

By: Senator(s) Ross

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2348

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; TO PRESCRIBE THE MANNER OF SERVICE AND COMPUTATION
7 OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION,
8 COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND
9 ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR
10 REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO
11 THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY
12 AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S
13 ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO
14 ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO
15 PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO
16 ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE
17 FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A
18 REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO
19 PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY
20 VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE
21 RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURES PROVIDED
22 IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO
23 REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE
24 RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE
25 METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE
26 EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE
27 INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS
28 FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO
29 REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO REPEAL
30 SECTIONS 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9,
31 25-43-11, 25-43-13, 25-43-15, 25-43-17 AND 25-43-19, MISSISSIPPI
32 CODE OF 1972, WHICH CREATE THE MISSISSIPPI ADMINISTRATIVE
33 PROCEDURES LAW, PROVIDE DEFINITIONS FOR TERMS USED IN SUCH LAW,
34 PRESCRIBE PROCEDURES THAT MUST BE FOLLOWED BY AGENCIES IN THE
35 ADOPTION, AMENDMENT AND REPEAL OF AGENCY RULES, REQUIRE THE FILING
36 OF AN ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE,
37 REQUIRE FILING AND NOTICE BEFORE SUCH RULES MAY BECOME EFFECTIVE,
38 REQUIRE AGENCIES TO INDEX ALL EFFECTIVE RULES ADOPTED, PROVIDE
39 THAT REVOCATION OR SUSPENSION OF ANY LICENSE SHALL NOT BE
40 EFFECTIVE UNLESS NOTICE OF SUCH INTENDED ACTION IS GIVEN TO THE
41 LICENSEE, AND REQUIRE AGENCIES TO ADOPT PROCEDURES TO ASSURE THAT
42 OPPONENTS OF PROPOSED RULES HAVE THE OPPORTUNITY TO PRESENT THEIR
43 VIEWS AND REVIEW ADVERSE RULINGS; AND FOR RELATED PURPOSES.

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

45 **ARTICLE I**

46 **GENERAL PROVISIONS**



47 **SECTION 1.** The following shall be codified as Section
48 25-43-1.101, Mississippi Code of 1972:

49 25-43-1.101. **Title; Statement of Purpose.**

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

52 (2) This chapter is intended to provide a minimum procedural
53 code for the operation of all state agencies when they take action
54 affecting the rights and duties of the public. Nothing in this
55 chapter shall be construed as invalidating any rule or regulation
56 adopted before July 1, 2003, if such rule or regulation was
57 properly adopted in accordance with the law as it existed at the
58 time of adoption. Nothing in this chapter is meant to discourage
59 agencies from adopting procedures providing greater protections to
60 the public or conferring additional rights upon the public; and
61 save for express provisions of this chapter to the contrary,
62 nothing in this chapter is meant to abrogate in whole or in part
63 any statute prescribing procedural duties for an agency which are
64 greater than or in addition to those provided here. This chapter
65 is meant to apply to all rule-making that is not specifically
66 excluded from this chapter or some portion thereof by its express
67 terms or by the express terms of another chapter.

68 The purposes of the Mississippi Administrative Procedures Law
69 are: to provide legislative oversight of powers and duties
70 delegated to administrative agencies; to increase public
71 accountability of administrative agencies; to simplify government
72 by assuring a uniform minimum procedure to which all agencies will
73 be held in the conduct of their most important functions; to
74 increase public access to governmental information; to increase
75 public participation in the formulation of administrative rules;
76 and to simplify the process of judicial review of agency action as
77 well as increase its ease and availability. In accomplishing its
78 objectives, the intention of this chapter is to strike a fair
79 balance between these purposes and the need for efficient,



80 economical and effective government administration. The chapter
81 is not meant to alter the substantive rights of any person or
82 agency. Its impact is limited to procedural rights with the
83 expectation that better substantive results will be achieved in
84 the everyday conduct of state government by improving the process
85 by which those results are attained.

86 (3) From and after July 1, 2003, any reference to the
87 Mississippi Administrative Procedure Act, the Mississippi
88 Administrative Procedures Act, the Mississippi Administrative
89 Procedure Law, or the Mississippi Administrative Procedures Law,
90 being Section 25-43-1 et seq., Mississippi Code of 1972, shall be
91 deemed to mean and refer to this chapter.

92 **SECTION 2.** The following shall be codified as Section
93 25-43-1.102, Mississippi Code of 1972:

94 25-43-1.102. **Definitions.**

95 As used in this chapter the following terms shall have the
96 meanings ascribed to them in this section unless the context
97 otherwise requires:

98 (a) "Agency" means a board, commission, department,
99 officer or other administrative unit of this state, including the
100 agency head, and one or more members of the agency head or agency
101 employees directly or indirectly purporting to act on behalf or
102 under the authority of the agency head. The term does not include
103 the Legislature or any of its component units, the judiciary or
104 any of its component units or the Governor. The term does not
105 include a political subdivision of the state or any of the
106 administrative units of a political subdivision. Furthermore, the
107 Board of Trustees of State Institutions of Higher Learning, or any
108 college or university thereunder, shall be exempt from the
109 provisions of this chapter until July 1, 2005, at which time this
110 exemption shall stand repealed. To the extent it purports to
111 exercise authority subject to any provision of this chapter, an
112 administrative unit otherwise qualifying as an "agency" must be



113 treated as a separate agency even if the unit is located within or
114 subordinate to another agency.

