

By: Senator(s) Gordon

To: Judiciary, Division A

SENATE BILL NO. 2088

1 AN ACT TO AMEND SECTION 28 OF CHAPTER 304, LAWS OF 2003, AND
2 SECTIONS 25-43-1.101, 25-43-1.102, 25-43-3.111, 25-43-3.112 AND
3 25-43-3.113, MISSISSIPPI CODE OF 1972, TO DELAY THE EFFECTIVE DATE
4 OF THE ADMINISTRATIVE PROCEDURES ACT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 28 of Chapter 304, Laws of 2003, is
7 amended to read as follows:

8 Section 28. Section 27 of this act shall take effect and be
9 in force from and after its passage. The remainder of this act
10 shall take effect and be in force from and after July 1, 2007.

11 **SECTION 2.** Section 25-43-1.101, Mississippi Code of 1972, is
12 amended as follows:

13 25-43-1.101. (1) This chapter may be cited as the
14 "Mississippi Administrative Procedures Law."

15 (2) This chapter is intended to provide a minimum procedural
16 code for the operation of all state agencies when they take action
17 affecting the rights and duties of the public. Nothing in this
18 chapter shall be construed as invalidating any rule or regulation
19 adopted before July 1, 2007, if such rule or regulation was
20 properly adopted in accordance with the law as it existed at the
21 time of adoption. Nothing in this chapter is meant to discourage
22 agencies from adopting procedures providing greater protections to
23 the public or conferring additional rights upon the public; and
24 save for express provisions of this chapter to the contrary,
25 nothing in this chapter is meant to abrogate in whole or in part
26 any statute prescribing procedural duties for an agency which are
27 greater than or in addition to those provided here. This chapter
28 is meant to apply to all rule-making that is not specifically

29 excluded from this chapter or some portion thereof by its express
30 terms or by the express terms of another chapter.

31 The purposes of the Mississippi Administrative Procedures Law
32 are: to provide legislative oversight of powers and duties
33 delegated to administrative agencies; to increase public
34 accountability of administrative agencies; to simplify government
35 by assuring a uniform minimum procedure to which all agencies will
36 be held in the conduct of their most important functions; to
37 increase public access to governmental information; and to
38 increase public participation in the formulation of administrative
39 rules. In accomplishing its objectives, the intention of this
40 chapter is to strike a fair balance between these purposes and the
41 need for efficient, economical and effective government
42 administration. This chapter is not meant to alter the
43 substantive rights of any person or agency. Its impact is limited
44 to procedural rights with the expectation that better substantive
45 results will be achieved in the everyday conduct of state
46 government by improving the process by which those results are
47 attained.

48 (3) From and after July 1, 2007, any reference to the
49 Mississippi Administrative Procedure Act, the Mississippi
50 Administrative Procedures Act, the Mississippi Administrative
51 Procedure Law, or the Mississippi Administrative Procedures Law,
52 being Section 25-43-1 et seq., Mississippi Code of 1972, shall be
53 deemed to mean and refer to this chapter.

54 **SECTION 3.** Section 25-43-1.102, Mississippi Code of 1972, is
55 amended as follows:

56 25-43-1.102. As used in this chapter, the following terms
57 shall have the meanings ascribed to them in this section unless
58 the context otherwise requires:

59 (a) "Agency" means a board, commission, department,
60 officer or other administrative unit of this state, including the
61 agency head, and one or more members of the agency head or agency

62 employees directly or indirectly purporting to act on behalf or
63 under the authority of the agency head. The term does not include
64 the Legislature or any of its component units, the judiciary or
65 any of its component units or the Governor. The term does not
66 include a political subdivision of the state or any of the
67 administrative units of a political subdivision. Furthermore, the
68 Board of Trustees of State Institutions of Higher Learning, or any
69 college or university thereunder, shall be exempt from the
70 provisions of this chapter until July 1, 2007, at which time this
71 exemption shall stand repealed. To the extent it purports to
72 exercise authority subject to any provision of this chapter, an
73 administrative unit otherwise qualifying as an "agency" must be
74 treated as a separate agency even if the unit is located within or
75 subordinate to another agency.

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

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

81 (i) A declaratory opinion pursuant to Section
82 25-43-2.103, or

83 (ii) A rule pursuant to Article III of this
84 chapter.

