

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2069

1 AN ACT TO AMEND SECTIONS 25-43-3.103 AND 25-43-3.109,  
 2 MISSISSIPPI CODE OF 1972, TO CORRECT TYPOGRAPHICAL ERRORS IN  
 3 INTERNAL REFERENCES IN THE ADMINISTRATIVE PROCEDURES ACT; TO AMEND  
 4 SECTION 43-13-137, MISSISSIPPI CODE OF 1972, TO CONFORM THE  
 5 STATUTORY REFERENCE IN THE MEDICAID LAW TO THE ADMINISTRATIVE  
 6 PROCEDURES ACT TO THE REVISED ACT; TO AMEND SECTION 83-24-43,  
 7 MISSISSIPPI CODE OF 1972, TO CONFORM THE NOTICE REQUIRED IN  
 8 INSURANCE REHABILITATION AND LIQUIDATION TO THE FORM OF NOTICE  
 9 REQUIRED UNDER THE REVISED ADMINISTRATIVE PROCEDURES ACT; TO AMEND  
 10 SECTION 65-9-1, MISSISSIPPI CODE OF 1972, TO CHANGE THE WORD "ACT"  
 11 TO THE WORD "LAW" IN THE STATE AID ROAD LAW; TO AMEND SECTIONS  
 12 77-3-45 AND 77-3-59, MISSISSIPPI CODE OF 1972, TO CONFORM THE  
 13 NOTICE REQUIREMENTS APPLICABLE TO THE PUBLIC SERVICE COMMISSION TO  
 14 THE REVISED ADMINISTRATIVE PROCEDURES ACT; TO AMEND SECTIONS  
 15 53-1-19 AND 53-1-47, MISSISSIPPI CODE OF 1972, TO CONFORM NOTICE  
 16 PROCEDURES APPLICABLE TO THE OIL AND GAS BOARD TO THE REVISED  
 17 ADMINISTRATIVE PROCEDURES ACT; TO AMEND SECTION 51-11-19,  
 18 MISSISSIPPI CODE OF 1972, TO CONFORM THE STATUTORY RULE-MAKING  
 19 AUTHORITY OF THE PEARL RIVER BASIN DEVELOPMENT DISTRICT TO THE  
 20 REVISED ADMINISTRATIVE PROCEDURES ACT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 25-43-3.103, Mississippi Code of 1972, is  
 23 amended as follows:

24 25-43-3.103. (1) At least twenty-five (25) days before the  
 25 adoption of a rule an agency shall cause notice of its  
 26 contemplated action to be properly filed with the Secretary of  
 27 State for publication in the administrative bulletin. The notice  
 28 of proposed rule adoption must include:

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

31 (b) The specific legal authority authorizing the  
 32 promulgation of rules;

33 (c) A reference to all rules repealed, amended or  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

35 (d) Subject to Section 25-43-2.101(7), the text of the  
 36 proposed rule;

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

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

42 (2) Within three (3) days after its proper filing with the  
43 Secretary of State for publication in the administrative bulletin,  
44 the agency shall cause a copy of the notice of proposed rule  
45 adoption to be provided to each person who has made a timely  
46 request to the agency to be placed on the mailing list maintained  
47 by the agency of persons who have requested notices of proposed  
48 rule adoptions. An agency may mail the copy to the person and may  
49 charge the person a reasonable fee for such service, which fee may  
50 be in excess of the actual cost of providing the person with a  
51 mailed copy. Alternatively, the agency may provide the copy via  
52 the Internet or by transmitting it to the person by electronic  
53 means, including, but not limited to, facsimile transfer or e-mail  
54 at no charge to the person, if the person consents to this form of  
55 delivery.

