

By: Representatives Brown, Barnett (116th),
Mayo, Reeves, Simpson, Ward, Whittington,
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To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 651

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

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

43 **ARTICLE I**

44 **GENERAL PROVISIONS**

45 **SECTION 1.** The following shall be codified as Section
46 25-43-1.101, Mississippi Code of 1972:



47 25-43-1.101. **Title; statement of purpose.**

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

50 (2) This chapter is intended to provide a minimum procedural
51 code for the operation of all state agencies when they take action
52 affecting the rights and duties of the public. Nothing in this
53 chapter shall be construed as invalidating any rule or regulation
54 adopted before July 1, 2005, if such rule or regulation was
55 properly adopted in accordance with the law as it existed at the
56 time of adoption. Nothing in this chapter is meant to discourage
57 agencies from adopting procedures providing greater protections to
58 the public or conferring additional rights upon the public; and
59 save for express provisions of this chapter to the contrary,
60 nothing in this chapter is meant to abrogate in whole or in part
61 any statute prescribing procedural duties for an agency which are
62 greater than or in addition to those provided here. This chapter
63 is meant to apply to all rule-making that is not specifically
64 excluded from this chapter or some portion thereof by its express
65 terms or by the express terms of another chapter.

66 The purposes of the Mississippi Administrative Procedures Law
67 are: to provide legislative oversight of powers and duties
68 delegated to administrative agencies; to increase public
69 accountability of administrative agencies; to simplify government
70 by assuring a uniform minimum procedure to which all agencies will
71 be held in the conduct of their most important functions; to
72 increase public access to governmental information; and to
73 increase public participation in the formulation of administrative
74 rules. In accomplishing its objectives, the intention of this
75 chapter is to strike a fair balance between these purposes and the
76 need for efficient, economical and effective government
77 administration. This chapter is not meant to alter the
78 substantive rights of any person or agency. Its impact is limited
79 to procedural rights with the expectation that better substantive



80 results will be achieved in the everyday conduct of state
81 government by improving the process by which those results are
82 attained.

83 (3) From and after July 1, 2005, any reference to the
84 Mississippi Administrative Procedure Act, the Mississippi
85 Administrative Procedures Act, the Mississippi Administrative
86 Procedure Law, or the Mississippi Administrative Procedures Law,
87 being Section 25-43-1 et seq., Mississippi Code of 1972, shall be
88 deemed to mean and refer to this chapter.

89 **SECTION 2.** The following shall be codified as Section
90 25-43-1.102, Mississippi Code of 1972:

91 25-43-1.102. **Definitions.**

92 As used in this chapter, the following terms shall have the
93 meanings ascribed to them in this section unless the context
94 otherwise requires:

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



112 (b) "Agency head" or "head of the agency" means an
113 individual or body of individuals in whom the ultimate legal
114 authority of the agency is vested by any provision of law.

115 (c) "Agency proceeding" or "proceeding" means the
116 process by which an agency considers:

117 (i) A declaratory opinion pursuant to Section
118 25-43-2.103, or

119 (ii) A rule pursuant to Article III of this
120 chapter.

121 (d) "Agency record" means the official rule-making
122 record of an agency pursuant to Section 25-43-3.112.

123 (e) "Declaratory opinion" means an agency opinion
124 rendered in accordance with the provisions of Section 25-43-2.103.

125 (f) "Order" means an agency action of particular
126 applicability that determines the legal rights, duties,
127 privileges, immunities or other legal interests of one or more
128 specific persons. An order shall be in writing signed by a person
129 with authority to render the order, or if more than one (1) person
130 has such authority by at least that number of such persons as
131 jointly have the authority to render the order, or by a person
132 authorized to render the order on behalf of all such persons. The
133 term does not include an executive order issued by the Governor
134 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
135 General pursuant to Section 7-5-25, an opinion issued by the
136 Ethics Commission pursuant to Section 25-4-17, or a declaratory
137 opinion rendered in accordance with Section 25-43-2.103.

138 (g) "Person" means an individual, partnership,
139 corporation, association, governmental subdivision or unit
140 thereof, or public or private organization or entity of any
141 character, and includes another agency.

142 (h) "Provision of law" or "law" means the whole or a
143 part of the federal or state Constitution, or of any federal or
144 state (i) statute, (ii) case law or common law, (iii) rule of



145 court, (iv) executive order, or (v) rule or order of an
146 administrative agency.

