (n) To cooperate with any individual or public agency,
2371 whether state or federal, or with any law school, school of
2372 political science, government, public administration, business or
2373 other similar school, public or private, to improve the quality of
2374 administrative law, public regulation and public administration in
2375 this state;

2376 (o) To maintain records, compile statistics and
2377 otherwise gather and keep information reasonably necessary to
2378 maintain and enhance the quality of administrative law, public
2379 regulation and public administration in this state;

2380 (p) To employ such personnel as may be necessary to
2381 carry out its duties and responsibilities;

2382 (q) To engage such persons and acquire such equipment
2383 as may be reasonably necessary to record and preserve in any
2384 technically and practicably feasible manner all matters and
2385 proceedings had at any adjudicative hearing and to assist the
2386 agency in preparing the record under Section 25-43-4.222(5) and
2387 generally to facilitate the preparation of the agency record of
2388 any such proceeding for administrative review, judicial review,
2389 civil enforcement or other purposes;

2390 (r) To purchase, lease or otherwise acquire the use of
2391 office space and equipment and maintain the same as may be
2392 reasonably necessary;

2393 (s) To prepare an annual budget for the operation of
2394 the division, to make appropriate and timely requests for funding,
2395 and to administer and otherwise oversee the implementation of such
2396 funding requests and budget;

2397 (t) To adopt rules to implement the powers and
2398 authorities conferred upon the division by law;

2399 (u) To otherwise implement the provisions of this
2400 section and rules adopted under the authority of the division.

2401 **PART IV**

2402 **INFORMAL ADJUDICATIVE HEARING**

2403 SECTION 55. The following shall be codified as Section
2404 25-43-4.401, Mississippi Code of 1972:

2405 25-43-4.401. **Informal Adjudicative Hearing - Applicability.**

2406 (1) An agency may use an informal adjudicative hearing if
2407 its use in the circumstances does not violate any provision of law
2408 and the matter is entirely within one or more categories for which

2409 the agency by rule has adopted this part; however, those
2410 categories may include only the following:

2411 (a) A matter in which there is no genuine issue of
2412 material fact; or

2413 (b) A matter in which there is a genuine issue of
2414 material fact, if the matter involves only;

2415 (i) A claim for unemployment compensation benefits
2416 within Title 71, Chapter 5, Article 11, Mississippi Code of 1972;

2417 (ii) A disciplinary sanction against a prisoner;

2418 (iii) A disciplinary sanction against a student
2419 which may involve expulsion from an academic institution or
2420 suspension for more than ten (10) days;

2421 (iv) A disciplinary sanction against a public
2422 employee which does not involve discharge from employment or
2423 suspension for more than ten (10) days;

2424 (v) A disciplinary sanction against a licensee
2425 which does not involve revocation, suspension, annulment,
2426 withdrawal, or amendment of a license or does not involve a
2427 potential penalty of more than Five Thousand Dollars (\$5,000.00);

2428 (vi) Revocation or suspension of a hunting,
2429 fishing, trapping or other similar license issued under Title 49,
2430 Chapter 7, Mississippi Code of 1972; or

2431 (vii) Any other matter that involves an amount in
2432 controversy of not more than Five Thousand Dollars (\$5,000.00);

2433 (c) A matter in which all of the parties give their
2434 informed consent and agreement that an informal adjudicative
2435 hearing may be used.

2436 (2) The agency may by rule adopt and implement this part.

2437 SECTION 56. The following shall be codified as Section
2438 25-43-4.402, Mississippi Code of 1972:

2439 25-43-4.402. **Informal Adjudicative Hearing - Procedures.**

2440 The procedures of this chapter pertaining to formal
2441 adjudicative hearings apply to an informal adjudicative hearing,
2442 except to the following extent:

2443 (a) If a matter is initiated as an informal
2444 adjudicative hearing, no prehearing conference may be held.

2445 (b) The provisions of Section 25-43-4.210 do not apply
2446 to informal adjudicative hearings insofar as those provisions
2447 authorize the issuance and enforcement of subpoenas and discovery
2448 orders, but do apply to informal adjudicative hearings insofar as
2449 those provisions authorize the presiding officer to issue
2450 protective orders at the request of any party or upon the
2451 presiding officer's motion.

2452 (c) Sections 25-43-4.212(a), (b) and (c) and
2453 25-43-4.213 do not apply; but:

2454 (i) The presiding officer shall regulate the
2455 course of the proceedings;

2456 (ii) Only the parties may testify and present
2457 exhibits or other evidence except that the presiding officer for
2458 good cause shown may allow others to testify and present exhibits
2459 or other evidence; and

2460 (iii) The parties may comment on the issues.

2461 SECTION 57. The following shall be codified as Section
2462 25-43-4.403, Mississippi Code of 1972:

2463 25-43-4.403. **Informal Adjudicative Hearing - Proposed Proof.**

2464 (1) If the presiding officer has reason to believe that
2465 there are genuine issues of material fact, the presiding officer
2466 may require any party to state the identity of the witnesses or
2467 other sources through whom the party would propose to present
2468 proof if the proceeding were converted to a formal adjudicative
2469 hearing, but the presiding officer shall respect and enforce any
2470 provision of law providing privileges, including the deliberative
2471 process privilege, imposing confidentiality requirements or
2472 protecting privacy rights, trade secrets, and other similar

2473 interests, and may enter protective orders to those ends, except
2474 that the person for whose benefit any such provision of law has
2475 been made may waive that protection. Any party waives any privacy
2476 right or any other privilege, with the exception of the
2477 lawyer-client privilege as defined in the Mississippi Rules of
2478 Evidence, and the deliberative process privilege, with respect to
2479 evidence relevant to any issue, claim or defense the party asserts
2480 or puts in issue in the proceeding. The presiding officer may
2481 enter an appropriate protective order to prevent use or disclosure
2482 of such evidence outside the context of the adjudicative
2483 proceeding or judicial review thereof.

2484 (2) If a party has reason to believe that essential facts
2485 must be obtained in order to permit an adequate presentation of
2486 the case, the party may inform the presiding officer regarding the
2487 general nature of the facts and the sources from whom the party
2488 would propose to obtain those facts if the proceeding were
2489 converted to a formal adjudicative hearing.