115 (b) "Agency action" means: (i) the whole or a part of
116 a rule, an order or a declaratory opinion; or (ii) the failure to
117 issue a rule, an order or a declaratory opinion. "Nonfinal agency
118 action" means the whole or a part of any agency determination,
119 investigation, proceeding, hearing, conference or other process
120 that is preliminary, preparatory, procedural or intermediate with
121 regard to subsequent agency action of that agency or another
122 agency. "Final agency action" means the whole or a part of any
123 agency action other than nonfinal agency action. Final agency
124 action occurs when the action is reduced to writing and approved
125 by the agency head.

126 (c) "Agency head" or "head of the agency" means an
127 individual or body of individuals in whom the ultimate legal
128 authority of the agency is vested by any provision of law.

129 (d) "Agency proceeding" or "proceeding" means the
130 process by which an agency considers:

131 (i) A declaratory opinion pursuant to Section
132 25-43-2.103, or

133 (ii) A rule pursuant to Article III of this
134 chapter.

135 (e) "Agency record" means the official rule-making
136 record of an agency pursuant to Section 25-43-3.112.

137 (f) "Declaratory opinion" means an agency opinion
138 rendered in accordance with the provisions of Section 25-43-2.103.

139 (g) "Final agency action" means the whole or a part of
140 any agency action other than nonfinal agency action. Final agency
141 action occurs when the action is reduced to writing and approved
142 by the agency head.

143 (h) "License" means a franchise, permit, certification,
144 approval, registration, charter or similar form of authorization



145 required by law. The holder of a "license" may be referred to as
146 a "licensee," "permittee" or "franchisee."

147 (i) "Nonfinal agency action" means the whole or a part
148 of any agency determination, investigation, proceeding, hearing,
149 conference or other process that is preliminary, preparatory,
150 procedural or intermediate with regard to subsequent agency action
151 of that agency or another agency.

152 (j) "Order" means an agency action of particular
153 applicability that determines the legal rights, duties,
154 privileges, immunities or other legal interests of one or more
155 specific persons. An order shall be in writing signed by a person
156 with authority to render the order, or if more than one (1) person
157 has such authority by at least that number of such persons as
158 jointly have the authority to render the order, or by a person
159 authorized to render the order on behalf of all such persons. The
160 term does not include an executive order issued by the Governor
161 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
162 General pursuant to Section 7-5-25, an opinion issued by the
163 Ethics Commission pursuant to Section 25-4-17, or a declaratory
164 opinion rendered in accordance with Section 25-43-2.103.

165 (k) "Party to agency proceedings," or "party" in a
166 context so indicating, means:

167 (i) A person to whom the agency action is
168 specifically directed;

169 (ii) A person named as a party to an agency
170 proceeding or allowed to intervene or participate as a party in
171 the proceeding; or

172 (iii) The agency, except where the agency is
173 essentially neutral regarding the outcome of the proceedings and
174 the agency's primary interest is that the proceeding be fair,
175 speedy and cost effective.

176 (l) "Party to judicial review or civil enforcement
177 proceedings," or "party" in a context so indicating, means:



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

180 (ii) A person named as a party in a proceeding for
181 judicial review or civil enforcement or allowed to participate as
182 a party in the proceeding; or

183 (iii) The agency in a proceeding for judicial
184 review or civil enforcement.

185 (m) "Person" means an individual, partnership,
186 corporation, association, governmental subdivision or unit
187 thereof, or public or private organization or entity of any
188 character, and includes another agency.

189 (n) "Presiding officer" means a person designated as
190 the principal hearing officer in an adjudicative proceeding.

191 (o) "Provision of law" or "law" means the whole or a
192 part of the federal or state Constitution, or of any federal or
193 state (i) statute, (ii) case law or common law, (iii) rule of
194 court, (iv) executive order, or (v) rule or order of an
195 administrative agency.

196 (p) "Public employee" means any person engaged in
197 "state service" as defined in Section 25-9-107(b) and excludes any
198 person engaged in "nonstate service" as defined in Section
199 25-9-107(c).

200 (q) "Rule" means the whole or a part of an agency
201 regulation or other statement of general applicability that
202 implements, interprets or prescribes:

203 (i) Law or policy, or

204 (ii) The organization, procedure or practice
205 requirements of an agency. The term includes the amendment,
206 repeal or suspension of an existing rule. "Rule" does not
207 include:

208 1. A regulation or statement concerning only
209 the internal management of an agency which does not directly and



210 substantially affect the procedural or substantive rights or
211 duties of any segment of the public;

212 2. A regulation or statement that establishes
213 criteria or guidelines to be used by the staff of an agency in
214 performing audits, investigations or inspections, settling
215 commercial disputes, negotiating commercial arrangements or in the
216 defense, prosecution or settlement of cases, if disclosure of the
217 criteria or guidelines would:

218 a. Enable law violators to avoid
219 detection;

220 b. Facilitate disregard of requirements
221 imposed by law; or

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

224 3. A regulation or statement that only
225 establishes specific prices to be charged for particular goods or
226 services sold by an agency;

227 4. A regulation or statement concerning only
228 the physical servicing, maintenance or care of agency owned or
229 operated facilities or property;