147 (i) "Rule" means the whole or a part of an agency
148 regulation or other statement of general applicability that
149 implements, interprets or prescribes:

150 (i) Law or policy, or

151 (ii) The organization, procedure or practice
152 requirements of an agency. The term includes the amendment,
153 repeal or suspension of an existing rule. "Rule" does not
154 include:

155 1. A regulation or statement concerning only
156 the internal management of an agency which does not directly and
157 substantially affect the procedural or substantive rights or
158 duties of any segment of the public;

159 2. A regulation or statement that establishes
160 criteria or guidelines to be used by the staff of an agency in
161 performing audits, investigations or inspections, settling
162 commercial disputes, negotiating commercial arrangements or in the
163 defense, prosecution or settlement of cases, if disclosure of the
164 criteria or guidelines would:

165 a. Enable law violators to avoid
166 detection;

167 b. Facilitate disregard of requirements
168 imposed by law; or

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

171 3. A regulation or statement that only
172 establishes specific prices to be charged for particular goods or
173 services sold by an agency;

174 4. A regulation or statement concerning only
175 the physical servicing, maintenance or care of agency owned or
176 operated facilities or property;



177 5. A regulation or statement relating only to
178 the use of a particular facility or property owned, operated or
179 maintained by the state or any of its subdivisions, if the
180 substance of the regulation or statement is adequately indicated
181 by means of signs or signals to persons who use the facility or
182 property;

183 6. A regulation or statement directly related
184 only to inmates of a correctional or detention facility, students
185 enrolled in an educational institution or patients admitted to a
186 hospital, if adopted by that facility, institution or hospital;

187 7. A form whose contents or substantive
188 requirements are prescribed by rule or statute, and instructions
189 for the execution or use of the form;

190 8. An agency budget;

191 9. A compact or agreement between an agency
192 of this state and one or more agencies of another state or states;
193 or

194 10. An opinion of the Attorney General
195 pursuant to Section 7-5-25, an opinion of the Ethics Commission
196 pursuant to Section 25-4-17, or an Executive Order of the
197 Governor.

198 (j) "Rule-making" means the process for formulation and
199 adoption of a rule.

200 **SECTION 3.** The following shall be codified as Section
201 25-43-1.103, Mississippi Code of 1972:

202 25-43-1.103. **Applicability and relation to other law.**

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

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

208 (3) Specific statutory provisions which govern agency
209 proceedings and which are in conflict with any of the provisions



210 of this chapter shall continue to be applied to all proceedings of
211 any such agency to the extent of such conflict only.

212 (4) The provisions of this chapter shall not be construed to
213 amend, repeal or supersede the provisions of any other law; and,
214 to the extent that the provisions of any other law conflict or are
215 inconsistent with the provisions of this chapter, the provisions
216 of such other law shall govern and control.

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

221 **SECTION 4.** The following shall be codified as Section
222 25-43-1.104, Mississippi Code of 1972:

223 25-43-1.104. **Suspension of chapter's provisions when**
224 **necessary to avoid loss of federal funds or services.**

225 (1) To the extent necessary to avoid a denial of funds or
226 services from the United States which would otherwise be available
227 to the state, the Governor, by executive order, may suspend, in
228 whole or in part, one or more provisions of this chapter. The
229 Governor, by executive order, shall declare the termination of a
230 suspension as soon as it is no longer necessary to prevent the
231 loss of funds or services from the United States.

232 (2) If any provision of this chapter is suspended pursuant
233 to this section, the Governor shall promptly report the suspension
234 to the Legislature. The report may include recommendations
235 concerning desirable legislation that may be necessary to conform
236 this chapter to federal law, including the exemption, if
237 appropriate, of a particular program from the provisions of this
238 chapter.

239 **SECTION 5.** The following shall be codified as Section
240 25-43-1.105, Mississippi Code of 1972:

241 25-43-1.105. **Waiver of rights.**



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

245 **SECTION 6.** The following shall be codified as Section
246 25-43-1.106, Mississippi Code of 1972:

247 25-43-1.106. **Filings with agency; service; computation of**
248 **time.**

249 (1) (a) Whenever, under this act, a party or any person is
250 permitted or required to file with an agency any pleading, motion
251 or other document, filing must be made by delivery of the document
252 to the agency, by mailing it to the agency or by transmitting it
253 to the agency by electronic means, including, but not limited to,
254 facsimile transfer or e-mail. Filing by electronic means is
255 complete when the electronic equipment being used by the agency
256 acknowledges receipt of the material. If the equipment used by
257 the agency does not automatically acknowledge transmission,
258 service is not complete until the filing party obtains an
259 acknowledgment from the agency. Filing by mail is complete upon
260 receipt by the agency.

261 (b) The agency may implement this section by agency
262 rule.