2490 **PART V**

2491 **BASIC ADJUDICATIVE PROCEEDINGS**

2492 SECTION 58. The following shall be codified as Section
2493 25-43-4.501, Mississippi Code of 1972:

2494 25-43-4.501. **Basic Adjudicative Proceedings -**
2495 **Applicability.**

2496 (1) An agency may use a basic adjudicative proceeding if its
2497 use in the circumstances does not violate any provision of law and
2498 the matter is entirely within one or more categories for which the
2499 agency by rule has adopted Sections 25-43-4.502 through
2500 25-43-4.505; however, these categories may include only the
2501 following:

2502 (a) A matter in which the protection of the public
2503 interest does not require the agency to serve notice and give an
2504 opportunity to participate to persons other than the parties;

2505 (b) A disciplinary sanction against a student which is
2506 not expulsion from an academic institution and is potentially a
2507 suspension for ten (10) days or less;

2508 (c) A matter in which the amount in controversy is not
2509 more than One Hundred Dollars (\$100.00);

2510 (d) The denial of an application after the applicant
2511 has abandoned the application;

2512 (e) The denial of an application for admission to an
2513 educational institution or for employment by an agency;

2514 (f) The denial, in whole or in part, of an application
2515 if the applicant has an opportunity for administrative review in
2516 accordance with Section 25-43-4.503;

2517 (g) A matter that may be resolved solely on the basis
2518 of inspection, examinations, or tests;

2519 (h) Any matter having only trivial potential impact
2520 upon the affected parties; or

2521 (i) A matter in which all of the parties have given
2522 their informed consent and agreement that a basic adjudicative
2523 hearing may be used.

2524 (2) An agency may by rule adopt and implement this part.

2525 SECTION 59. The following shall be codified as Section
2526 25-43-4.502, Mississippi Code of 1972:

2527 25-43-4.502. **Basic Adjudicative Proceedings - Procedures.**

2528 (1) The agency head, one or more members of the agency head,
2529 one or more hearing officers or administrative judges employed or
2530 appointed by the agency, or one or more hearing officers assigned
2531 by the Division of Independent Hearing Officers in accordance with
2532 Section 25-43-4.301, or any combination thereof, in the discretion
2533 of the agency head, may be the presiding officer. Unless
2534 prohibited by law, a person exercising authority over the matter
2535 is the presiding officer.

2536 (2) If the proceeding involves a monetary matter or a
2537 reprimand, warning, disciplinary report, or other sanction:

2538 (a) The presiding officer, before taking action, shall
2539 give each party an opportunity to be informed of the agency's view
2540 of the matter and to explain the party's view of the matter; and

2541 (b) The presiding officer, at the time any unfavorable
2542 action is taken, shall give each party a brief statement of
2543 findings of fact, conclusions of law, and policy reasons for the
2544 decision if it is an exercise of the agency's discretion, to
2545 justify the action, and a notice of any available administrative
2546 review.

2547 (3) The agency, by reasonable means, shall serve a copy of
2548 the order in a basic adjudicative proceeding on each party. The
2549 order must include at least a statement of the agency's action and
2550 a notice of any available administrative review.

2551 (4) If after reasonable advance notice of a basic
2552 adjudicative hearing, a party fails to attend or participate in
2553 the hearing, the presiding officer may declare the party in
2554 default and enter a default order. The agency must promptly serve
2555 the default order on the party found in default. For good cause,
2556 the presiding officer may modify or rescind the default order.

2557 (5) An agency may by rule provide for additional procedures
2558 for basic adjudicative proceedings, not inconsistent with this
2559 chapter or other provision of law.

2560 SECTION 60. The following shall be codified as Section
2561 25-43-4.503, Mississippi Code of 1972:

2562 25-43-4.503. **Administrative Review of Basic Adjudicative**
2563 **Proceedings - Applicability.**

2564 Unless prohibited by any provision of law, an agency, on its
2565 own motion, may conduct administrative review of an order
2566 resulting from basic adjudicative proceedings, and shall conduct
2567 this review upon the written request of a party if the agency
2568 receives the request within twenty (20) days after serving notice
2569 under Section 25-5-4.502(3).

2570 SECTION 61. The following shall be codified as Section
2571 25-43-4.504, Mississippi Code of 1972:

2572 25-43-4.504. **Administrative Review of Basic Adjudicative**
2573 **Proceedings - Procedures.**

2574 Unless otherwise provided by statute or rule:

2575 (a) An agency need not serve notification of the
2576 pendency of administrative review to any person who did not
2577 request the review, but the agency may not take any action on
2578 review less favorable to any party than the original order without
2579 giving that party notice and an opportunity to explain that
2580 party's view of the matter.

2581 (b) The reviewing officer, in the discretion of the
2582 agency head, may be any person who could have presided at the
2583 basic adjudicative proceeding, but the reviewing officer must be
2584 one who is authorized to grant appropriate relief upon review.

2585 (c) The reviewing officer shall give each party an
2586 opportunity to explain the party's view of the matter unless the
2587 party's view is apparent from the written materials in the file
2588 submitted to the reviewing officer. The reviewing officer shall
2589 make any inquiries necessary to ascertain whether the proceeding
2590 must be converted to an informal adjudicative hearing or a formal
2591 adjudicative hearing.

2592 (d) The reviewing officer may issue an order disposing
2593 of the proceeding in any manner that was available to the
2594 presiding officer at the basic adjudicative proceeding, or the
2595 reviewing officer may remand the matter for further proceedings,
2596 with or without conversion to an informal adjudicative hearing or
2597 a formal adjudicative hearing.

2598 (e) The order on review must be in writing, including a
2599 brief statement of reasons for the decision, and a notice of any
2600 further available administrative review.

2601 (f) A request for administrative review is deemed to
2602 have been denied if the reviewing officer does not dispose of the

2603 matter or remand it for further proceedings within twenty (20)
2604 days after the request is submitted.

2605 SECTION 62. The following shall be codified as Section
2606 25-43-4.505, Mississippi Code of 1972:

2607 25-43-4.505. **Agency Record of Basic Adjudicative Proceedings**
2608 **and Administrative Review.**

2609 (1) The agency record consists of any documents regarding
2610 the matter that were considered or prepared by the presiding
2611 officer for the basic adjudicative proceeding or by the reviewing
2612 officer for any review. The agency shall maintain these documents
2613 as its official record.

2614 (2) Unless otherwise required by a provision of law, the
2615 agency record need not constitute the exclusive basis for agency
2616 action in basic adjudicative proceedings or for judicial review
2617 thereof.