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

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

89 (f) "Order" means an agency action of particular
90 applicability that determines the legal rights, duties,
91 privileges, immunities or other legal interests of one or more
92 specific persons. An order shall be in writing signed by a person
93 with authority to render the order, or if more than one (1) person
94 has such authority by at least that number of such persons as

95 jointly have the authority to render the order, or by a person
96 authorized to render the order on behalf of all such persons. The
97 term does not include an executive order issued by the Governor
98 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
99 General pursuant to Section 7-5-25, an opinion issued by the
100 Ethics Commission pursuant to Section 25-4-17, or a declaratory
101 opinion rendered in accordance with Section 25-43-2.103.

102 (g) "Person" means an individual, partnership,
103 corporation, association, governmental subdivision or unit
104 thereof, or public or private organization or entity of any
105 character, and includes another agency.

106 (h) "Provision of law" or "law" means the whole or a
107 part of the federal or state Constitution, or of any federal or
108 state (i) statute, (ii) case law or common law, (iii) rule of
109 court, (iv) executive order, or (v) rule or order of an
110 administrative agency.

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

114 (i) Law or policy, or

115 (ii) The organization, procedure or practice
116 requirements of an agency. The term includes the amendment,
117 repeal or suspension of an existing rule. "Rule" does not
118 include:

119 1. A regulation or statement concerning only
120 the internal management of an agency which does not directly and
121 substantially affect the procedural or substantive rights or
122 duties of any segment of the public;

123 2. A regulation or statement that establishes
124 criteria or guidelines to be used by the staff of an agency in
125 performing audits, investigations or inspections, settling
126 commercial disputes, negotiating commercial arrangements or in the

127 defense, prosecution or settlement of cases, if disclosure of the
128 criteria or guidelines would:

129 a. Enable law violators to avoid
130 detection;

131 b. Facilitate disregard of requirements
132 imposed by law; or

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

135 3. A regulation or statement that only
136 establishes specific prices to be charged for particular goods or
137 services sold by an agency;

138 4. A regulation or statement concerning only
139 the physical servicing, maintenance or care of agency owned or
140 operated facilities or property;

141 5. A regulation or statement relating only to
142 the use of a particular facility or property owned, operated or
143 maintained by the state or any of its subdivisions, if the
144 substance of the regulation or statement is adequately indicated
145 by means of signs or signals to persons who use the facility or
146 property;

147 6. A regulation or statement directly related
148 only to inmates of a correctional or detention facility, students
149 enrolled in an educational institution or patients admitted to a
150 hospital, if adopted by that facility, institution or hospital;

151 7. A form whose contents or substantive
152 requirements are prescribed by rule or statute, and instructions
153 for the execution or use of the form;

154 8. An agency budget;

155 9. A compact or agreement between an agency
156 of this state and one or more agencies of another state or states;
157 or

158 10. An opinion of the Attorney General
159 pursuant to Section 7-5-25, an opinion of the Ethics Commission

160 pursuant to Section 25-4-17, or an Executive Order of the
161 Governor.

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

164 **SECTION 4.** Section 25-43-3.111, Mississippi Code of 1972, is
165 amended as follows:

166 25-43-3.111. (1) A rule adopted after July 1, 2007, is
167 invalid unless adopted in substantial compliance with the
168 provisions of Sections 25-43-3.102 through 25-43-3.110.

169 Inadvertent failure to mail a notice of proposed rule adoption to
170 any person as required by Section 25-43-3.103(2) does not
171 invalidate a rule.

172 (2) An action to contest the validity of a rule on the
173 grounds of its noncompliance with any provision of Sections
174 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
175 year after the effective date of the rule.

176 **SECTION 5.** Section 25-43-3.112, Mississippi Code of 1972, is
177 amended as follows:

178 25-43-3.112. An agency shall file in the Office of the
179 Secretary of State each rule it adopts and all rules existing on
180 July 1, 2007, that have not previously been filed. The filing
181 must be done as soon after adoption of the rule as is practicable.
182 At the time of filing, each rule adopted after July 1, 2007, must
183 have included in or attached to it the material set out in Section
184 25-43-3.109. The Secretary of State shall affix to each rule and
185 statement a certification of the date of filing and keep a
186 permanent register open to public inspection of all filed rules
187 and attached material. In filing a rule, each agency shall use a
188 standard format prescribed by the Secretary of State.

189 **SECTION 6.** Section 25-43-3.113, Mississippi Code of 1972, is
190 amended as follows:

191 25-43-3.113. (1) Except to the extent subsection (2) or (3)
192 of this section provides otherwise, each rule adopted after July

193 1, 2007, becomes effective thirty (30) days after its proper
194 filing in the Office of the Secretary of State.

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

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

202 (i) It is required by Constitution, statute or
203 court order;

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

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

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

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

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

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

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

225 **SECTION 7.** This act shall take effect and be in force from
226 and after its passage.