263 (2) (a) Whenever service is required by this chapter, and
264 whether the service is made by a party, an agency or a presiding
265 officer, service of orders, notices, pleadings, motions and other
266 documents upon a party shall be made by delivering a copy to the
267 party, by transmitting it to the party by electronic means,
268 including, but not limited to, facsimile transfer or e-mail, or by
269 mailing it to the party at the party's last known address.
270 Delivery of a copy means handing it to a party, leaving it at the
271 office of a party with a person in charge thereof, or leaving it
272 at the dwelling house or usual place of abode of the party with
273 some person of suitable age and discretion then residing therein.
274 Service by electronic means is complete when the electronic



275 equipment being used by the party being served acknowledges
276 receipt of the material. If the equipment used by the party being
277 served does not automatically acknowledge the transmission,
278 service is not complete until the sending party obtains an
279 acknowledgment from the recipient. Service by mail is complete
280 upon mailing.

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

284 (c) Whenever an agency issues an order or serves a
285 notice or other document, the order or notice or other document
286 shall be dated and shall be deemed to have been issued on the day
287 it is served on the parties to the matter. If the order or notice
288 or other document is to be served by mail, it shall be dated and
289 shall be deemed to have been issued on the day it is mailed.

290 (3) (a) In computing any period of time prescribed or
291 allowed by this Article I, by order of an agency, or by any
292 applicable statute or agency rule, the day of the act, event or
293 default from which the designated period of time begins to run
294 shall not be included. The last day of the period so computed
295 shall be included, unless it is a Saturday, a Sunday or a legal
296 holiday, as defined by statute, or any other day when the agency's
297 office is in fact closed, whether with or without legal authority,
298 in which event the period runs until the end of the next day which
299 is not a Saturday, a Sunday, a legal holiday or any other day when
300 the agency's office is closed. When the period of time prescribed
301 or allowed is less than seven (7) days, intermediate Saturdays,
302 Sundays and legal holidays shall be excluded in the computation.
303 In the event any legal holiday falls on a Sunday, the next
304 following day shall be a legal holiday.

305 (b) Whenever a party has the right or is required to do
306 some act or take some proceedings within a prescribed period after
307 the service of a notice, order, pleading, motion or other paper



308 upon him and the notice or paper is served upon him by mail, three
309 (3) days shall be added to the prescribed period.

310 **ARTICLE II**

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

312 **SECTION 7.** The following shall be codified as Section
313 25-43-2.101, Mississippi Code of 1972:

314 25-43-2.101. **Publication, compilation, indexing and public**
315 **inspection of rules.**

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

322 (2) The Secretary of State shall cause an administrative
323 bulletin to be published in a format and at such regular intervals
324 as the Secretary of State shall prescribe by rule. Upon proper
325 filing of proposed rules, the Secretary of State shall publish
326 them in the administrative bulletin as expeditiously as possible.
327 The administrative bulletin must contain:

328 (a) Notices of proposed rule adoption prepared so that
329 the text of the proposed rule shows the text of any existing rule
330 proposed to be changed and the change proposed;

331 (b) Any other notices and materials designated by law
332 for publication therein; and

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

334 (3) The Secretary of State shall cause an administrative
335 bulletin to be published in a format and at such regular intervals
336 as the Secretary of State shall prescribe by rule. Upon proper
337 filing of newly adopted rules, the Secretary of State shall
338 publish them as expeditiously as possible. The administrative
339 bulletin must contain:



340 (a) Newly filed adopted rules prepared so that the text
341 shows the text of any existing rule being changed and the change
342 being made;

343 (b) Any other notices and materials designated by law
344 for publication therein; and

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

346 (4) The Secretary of State retains the authority to reject
347 proposed and newly adopted rules not properly filed in accordance
348 with the Secretary of State's rules prescribing the numbering
349 system, form, style or transmitting format for such filings. The
350 Secretary of State shall not be empowered to reject filings for
351 reasons of the substance or content or any proposed or newly
352 adopted rule. The Secretary of State shall notify the agency of
353 its rejection of a proposed or newly adopted rule as expeditiously
354 as possible and accompany such notification with a stated reason
355 for the rejection. A rejected filing of a proposed or newly
356 adopted rule does not constitute filing pursuant to Section
357 25-43-3.101 et seq. of this chapter.

358 (5) (a) The Secretary of State shall cause an
359 administrative code to be compiled, indexed by subject and
360 published in a format prescribed by the Secretary of State by
361 rule. All of the effective rules of each agency must be published
362 and indexed in that publication. The Secretary of State shall
363 also cause supplements to the administrative code to be published
364 in a format and at such regular intervals as the Secretary of
365 State shall prescribe by rule.