2618 **PART VI**

2619 **EMERGENCY ADJUDICATIVE PROCEEDINGS**

2620 SECTION 63. The following shall be codified as Section
2621 25-43-4.601, Mississippi Code of 1972:

2622 25-43-4.601. **Emergency Adjudicative Proceedings.**

2623 (1) An agency may use emergency adjudicative proceedings in
2624 a situation involving a clear and present danger to the public
2625 health, safety or welfare requiring immediate agency action.
2626 Subject to this chapter and other applicable law, an agency may
2627 provide by rule for the use of emergency adjudicative proceedings,
2628 including rules providing for the delegation of initial
2629 decision-making authority.

2630 (2) Except as provided in subsection (3) of this section, an
2631 agency may take only such action as is necessary to prevent or
2632 avoid a clear and present danger to the public health, safety or
2633 welfare that justifies use of emergency adjudication.

2634 (3) An agency may comply with more stringent immediate
2635 requirements of federal law or regulation or with any interstate
2636 compact.

2637 (4) An agency may respect any party's due process right to
2638 reasonable advance notice and the opportunity to be heard.

2639 (5) The agency shall issue an order, including a brief
2640 statement of findings of fact, conclusions of law, and policy
2641 reasons for the decision if it is an exercise of the agency's
2642 discretion, to justify the finding of a clear and present danger
2643 and the agency's decision to take the specific action.

2644 (6) The agency shall give such notice as is practicable to
2645 persons who are required to comply with the order. The order is
2646 effective when served.

2647 (7) After service of an order pursuant to this section, any
2648 person subject to the order may, upon the filing of a written
2649 request, require the agency to provide within three (3) days of
2650 filing the request an emergency hearing before a person or persons
2651 assigned by the Division of Independent Hearing Officers who shall
2652 hear the person subject to the order present any matter in
2653 objection to the order and who shall hear the agency on any matter
2654 in support and justification of the order. The hearing may be
2655 continued at the request of the person subject to the order.
2656 After hearing these matters, the hearing officer shall have
2657 authority to modify the order subject to the criteria of
2658 subsections (2) and (3) of this section.

2659 (8) After issuing an order pursuant to this section, the
2660 agency shall treat the matter as a preference case and expedite
2661 the proceedings, as feasible, to complete any proceedings that
2662 would be required if the matter did not involve a clear and
2663 present danger.

2664 (9) The agency record consists of any documents regarding
2665 the matter that were considered or prepared by the agency. The
2666 agency shall maintain these documents as its official record.

2667 (10) Unless otherwise required by a provision of law, the
2668 agency record need not constitute the exclusive basis for agency
2669 action in emergency adjudicative proceedings or for judicial
2670 review thereof.

2671 **ARTICLE V**

2672 **JUDICIAL REVIEW AND CIVIL ENFORCEMENT**

2673 **PART I**

2674 **JUDICIAL REVIEW**

2675 SECTION 64. The following shall be codified as Section
2676 25-43-5.101, Mississippi Code of 1972:

2677 **25-43-5.101. Relationship Between this chapter and Other Law**
2678 **on Judicial Review and Other Judicial Remedies.**

2679 (1) Except as provided in subsection (3),(4),(5) or (6) of
2680 this section, this chapter establishes the exclusive means of
2681 judicial review of agency action.

2682 (2) Proceedings for judicial review shall be governed by the
2683 Mississippi Rules of Appellate Procedure. Any matter of practice
2684 or procedure respecting judicial review of agency action which is
2685 not addressed by the Mississippi Rules of Appellate Procedure
2686 shall be governed by this chapter.

2687 (3) If the relief available under this chapter is not equal
2688 or substantially equivalent to the relief otherwise available
2689 under law, the relief otherwise available and the related
2690 procedures supersede and supplement this chapter to the extent
2691 reasonably necessary for their effectuation. The applicable
2692 provisions of this chapter and other law must be combined and
2693 harmonized to the extent reasonably practicable to govern a single
2694 proceeding or, if the court orders, two (2) or more separate
2695 proceedings, but no type of relief may be sought in a combined
2696 proceeding after expiration of the time limit for doing so.

2697 (4) Proceedings for declaratory judgments and injunctive
2698 relief respecting agency action, where expressly allowed by a
2699 statute other than as contained in this chapter, shall be governed

2700 by the Mississippi Rules of Civil Procedure and other applicable
2701 law.

2702 (5) Proceedings for extraordinary writs such as writs of
2703 mandamus and prohibition with regard to agency action may be
2704 brought only before the Supreme Court or the Court of Appeals.
2705 Such proceedings shall be governed by Mississippi Code, Title 11,
2706 Chapter 41, the Mississippi Rules of Appellate Procedure and other
2707 provisions of law. In a proceeding for judicial review a party,
2708 in addition or in the alternative, may seek an extraordinary writ.

2709 (6) Upon the motion of a party, or upon the court's own
2710 motion, acting sua sponte, a proceeding for judicial review of
2711 agency action may be converted to an application for an
2712 extraordinary writ, and, conversely, an application for an
2713 extraordinary writ may be converted to a proceeding for judicial
2714 review. In the event of conversion, the converted action shall
2715 relate back to the time of the original action.

2716 (7) Declaratory opinions issued pursuant to Section
2717 25-43-2.103 are not subject to judicial review.

2718 (8) "Party to judicial review or civil enforcement
2719 proceedings," or "party" in contexts so indicating, means:

2720 (a) A person who files a notice of judicial review or a
2721 complaint for civil enforcement;

2722 (b) A person named as a party in a proceeding for
2723 judicial review or civil enforcement or allowed to participate as
2724 a party in the proceeding; and

2725 (c) The agency in a proceeding for judicial review or
2726 civil enforcement.

2727 SECTION 65. The following shall be codified as Section
2728 25-43-5.102, Mississippi Code of 1972:

2729 25-43-5.102. **Final Agency Action Reviewable.**

2730 A person who qualifies under this chapter regarding (a)
2731 standing (Section 25-43-5.106), (b) exhaustion of administrative
2732 remedies (Section 25-43-5.107), and (c) time for filing the notice

2733 of judicial review (Section 25-43-5.108), and other applicable
2734 provisions of law regarding bond, compliance, and other
2735 preconditions, is entitled to judicial review of final agency
2736 action, whether or not the person has sought judicial review of
2737 any related nonfinal agency action.

2738 SECTION 66. The following shall be codified as Section
2739 25-43-5.103, Mississippi Code of 1972:

2740 25-43-5.103. **Nonfinal Agency Action Reviewable.**

2741 Except as provided in Sections 25-43-5.101(3), (4), (5) and
2742 (6), a person is entitled to judicial review of nonfinal agency
2743 action only if:

2744 (a) It appears likely that the person will qualify
2745 under Section 25-43-5.102 for judicial review of the related final
2746 agency action;

2747 (b) The person has applied to the agency for an order
2748 for judicial review of nonfinal agency action and the agency has
2749 granted or denied the application, provided that the agency
2750 ordinarily should give its reasons for granting or denying the
2751 application; and

2752 (c) The criteria of the Mississippi Rules of Appellate
2753 Procedure respecting interlocutory appeals or of the Mississippi
2754 Rules of Civil Procedure respecting a judgment upon multiple
2755 claims or involving multiple parties are satisfied.