56 **SECTION 2.** Section 25-43-3.109, Mississippi Code of 1972, is  
57 amended as follows:

58 25-43-3.109. (1) Each rule adopted by an agency must  
59 contain the text of the rule and:

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

61 (b) An indication of any change between the text of the  
62 proposed rule contained in the published notice of proposed rule  
63 adoption and the text of the rule as finally adopted, with the  
64 reasons for any substantive change;

65 (c) Any changes to the information contained in the  
66 notice of proposed rule adoption as required by Section  
67 25-43-3.103(1)(a), (b) or (c) \* \* \*;

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

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

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

75           (3) An agency may incorporate, by reference in its rules and  
76 without publishing the incorporated matter in full, all or any  
77 part of a code, standard, rule or regulation that has been adopted  
78 by an agency of the United States or of this state, another state  
79 or by a nationally recognized organization or association, if  
80 incorporation of its text in agency rules would be unduly  
81 cumbersome, expensive or otherwise inexpedient. The reference in  
82 the agency rules must fully identify the incorporated matter with  
83 an appropriate citation. An agency may incorporate by reference  
84 such matter in its rules only if the agency, organization or  
85 association originally issuing that matter makes copies of it  
86 readily available to the public. The rules must state if copies  
87 of the incorporated matter are available from the agency issuing  
88 the rule or where copies of the incorporated matter are available  
89 from the agency of the United States, this state, another state or  
90 the organization or association originally issuing that matter.

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

94           **SECTION 3.** Section 43-13-137, Mississippi Code of 1972, is  
95 amended as follows:

96           43-13-137. The division is an agency as defined under  
97 Section 25-43-3 and, therefore, must comply in all respects with  
98 the Administrative Procedures Law, Section 25-43-1.101 et seq.

99           **SECTION 4.** Section 83-24-43, Mississippi Code of 1972, is  
100 amended as follows:

101           83-24-43. (1) Unless the court otherwise directs, the  
102 liquidator shall give or cause to be given notice in a manner

103 specified under the Administrative Procedures Law of the  
104 liquidation order as soon as possible:

105 (a) \* \* \* To the insurance commissioner of each  
106 jurisdiction in which the insurer is doing business, who shall  
107 receive additional notice by telephone or telegraph;

108 (b) \* \* \* To any guaranty association or foreign  
109 guaranty association which is or may become obligated as a result  
110 of the liquidation;

111 (c) \* \* \* To all insurance agents of the insurer;

112 (d) \* \* \* To all persons known or reasonably expected  
113 to have claims against the insurer, including all policyholders,  
114 at their last known address as indicated by the records of the  
115 insurer; and

116 (e) By publication in a newspaper of general  
117 circulation in the county in which the insurer has its principal  
118 place of business and in such other locations as the liquidator  
119 deems appropriate.

120 (2) Except as otherwise established by the liquidator with  
121 approval of the court, notice to potential claimants under  
122 subsection (1) shall require claimants to file with the liquidator  
123 their claims, together with proper proofs thereof under Section  
124 83-24-71, on or before a date the liquidator shall specify in the  
125 notice. The liquidator need not require persons claiming cash  
126 surrender values or other investment values in life insurance and  
127 annuities to file a claim. All claimants shall have a duty to  
128 keep the liquidator informed of any changes of address.

129 (3) (a) Notice under subsection (1) to agents of the  
130 insurer and to potential claimants who are policyholders shall  
131 include, where applicable, notice that coverage by state guaranty  
132 associations may be available for all or part of policy benefits  
133 in accordance with applicable state guaranty laws.

134 (b) The liquidator shall promptly provide to the  
135 guaranty associations such information concerning the identities

136 and addresses of such policyholders and their policy coverages as  
137 may be within the liquidator's possession or control, and  
138 otherwise cooperate with guaranty associations to assist them in  
139 providing to such policyholders timely notice of the guaranty  
140 associations' coverage of policy benefits, including, as  
141 applicable, coverage of claims and continuation or termination of  
142 coverages.

143 (4) If notice is given in accordance with this section, the  
144 distribution of assets of the insurer under this chapter shall be  
145 conclusive with respect to all claimants, whether or not they  
146 received notice.

147 **SECTION 5.** Section 65-9-1, Mississippi Code of 1972, is  
148 amended as follows:

149 65-9-1. The board of supervisors of each county, now having  
150 full jurisdiction over all roads, ferries, and bridges in its  
151 respective county not maintained as state highways, is hereby  
152 fully authorized and empowered to construct and maintain the same  
153 (including designated state highways not yet taken over by the  
154 highway department); and all such roads under the jurisdiction of  
155 the several boards of supervisors are hereby designated, defined,  
156 and declared to be either (a) "feeder" or "local farm roads" or  
157 (b) "state aid roads."