366 (b) The Joint Legislative Committee on Compilation,
367 Revision and Publication of Legislation is hereby authorized to
368 contract with a reputable and competent publishing company on such
369 terms and conditions and at such prices as may be deemed proper to
370 digest, compile, annotate, index and publish the state agency
371 rules and regulations.



372 (6) (a) Copyrights of the Mississippi Administrative Code,
373 including, but not limited to, cross references, tables of cases,
374 notes of decisions, tables of contents, indices, source notes,
375 authority notes, numerical lists and codification guides, other
376 than the actual text of rules or regulations, shall be taken by
377 and in the name of the publishers of said compilation. Such
378 publishers shall thereafter promptly assign the same to the State
379 of Mississippi and said copyright shall be owned by the state.

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

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

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

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

393 (c) The administrative bulletin or code contains a
394 notice stating in detail the specific subject matter of the
395 omitted proposed or adopted rule and how a copy of the omitted
396 material may be obtained.

397 (8) The administrative bulletin and administrative code with
398 supplements must be furnished to designated officials without
399 charge and to all subscribers at a reasonable cost to be
400 determined by the Secretary of State. Each agency shall also make
401 available for public inspection and copying those portions of the
402 administrative bulletin and administrative code containing all
403 rules adopted or used by the agency in the discharge of its
404 functions, and the index to those rules.



405 **SECTION 8.** The following shall be codified as Section
406 25-43-2.102, Mississippi Code of 1972:

407 25-43-2.102. **Public inspection and indexing of agency**
408 **orders.**

409 (1) In addition to other requirements imposed by any
410 provision of law, and subject to any confidentiality provisions
411 established by law, each agency shall make all written final
412 orders available for public inspection and copying and index them
413 by name and subject.

414 (2) A written final order available for public inspection
415 pursuant to subsection (1) may not be relied on as precedent by an
416 agency to the detriment of any person until it has been made
417 available for public inspection and indexed in the manner
418 described in subsection (1) of this section. This provision is
419 inapplicable to any person who has actual, timely knowledge of the
420 order. The burden of proving that knowledge is on the agency.

421 **SECTION 9.** The following shall be codified as Section
422 25-43-2.103, Mississippi Code of 1972:

423 25-43-2.103. **Declaratory opinions.**

424 (1) Any person with a substantial interest in the subject
425 matter may make a written request of an agency for a declaratory
426 opinion as to the applicability to specified circumstances of a
427 statute, rule or order within the primary jurisdiction of the
428 agency. Such written request must clearly set forth the specific
429 facts upon which an opinion is asked for and shall be limited to a
430 single transaction or occurrence. An agency, through the agency
431 head or its designee(s) by rule, shall issue a declaratory opinion
432 in response to a written request for that opinion unless the
433 agency determines that issuance of the opinion under the
434 circumstances would be contrary to a rule adopted in accordance
435 with subsection (2) of this section.

436 (2) Each agency shall issue rules that provide for: (a) the
437 form, contents and filing of written requests for declaratory



438 opinions; (b) the procedural rights of persons in relation to the
439 written requests; and (c) the disposition of the written requests.
440 Those rules must describe the classes of circumstances in which
441 the agency will not issue a declaratory opinion.

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

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

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

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

451 (4) A copy of all opinions issued in response to a written
452 request for a declaratory opinion must be mailed promptly to the
453 requesting person.

454 (5) (a) When any person receives a declaratory opinion from
455 an agency and shall have stated all the facts to govern such
456 opinion, the agency shall take no civil or criminal action against
457 such person who, in good faith, follows the direction of such
458 opinion and acts in accordance therewith unless a court of
459 competent jurisdiction, after a full hearing, shall judicially
460 declare that such opinion is manifestly wrong and without any
461 substantial support. No declaratory opinion shall be given or
462 considered if the opinion is requested after suit is filed or
463 prosecution begun. Any declaratory opinion rendered pursuant to
464 this chapter shall not be binding or effective for any third party
465 or person other than the agency issuing the declaratory opinion
466 and the person to whom the opinion is issued and shall not be used
467 as precedent for any other transaction or occurrence beyond that
468 set forth by the requesting person.

469 (b) The authority of persons to request and receive
470 agency declaratory opinions in no way affects the ability of any



471 person authorized by Section 7-5-25 to request a legal opinion
472 from the Attorney General.

473 (c) Subject to any confidentiality provisions
474 established by law, each agency shall make all declaratory
475 opinions available for public inspection and copying and shall
476 index them by name and subject, unless information contained
477 within such opinions is confidential by statute or exempt from
478 public disclosure pursuant to another provision of law.