2756 SECTION 67. The following shall be codified as Section
2757 25-43-5.104, Mississippi Code of 1972:

2758 25-43-5.104. **Jurisdiction.**

2759 (1) The Mississippi Court of Appeals has authority to
2760 conduct judicial review except as provided:

2761 (a) In Title 77, in the case of judicial review of
2762 agency action of the Mississippi Public Service Commission;

2763 (b) In Sections 71-5-529, 71-5-531, 71-5-533 in the
2764 case of judicial review of agency action of the Mississippi
2765 Employment Security Commission; and

2766 (c) In Sections 25-43-5.101(3), (4), (5) and (6).

2767 (2) If evidence is to be adduced in the court in accordance
2768 with Section 25-43-5.114(1), the court may remand the matter:

2769 (a) To the agency with appropriate directions; or

2770 (b) If the court determines in its sound discretion

2771 that the nature of one or more issues upon which new evidence may
2772 be taken is such that remand to the agency would be inappropriate,
2773 to a master as provided by the Mississippi Rules of Civil
2774 Procedure, provided that, in addition to the provisions of the
2775 Mississippi Rules of Civil Procedure:

2776 (i) Any person eligible for appointment as a
2777 special judge under Section 9-1-105(6) is eligible for appointment
2778 as a master; or

2779 (ii) The Division of Independent Hearing Officers
2780 may supply a person who becomes eligible for appointment as a
2781 master.

2782 (3) Except as provided otherwise by this chapter or other
2783 statute, an agency retains jurisdiction as may be appropriate,
2784 convenient and otherwise necessary pending judicial review.

2785 SECTION 68. The following shall be codified as Section
2786 25-43-5.105, Mississippi Code of 1972:

2787 25-43-5.105. **Notice of Judicial Review; Relief Available.**

2788 (1) Except as provided in Title 77, and in Sections
2789 71-5-529, 71-5-531, and 71-5-533, judicial review is initiated by
2790 filing a notice of judicial review in the Court of Appeals.
2791 Failure of a party initiating a proceeding for judicial review to
2792 take any step other than the timely filing of a notice of judicial
2793 review does not affect the perfection of the proceeding for
2794 judicial review, but is grounds only for such action as the court
2795 deems appropriate, which may include dismissal of the proceeding
2796 for judicial review.

2797 (2) A party initiating a proceeding for judicial review may
2798 seek any type of relief available under Section 25-43-5.101(3),
2799 (4), (5) or (6) or 25-43-5.117 or other law.

2800 SECTION 69. The following shall be codified as Section
2801 25-43-5.106, Mississippi Code of 1972:

2802 25-43-5.106. **Standing.**

2803 (1) The following persons have standing to obtain judicial
2804 review of final or nonfinal agency action:

2805 (a) A person to whom the agency action is specifically
2806 directed;

2807 (b) A person who was a party to the agency proceedings
2808 that led to the agency action;

2809 (c) If the agency action, review of which is sought, is
2810 a rule, a person subject to that rule or an association some of
2811 whose members are subject to that rule;

2812 (d) A person eligible for standing under another
2813 provision of law; or

2814 (e) A person otherwise aggrieved or adversely affected
2815 by the agency action or an association one or more of whose
2816 members are aggrieved or adversely affected by the agency action.
2817 For purposes of this paragraph, no person has standing as one
2818 otherwise aggrieved or adversely affected unless:

2819 (i) The agency action has arguably affected or is
2820 arguably likely to affect that person;

2821 (ii) That person's asserted interests are arguably
2822 among those that the agency was required to consider when it
2823 engaged in the agency action review of which is sought; and

2824 (iii) A judgment in favor of that person may
2825 substantially eliminate or redress the arguable effect to or upon
2826 that person caused or arguably likely to be caused by the agency
2827 action.

2828 (2) A claim that the decision in a proceeding for judicial
2829 review may be given precedential effect that may affect a person

2830 is, without more, insufficient grounds upon which the court may
2831 find that the person has standing. Even though he may lack
2832 standing, the person may apply for leave to file a brief as amicus
2833 curiae under the Mississippi Rules of Appellate Procedure.

2834 (3) A claim (1) that he is a citizen, a voter or a taxpayer
2835 or (2) that he has an interest that the law be enforced is,
2836 without more, insufficient grounds upon which the court may find
2837 that a person has standing.

2838 SECTION 70. The following shall be codified as Section
2839 25-43-5.107, Mississippi Code of 1972:

2840 25-43-5.107. **Exhaustion of Administrative Remedies.**

2841 A person may file a notice of judicial review under this
2842 chapter only after exhausting all administrative remedies
2843 available within the agency review of whose action is being sought
2844 and within any other agency authorized to exercise administrative
2845 review, but:

2846 (a) A person seeking judicial review of a rule need not
2847 have participated in the rule-making proceeding upon which that
2848 rule is based, or have moved for its amendment or repeal;

2849 (b) A person seeking judicial review need not exhaust
2850 administrative remedies to the extent that this chapter or any
2851 other law provides that exhaustion is not required; or

2852 (c) The court may relieve a person seeking judicial
2853 review of the requirement to exhaust any or all administrative
2854 remedies, to the extent that the administrative remedies are
2855 inadequate, or requiring their exhaustion would result in
2856 irreparable harm disproportionate to the public benefit derived
2857 from requiring exhaustion.

2858 SECTION 71. The following shall be codified as Section
2859 25-43-5.108, Mississippi Code of 1972:

2860 25-43-5.108. **Time for Filing Notice of Judicial Review.**

2861 Subject to other requirements of this chapter or of any other
2862 law:

2863 (a) A notice of judicial review of a rule may be filed
2864 at any time, except as limited by Section 25-43-3.113(2).

2865 (b) A notice of judicial review of an order is not
2866 timely unless filed within thirty (30) days after issuance of the
2867 written order by a person authorized to act for the agency.

2868 (c) The time for filing notice of judicial review is
2869 extended during the pendency of the person's timely attempts to
2870 exhaust administrative remedies.

