HOUSE BILL NO. 617

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Representative Bowles
To: Judiciary A; Appropriations

AN ACT TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION 25-43-20, MISSISSIPPI CODE OF 1972, TO CREATE A JOINT STANDING LEGISLATIVE COMMITTEE TO BE KNOWN AS THE JOINT COMMITTEE ON ADMINISTRATIVE REGULATION REVIEW, WHICH SHALL REVIEW ALL AGENCY RULES PROPOSED AFTER JUNE 30, 2003; TO PROVIDE FOR THE MEMBERSHIP, APPOINTMENT AND MEETINGS OF THE COMMITTEE; TO REQUIRE EACH AGENCY PROPOSING THE ADOPTION OF ANY RULE AFTER JUNE 30, 2003, TO GIVE NOTICE TO THE CHAIRMAN OF THE COMMITTEE AT LEAST 30 DAYS BEFORE THE AGENCY’S INTENDED ACTION; TO AUTHORIZE THE COMMITTEE TO HOLD PUBLIC HEARINGS ON ANY PROPOSED RULE; TO PROVIDE THAT THE COMMITTEE SHALL NOTIFY THE AGENCY PROPOSING THE ADOPTION OF A RULE IF IT OBJECTS TO THE PROPOSED RULE OR ANY PART THEREOF, AND SHALL PROVIDE THE AGENCY WITH THE REASONS FOR ITS OBJECTIONS; TO PROVIDE THAT THE COMMITTEE MAY MAKE RECOMMENDATIONS TO THE AGENCY FOR SUGGESTED CHANGES TO BE MADE TO ANY PROPOSED RULE; TO PROVIDE THAT IF THE AGENCY DOES NOT MAKE ANY OF THE SUGGESTED CHANGES TO THE PROPOSED RULE, THE PROPOSED RULE SHALL TAKE EFFECT 30 DAYS AFTER THE COMMITTEE HAS CONCLUDED ITS MEETINGS TO REVIEW THE PROPOSED RULE; TO PROVIDE THAT IF THE AGENCY MAKES ANY OF THE SUGGESTED CHANGES TO THE PROPOSED RULE, THE PROPOSED RULE SHALL TAKE EFFECT 30 DAYS AFTER THE AGENCY HAS FILED A COPY OF THE REVISED PROPOSED RULE WITH THE OFFICE OF THE SECRETARY OF STATE; TO AMEND SECTIONS 25-43-7 AND 25-43-9, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 25-43-20, Mississippi Code of 1972:

25-43-20. (1) There shall be a joint standing legislative committee to be known as the Joint Committee on Administrative Regulation Review, which shall review all agency rules proposed after June 30, 2003. The committee shall consist of ten (10) members: five (5) members of the House of Representatives, one (1) from each congressional district, to be appointed by the Speaker of the House, and five (5) members of the Senate, one (1) from each congressional district, to be appointed by the Lieutenant Governor. The Speaker and the Lieutenant Governor shall call an organizational meeting of the committee, and the committee shall elect a chairman and such other officers as they
deem necessary. The chairmanship shall alternate for twelve-month periods between a House member and a Senate member, with the first chairman being a House member. All actions of the committee shall require a majority vote of the members of each house present and voting. A quorum of the committee shall be three (3) House members and three (3) Senate members. The committee shall meet at least once each month, and the chairman may call additional meetings at such time as he deems necessary or advisable. The chairman may name subcommittees to meet and review proposed rules and report to the full committee.

(2) The committee shall review all agency rules that are proposed to be adopted, amended or repealed after June 30, 2003. For the purposes of this section, any reference to a proposed rule or the proposed adoption of a rule includes a proposed amendment or repeal of a rule. Any agency proposing the adoption of any rule after June 30, 2003, shall give notice to the chairman of the committee at least thirty (30) days before the agency's intended action. The agency shall furnish the committee with fifteen (15) copies of each proposed rule. If the agency has prepared an economic impact statement regarding any proposed rule as provided by Section 25-43-6, the agency shall furnish the committee with fifteen (15) copies of the economic impact statement along with the copies of the proposed rule. Any member of the House of Representatives or Senate who requests a copy of a proposed rule or an economic impact statement from the committee chairman shall be provided a copy. The language of a proposed rule as presented to the committee shall be as follows: New language added to an existing rule shall be underlined, and language to be deleted from an existing rule shall be lined through. The committee, in its discretion, may hold public hearings on any proposed rule.

(3) The committee shall notify the agency proposing the adoption of a rule if it objects to the proposed rule or any part thereof, and shall provide the agency with the reasons for its
objections. The committee shall consider the criteria specified in subsection (4) of this section in determining whether it should object to any proposed rule. The committee may make recommendations to the agency for suggested changes to be made to any proposed rule. After the agency has received any objections and recommendations for suggested changes from the committee, the agency may withdraw the proposed rule, make any of the suggested changes to the proposed rule, or leave the proposed rule unchanged. If the agency does not make any of the suggested changes to the proposed rule, it shall notify the committee of that fact, and the proposed rule shall take effect thirty (30) days after the committee has concluded its meetings to review the proposed rule, or on such later date as required by statute or specified in the proposed rule. If the agency makes any of the suggested changes to the proposed rule, the proposed rule shall take effect thirty (30) days after the agency has filed a copy of the revised proposed rule with the Office of the Secretary of State, or on such later date as required by statute or specified in the proposed rule. No proposed rule, except an emergency rule adopted under Section 25-43-7(2), shall be effective any earlier than thirty (30) days after the committee has concluded its meetings to review the proposed rule. Nothing in this section shall be construed as giving the committee any authority to veto, nullify or amend any agency rule or proposed rule. The committee's authority is limited to reviewing, making objections to and making recommendations for suggested changes to proposed rules.

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

(a) Would the absence of the rule significantly harm or endanger the public health, safety, or welfare?
(b) Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

c) Is there another, less restrictive method of regulation available that could adequately protect the public?

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

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

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

g) Any other criteria the committee may deem appropriate.

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

25-43-7. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give at least thirty (30) days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the manner in which interested persons may present their views thereon. The notice shall be filed with the Office of the Secretary of State and mailed by the agency to all persons who have made timely request of the agency for advance notice of its rule-making proceedings. The notice also shall be given by the agency to the Chairman of the Joint Committee on Administrative Regulation Review as provided in Section 25-43-20. The Secretary of State shall furnish copies at the request of any person and shall be reimbursed by the requesting person for the expense of providing such service.
(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice of hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than one hundred twenty (120) days, renewable once for a period not exceeding ninety (90) days, but the adoption of an identical rule under subsection (1) of this section is not precluded.

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

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

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

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

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

(b) Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing with the Secretary of State, or at a stated date less than
thirty (30) days thereafter if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency's finding and a brief statement of the reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

SECTION 4. This act shall take effect and be in force from and after July 1, 2003.