479 **SECTION 10.** The following shall be codified as Section
480 25-43-2.104, Mississippi Code of 1972:

481 25-43-2.104. **Required rule-making.**

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

484 (a) Adopt as a rule a description of the organization
485 of the agency which states the general course and method of its
486 operations and where and how the public may obtain information or
487 make submissions or requests;

488 (b) Adopt rules of practice setting forth the nature
489 and requirements of all formal and informal proceedings available
490 to the public.

491 **SECTION 11.** The following shall be codified as Section
492 25-43-2.105, Mississippi Code of 1972:

493 25-43-2.105. **Model rules of procedure.**

494 In accordance with the rule-making requirements of this
495 chapter, the Secretary of State shall adopt model rules of
496 procedure appropriate for use by as many agencies as possible.
497 The model rules must deal with all general functions and duties
498 performed in common by several agencies. Each agency may adopt as
499 much of the model rules as is practicable under its circumstances.
500 To the extent an agency adopts the model rules, it shall do so in
501 accordance with the rule-making requirements of this chapter.

502 **ARTICLE III**

503 **RULE-MAKING**



504 **ADOPTION AND EFFECTIVENESS OF RULES**

505 **SECTION 12.** The following shall be codified as Section
506 25-43-3.101, Mississippi Code of 1972:

507 25-43-3.101. **Advice on possible rules before notice of**
508 **proposed rule adoption.**

509 (1) In addition to seeking information by other methods, an
510 agency, before filing of a notice of proposed rule adoption under
511 Section 25-43-3.103, may solicit comments from the public on a
512 subject matter of possible rule-making under active consideration
513 within the agency by causing notice to be filed with the Secretary
514 of State for publication in the administrative bulletin of the
515 subject matter and indicating where, when and how persons may
516 comment.

517 (2) Each agency may also appoint committees of nonagency
518 personnel or other members of the public to comment, before filing
519 of a notice of proposed rule adoption under Section 25-43-3.103,
520 on the subject matter of a possible rule-making under active
521 consideration within the agency. The membership of those
522 committees must be filed with the Secretary of State for
523 publication in the administrative bulletin.

524 **SECTION 13.** The following shall be codified as Section
525 25-43-3.102, Mississippi Code of 1972:

526 25-43-3.102. **Public rule-making docket.**

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

529 (2) The rule-making docket may, but need not, contain a
530 listing of the subject matter of possible rules currently under
531 active consideration within the agency for proposal under Section
532 25-43-3.103 and the name and address of agency personnel with whom
533 persons may communicate with respect to the matter.

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



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

- 541 (a) The subject matter of the proposed rule;
- 542 (b) A citation to all published notices relating to the
543 proceeding;
- 544 (c) Where written submissions or written requests for
545 an opportunity to make oral presentations on the proposed rule may
546 be inspected;
- 547 (d) The time during which written submissions may be
548 made;
- 549 (e) If applicable, where and when oral presentations
550 may be made;
- 551 (f) Where any economic impact statement and written
552 requests for the issuance of and other information concerning an
553 economic impact statement of the proposed rule may be inspected;
- 554 (g) The current status of the proposed rule;
- 555 (h) The date of the rule's adoption; and
- 556 (i) When the rule will become effective.

557 **SECTION 14.** The following shall be codified as Section
558 25-43-3.103, Mississippi Code of 1972:

559 25-43-3.103. **Notice of proposed rule adoption.**

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

- 565 (a) A short explanation of the purpose of the proposed
566 rule and the agency's reasons for proposing the rule;
- 567 (b) The specific legal authority authorizing the
568 promulgation of rules;



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

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

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

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

578 (2) Within three (3) days after its proper filing with the
579 Secretary of State for publication in the administrative bulletin,
580 the agency shall cause a copy of the notice of proposed rule
581 adoption to be provided to each person who has made a timely
582 request to the agency to be placed on the mailing list maintained
583 by the agency of persons who have requested notices of proposed
584 rule adoptions. An agency may mail the copy to the person and may
585 charge the person a reasonable fee for such service, which fee may
586 be in excess of the actual cost of providing the person with a
587 mailed copy. Alternatively, the agency may provide the copy via
588 the Internet or by transmitting it to the person by electronic
589 means, including, but not limited to, facsimile transfer or e-mail
590 at no charge to the person, if the person consents to this form of
591 delivery.