2871 SECTION 72. The following shall be codified as Section
2872 25-43-5.109, Mississippi Code of 1972:

2873 25-43-5.109. **Notice of Judicial Review - Filing and**
2874 **Contents.**

2875 (1) Except as provided in Title 77, and in Sections
2876 71-5-529, 71-5-531 and 71-5-533, a notice of judicial review must
2877 be filed with the clerk of the Court of Appeals, who is the clerk
2878 of the Supreme Court.

2879 (2) A notice of judicial review should set forth:

2880 (a) The name and mailing address of each person seeking
2881 judicial review;

2882 (b) The name and mailing address of the agency whose
2883 action is at issue;

2884 (c) Identification of the agency action at issue,
2885 together with a duplicate copy, summary or brief description of
2886 the agency action; and

2887 (d) Identification of persons who were parties to, or
2888 persons who participated in, any adjudicative proceedings that led
2889 to the agency action.

2890 (3) A notice of judicial review in substantial compliance
2891 with the requirements of subsection (2) of this section may not be
2892 dismissed for failure of complete compliance. Judicial review
2893 shall not be denied for informality of form or title of the notice
2894 of judicial review.

2895 SECTION 73. The following shall be codified as Section
2896 25-43-5.110, Mississippi Code of 1972:

2897 25-43-5.110. **Notice of Judicial Review - Service and**
2898 **Notification.**

2899 A person filing a notice of judicial review shall,
2900 contemporaneously therewith, serve a copy of the notice in the
2901 manner provided for service of papers by Section 25-43-4.108
2902 respecting service:

2903 (a) Upon the agency review of whose action is sought;
2904 and

2905 (b) Upon all other parties to, or persons who
2906 participated in, any adjudicative proceedings that led to the
2907 agency action.

2908 SECTION 74. The following shall be codified as Section
2909 25-43-5.111, Mississippi Code of 1972:

2910 25-43-5.111. **Stay and Other Temporary Remedies Pending Final**
2911 **Disposition.**

2912 (1) Unless otherwise provided by law or by order of the
2913 court for good cause shown, no proceedings for enforcement of
2914 final agency action ordering monetary payment may be taken until
2915 the expiration of thirty (30) days after (a) the final agency
2916 action is taken or (b) the disposition of a motion for
2917 reconsideration of the final agency action made under Section
2918 25-43-4.219, whichever last occurs.

2919 (2) Unless otherwise provided by law, the agency may grant a
2920 stay on appropriate terms or other temporary remedies during the
2921 pendency of judicial review.

2922 (3) A party may move the court, during the pendency of
2923 judicial review, for interlocutory review of the agency's action
2924 on an application for stay or other temporary remedies.

2925 (4) If the agency has found that its action on an
2926 application for stay or other temporary remedies is justified to
2927 protect against a clear and present threat to the public health,

2928 safety, or welfare, the court may not grant relief unless it finds
2929 that:

2930 (a) The applicant is likely to prevail when the court
2931 finally disposes of the matter;

2932 (b) Without relief the applicant will suffer
2933 irreparable injury;

2934 (c) The grant of relief to the applicant will not
2935 substantially harm other parties to the proceedings; and

2936 (d) The threat to the public health, safety or welfare
2937 relied on by the agency is not sufficiently serious to justify the
2938 agency's action in the circumstances.

2939 (5) If subsection (4) of this section does not apply, the
2940 court shall grant relief if it finds that the agency's action on
2941 the application for stay or the terms thereof or other temporary
2942 remedies was unreasonable in the circumstances.

2943 (6) If the court determines that relief should be granted
2944 from the agency's action on an application for stay or other
2945 temporary remedies, the court may remand the matter to the agency
2946 with directions to deny a stay, to grant a stay on appropriate
2947 terms, or to grant other temporary remedies, or the court may
2948 issue an order denying a stay, granting a stay on appropriate
2949 terms, or granting other temporary remedies.

2950 SECTION 75. The following shall be codified as Section
2951 25-43-5.112, Mississippi Code of 1972:

2952 25-43-5.112. **Limitation on New Issues.**

2953 (1) A person may obtain judicial review of an issue that was
2954 not raised before the agency, only to the extent that:

2955 (a) The agency did not have jurisdiction to grant an
2956 adequate remedy based on a determination of the issue; and

2957 (b) The agency action subject to judicial review is a
2958 rule, and the person has not been a party in adjudicative
2959 proceedings that provided an adequate opportunity to raise the
2960 issue.

2961 (2) The court may notice plain error as in other cases.

2962 SECTION 76. The following shall be codified as Section
2963 25-43-5.113, Mississippi Code of 1972:

2964 25-43-5.113. **Judicial Review of Facts Confined to Record for**
2965 **Judicial Review and Additional Evidence Taken Pursuant to Act.**

2966 Judicial review of disputed issues of fact must be confined
2967 to the agency record for judicial review as defined in this
2968 chapter, supplemented by additional evidence taken pursuant to
2969 this chapter or judicially noticed consistent with Section
2970 25-43-4.213(7).

2971 SECTION 77. The following shall be codified as Section
2972 25-43-5.114, Mississippi Code of 1972:

2973 25-43-5.114. **New Evidence Taken by Court or Agency Before**
2974 **Final Disposition.**

2975 (1) The court, in its discretion assisted by the agency or
2976 by a master as provided in Section 25-43-5.104(2), may receive
2977 evidence, in addition to that contained in the agency record for
2978 judicial review, only if it relates to the validity of the agency
2979 action at the time it was taken and is needed to decide disputed
2980 issues regarding:

2981 (a) Improper constitution as a decision-making body, or
2982 improper motive or behavior on grounds for disqualification, of
2983 those taking the agency action;

2984 (b) The apparent reliance by the agency taking the
2985 agency action on facts or evidence not included in the record;

2986 (c) Unlawfulness of procedure or of decision-making
2987 process;

2988 (d) A failure by the agency to explain its action where
2989 such failure may frustrate judicial review;

2990 (e) The explanation of technical terms or complex
2991 subjects;

2992 (f) The apparent failure of the agency to consider
2993 adequately some reasonable alternative to the agency action; or

2994 (g) Any material fact that was not required by any
2995 provision of law to be determined exclusively on an agency record
2996 of a type reasonably suitable for judicial review.

