

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1015

1 AN ACT TO CONSOLIDATE THE MISSISSIPPI ADMINISTRATIVE
2 PROCEDURES LAW, THE MISSISSIPPI PUBLIC RECORDS ACT OF 1983 AND THE
3 OPEN MEETINGS LAW INTO A SINGLE NEW ACT TO BE KNOWN AS THE
4 "MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW OF 2014"; TO DEFINE
5 CERTAIN TERMS; TO REQUIRE CERTAIN INFORMATION TO BE MADE AVAILABLE
6 PUBLISHED THROUGH THE SECRETARY OF STATE AND MADE AVAILABLE TO THE
7 PUBLIC; TO AUTHORIZE THE CHARGING OF FEES FOR INFORMATION PROVIDED
8 TO THE PUBLIC; TO PROVIDE PROCEDURES FOR OBTAINING RECORDS; TO
9 REQUIRE AGENCIES TO PROMULGATE RULES AND REGULATIONS AND TO
10 PRESCRIBE THE PROCEDURE TO BE FOLLOWED IN THE PROMULGATION OF
11 RULES AND REGULATIONS; TO REQUIRE REPORTING OF PROPOSED RULES TO
12 THE LEGISLATURE; TO PRESCRIBE THE MANNER IN WHICH AGENCIES ARE TO
13 MAINTAIN A SYSTEM OF RECORDS; TO REQUIRE THE DISCLOSURE OF AND
14 ACCESS TO PUBLIC RECORDS; TO EXEMPT CERTAIN AGENCY RECORDS FROM
15 PUBLIC DISCLOSURE; TO REQUIRE DETAILED ANNUAL REPORTS TO THE
16 LEGISLATURE FROM AGENCIES PROVIDING INFORMATION ON REQUESTS FOR
17 RECORDS AND APPEALS MADE WHEN RECORD REQUESTS HAVE BEEN DENIED; TO
18 REQUIRE PUBLICATION REGARDING RULES AND REGULATIONS PROMULGATED
19 UNDER THIS ACT; TO PROVIDE CIVIL REMEDIES; TO PROVIDE CRIMINAL
20 PENALTIES FOR VIOLATIONS OF THIS ACT; TO PROVIDE RULES FOR
21 CONDUCTING AGENCY BUSINESS; TO PROHIBIT MEMBERS OF AGENCIES FROM
22 CONDUCTING MEETINGS THAT ARE NOT OPEN TO THE PUBLIC; TO PRESCRIBE
23 THE MANNER IN WHICH AGENCIES MAY CLOSE MEETINGS OR PORTIONS OF A
24 MEETING TO THE PUBLIC UNDER PRESCRIBED CIRCUMSTANCES; TO PROVIDE
25 JURISDICTION FOR ACTIONS AND PROCEEDINGS UNDER THIS ACT; TO
26 REQUIRE AGENCIES TO MAKE CERTAIN ANNUAL REPORTS TO THE
27 LEGISLATURE; TO ALLOW INTERESTED PERSONS AN OPPORTUNITY TO
28 PARTICIPATE IN RULEMAKING; TO PROVIDE FOR AGENCY HEARINGS; TO
29 COMPEL ATTENDANCE; TO PROVIDE FOR THE TAKING OF EVIDENCE; TO
30 PROVIDE FOR THE POWERS AND DUTIES OF JUDGES AT HEARINGS; TO
31 AUTHORIZE A CAUSE OF ACTION FOR AGGRIEVED PARTIES; TO PROVIDE FOR
32 JUDICIAL REVIEW; TO PROVIDE THE DUTIES AND POWERS OF REVIEWING
33 COURTS; TO REQUIRE THE LEGISLATURE TO ACCEPT OR DISAPPROVE OF
34 RULES AND TO PRESCRIBE THE RULES TO BE FOLLOWED IN THE HOUSE AND



35 SENATE IN THE CONSIDERATION OF JOINT RESOLUTIONS PROPOSING AGENCY
36 RULES AND RULE CHANGES; TO BRING FORWARD SECTIONS 25-43-1.101
37 THROUGH 25-43-3.114, MISSISSIPPI CODE OF 1972, WHICH ARE THE
38 MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW, FOR PURPOSES OF
39 POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS 25-61-1 THROUGH
40 25-61-19, MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI
41 PUBLIC RECORDS ACT OF 1983, FOR PURPOSES OF POSSIBLE AMENDMENT; TO
42 BRING FORWARD SECTIONS 25-41-1 THROUGH 25-41-17, MISSISSIPPI CODE
43 OF 1972, WHICH REQUIRE PUBLIC BUSINESS TO BE CONDUCTED IN OPEN
44 MEETINGS, SUBJECT TO PRESCRIBED EXCEPTIONS, FOR PURPOSES OF
45 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

47 **SECTION 1.** (1) This act shall be known and may be cited as
48 the "Mississippi Administrative Procedures Law of 2014."