592 **SECTION 15.** The following shall be codified as Section
593 25-43-3.104, Mississippi Code of 1972:

594 25-43-3.104. **Public participation.**

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

599 (2) (a) An agency, in its discretion, may schedule an oral
600 proceeding on any proposed rule. However, an agency shall
601 schedule an oral proceeding on a proposed rule if, within twenty



602 (20) days after the proper filing of the notice of proposed rule
603 adoption, a written request for an oral proceeding is submitted by
604 a political subdivision, an agency or ten (10) persons. At that
605 proceeding, persons may present oral or written argument, data and
606 views on the proposed rule.

607 (b) An oral proceeding on a proposed rule, if required,
608 may not be held earlier than twenty (20) days after notice of its
609 location and time is properly filed with the Secretary of State
610 for publication in the administrative bulletin. Within three (3)
611 days after its proper filing with the Secretary of State for
612 publication in the administrative bulletin, the agency shall cause
613 a copy of the notice of the location and time of the oral
614 proceeding to be mailed to each person who has made a timely
615 request to the agency to be placed on the mailing list maintained
616 by the agency of persons who have requested notices of proposed
617 rule adoptions.

618 (c) The agency, a member of the agency, or another
619 presiding officer designated by the agency shall preside at a
620 required oral proceeding on a proposed rule. Oral proceedings
621 must be open to the public and may be recorded by stenographic or
622 other means.

623 (d) An agency may issue rules for the conduct of oral
624 rule-making proceedings or prepare reasonable guidelines or
625 procedures for the conduct of any such proceedings. Those rules
626 may include, but not be limited to, provisions calculated to
627 prevent undue repetition in the oral proceedings.

628 **SECTION 16.** The following shall be codified as Section
629 25-43-3.105, Mississippi Code of 1972:

630 25-43-3.105. **Economic impact statement, requirement and**
631 **conditions.**

632 (1) Prior to giving the notice required in Section
633 25-43-3.103, each agency proposing the adoption of a rule or
634 significant amendment of an existing rule imposing a duty,



635 responsibility or requirement on any person shall consider the
636 economic impact the rule will have on the citizens of our state
637 and the benefits the rule will cause to accrue to those citizens.
638 For purposes of this section, a "significant amendment" means any
639 amendment to a rule for which the total aggregate cost to all
640 persons required to comply with that rule exceeds One Hundred
641 Thousand Dollars (\$100,000.00).

642 (2) Each agency shall prepare a written report providing an
643 economic impact statement for the adoption of a rule or
644 significant amendment to an existing rule imposing a duty,
645 responsibility or requirement on any person, except as provided in
646 subsection (7) of this section. The economic impact statement
647 shall include the following:

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

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

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

656 (d) An analysis of the impact of the proposed rule on
657 small business;

658 (e) A comparison of the costs and benefits of the
659 proposed rule to the probable costs and benefits of not adopting
660 the proposed rule or significantly amending an existing rule;

661 (f) A determination of whether less costly methods or
662 less intrusive methods exist for achieving the purpose of the
663 proposed rule where reasonable alternative methods exist which are
664 not precluded by law;

665 (g) A description of reasonable alternative methods,
666 where applicable, for achieving the purpose of the proposed action



667 which were considered by the agency and a statement of reasons for
668 rejecting those alternatives in favor of the proposed rule; and

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

671 (3) No rule or regulation shall be declared invalid based on
672 a challenge to the economic impact statement for the rule unless
673 the issue is raised in the agency proceeding. No person shall
674 have standing to challenge a rule, based upon the economic impact
675 statement or lack thereof, unless that person provided the agency
676 with information sufficient to make the agency aware of specific
677 concerns regarding the statement in an oral proceeding or in
678 written comments regarding the rule. The grounds for invalidation
679 of an agency action, based upon the economic impact statement, are
680 limited to the agency's failure to adhere to the procedure for
681 preparation of the economic impact statement as provided in this
682 section, or the agency's failure to consider information submitted
683 to the agency regarding specific concerns about the statement, if
684 that failure substantially impairs the fairness of the rule-making
685 proceeding.

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

692 (5) The properly filed summary of the economic impact
693 statement must also indicate where persons may obtain copies of
694 the full text of the economic impact statement and where, when and
695 how persons may present their views on the proposed rule and
696 demand an oral proceeding on the proposed rule if one is not
697 already provided.

698 (6) If the agency has made a good faith effort to comply
699 with the requirements of subsections (1) and (2) of this section,



700 the rule may not be invalidated on the ground that the contents of
701 the economic impact statement are insufficient or inaccurate.

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

703 (a) Any rule which is required by the federal
704 government pursuant to a state/federal program delegation
705 agreement or contract;

706 (b) Any rule which is expressly required by state law;
707 and

708 (c) A temporary rule adopted pursuant to Section
709 25-43-3.108.