2997 (2) The court may remand a matter to the agency or a master,
2998 before final disposition of a proceeding for judicial review, with
2999 directions that the agency conduct fact-finding and other
3000 proceedings the court considers necessary, within such time limits
3001 as the court may prescribe, and that the agency or a master take
3002 such further action on the basis thereof as the court directs, if:

3003 (a) The agency was required by this chapter or any
3004 other provision of law to base its action on a record of a type
3005 reasonably suitable for judicial review, but the agency failed to
3006 prepare or preserve an adequate record;

3007 (b) The court finds that (i) new evidence has become
3008 available that relates to the validity of the agency action at the
3009 time it was taken, that one or more of the parties did not know
3010 and was under no duty to discover, or did not know and was under a
3011 duty to discover but could not reasonably have discovered, until
3012 after the agency action, and (ii) the interests of justice would
3013 be served by remand to the agency;

3014 (c) The agency improperly excluded or omitted evidence
3015 from the record; or

3016 (d) A relevant provision of law changed after the
3017 agency action and the court determines that the new provision may
3018 control the outcome.

3019 (3) The court may take judicial notice of adjudicative facts
3020 consistent with the Mississippi Rules of Evidence and Section
3021 25-43-4.213(g).

3022 SECTION 78. The following shall be codified as Section
3023 25-43-5.115, Mississippi Code of 1972:

3024 25-43-5.115. **Agency Record for Judicial Review - Contents,**
3025 **Preparation, Transmittal, Cost.**

3026 (1) In the event of judicial review of agency action, the
3027 agency shall have full and exclusive authority and responsibility
3028 of preparing the agency record and certifying the agency record to
3029 the court. Subject only to the limitations of this part, an
3030 agency may by rule provide the formal process for its preparation
3031 and certification of the agency record.

3032 (2) Within thirty (30) days after service of notice of
3033 judicial review, or within further time allowed by the court or by
3034 other provision of law, the agency shall transmit to the clerk of
3035 the Court of Appeals the agency record certified by the agency for
3036 judicial review of the agency action, consisting of any agency
3037 documents expressing the agency action, other documents identified
3038 by the agency as having been considered by it before its action
3039 and used as a basis for its action, and any other material
3040 described in this chapter as the agency record for the type of
3041 agency action at issue, subject to the provisions of this section.

3042 (3) If part of the record has been preserved without a
3043 transcript, the agency shall prepare a transcript for inclusion in
3044 the record transmitted to the court, except for portions that the
3045 parties stipulate to omit in accordance with subsection (5) of
3046 this section. The word "transcript" includes a written
3047 transcript, a printed transcript, and an audible audiotape or
3048 videotape that is indexed and annotated so that it is readily
3049 accessible.

3050 (4) The agency may charge the person filing the notice of
3051 judicial review with the reasonable cost of preparing the record
3052 and any necessary copies and transcripts for transmittal to the
3053 court. A failure by the person seeking judicial review to pay any
3054 of this cost to the agency does not relieve the agency from the
3055 responsibility for timely preparation of the record, including any
3056 transcript and transmittal to the court. The agency may set
3057 criteria and terms for payment of costs of the record. The agency
3058 may by rule implement and elaborate this subsection.

3059 (5) By stipulation of all parties to the review proceedings,
3060 the record may be shortened, summarized, supplemented or
3061 organized.

3062 (6) The court may tax the cost of preparing transcripts and
3063 copies for the record:

3064 (a) Against a party who unreasonably refuses to
3065 stipulate to shorten, summarize, or organize the record;

3066 (b) As provided by Section 25-43-5.117; or

3067 (c) In accordance with any other provision of law.

3068 (7) Additions to the record pursuant to Section 25-43-5.114
3069 must be made as ordered by the court.

3070 (8) The court may require or permit subsequent corrections
3071 or additions to the record.

3072 SECTION 79. The following shall be codified as Section
3073 25-43-5.116, Mississippi Code of 1972:

3074 25-43-5.116. **Scope of Review; Grounds for Invalidity.**

3075 (1) Except to the extent that this chapter provides
3076 otherwise:

3077 (a) The burden of demonstrating the invalidity of
3078 agency action is on the party asserting invalidity; and

3079 (b) The validity of agency action must be determined in
3080 accordance with the standards of review provided in this section,
3081 as applied to the agency action at the time it was taken.

3082 (2) The court should make a separate and distinct ruling on
3083 each material issue on which the court's decision is based.

3084 (3) The court shall grant relief from agency action only if
3085 it determines that a person seeking judicial relief may have been
3086 prejudiced by any one or more of the following:

3087 (a) The agency action, or the law on which the agency
3088 action is based, is unconstitutional on its face or as applied.

3089 (b) The agency has acted beyond the jurisdiction
3090 conferred by any provision of law.

3091 (c) The agency has not decided all issues requiring
3092 resolution.

3093 (d) The agency has erroneously interpreted or applied
3094 or failed to apply the law.

3095 (e) The agency has engaged in an unlawful procedure or
3096 decision-making process, or has failed to follow prescribed
3097 procedure.

3098 (f) The persons taking the agency action were not
3099 constituted as a decision-making body as required by law, were
3100 motivated by an improper purpose, or were subject to
3101 disqualification.

3102 (g) The agency action is based on a determination of
3103 fact, made or implied by the agency, that is not supported by
3104 evidence that is substantial when viewed in light of the whole
3105 record before the court, which includes the agency record for
3106 judicial review, supplemented by any additional evidence received
3107 or noticed by the court under this chapter.

3108 (h) The agency action is:

3109 (i) Outside the range of discretion delegated to
3110 the agency law;

3111 (ii) Agency action, other than a rule, that is
3112 inconsistent with a rule of the agency;

3113 (iii) Agency action, other than a rule, that is
3114 inconsistent with the agency's prior practice unless the agency
3115 justifies the inconsistency by stating facts and reasons to
3116 demonstrate a fair and rational basis for the inconsistency; or

3117 (iv) Otherwise unreasonable, arbitrary or
3118 capricious.

3119 (4) In performing its review under subsection (3) of this
3120 section, the court shall give substantial deference to the view of
3121 the agency with respect to particular matters that have been
3122 vested by a law within the discretion of the agency.

3123 SECTION 80. The following shall be codified as Section
3124 25-43-5.117, Mississippi Code of 1972:

3125 25-43-5.117. **Type of Relief.**

3126 (1) The court may award damages or compensation only to the
3127 extent expressly authorized by another provision of law.

3128 (2) The court may grant other appropriate relief, whether
3129 mandatory, prohibitory, injunctive or declaratory; preliminary or
3130 final; temporary or permanent; equitable or legal. In granting
3131 relief, the court may order agency action required by law, order
3132 agency exercise of discretion required by law, set aside or modify
3133 agency action, enjoin or stay the effectiveness of agency action,
3134 remand the matter for further proceedings, issue a declaratory
3135 judgment or take any other action that is authorized and
3136 appropriate.