49 (2) For purposes of this act, the following words and
50 phrases have the meanings ascribed in this section unless the
51 context clearly indicates otherwise:

52 (a) "Adjudication" means the agency process for the
53 formulation of an order.

54 (b) "Agency" means each authority of the government of
55 the State of Mississippi, whether or not it is within or subject
56 to review by another agency. The term "agency" does not include:

57 (i) The Legislature;

58 (ii) The courts of the State of Mississippi;

59 (iii) The governments of the political
60 subdivisions of the State of Mississippi;

61 (iv) The Mississippi National Guard; or

62 (v) Military authority exercised in the field in
63 time of war or in occupied territory.



64 (c) "Agency action" includes the whole or a part of an
65 agency rule, order, license, sanction, relief or the equivalent or
66 denial of such action, or the failure to act.

67 (d) "Agency proceeding" means any agency process.

68 (e) "Ex parte communication" means an oral or written
69 communication not on the public record with respect to which
70 reasonable prior notice to all parties is not given. The term "ex
71 parte communication" does not include requests for status reports
72 on any matter or proceeding covered by this act.

73 (f) "License" includes the whole or a part of an agency
74 permit, certificate, approval, registration, charter, membership,
75 statutory exemption or other form of permission.

76 (g) "Licensing" includes the agency process respecting
77 the grant, renewal, denial, revocation, suspension, annulment,
78 withdrawal, limitation, amendment, modification or conditioning of
79 a license.

80 (h) "Order" means the whole or a part of a final
81 disposition, whether affirmative, negative, injunctive or
82 declaratory in form, of an agency in a matter other than rule
83 making but including licensing.

84 (i) "Party" includes a person or agency named or
85 admitted as a party, or properly seeking and entitled as of right
86 to be admitted as a party, in an agency proceeding, and a person
87 or agency admitted by an agency as a party for limited purposes.



88 (j) "Person" includes an individual, partnership,
89 corporation, association or public or private organization other
90 than an agency.

91 (k) "Relief" includes the whole or a part of an agency,
92 including, but not limited to:

93 (i) Grant of money, assistance, license,
94 authority, exemption, exception, privilege or remedy;

95 (ii) Recognition of a claim, right, immunity,
96 privilege, exemption or exception; or

97 (iii) Taking of other action on a person's
98 application or petition and beneficial to that person.

99 (l) "Rule" means the whole or a part of an agency
100 statement of general or particular applicability and future effect
101 designed to implement, interpret or prescribe law or policy or
102 describing the organization, procedure or practice requirements of
103 an agency and includes the approval or prescription for the future
104 of rates, wages, corporate or financial structures or
105 reorganizations thereof, prices, facilities, appliances, services
106 or allowances therefor or of valuations, costs, or accounting or
107 practices bearing on any of the foregoing.

108 (m) "Rule making" means the agency process for
109 formulating, amending or repealing a rule.

110 (n) "Sanction" includes the whole or a part of an
111 agency, including, but not limited to:

112 (i) Prohibition, requirement, limitation or other



113 condition affecting the freedom of a person;
114 (ii) Withholding of relief;
115 (iii) Imposition of penalty or fine;
116 (iv) Destruction, taking, seizure or withholding
117 of property;
118 (v) Assessment of damages, reimbursement,
119 restitution, compensation, costs, charges or fees;
120 (vi) Requirement, revocation or suspension of a
121 license; or
122 (vii) Taking other compulsory or restrictive
123 action.

124 **SECTION 2.** (1) Each agency shall state and publish with the
125 Secretary of State for the guidance of the public the following
126 information:

127 (a) A description of the agency's central and field
128 organization and the established places at which the public may
129 obtain information, make submittals or requests, or obtain
130 decisions, including the employees from whom the information may
131 be obtained and the method for obtaining the information;

132 (b) Statements of the general course and method by
133 which the agency's functions are channeled and determined,
134 including the nature and requirements of all formal and informal
135 procedures available;

136 (c) Rules of procedure, descriptions of forms available
137 and the places at which those forms may be obtained, and



138 instructions as to the scope and contents of all papers, reports
139 and examinations;

140 (d) Substantive rules of general applicability adopted
141 in accordance with law, and statements of general policy or
142 interpretations of general applicability formulated and adopted by
143 the agency; and

144 (e) Each amendment, revision or repeal of the
145 information required under this subsection.