230 5. A regulation or statement relating only to
231 the use of a particular facility or property owned, operated or
232 maintained by the state or any of its subdivisions, if the
233 substance of the regulation or statement is adequately indicated
234 by means of signs or signals to persons who use the facility or
235 property;

236 6. A regulation or statement concerning only
237 inmates of a correctional or detention facility, students enrolled
238 in an educational institution or patients admitted to a hospital,
239 if adopted by that facility, institution or hospital;

240 7. A form whose contents or substantive
241 requirements are prescribed by rule or statute, and instructions
242 for the execution or use of the form;



243 8. An agency budget;

244 9. A compact or agreement between an agency

245 of this state and one or more agencies of another state or states;

246 or

247 10. An opinion of the Attorney General

248 pursuant to Section 7-5-25, an opinion of the Ethics Commission

249 pursuant to Section 25-4-17, or an executive order of the

250 Governor.

251 (r) "Rule-making" means the process for formulation and

252 adoption of a rule.

253 **SECTION 3.** The following shall be codified as Section

254 25-43-1.103, Mississippi Code of 1972:

255 25-43-1.103. **Applicability and Relation to Other Law.**

256 (1) This chapter applies to all agencies and all proceedings

257 not expressly exempted under this chapter.

258 (2) This chapter creates only procedural rights and imposes

259 only procedural duties. They are in addition to those created and

260 imposed by other statutes.

261 (3) Specific statutory provisions which govern agency

262 proceedings and which are in conflict with any of the provisions

263 of this chapter shall continue to be applied to all proceedings of

264 any such agency to the extent of such conflict only.

265 (4) The provisions of this chapter shall not be construed to

266 amend, repeal or supersede the provisions of any other law; and,

267 to the extent that the provisions of any other law conflict or are

268 inconsistent with the provisions of this chapter, the provisions

269 of such other law shall govern and control.

270 (5) An agency may grant procedural rights to persons in

271 addition to those conferred by this chapter so long as rights

272 conferred upon other persons by any provision of law are not

273 substantially prejudiced.

274 **SECTION 4.** The following shall be codified as Section

275 25-43-1.104, Mississippi Code of 1972:



276 25-43-1.104. **Suspension of Chapter's Provisions when**
277 **Necessary to Avoid Loss of Federal Funds or Services.**

278 (1) To the extent necessary to avoid a denial of funds or
279 services from the United States which would otherwise be available
280 to the state, the Governor, by executive order, may suspend, in
281 whole or in part, one or more provisions of this chapter. The
282 Governor, by executive order, shall declare the termination of a
283 suspension as soon as it is no longer necessary to prevent the
284 loss of funds or services from the United States.

285 (2) If any provision of this chapter is suspended pursuant
286 to this section, the Governor shall promptly report the suspension
287 to the Legislature. The report may include recommendations
288 concerning desirable legislation that may be necessary to conform
289 this chapter to federal law, including the exemption, if
290 appropriate, of a particular program from the provisions of this
291 chapter.

292 **SECTION 5.** The following shall be codified as Section
293 25-43-1.105, Mississippi Code of 1972:

294 25-43-1.105. **Waiver of Rights.**

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

298 **SECTION 6.** The following shall be codified as Section
299 25-43-1.106, Mississippi Code of 1972:

300 25-43-1.106. **Filings with Agency; Service; Computation of**
301 **Time.**

302 (1) (a) Whenever a presiding officer, a party or any person
303 is permitted or required to file with an agency any application,
304 pleading, motion or other document, filing must be made by
305 delivery of the document to the agency, by mailing it to the
306 agency or by transmitting it to the agency by electronic means,
307 including, but not limited to, facsimile transfer or e-mail.
308 Filing by electronic means is complete when the electronic



309 equipment being used by the agency acknowledges receipt of the
310 material. If the equipment used by the agency does not
311 automatically acknowledge transmission, service is not complete
312 until the filing party obtains an acknowledgment from the agency.
313 Filing by mail is complete upon receipt by the agency.

314 (b) The agency may implement this section by agency
315 rule.

316 (2) (a) Whenever service is required by this chapter, and
317 whether the service is made by a party, an agency or a presiding
318 officer, service of orders, notices, pleadings, motions and other
319 documents upon a party shall be made by delivering a copy to the
320 party, by transmitting it to the party by electronic means,
321 including, but not limited to, facsimile transfer or e-mail, or by
322 mailing it to the party at the party's last known address.
323 Delivery of a copy means handing it to a party, leaving it at the
324 office of a party with a person in charge thereof, or leaving it
325 at the dwelling house or usual place of abode of the party with
326 some person of suitable age and discretion then residing therein.
327 Service by electronic means is complete when the electronic
328 equipment being used by the party being served acknowledges
329 receipt of the material. If the equipment used by the party being
330 served does not automatically acknowledge the transmission,
331 service is not complete until the sending party obtains an
332 acknowledgment from the recipient. Service by mail is complete
333 upon mailing.

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

337 (c) Whenever an agency or presiding officer issues an
338 order or serves a notice or other document, the order or notice or
339 other document shall be dated and shall be deemed to have been
340 issued on the day it is served on the parties to the matter. If
341 the order or notice or other document is to be served by mail, it



342 shall be dated and shall be deemed to have been issued on the day
343 it is mailed.