158 State aid roads are hereby defined as that group or class of  
159 roads composing the main collector and distributor routes feeding  
160 into local trade areas or into the state highway network, which  
161 are not designated as state highways by the Legislature, and  
162 particularly those essential to the conservation and development  
163 of natural resources, of economic and social value, and  
164 encouraging desirable land utilization, having in addition the  
165 following characteristics, to wit: roads (including bridges and  
166 ferries) which:

167 (a) Connect communities within the individual counties  
168 and with those of adjoining counties and/or which also connect

169 with the state highway system to form a complete network of  
170 secondary or collector routes.

171 (b) Carry heavy volumes of traffic serving most of the  
172 following interests of the counties, to wit:

- 173 (1) Agricultural;
- 174 (2) Business;
- 175 (3) Educational; and
- 176 (4) Industrial.

177 The State Aid Engineer shall see that the criteria imposed  
178 herein are explicitly followed in the designation and in the  
179 construction of the state aid roads in each county. The State Aid  
180 Engineer shall promulgate regulations pursuant to the  
181 Administrative Procedures Law to require the development of a  
182 network of intercounty roads and to provide for a review process  
183 within the state aid division for the designation of said state  
184 aid roads. Such regulations shall also establish standards for  
185 state aid route designation. The State Aid Engineer is hereby  
186 authorized and directed to withhold funds from such counties until  
187 the state aid roads therein are designated and constructed  
188 according to the characteristics set forth herein.

189 All other roads under the jurisdiction of the several boards  
190 of supervisors are hereby declared to be "local farm roads" and  
191 not affected in anywise by this chapter.

192 State aid roads in the several counties shall be eligible for  
193 state aid in the manner and under the terms and conditions  
194 hereinafter set out. Local system roads (as defined in Section  
195 65-18-3) in the several counties shall be eligible for state aid  
196 in the manner and under the terms and conditions set out in the  
197 Local System Road Program established in Sections 65-18-1 through  
198 65-18-17. State aid, by way of funds to be expended on state aid  
199 roads and local system roads (as defined in Section 65-18-3),  
200 shall consist of any sum or sums provided by the Legislature to  
201 supplement funds furnished by the several counties for the purpose

202 of constructing, improving, widening, straightening, surfacing, or  
203 reconstructing roads on the state aid system or for the purpose of  
204 the construction, reconstruction and paving of roads on the Local  
205 System Road Program, and shall be available to the several  
206 counties in such proportion as may be fixed and determined by law.

207 **SECTION 6.** Section 77-3-45, Mississippi Code of 1972, is  
208 amended as follows:

209 77-3-45. The commission shall prescribe, issue, amend and  
210 rescind such reasonable rules and regulations as may be reasonably  
211 necessary or appropriate to carry out the provisions of this  
212 chapter in compliance with the Administrative Procedures Law.

213 The commission \* \* \*, in the exercise of its power to  
214 promulgate rules and regulations, shall adopt standard practices  
215 and procedures:

216 (a) To specify what costs may be used for determining a  
217 public utility's rate base, which balance the interests of  
218 consumers and investors;

219 (b) To prescribe the time period for measuring a public  
220 utility's rate base;

221 (c) To specify allowable operating expenses, provided,  
222 however, that the commission shall exclude from a public utility's  
223 allowable operating expenses any interest such utility paid, or  
224 credited, to its consumers in connection with refunds in a rate  
225 proceeding in which its rates were finally determined to be  
226 excessive;

227 (d) To determine accurately the capital costs of a  
228 public utility;

229 (e) To define specific costs which may be included by a  
230 public utility in its monthly fuel adjustment clause retail  
231 billings;

232 (f) To define specific costs which may be included by a  
233 public utility distributing gas in its monthly purchased gas  
234 adjustments retail billings;

235 (g) To prescribe minimal uniform standards of service  
236 for various classes of public utilities; and

237 (h) To provide for any other rules and regulations  
238 deemed by the commission to be appropriate for carrying out the  
239 provisions of this chapter.