146 (2) In addition to publishing the information described
147 under subsection (1) of this section with the Secretary of State,
148 each agency must make the information directly available to the
149 public.

150 (3) Except to the extent that a person has actual and timely
151 notice of the terms thereof, a person may not in any manner be
152 required to resort to, or be adversely affected by, a matter
153 required to be published and not so published.

154 **SECTION 3.** (1) Each agency, in accordance with published
155 rules, shall make the following available for public inspection
156 and copying unless the materials are published promptly and copies
157 offered for sale:

158 (a) Final opinions, including concurring and dissenting
159 opinions as well as orders, made in the adjudication of cases;

160 (b) Those statements of policy and interpretations
161 which have been adopted by the agency and are not published;



162 (c) Administrative staff manuals and instructions to
163 staff that affect a member of the public;

164 (d) Copies of all records, regardless of form or
165 format, which have been released to any person under Section 4 of
166 this act and which, because of the nature of their subject matter,
167 the agency determines currently are, or may become, the subject of
168 subsequent requests for substantially the same records;

169 (e) A general index of the records referred to under
170 paragraph (d) of this subsection, which index must be made
171 available by computer telecommunications before January 1, 2015;
172 and

173 (f) A current index providing identifying information
174 for the public as to any matter issued, adopted or promulgated
175 after July 4, 1967, and required by this section to be made
176 available and published.

177 (2) Each agency shall make records created on or after
178 January 1, 2015, available within one (1) year after the date of
179 the respective record's creation. The records must be made
180 available by computer telecommunications or, if computer
181 telecommunications means have not been established by the agency,
182 by other electronic means.

183 (3) To the extent required to prevent a clearly unwarranted
184 invasion of personal privacy, an agency may delete identifying
185 details when it makes available or publishes an opinion, statement
186 of policy, interpretation, staff manual, instruction or copies of



187 records referred to in paragraph (d) of subsection (1). However,
188 the justification for each deletion must be explained fully in
189 writing, and the extent of the deletion must be indicated on the
190 portion of the record which is made available or published unless
191 including that indication would harm an interest protected by an
192 exemption under Section 9 of this act. If technically feasible,
193 the extent of the deletion must be indicated at the place in the
194 record where the deletion was made.

195 (4) Each agency shall publish, no less than quarterly, and
196 distribute by sale or otherwise copies of each index or index
197 supplement unless the agency determines, by order published, that
198 the publication would be unnecessary and impracticable. In such
199 case, the agency must provide copies of the index on request at a
200 cost not exceeding the direct cost of duplication.

201 (5) A final order, opinion, statement of policy,
202 interpretation or staff manual or instruction that affects a
203 member of the public may be relied on, used or cited as precedent
204 by an agency against a party other than an agency only if: it has
205 been indexed and either made available or published as required
206 under this section; or the party has actual and timely notice of
207 the terms of the document.

208 **SECTION 4.** (1) For purposes of this section, the term
209 "search" means to review, manually or by automated means, agency
210 records for the purpose of locating those records that are
211 responsive to a request.



212 (2) Except with respect to the records made available under
213 Sections 1 and 2 of this act, each agency, upon any request for
214 records which reasonably describes the records and is made in
215 accordance with published rules stating the time, place, fees (if
216 any) and procedures to be followed, shall make the records
217 promptly available to any person.

218 (3) In making any record available to a person under this
219 section, an agency shall provide the record in any form or format
220 requested by the person if the record is readily reproducible by
221 the agency in that form or format. Each agency shall make
222 reasonable efforts to maintain its records in forms or formats
223 that are reproducible for purposes of this subsection.

224 (4) In responding under this section to a request for
225 records, an agency shall make reasonable efforts to search for the
226 records in electronic form or format, except when those efforts
227 would interfere significantly with the operation of the agency's
228 automated information system.

229 **SECTION 5.** (1) (a) In order to carry out the provisions of
230 this act, each agency shall promulgate regulations, pursuant to
231 notice and receipt of public comment, specifying the schedule of
232 fees applicable to the processing of requests under this act and
233 establishing procedures and guidelines for determining when the
234 fees should be waived or reduced. The schedule shall conform to
235 the guidelines that shall be promulgated, pursuant to notice and
236 receipt of public comment, by the Legislative Budget Office and



237 which shall provide for a uniform schedule of fees for all
238 agencies.