710 **SECTION 17.** The following shall be codified as Section
711 25-43-3.106, Mississippi Code of 1972:

712 25-43-3.106. **Time and manner of rule adoption.**

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

715 (2) Following the proper filing with the Secretary of State
716 of the notice of proposed rule adoption, an agency shall adopt a
717 rule pursuant to the rule-making proceeding or terminate the
718 proceeding by proper filing with the Secretary of State of a
719 notice to that effect for publication in the administrative
720 bulletin.

721 (3) Before the adoption of a rule, an agency shall consider
722 the written submissions, oral submissions or any memorandum
723 summarizing oral submissions, and any economic impact statement,
724 provided for by this Article III.

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

728 **SECTION 18.** The following shall be codified as Section
729 25-43-3.107, Mississippi Code of 1972:

730 25-43-3.107. **Variance between adopted rule and published**
731 **notice of proposed rule adoption.**



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

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

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

741 (c) The notice of proposed rule adoption provided fair
742 warning that the outcome of that rule-making proceeding could be
743 the rule in question.

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

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

751 (b) The extent to which the subject matter of the rule
752 or issues determined by the rule are different from the subject
753 matter or issues contained in the notice of proposed rule
754 adoption; and

755 (c) The extent to which the effects of the rule differ
756 from the effects of the proposed rule contained in the notice of
757 proposed rule adoption.

758 **SECTION 19.** The following shall be codified as Section
759 25-43-3.108, Mississippi Code of 1972:

760 25-43-3.108. **Exemption from public rule-making procedures**
761 **for temporary rules.**

762 If an agency finds that an imminent peril to the public
763 health, safety or welfare requires adoption of a rule upon fewer
764 than twenty-five (25) days' notice and states in writing its



765 reasons for that finding, it may proceed without prior notice of
766 hearing or upon any abbreviated notice and hearing that it finds
767 practicable to adopt an emergency rule. The rule may be effective
768 for a period of not longer than one hundred twenty (120) days,
769 renewable once for a period not exceeding ninety (90) days, but
770 the adoption of an identical rule under subsection (1) of this
771 section is not precluded.

772 **SECTION 20.** The following shall be codified as Section
773 25-43-3.109, Mississippi Code of 1972:

774 25-43-3.109. **Contents, style and form of rule.**

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

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

778 (b) An indication of any change between the text of the
779 proposed rule contained in the published notice of proposed rule
780 adoption and the text of the rule as finally adopted, with the
781 reasons for any substantive change;

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

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

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

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

792 (3) An agency may incorporate, by reference in its rules and
793 without publishing the incorporated matter in full, all or any
794 part of a code, standard, rule or regulation that has been adopted
795 by an agency of the United States or of this state, another state
796 or by a nationally recognized organization or association, if
797 incorporation of its text in agency rules would be unduly



798 cumbersome, expensive or otherwise inexpedient. The reference in
799 the agency rules must fully identify the incorporated matter with
800 an appropriate citation. An agency may incorporate by reference
801 such matter in its rules only if the agency, organization or
802 association originally issuing that matter makes copies of it
803 readily available to the public. The rules must state if copies
804 of the incorporated matter are available from the agency issuing
805 the rule or where copies of the incorporated matter are available
806 from the agency of the United States, this state, another state or
807 the organization or association originally issuing that matter.

808 (4) In preparing its rules pursuant to this Article III,
809 each agency shall follow the uniform numbering system, form and
810 style prescribed by the Secretary of State.

811 **SECTION 21.** The following shall be codified as Section
812 25-43-3.110, Mississippi Code of 1972:

813 25-43-3.110. **Agency rule-making record.**

814 (1) An agency shall maintain an official rule-making record
815 for each rule it (a) proposes or (b) adopts. The agency has the
816 exclusive authority to prepare and exclusive authority to certify
817 the record or any part thereof, including, but not limited to, any
818 transcript of the proceedings, and the agency's certificate shall
819 be accepted by the court and by any other agency. The record must
820 be available for public inspection.