344 (3) (a) In computing any period of time prescribed or
345 allowed by this article, by order of an agency, or by any
346 applicable statute or agency rule, the day of the act, event or
347 default from which the designated period of time begins to run
348 shall not be included. The last day of the period so computed
349 shall be included, unless it is a Saturday, a Sunday or a legal
350 holiday, as defined by statute, or any other day when the agency's
351 office is in fact closed, whether with or without legal authority,
352 in which event the period runs until the end of the next day which
353 is not a Saturday, a Sunday, a legal holiday or any other day when
354 the agency's office is closed. When the period of time prescribed
355 or allowed is less than seven (7) days, intermediate Saturdays,
356 Sundays and legal holidays shall be excluded in the computation.
357 In the event any legal holiday falls on a Sunday, the next
358 following day shall be a legal holiday.

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

364 **ARTICLE II**

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

366 **SECTION 7.** The following shall be codified as Section
367 25-43-2.101, Mississippi Code of 1972:

368 25-43-2.101. **Publication, Compilation, Indexing and Public**
369 **Inspection of Rules.**

370 (1) Subject to the provisions of this chapter, the Secretary
371 of State shall prescribe a uniform numbering system, form, style
372 and transmitting format for all proposed and adopted rules caused
373 to be published by him and, with prior approval of each respective



374 agency involved, may edit rules for publication and codification
375 without changing the meaning or effect of any rule.

376 (2) The Secretary of State shall cause an administrative
377 bulletin to be published in a format and at such regular intervals
378 as the Secretary of State shall prescribe by rule. Upon proper
379 filing of proposed rules, the Secretary of State shall publish
380 them in the administrative bulletin as expeditiously as possible.
381 The administrative bulletin must contain:

382 (a) Notices of proposed rule adoption prepared so that
383 the text of the proposed rule shows the text of any existing rule
384 proposed to be changed and the change proposed;

385 (b) Any other notices and materials designated by law
386 for publication therein; and

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

388 (3) The Secretary of State shall cause an administrative
389 bulletin to be published in a format and at such regular intervals
390 as the Secretary of State shall prescribe by rule. Upon proper
391 filing of newly adopted rules, the Secretary of State shall
392 publish them as expeditiously as possible. The administrative
393 bulletin must contain:

394 (a) Newly filed adopted rules prepared so that the text
395 shows the text of any existing rule being changed and the change
396 being made;

397 (b) Any other notices and materials designated by law
398 for publication therein; and

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

400 (4) The Secretary of State retains the authority to reject
401 proposed and newly adopted rules not properly filed in accordance
402 with the Secretary of State's rules prescribing the numbering
403 system, form, style or transmitting format for such filings. The
404 Secretary of State shall not be empowered to reject filings for
405 reasons of the substance or content or any proposed or newly
406 adopted rule. The Secretary of State shall notify the agency of



407 its rejection of a proposed or newly adopted rule as expeditiously
408 as possible and accompany such notification with a stated reason
409 for the rejection. A rejected filing of a proposed or newly
410 adopted rule does not constitute filing pursuant to Section
411 25-43-3.101 et seq. of this chapter.

412 (5) (a) The Secretary of State shall cause an
413 administrative code to be compiled, indexed by subject and
414 published in a format prescribed by the Secretary of State by
415 rule. All of the effective rules of each agency must be published
416 and indexed in that publication. The Secretary of State shall
417 also cause supplements to the administrative code to be published
418 in a format and at such regular intervals as the Secretary of
419 State shall prescribe by rule.

420 (b) The Joint Legislative Committee on Compilation,
421 Revision and Publication of Legislation is hereby authorized to
422 contract with a reputable and competent publishing company on such
423 terms and conditions and at such prices as may be deemed proper to
424 digest, compile, annotate, index and publish the state agency
425 rules and regulations.

426 (6) (a) Copyrights of the Mississippi Administrative Code,
427 including, but not limited to, cross references, tables of cases,
428 notes of decisions, tables of contents, indices, source notes,
429 authority notes, numerical lists and codification guides, other
430 than the actual text of rules or regulations, shall be taken by
431 and in the name of the publishers of said compilation. Such
432 publishers shall thereafter promptly assign the same to the State
433 of Mississippi and said copyright shall be owned by the state.

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

438 (7) The Secretary of State may omit from the administrative
439 bulletin or code any proposed or filed adopted rule the



440 publication in hard copy of which would be unduly cumbersome,
441 expensive or otherwise inexpedient, if:

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

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

447 (c) The administrative bulletin or code contains a
448 notice stating in detail the specific subject matter of the
449 omitted proposed or adopted rule and how a copy of the omitted
450 material may be obtained.

451 (8) The administrative bulletin and administrative code with
452 supplements must be furnished to designated officials without
453 charge and to all subscribers at a reasonable cost to be
454 determined by the Secretary of State. Each agency shall also make
455 available for public inspection and copying those portions of the
456 administrative bulletin and administrative code containing all
457 rules adopted or used by the agency in the discharge of its
458 functions, and the index to those rules.

459 **SECTION 8.** The following shall be codified as Section
460 25-43-2.102, Mississippi Code of 1972:

461 25-43-2.102. **Public Inspection and Indexing of Agency**
462 **Orders.**

463 (1) In addition to other requirements imposed by any
464 provision of law, and subject to any confidentiality provisions
465 established by law, each agency shall make all written final
466 orders available for public inspection and copying and index them
467 by name and subject.