240 **SECTION 7.** Section 77-3-59, Mississippi Code of 1972, is  
241 amended as follows:

242 77-3-59. The commission shall make and file its findings and  
243 order, and its opinion, if any. All findings shall be supported  
244 by substantial evidence presented and shall be in sufficient  
245 detail to enable the court on appeal to determine the controverted  
246 questions presented, and the basis of the commission's conclusion.  
247 A copy of such order certified under the seal of the commission,  
248 shall be served upon all parties and attorneys of record, and to  
249 all persons requesting a copy of the opinion pursuant to the  
250 Administrative Procedures Law. The order shall take effect twenty  
251 (20) days after the service thereof, unless otherwise provided,  
252 and shall continue in force, either for a period which may be  
253 designated therein or until changed or revoked by the commission.  
254 If an order cannot, in the judgment of the commission, be complied  
255 with within twenty (20) days, the commission may grant and  
256 prescribe such additional time as in its judgment is reasonably  
257 necessary to comply with the order, and may, on application and  
258 for good cause shown, extend the time for compliance fixed in its  
259 order.

260 **SECTION 8.** Section 53-1-19, Mississippi Code of 1972, is  
261 amended as follows:

262 53-1-19. The board shall prescribe its rules of order or  
263 procedure in hearings or other proceedings before it consistent  
264 with the Administrative Procedures Law. The board may provide for  
265 the recording and preservation of its proceedings by order entered  
266 on its minutes.



267           **SECTION 9.** Section 53-1-47, Mississippi Code of 1972, is  
268 amended as follows:

269           53-1-47. (a) (i) Any person, who, for the purpose of  
270 evading the provisions of Sections 53-1-1 through 53-1-47,  
271 inclusive, or any rule, regulation or order made thereunder, shall  
272 make or cause to be made any false entry, statement of fact or  
273 omission in any report required by such sections or by any rule,  
274 regulation or order thereunder or in any account, record or  
275 memorandum kept in connection with the provisions thereof or who,  
276 for such purpose, shall mutilate, alter, conceal or falsify any  
277 such report, account, record or memorandum, shall be subject to a  
278 penalty of not more than Ten Thousand Dollars (\$10,000.00) per day  
279 for each day of such violation to be assessed by the board. In  
280 determining the amount of the penalty, the board shall consider  
281 the factors specified in subsection (d) of this section. Such  
282 penalties shall be assessed according to the procedures set forth  
283 in subsection (b) of this section.

284                       (ii) Any person, who, for the purpose of evading  
285 the provisions of Sections 53-1-1 through 53-1-47, inclusive, or  
286 any rule, regulation or order made thereunder, shall intentionally  
287 make or cause to be made any false entry, statement of fact or  
288 omission in any report required by said sections or by any rule,  
289 regulation or order thereunder or in any account, record or  
290 memorandum kept in connection with the provisions thereof or who,  
291 for such purpose, shall mutilate, alter, conceal or falsify any  
292 such report, account, record or memorandum shall be deemed guilty  
293 of a misdemeanor and shall be subject, upon conviction in any  
294 court of competent jurisdiction, to a fine of not less than Five  
295 Hundred Dollars (\$500.00) nor more than One Thousand Dollars  
296 (\$1,000.00), or imprisonment for a term of not less than ten (10)  
297 days nor more than six (6) months for each such violation, or both  
298 such fine and imprisonment.

299           (b) Any person who violates any provision of Sections  
300 53-1-1 through 53-1-47, inclusive, or Sections 53-3-1 through  
301 53-3-33, and 53-3-39 through 53-3-165, or any lawful rule,  
302 regulation or order of the board made hereunder, shall, in  
303 addition to any penalty for such violation that is otherwise  
304 provided for herein, be subject to a penalty of not to exceed Ten  
305 Thousand Dollars (\$10,000.00) per day for each day of such  
306 violation to be assessed by the board. When any charge is filed  
307 with the board charging any person with any such violation, the  
308 board shall conduct an adjudicative proceeding in accordance with  
309 the Administrative Procedures Law. Such proceeding shall be held  
310 by not less than three (3) members of the board and a unanimous  
311 verdict of all members hearing such charge shall be necessary for  
312 conviction and in the event of a conviction all members of the  
313 board hearing such cause must agree on the penalty assessed.