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

822 (a) Copies of all notices of proposed rule-making or
823 oral proceedings or other publications in the administrative
824 bulletin with respect to the rule or the proceeding upon which the
825 rule is based;

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

829 (c) All written requests, submissions and comments
830 received by the agency and all other written materials considered



831 by the agency in connection with the formulation, proposal or
832 adoption of the rule or the proceeding upon which the rule is
833 based;

834 (d) Any official transcript of oral presentations made
835 in the proceeding upon which the rule is based or, if not
836 transcribed, any tape recording or stenographic record of those
837 presentations, and any memorandum prepared by a presiding official
838 summarizing the contents of those presentations. The word
839 "transcript" includes a written transcript, a printed transcript,
840 an audible audiotape or videotape that is indexed and annotated so
841 that it is readily accessible and any other means that the agency
842 may have by rule provided for the reliable and accessible
843 preservation of the proceeding;

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

846 (f) A copy of the rule and related information set out
847 in Section 25-43-3.109 as filed in the Office of the Secretary of
848 State.

849 (3) The agency shall have authority to engage such persons
850 and acquire such equipment as may be reasonably necessary to
851 record and preserve in any technically and practicably feasible
852 manner all matters and all proceedings had at any rule-making
853 proceeding.

854 (4) Upon judicial review, the record required by this
855 section constitutes the official agency rule-making record with
856 respect to a rule. Except as otherwise required by a provision of
857 law, the agency rule-making record need not constitute the
858 exclusive basis for agency action on that rule or for judicial
859 review thereof.

860 **SECTION 22.** The following shall be codified as Section
861 25-43-3.111, Mississippi Code of 1972:

862 25-43-3.111. **Invalidity of rules not adopted according to**
863 **article; time limitation.**



864 (1) A rule adopted after July 1, 2005, is invalid unless
865 adopted in substantial compliance with the provisions of Sections
866 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a
867 notice of proposed rule adoption to any person as required by
868 Section 25-43-3.103(2) does not invalidate a rule.

869 (2) An action to contest the validity of a rule on the
870 grounds of its noncompliance with any provision of Sections
871 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
872 year after the effective date of the rule.

873 **SECTION 23.** The following shall be codified as Section
874 25-43-3.112, Mississippi Code of 1972:

875 25-43-3.112. **Filing of rules.**

876 An agency shall file in the Office of the Secretary of State
877 each rule it adopts and all rules existing on July 1, 2005, that
878 have not previously been filed. The filing must be done as soon
879 after adoption of the rule as is practicable. At the time of
880 filing, each rule adopted after July 1, 2005, must have included
881 in or attached to it the material set out in Section 25-43-3.109.
882 The Secretary of State shall affix to each rule and statement a
883 certification of the date of filing and keep a permanent register
884 open to public inspection of all filed rules and attached
885 material. In filing a rule, each agency shall use a standard
886 format prescribed by the Secretary of State.

887 **SECTION 24.** The following shall be codified as Section
888 25-43-3.113, Mississippi Code of 1972:

889 25-43-3.113. **Effective date of rules.**

890 (1) Except to the extent subsection (2) or (3) of this
891 section provides otherwise, each rule adopted after July 1, 2005,
892 becomes effective thirty (30) days after its proper filing in the
893 Office of the Secretary of State.

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



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

901 (i) It is required by Constitution, statute or
902 court order;

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

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

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

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

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

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

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

924 **SECTION 25.** The following shall be codified as Section
925 25-43-3.114, Mississippi Code of 1972:

926 25-43-3.114. **Review by agency.**

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



930 **SECTION 26.** Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6,
931 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and
932 25-43-19, Mississippi Code of 1972, which create the Mississippi
933 Administrative Procedures Law, provide definitions for terms used
934 in such law, prescribe procedures that must be followed by
935 agencies in the adoption, amendment and repeal of agency rules,
936 require the filing of an economic impact statement for the
937 adoption of a rule, require filing and notice before such rules
938 may become effective, require agencies to index all effective
939 rules adopted, provide that revocation or suspension of any
940 license shall not be effective unless notice of such intended
941 action is given to the licensee, and require agencies to adopt
942 procedures to assure that opponents of proposed rules have the
943 opportunity to present their views and review adverse rulings, are
944 repealed.

945 **SECTION 27.** Every agency as defined in this act shall, no
946 later than October 1, 2003, file with the Secretary of the Senate
947 and the Clerk of the House a report which outlines any conflicts
948 between this act and any other laws affecting the agency. This
949 report shall include proposed legislation to bring the other laws
950 into conformity with the requirements of this act. The Secretary
951 of State shall, no later than December 1, 2003, file with the
952 Secretary of the Senate and the Clerk of the House a list of
953 sections which the Secretary of State believes conflict with this
954 act. The Secretary of the Senate and the Clerk of the House shall
955 maintain a list of agencies which have complied with this section.

956 **SECTION 28.** Section 27 of this act shall take effect and be
957 in force from and after its passage. The remainder of this act
958 shall take effect and be in force from and after July 1, 2005.