468 (2) A written final order may not be relied on as precedent
469 by an agency to the detriment of any person until it has been made
470 available for public inspection and indexed in the manner
471 described in subsection (1) of this section. This provision is



472 inapplicable to any person who has actual, timely knowledge of the
473 order. The burden of proving that knowledge is on the agency.

474 **SECTION 9.** The following shall be codified as Section
475 25-43-2.103, Mississippi Code of 1972:

476 25-43-2.103. **Declaratory Opinions.**

477 (1) Any person with a substantial interest in the subject
478 matter may make a written request of an agency for a declaratory
479 opinion as to the applicability to specified circumstances of a
480 statute, rule or order within the primary jurisdiction of the
481 agency. An agency, through the agency head or its designee(s) by
482 rule, shall issue a declaratory opinion in response to a written
483 request for that opinion unless the agency determines that
484 issuance of the opinion under the circumstances would be contrary
485 to a rule adopted in accordance with subsection (2) of this
486 section.

487 (2) Each agency shall issue rules that provide for: (a) the
488 form, contents and filing of written requests for declaratory
489 opinions; (b) the procedural rights of persons in relation to the
490 written requests; and (c) the disposition of the written requests.
491 Those rules must describe the classes of circumstances in which
492 the agency will not issue a declaratory opinion.

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

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

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

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

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



505 (5) (a) When any person receives a declaratory opinion from
506 an agency and shall have stated all the facts to govern such
507 opinion, there shall be no liability, civil or criminal, accruing
508 to or against any such person who, in good faith, follows the
509 direction of such opinion and acts in accordance therewith unless
510 a court of competent jurisdiction, after a full hearing, shall
511 judicially declare that such opinion is manifestly wrong and
512 without any substantial support. No declaratory opinion shall be
513 given or considered if the opinion is requested after suit is
514 filed or prosecution begun. Any declaratory opinion rendered
515 pursuant to this chapter shall not be binding or effective for any
516 third party or person other than the agency issuing the
517 declaratory opinion and the person to whom the opinion is issued.

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

522 (c) Each agency shall make all declaratory opinions
523 available for public inspection and copying and shall index them
524 by name and subject, unless information contained within such
525 opinions is confidential by statute or exempt from public
526 disclosure pursuant to another provision of law.

527 **SECTION 10.** The following shall be codified as Section
528 25-43-2.104, Mississippi Code of 1972:

529 25-43-2.104. **Required Rule-Making.**

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

532 (a) Adopt as a rule a description of the organization
533 of the agency which states the general course and method of its
534 operations and where and how the public may obtain information or
535 make submissions or requests;



536 (b) Adopt rules of practice setting forth the nature
537 and requirements of all formal and informal proceedings available
538 to the public.

539 **SECTION 11.** The following shall be codified as Section
540 25-43-2.105, Mississippi Code of 1972:

541 25-43-2.105. **Model Rules of Procedure.**

542 In accordance with the rule-making requirements of this
543 chapter, the Secretary of State shall adopt model rules of
544 procedure appropriate for use by as many agencies as possible.
545 The model rules must deal with all general functions and duties
546 performed in common by several agencies. Each agency may adopt as
547 much of the model rules as is practicable under its circumstances.
548 To the extent an agency adopts the model rules, it shall do so in
549 accordance with the rule-making requirements of this chapter.

550 **ARTICLE III**

551 **RULE-MAKING**

552 **ADOPTION AND EFFECTIVENESS OF RULES**

553 **SECTION 12.** The following shall be codified as Section
554 25-43-3.101, Mississippi Code of 1972:

555 25-43-3.101. **Advice on Possible Rules before Notice of**
556 **Proposed Rule Adoption.**

557 (1) In addition to seeking information by other methods, an
558 agency, before filing of a notice of proposed rule adoption under
559 Section 25-43-3.103, may solicit comments from the public on a
560 subject matter of possible rule-making under active consideration
561 within the agency by causing notice to be filed with the Secretary
562 of State for publication in the administrative bulletin of the
563 subject matter and indicating where, when and how persons may
564 comment.

565 (2) Each agency may also appoint committees to comment,
566 before filing of a notice of proposed rule adoption under Section
567 25-43-3.103, on the subject matter of a possible rule-making under
568 active consideration within the agency. The membership of those



569 committees must be filed with the Secretary of State for
570 publication in the administrative bulletin.

571 **SECTION 13.** The following shall be codified as Section
572 25-43-3.102, Mississippi Code of 1972:

573 25-43-3.102. **Public Rule-Making Docket.**

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

576 (2) The rule-making docket may, but need not, contain a
577 listing of the subject matter of possible rules currently under
578 active consideration within the agency for proposal under Section
579 25-43-3.103 and the name and address of agency personnel with whom
580 persons may communicate with respect to the matter.

581 (3) The rule-making docket must list each pending
582 rule-making proceeding. A rule-making proceeding is pending from
583 the time it is commenced, by proper filing with the Secretary of
584 State of a notice of proposed rule adoption, to the time it is
585 terminated by the filing with the Secretary of State of a notice
586 of termination or the rule becoming effective. For each pending
587 rule-making proceeding, the docket must indicate:

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

589 (b) A citation to all published notices relating to the
590 proceeding;

591 (c) Where written submissions or written requests for
592 an opportunity to make oral presentations on the proposed rule may
593 be inspected;

594 (d) The time during which written submissions may be
595 made;

596 (e) If applicable, where and when oral presentations
597 may be made;

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

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



- 602 (h) The date of the rule's adoption; and
603 (i) When the rule will become effective.