3137 (3) The court may also grant necessary and ancillary relief
3138 to redress the effects of agency action wrongfully taken or
3139 withheld, but the court may award attorney's fees or witness fees
3140 only to the extent authorized by other law.

3141 (4) If the court sets aside or modifies agency action or
3142 remands the matter to the agency for further proceedings, the
3143 court may make any interlocutory order it finds necessary to
3144 preserve or protect the interests of the parties and the public
3145 pending further proceedings or agency action.

3146 SECTION 81. The following shall be codified as Section
3147 25-43-5.118, Mississippi Code of 1972:

3148 25-43-5.118. **Decisions of Court of Appeals Reviewable by**
3149 **Writ of Certiorari.**

3150 Decisions on proceedings for judicial review of agency action
3151 made in the Court of Appeals are subject to review in the Supreme
3152 Court as provided by the Mississippi Rules of Appellate Procedure.

3153 SECTION 82. The following shall be codified as Section
3154 25-43-5.119, Mississippi Code of 1972:

3155 25-43-5.119. **Filed Rate Doctrine.**

3156 (1) If a person offering a service to the public:

3157 (a) Is required by law to file with an agency to whose
3158 regulatory jurisdiction the person is subject a rate or tariff or
3159 the terms or conditions for the provision of that service, and

3160 (b) Has filed with the agency a rate or tariff or the
3161 terms or conditions relating in any way to the provision of the
3162 service, and the agency has accepted the filing and has not
3163 disapproved the filing within the time allowed by law, and the
3164 time for judicial review of the agency action in approving or in
3165 failing to disapprove the filing has expired, the filing is final
3166 and in full force and effect for the period of time provided by
3167 law.

3168 (2) A rate or tariff or terms or conditions that have become
3169 final, either in the manner described in subsection (1) of this
3170 section or as a result of being lawfully ordered into effect by
3171 the agency, may be subject to review and reconsideration by the
3172 agency prospectively only and as provided by another provision of
3173 law.

3174 (3) In the case of a rate or tariff or the terms or
3175 conditions for the provision of a service that have become final,
3176 in the manner described in subsection (1) or (2) of this section,
3177 a claim by the agency or by any other person that the rate or
3178 tariff or terms or conditions are invalid or unenforceable for any
3179 of the grounds set forth in Section 25-43-5.116(3)(b), (c), (d),
3180 (e), (f), (g) or (h) may be made only in the form of a request
3181 that the agency, acting prospectively only, review and reconsider
3182 the filing as provided by another provision of law.

3183 (4) The acts or omissions of a person in the provision of a
3184 service pursuant to a filed rate or tariff, or terms or conditions
3185 that have become final in the manner described in subsection (1)
3186 or (2) of this section shall be subject to judicial review, civil
3187 enforcement or collateral attack only on grounds:

3188 (a) (i) The rate or tariff or terms or conditions, or
3189 (ii) the agency action in approving or in failing to disapprove
3190 the rate or tariff or terms, conditions or provisions, or (iii)
3191 the law on which the agency action is based, is unconstitutional
3192 on its face or as applied; or

3193 (b) The person has deviated from the filed rate tariff
3194 or terms or conditions in the provision of the service.

3195 **PART II**

3196 **CIVIL ENFORCEMENT**

3197 SECTION 83. The following shall be codified as Section
3198 25-43-5.201, Mississippi Code of 1972:

3199 25-43-5.201. **Complaint by Agency for Civil Enforcement of**
3200 **Rule or Order.**

3201 (1) In addition to other remedies provided by law:

3202 (a) An agency may seek enforcement of its rule or
3203 order, including a subpoena or other order compelling the
3204 testimony of persons, the production of documents or other
3205 discovery, by filing a complaint for civil enforcement in the
3206 chancery court.

3207 (b) The complaint must name, as defendants, each person
3208 against whom the agency seeks to obtain civil enforcement.

3209 (c) Venue is determined as in other civil cases.

3210 (d) A complaint for civil enforcement filed by an
3211 agency may request, and the court may grant, declaratory relief,
3212 temporary or permanent injunctive relief, any penalty, sanction or
3213 other civil remedy provided by law or any combination of the
3214 foregoing.

3215 (2) In the case of an order, and in addition to other
3216 remedies provided by law:

3217 (a) A copy of a written order certified by the agency
3218 may be filed in the office of the circuit clerk of any county in
3219 this state. The circuit clerk shall enroll the order in the
3220 judgment roll and shall otherwise treat the order in the same

3221 manner as a judgment of the circuit court of any county in this
3222 state. An order so filed and enrolled has the same effect and is
3223 subject to the same procedures, defenses and proceedings for
3224 reopening, vacating or staying as a judgment of a circuit court of
3225 any county in this state and may be enforced or satisfied in like
3226 manner.

3227 (b) At the time of the filing of the order with the
3228 circuit clerk, the agency, party or person filing same shall serve
3229 notice of the filing upon each party or person against whom
3230 enforcement is sought in the manner provided for service of papers
3231 in a civil action by the Mississippi Rules of Civil Procedure.

3232 SECTION 84. The following shall be codified as Section
3233 25-43-5.202, Mississippi Code of 1972:

3234 25-43-5.202. **Complaint by Qualified Person for Civil**
3235 **Enforcement of Agency's Order.**

3236 (1) Any person who would qualify under this chapter as
3237 having standing to seek judicial review of an agency's failure to
3238 enforce its order may file a complaint for civil enforcement of
3239 that order in the chancery court, but the action may not be
3240 commenced:

3241 (a) Until at least thirty (30) days after the person
3242 has given notice of the alleged violation or failure and of the
3243 person's intent to seek civil enforcement to the agency head of
3244 the agency that issued the order, to the Attorney General, and to
3245 each person against whom the person filing the complaint seeks
3246 civil enforcement;

3247 (b) If the agency has filed and is diligently
3248 prosecuting a complaint for civil enforcement of the same order
3249 against the same defendant or defendants; provided, however, that
3250 the person may move to intervene in the pending civil enforcement
3251 proceeding as provided by the Mississippi Rules of Civil
3252 Procedure; or

3253 (c) If a notice of judicial review of the same order
3254 has been filed and is pending in court; provided, however, that
3255 the person may move to intervene in the pending judicial review
3256 proceeding if the person has standing under Section 25-43-5.106 or
3257 as provided by the Mississippi Rules of Appellate Procedure.

3258 (2) The complaint must name, as defendants, the agency whose
3259 order is sought to be enforced and each person against whom the
3260 person filing the complaint seeks civil enforcement. The court
3261 may realign the parties as may be appropriate.