314           The Attorney General, by his designated assistant, shall  
315 represent the board in all such proceedings \* \* \*. The Attorney  
316 General shall also designate a member of his staff to present  
317 evidence and proof of such violation in the event such charge is  
318 contested.

319           All penalties assessed by the board under the provisions of  
320 this section shall have the force and effect of a judgment of the  
321 circuit court and shall be enrolled in the office of the circuit  
322 clerk and execution may be issued thereon. All such penalties  
323 paid or collected shall be paid to the State Treasurer for credit  
324 to the Special Oil and Gas Board Fund.

325           Any person adjudged guilty of any such violation shall have  
326 the right of appeal in accordance with the provisions of Section  
327 53-1-39.

328           The payment of any penalty as provided herein shall not have  
329 the effect of changing illegal oil into legal oil, illegal gas  
330 into legal gas or illegal product into legal product, nor shall  
331 such payment have the effect of authorizing the sale or purchase

332 or acquisition or the transportation, refining, processing or  
333 handling in any other way of such illegal oil, illegal gas or  
334 illegal product.

335 (c) Any person who aids or abets any other person in  
336 the violation of any provision of Sections 53-1-1 through 53-1-47,  
337 inclusive, or Sections 53-3-1 through 53-3-21, inclusive, or any  
338 rule, regulation or order made thereunder, shall be subject to the  
339 same penalties as are prescribed herein for the violation by such  
340 other person.

341 (d) In determining the amount of the penalty under  
342 subsection (a), (b) or (c) of this section, the board shall  
343 consider at a minimum the following factors:

344 (i) The willfulness of the violation;

345 (ii) Any damage to water, land or other natural  
346 resources of the state or their users;

347 (iii) Any cost of restoration and abatement;

348 (iv) Any economic benefit to the violator as a  
349 result of noncompliance;

350 (v) The seriousness of the violation, including  
351 any harm to the environment and any harm to the health and safety  
352 of the public; and

353 (vi) Any prior violation by such violator.

354 (e) The board is authorized to utilize the provisions  
355 of Section 85-7-132 to enforce penalties provided by this section.

356 **SECTION 10.** Section 51-11-19, Mississippi Code of 1972, is  
357 amended as follows:

358 51-11-19. (1) The board of directors of the district shall  
359 have the power to adopt and promulgate all reasonable regulations  
360 so as to secure, maintain, and preserve the sanitary condition of  
361 all water in and to flow into any reservoir owned by the district,  
362 to prevent waste of water or the unauthorized use thereof, and to  
363 regulate residence, hunting, fishing, boating, camping,  
364 circulation of vehicular traffic on land, the parking of such

365 vehicles, and all recreational and business privileges in, along,  
366 or around any such reservoir, any body of land, or any easement  
367 owned by the district.

368 (2) All such regulations shall be promulgated in compliance  
369 with the Administrative Procedures Law, and, after publication in  
370 a daily newspaper of statewide circulation and in a newspaper of  
371 general circulation in each county comprising the area of the  
372 district, shall have the full force and effect of law, and  
373 violation thereof shall be punishable by fine, not to exceed One  
374 Thousand Dollars (\$1,000.00), as may be prescribed in such  
375 regulations, or by imprisonment, not to exceed fifteen (15) days,  
376 to be determined by the court, or both.

377 (3) In the event of a violation of any regulation adopted to  
378 prevent pollution of the waters in any reservoir owned by the  
379 district, or the threat of continuous violation thereof, the  
380 district shall have authority to sue for and obtain damages and/or  
381 other appropriate relief, including injunctive relief.

382 (4) All such rules and regulations so prescribed and the  
383 penalties fixed thereunder, by the authority of this section,  
384 shall not conflict with, exceed, alter, or suspend any  
385 regulations, rules, or penalties prescribed by general statute, by  
386 the Mississippi Commission on Wildlife, Fisheries and Parks or the  
387 Mississippi State Board of Health. All fines and penalties levied  
388 and collected under this chapter shall be remitted and accounted  
389 for in accordance with the general statutes relating thereto.

390 **SECTION 11.** This act shall take effect and be in force from  
391 and after July 1, 2005.