604 **SECTION 14.** The following shall be codified as Section
605 25-43-3.103, Mississippi Code of 1972:

606 25-43-3.103. **Notice of Proposed Rule Adoption.**

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

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

614 (b) The specific legal authority authorizing the
615 proposed rule;

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

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

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

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

625 (2) Within three (3) days after its proper filing with the
626 Secretary of State for publication in the administrative bulletin,
627 the agency shall cause a copy of the notice of proposed rule
628 adoption to be provided to each person who has made a timely
629 request to the agency to be placed on the mailing list maintained
630 by the agency of persons who have requested notices of proposed
631 rule adoptions. An agency may mail the copy to the person and may
632 charge the person a reasonable fee for such service, which fee may
633 be in excess of the actual cost of providing the person with a
634 mailed copy. Alternatively, the agency may provide the copy by



635 transmitting it to the person by electronic means, including, but
636 not limited to, facsimile transfer or e-mail at no charge to the
637 person, if the person consents to this form of delivery.

638 **SECTION 15.** The following shall be codified as Section
639 25-43-3.104, Mississippi Code of 1972:

640 25-43-3.104. **Public Participation.**

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

645 (2) (a) An agency, in its discretion, may schedule an oral
646 proceeding on any proposed rule. However, an agency shall
647 schedule an oral proceeding on a proposed rule if, within twenty
648 (20) days after the proper filing of the notice of proposed rule
649 adoption, a written request for an oral proceeding is submitted by
650 a political subdivision, an agency or twenty-five (25) persons.
651 At that proceeding, persons may present oral or written argument,
652 data and views on the proposed rule.

653 (b) An oral proceeding on a proposed rule, if required,
654 may not be held earlier than twenty (20) days after notice of its
655 location and time is properly filed with the Secretary of State
656 for publication in the administrative bulletin. Within three (3)
657 days after its proper filing with the Secretary of State for
658 publication in the administrative bulletin, the agency shall cause
659 a copy of the notice of the location and time of the oral
660 proceeding to be mailed to each person who has made a timely
661 request to the agency to be placed on the mailing list maintained
662 by the agency of persons who have requested notices of proposed
663 rule adoptions.

664 (c) The agency, a member of the agency, or another
665 presiding officer designated by the agency shall preside at a
666 required oral proceeding on a proposed rule. Oral proceedings



667 must be open to the public and may be recorded by stenographic or
668 other means.

669 (d) An agency may issue rules for the conduct of oral
670 rule-making proceedings or prepare reasonable guidelines or
671 procedures for the conduct of any such proceedings. Those rules
672 may include, but not be limited to, provisions calculated to
673 prevent undue repetition in the oral proceedings.

674 **SECTION 16.** The following shall be codified as Section
675 25-43-3.105, Mississippi Code of 1972:

676 25-43-3.105. **Economic Impact Statement, Requirement and**
677 **Conditions.**

678 (1) Prior to giving the notice required in Section
679 25-43-3.103, each agency proposing the adoption of a rule or
680 significant amendment of an existing rule imposing a duty,
681 responsibility or requirement on any person shall consider the
682 economic impact the rule will have on the citizens of our state
683 and the benefits the rule will cause to accrue to those citizens.
684 For purposes of this section, a "significant amendment" means any
685 amendment to a rule for which the total aggregate cost to all
686 persons required to comply with that rule exceeds One Hundred
687 Thousand Dollars (\$100,000.00).

688 (2) Each agency shall prepare a written report providing an
689 economic impact statement for the adoption of a rule or
690 significant amendment to an existing rule imposing a duty,
691 responsibility or requirement on any person, except as provided in
692 subsection (7) of this section. The economic impact statement
693 shall include the following:

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

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



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

702 (d) An analysis of the impact of the proposed rule on
703 small business;

704 (e) A comparison of the costs and benefits of the
705 proposed rule to the probable costs and benefits of not adopting
706 the proposed rule or significantly amending an existing rule;

707 (f) A determination of whether less costly methods or
708 less intrusive methods exist for achieving the purpose of the
709 proposed rule where reasonable alternative methods exist which are
710 not precluded by law;

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

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

717 (3) No rule or regulation shall be declared invalid based on
718 a challenge to the economic impact statement for the rule unless
719 the issue is raised in the agency proceeding. No person shall
720 have standing to challenge a rule, based upon the economic impact
721 statement or lack thereof, unless that person provided the agency
722 with information sufficient to make the agency aware of specific
723 concerns regarding the statement in an oral proceeding or in
724 written comments regarding the rule. The grounds for invalidation
725 of an agency action, based upon the economic impact statement, are
726 limited to the agency's failure to adhere to the procedure for
727 preparation of the economic impact statement as provided in this
728 section, or the agency's failure to consider information submitted
729 to the agency regarding specific concerns about the statement, if
730 that failure substantially impairs the fairness of the rule-making
731 proceeding.