3262 (3) The agency whose order is sought to be enforced may move
3263 to dismiss on the grounds that the complaint fails to qualify
3264 under this section or that enforcement would be contrary to the
3265 lawful policy of the agency. The court shall grant the motion to
3266 dismiss unless the person filing the complaint demonstrates that
3267 (i) the complaint qualifies under this section and (ii) the
3268 agency's failure to enforce its order is based on an exercise of
3269 discretion that is improper on one or more of the grounds provided
3270 in Section 25-43-5.116(3)(h).

3271 (4) Except to the extent authorized by law, a complaint for
3272 civil enforcement filed under this part may not request, and the
3273 court may not grant, any monetary relief or require any monetary
3274 payment apart from taxable costs.

3275 SECTION 85. The following shall be codified as Section
3276 25-43-5.203, Mississippi Code of 1972:

3277 25-43-5.203. **Defenses; Limitation on New Issues and New**
3278 **Evidence.**

3279 (1) A defendant, who would be qualified under Sections
3280 25-43-5.106, 25-43-5.107 and 25-43-5.108 to do so in a proceeding
3281 for judicial review, may assert, in a proceeding for civil
3282 enforcement:

3283 (a) That the rule or order sought to be enforced is
3284 invalid on any of the grounds stated in Section 25-43-5.116(3) and
3285 (4). If that defense is raised, the court may consider issues and

3286 receive evidence only within the limitations provided by Sections
3287 25-43-5.112, 25-43-5.113 and 25-43-5.114; and

3288 (b) Any of the following defenses on which the court,
3289 to the extent necessary for the determination of the matter, may
3290 take new evidence:

3291 (i) The rule or order does not apply to the party;

3292 (ii) The party has not violated the rule or order;

3293 (iii) The party has violated the rule or order but
3294 has subsequently complied, but a party who establishes this
3295 defense is not necessarily relieved from any sanction provided by
3296 law for past violations; or

3297 (iv) Other defenses, if any, allowed by law.

3298 (2) Except as expressly provided in this section, a
3299 defendant may not assert as a defense in a proceeding for civil
3300 enforcement any fact or issue that the defendant had an
3301 opportunity to assert before the agency or a court on judicial
3302 review and did not, or upon which the final determination of the
3303 agency or court on judicial review was adverse to the defendant.

3304 SECTION 86. The following shall be codified as Section
3305 25-43-5.204, Mississippi Code of 1972:

3306 25-43-5.204. **Rules of Practice, Procedure and Evidence;**
3307 **Incorporation of Certain Provisions on Judicial Review.**

3308 Proceedings for civil enforcement are governed by:

3309 (a) The Mississippi Rules of Civil Procedure;

3310 (b) The Mississippi Rules of Evidence;

3311 (c) Any other valid and applicable rule of practice or
3312 procedure; and

3313 (d) Unless inconsistent with a rule or rules by its
3314 terms applicable to such proceedings, the provisions of this
3315 chapter.

3316 SECTION 87. The following shall be codified as Section
3317 25-43-5.205, Mississippi Code of 1972:

3318 25-43-5.205. **Review by Supreme Court.**

3319 Judgments and orders on complaints for civil enforcement are
3320 reviewable by the Supreme Court or by the Court of Appeals, as in
3321 other civil cases.

3322 SECTION 88. Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6,
3323 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and
3324 25-43-19, Mississippi Code of 1972, which create the Mississippi
3325 Administrative Procedures Law, provide definitions for terms used
3326 in such law, prescribe procedures that must be followed by
3327 agencies in the adoption, amendment and repeal of agency rules,
3328 require the filing of an economic impact statement for the
3329 adoption of a rule, require filing and notice before such rules
3330 may become effective, require agencies to index all effective
3331 rules adopted, provide that revocation or suspension of any
3332 license shall not be effective unless notice of such intended
3333 action is given to the licensee, and require agencies to adopt
3334 procedures to assure that opponents of proposed rules have the
3335 opportunity to present their views and review adverse rulings, are
3336 repealed.

3337 SECTION 89. Sections 37-45-39, 37-45-59 and 37-45-61,
3338 Mississippi Code of 1972, which provide for the preservation of
3339 the reporter's notes, transcription and preparation of the record
3340 for appeal, and further appeal to the Supreme Court in certain
3341 hearings held before the State Department of Education, are
3342 repealed.

3343 SECTION 90. Section 41-51-27, Mississippi Code of 1972,
3344 which deals with the record in hearings held under the Animal and
3345 Poultry By-Products Disposal Law of 1964, is repealed.

3346 SECTION 91. Sections 49-27-43, 49-27-45 and 49-27-47,
3347 Mississippi Code of 1972, which deal with appeal to the chancery
3348 court under the provisions of the Coastal Protection Wetlands Act,
3349 are repealed.

3350 SECTION 92. Section 53-1-45, Mississippi Code of 1972, which
3351 deals with appeals to the Supreme Court in the matter of a hearing
3352 held before the State Oil and Gas Board, is repealed.

3353 SECTION 93. Sections 63-17-91 and 63-17-93, Mississippi Code
3354 of 1972, which deal with hearings held under the Mississippi Motor
3355 Vehicle Commission Law, are repealed.

3356 SECTION 94. Section 65-2-17, Mississippi Code of 1972, which
3357 deals with the appeal to the Supreme Court from a decision of the
3358 circuit court in an appeal from a hearing held by the state
3359 highway arbitration board, is repealed.

3360 SECTION 95. Section 83-53-35, Mississippi Code of 1972,
3361 which prescribes the issuance of an order following a hearing
3362 before the Commissioner of Insurance concerning credit life and
3363 credit disability insurance, is repealed.

3364 SECTION 96. Every agency as defined in this act shall, no
3365 later than July 1, 2003, file with the Secretary of the Senate and
3366 the Clerk of the House a report which outlines any conflicts
3367 between this act and any other laws affecting the agency. This
3368 report shall include proposed legislation to bring the other laws
3369 into conformity with the requirements of this act. The Secretary
3370 of State shall, no later than July 1, 2001, file with the
3371 Secretary of the Senate and the Clerk of the House a list of
3372 sections which the Secretary of State believes conflict with this
3373 act. The Secretary of the Senate and the Clerk of the House shall
3374 maintain a list of agencies which have complied with this section.

3375 SECTION 97. Section 96 of this act shall take effect and be
3376 in force from and after its passage. The remainder of this act
3377 shall take effect and be in force from and after July 1, 2004.