239 (b) The agency regulations must provide the following:

240 (i) Fees shall be limited to reasonable standard
241 charges for document search, duplication and review, when records
242 are requested for commercial use;

243 (ii) Fees shall be limited to reasonable standard
244 charges for document duplication when records are not sought for
245 commercial use and the request is made by an educational or
246 noncommercial scientific institution, whose purpose is scholarly
247 or scientific research, or a representative of the news media. As
248 used in this subparagraph, the term "a representative of the news
249 media" means any person or entity that gathers information of
250 potential interest to a segment of the public, uses its editorial
251 skills to turn the raw materials into a distinct work, and
252 distributes that work to an audience. As used in this
253 subparagraph, the term "news" means information that is about
254 current events or that would be of current interest to the public.
255 Examples of news-media entities include, but are not limited to,
256 television and radio stations broadcasting to the public at large
257 and publishers of periodicals that qualify as disseminators of
258 news, which entities distribute their products to the general
259 public free of charge or make their products available for
260 purchase or subscription by the general public. As methods of
261 news delivery evolve, alternative media, such as the adoption of



262 the electronic dissemination of newspapers through
263 telecommunications services, must be considered to be news-media
264 entities. A freelance journalist must be regarded as working for
265 a news-media entity if the journalist can demonstrate a solid
266 basis for expecting publication through that entity, whether or
267 not the journalist is actually employed by the entity. A
268 publication contract may be deemed to present a solid basis for
269 such an expectation. The agency also may consider the past
270 publication record of the requester in making a determination
271 regarding fees; and

272 (iii) For any request not described in (i) or
273 (ii), fees must be limited to reasonable standard charges for
274 document search and duplication.

275 (c) Documents must be furnished without any charge or
276 at a charge reduced below the fees established under paragraph (b)
277 if disclosure of the information is in the public interest because
278 it is likely to contribute significantly to public understanding
279 of the operations or activities of the government and is not
280 primarily in the commercial interest of the requester.

281 (d) Fee schedules must provide for the recovery of only
282 the direct costs of search, duplication or review. Review costs
283 include only the direct costs incurred during the initial
284 examination of a document for the purposes of determining whether
285 or not the documents must be disclosed under this act and for the
286 purposes of withholding any portions exempt from disclosure under



287 this act. Review costs may not include any costs incurred in
288 resolving issues of law or policy which may be raised in the
289 course of processing a request under this act. A fee may not be
290 charged by an agency under this act: if the costs of routine
291 collection and processing of the fee are likely to equal or exceed
292 the amount of the fee; or for any request described in paragraph
293 (b) (ii) or (iii) of this subsection, for the first two (2) hours
294 of search time or the first one hundred (100) pages of
295 duplication.

296 (e) An agency may not require advance payment of any
297 fee unless the requester previously has failed to pay fees in a
298 timely fashion or the agency has determined that the fee will
299 exceed Two Hundred Fifty Dollars (\$250.00).

300 (f) Nothing in this subsection may supersede fees
301 chargeable under a statute specifically providing for setting the
302 level of fees for particular types of records.

303 (g) In any action by a requester regarding the waiver
304 of fees under this section, the court shall determine the matter
305 de novo; however, the court's review of the matter must be limited
306 to the record before the agency.

307 (h) An agency may not assess search fees or, in the
308 case of a requester described under paragraph (b) (ii), duplication
309 fees, if the agency fails to comply with any time limit required
310 under Sectuib of this act, unless unusual circumstances, as



311 defined for purposes of Section 7, apply to the processing of the
312 request.

313 (2) On complaint, the circuit or chancery court of the
314 district in which the complainant resides or has his principal
315 place of business or in which the agency records are situated has
316 jurisdiction to enjoin the agency from withholding agency records
317 and to order the production of any agency records improperly
318 withheld from the complainant. In such a case, the court shall
319 determine the matter de novo, and may examine the contents of the
320 agency records in camera to determine whether or not the records
321 or any part of the records must be withheld under any of the
322 exemptions set forth in Section 9 of this act. The burden is on
323 the agency to sustain its action.

324 (3) An agency must serve an answer or otherwise plead to any
325 complaint made under this section within thirty (30) days after
326 service upon the agency of the pleading in which the complaint is
327 made, unless the court otherwise directs for good cause shown.