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

738 (5) The properly filed summary of the economic impact
739 statement must also indicate where persons may obtain copies of
740 the full text of the economic impact statement and where, when and
741 how persons may present their views on the proposed rule and
742 demand an oral proceeding on the proposed rule if one is not
743 already provided.

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

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

749 (a) Any rule which is required by the federal
750 government pursuant to a state/federal program delegation
751 agreement or contract;

752 (b) Any rule which is expressly required by state law;
753 and

754 (c) A temporary rule adopted pursuant to Section
755 25-43-3.108.

756 **SECTION 17.** The following shall be codified as Section
757 25-43-3.106, Mississippi Code of 1972:

758 25-43-3.106. **Time and Manner of Rule Adoption.**

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

761 (2) Following the proper filing with the Secretary of State
762 of the notice of proposed rule adoption, an agency shall adopt a
763 rule pursuant to the rule-making proceeding or terminate the
764 proceeding by proper filing with the Secretary of State of a



765 notice to that effect for publication in the administrative
766 bulletin.

767 (3) Before the adoption of a rule, an agency shall consider
768 the written submissions, oral submissions or any memorandum
769 summarizing oral submissions, and any economic impact statement,
770 provided for by this article.

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

774 **SECTION 18.** The following shall be codified as Section
775 25-43-3.107, Mississippi Code of 1972:

776 25-43-3.107. **Variance between Adopted Rule and Published**
777 **Notice of Proposed Rule Adoption.**

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

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

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

787 (c) The notice of proposed rule adoption provided fair
788 warning that the outcome of that rule-making proceeding could be
789 the rule in question.

790 (2) In determining whether the notice of proposed rule
791 adoption provided fair warning that the outcome of that
792 rule-making proceeding could be the rule in question, an agency
793 shall consider all of the following factors:

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



797 (b) The extent to which the subject matter of the rule
798 or issues determined by the rule are different from the subject
799 matter or issues contained in the notice of proposed rule
800 adoption; and

801 (c) The extent to which the effects of the rule differ
802 from the effects of the proposed rule contained in the notice of
803 proposed rule adoption.

804 **SECTION 19.** The following shall be codified as Section
805 25-43-3.108, Mississippi Code of 1972:

806 25-43-3.108. **Exemption from Public Rule-Making Procedures**
807 **for Temporary Rules.**

808 (1) To the extent an agency for good cause finds that any
809 requirements of Sections 25-43-3.103 through 25-43-3.107 are
810 unnecessary, impracticable or contrary to the public interest in
811 the process of adopting a temporary rule, those requirements do
812 not apply. The agency shall incorporate the required finding and
813 a brief statement of its supporting reasons in each temporary rule
814 adopted in reliance on this subsection. The supporting reasons
815 for the issuance of a temporary rule in accordance with this
816 provision may include, but are not limited to, a serious and
817 unforeseen threat to the public health, safety or welfare; an
818 impending effective date of a recent act of the Legislature of the
819 State of Mississippi or the United States Congress that requires
820 the issuance of implementing or conforming rules or regulations;
821 an impending effective date of a regulation recently issued by an
822 agency or authority of the federal government of the United States
823 that requires the issuance of implementing or conforming rules or
824 regulations; or a court order or other controlling judicial
825 decision that requires the issuance of implementing or conforming
826 rules or regulations. Unless a shorter period of time is stated
827 in the temporary rule, a temporary rule shall expire no later than
828 one hundred eighty (180) days after adoption. A temporary rule
829 may not be renewed after its expiration or early termination by



830 the agency. However, an agency may adopt a rule which is
831 identical or similar to a temporary rule to become effective
832 following the expiration or early termination of the temporary
833 rule, provided that the rule is adopted in accordance with the
834 requirements of Sections 25-43-3.103 through 25-43-3.107.

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

840 **SECTION 20.** The following shall be codified as Section
841 25-43-3.109, Mississippi Code of 1972:

842 25-43-3.109. **Contents, Style and Form of Rule.**

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

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

846 (b) An indication of any change between the text of the
847 proposed rule contained in the published notice of proposed rule
848 adoption and the text of the rule as finally adopted, with the
849 reasons for any substantive change;

850 (c) Any changes to the information contained in the
851 notice of proposed rule adoption as required by subsection (a),
852 (b) or (c) of Section 25-43-3.103;

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

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

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

860 (3) An agency may incorporate, by reference in its rules and
861 without publishing the incorporated matter in full, all or any
862 part of a code, standard, rule or regulation that has been adopted



863 by an agency of the United States or of this state, another state
864 or by a nationally recognized organization or association, if
865 incorporation of its text in agency rules would be unduly
866 cumbersome, expensive or otherwise inexpedient. The reference in
867 the agency rules must fully identify the incorporated matter with
868 an appropriate citation. An agency may incorporate by reference
869 such matter in its rules only if the agency, organization or
870 association originally issuing that matter makes copies of it
871 readily available to the public. The rules must state if copies
872 of the incorporated matter are available from the agency issuing
873 the rule or where copies of the incorporated matter are available
874 from the agency of the United States, this state, another state or
875 the organization or association originally issuing that matter.

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

879 **SECTION 21.** The following shall be codified as Section
880 25-43-3.110, Mississippi Code of 1972:

881 25-43-3.110. **Agency Rule-Making Record.**

882 (1) An agency shall maintain an official rule-making record
883 for each rule it (a) proposes or (b) adopts. The agency has the
884 exclusive authority to prepare and exclusive authority to certify
885 the record or any part thereof, including, but not limited to, any
886 transcript of the proceedings, and the agency's certificate shall
887 be accepted by the court and by any other agency. The record must
888 be available for public inspection.

