

By: Senator(s) Gordon

To: Judiciary, Division A

SENATE BILL NO. 2516

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, 2010.

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, 2010, 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, 2010, 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, 2010, 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, 2010, 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, 2010, 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, 2010, 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, 2010, 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.