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

890 (a) Copies of all notices of proposed rule-making or
891 oral proceedings or other publications in the administrative
892 bulletin with respect to the rule or the proceeding upon which the
893 rule is based;



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

897 (c) All written petitions, requests, submissions and
898 comments received by the agency and all other written materials
899 considered by the agency in connection with the formulation,
900 proposal or adoption of the rule or the proceeding upon which the
901 rule is based;

902 (d) Any official transcript of oral presentations made
903 in the proceeding upon which the rule is based or, if not
904 transcribed, any tape recording or stenographic record of those
905 presentations, and any memorandum prepared by a presiding official
906 summarizing the contents of those presentations. The word
907 "transcript" includes a written transcript, a printed transcript,
908 an audible audiotape or videotape that is indexed and annotated so
909 that it is readily accessible and any other means that the agency
910 may have by rule provided for the reliable and accessible
911 preservation of the proceeding;

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

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

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

919 (3) The agency shall have authority to engage such persons
920 and acquire such equipment as may be reasonably necessary to
921 record and preserve in any technically and practicably feasible
922 manner all matters and all proceedings had at any rule-making
923 proceeding.

924 (4) Upon judicial review, the record required by this
925 section constitutes the official agency rule-making record with
926 respect to a rule. Except as otherwise required by a provision of



927 law, the agency rule-making record need not constitute the
928 exclusive basis for agency action on that rule or for judicial
929 review thereof.

930 **SECTION 22.** The following shall be codified as Section
931 25-43-3.111, Mississippi Code of 1972:

932 25-43-3.111. **Invalidity of Rules not Adopted According to**
933 **Article; Time Limitation.**

934 (1) A rule adopted after July 1, 2003, is invalid unless
935 adopted in substantial compliance with the provisions of Sections
936 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a
937 notice of proposed rule adoption to any person as required by
938 Section 25-43-3.103(2) does not invalidate a rule.

939 (2) An action to contest the validity of a rule on the
940 grounds of its noncompliance with any provision of Sections
941 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
942 year after the effective date of the rule.

943 **SECTION 23.** The following shall be codified as Section
944 25-43-3.112, Mississippi Code of 1972:

945 25-43-3.112. **Filing of Rules.**

946 An agency shall file in the Office of the Secretary of State
947 each rule it adopts and all rules existing on July 1, 2003, that
948 have not previously been filed. The filing must be done as soon
949 after adoption of the rule as is practicable. At the time of
950 filing, each rule adopted after July 1, 2003, must have included
951 in or attached to it the material set out in Section 25-43-3.109.
952 The Secretary of State shall affix to each rule and statement a
953 certification of the date of filing and keep a permanent register
954 open to public inspection of all filed rules and attached
955 material. In filing a rule, each agency shall use a standard
956 format prescribed by the Secretary of State.

957 **SECTION 24.** The following shall be codified as Section
958 25-43-3.113, Mississippi Code of 1972:

959 25-43-3.113. **Effective Date of Rules.**



960 (1) Except to the extent subsection (2) or (3) of this
961 section provides otherwise, each rule adopted after July 1, 2002,
962 becomes effective thirty (30) days after its proper filing in the
963 Office of the Secretary of State.

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

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

971 (i) It is required by constitution, statute or
972 court order;

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

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

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

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

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

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

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



992 be approved by other designated officials or bodies before they
993 become effective.

994 **SECTION 25.** The following shall be codified as Section
995 25-43-3.114, Mississippi Code of 1972:

996 25-43-3.114. **Review by Agency.**

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

1000 **SECTION 26.** Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6,
1001 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and
1002 25-43-19, Mississippi Code of 1972, which create the Mississippi
1003 Administrative Procedures Law, provide definitions for terms used
1004 in such law, prescribe procedures that must be followed by
1005 agencies in the adoption, amendment and repeal of agency rules,
1006 require the filing of an economic impact statement for the
1007 adoption of a rule, require filing and notice before such rules
1008 may become effective, require agencies to index all effective
1009 rules adopted, provide that revocation or suspension of any
1010 license shall not be effective unless notice of such intended
1011 action is given to the licensee, and require agencies to adopt
1012 procedures to assure that opponents of proposed rules have the
1013 opportunity to present their views and review adverse rulings, are
1014 repealed.

1015 **SECTION 27.** Every agency as defined in this act shall, no
1016 later than July 1, 2002, file with the Secretary of the Senate and
1017 the Clerk of the House a report which outlines any conflicts
1018 between this act and any other laws affecting the agency. This
1019 report shall include proposed legislation to bring the other laws
1020 into conformity with the requirements of this act. The Secretary
1021 of State shall, no later than October 1, 2002, file with the
1022 Secretary of the Senate and the Clerk of the House a list of
1023 sections which the Secretary of State believes conflict with this



1024 act. The Secretary of the Senate and the Clerk of the House shall
1025 maintain a list of agencies which have complied with this section.

1026 **SECTION 28.** Section 27 of this act shall take effect and be
1027 in force from and after its passage. The remainder of this act
1028 shall take effect and be in force from and after July 1, 2003.