328 (4) (a) The court may assess against the agency reasonable
329 attorney's fees and other litigation costs reasonably incurred in
330 any case under this section in which the complainant substantially
331 has prevailed.

332 (b) For purposes of this subsection, a complainant
333 substantially has prevailed if the complainant has obtained relief
334 through either:



335 (i) A judicial order, or an enforceable written
336 agreement or consent decree; or

337 (ii) A voluntary or unilateral change in position
338 by the agency, if the complainant's claim is not insubstantial.

339 (5) (a) Whenever the court orders the production of any
340 agency records improperly withheld from the complainant and
341 assesses against the agency reasonable attorney's fees and other
342 litigation costs, and the court additionally issues a written
343 finding that the circumstances surrounding the withholding raise
344 questions whether agency personnel acted arbitrarily or
345 capriciously with respect to the withholding, then a special
346 counsel appointed by the Attorney General promptly shall initiate
347 a proceeding to determine whether disciplinary action is warranted
348 against the officer or employee who was primarily responsible for
349 the withholding. The special counsel, after investigation and
350 consideration of the evidence submitted, shall submit his findings
351 and recommendations to the administrative authority of the agency
352 concerned and shall send copies of the findings and
353 recommendations to the officer or employee or his representative.
354 The administrative authority must take the corrective action that
355 the special counsel recommends.

356 (b) The Attorney General shall:

357 (i) Notify the special counsel of each civil
358 action described under paragraph (a) of this subsection; and



359 (ii) Annually submit a report to the Legislature
360 on the number of such civil actions in the preceding year.

361 (c) The special counsel shall submit an annual report
362 to the Legislature on the actions taken by the special counsel
363 under paragraph (a).

364 (6) In the event of noncompliance with the order of the
365 court, the circuit or chancery court may punish for contempt the
366 responsible employee.

367 **SECTION 6.** Each agency having more than one member shall
368 maintain and make available for public inspection a record of the
369 final votes of each member in every agency proceeding.

370 **SECTION 7.** (1) Each agency, upon any request for records
371 made under Sections 2, 3 or 4 of this act, shall:

372 (a) Determine, within twenty (20) days (excepting
373 Saturdays, Sundays, and legal public holidays) after the receipt
374 of the request, whether to comply with the request and immediately
375 shall notify the person making the request of its determination
376 and the reasons therefor and of the right of the person to appeal
377 to the head of the agency any adverse determination; and

378 (b) Make a determination, with respect to any appeal,
379 within twenty (20) days (excepting Saturdays, Sundays, and legal
380 public holidays) after the receipt of the appeal. If on appeal
381 the denial of the request for records is upheld, in whole or in
382 part, the agency shall notify the person making the request of the



383 provisions for judicial review of that determination under Section
384 5 of this act.

385 The twenty-day period under paragraph (a) shall commence on
386 the date on which the request is first received by the appropriate
387 component of the agency, but in any event not later than ten (10)
388 days after the request is first received by any component of the
389 agency that is designated in the agency's regulations under this
390 section to receive requests. The twenty-day period may not be
391 tolled by the agency except that the agency may make one (1)
392 request to the requester for information and toll the twenty-day
393 period while it is awaiting the information that it has reasonably
394 requested. In addition, the twenty-day period may be tolled if it
395 is necessary to clarify with the requester issues regarding fee
396 assessment. In either case, the agency's receipt of the
397 requester's response to the agency's request for information or
398 clarification ends the tolling period.

399 (2) (a) In unusual circumstances as specified in this
400 subsection, the time limits prescribed in either paragraph (a) or
401 (b) of subsection (1) may be extended by written notice to the
402 person making the request setting forth the unusual circumstances
403 for the extension and the date on which a determination is
404 expected to be dispatched. The notice may not specify a date that
405 would result in an extension for more than ten (10) working days,
406 except as provided in paragraph (b) of this subsection.



407 (b) With respect to a request for which a written
408 notice under paragraph (a) extends the time limits prescribed
409 under paragraph (a) of subsection (1), the agency shall notify the
410 person making the request if the request cannot be processed
411 within the time limit specified in that paragraph and shall
412 provide the person an opportunity to limit the scope of the
413 request so that it may be processed within that time limit or an
414 opportunity to arrange with the agency an alternative time frame
415 for processing the request or a modified request. To aid the
416 requester, each agency shall make available its public liaison,
417 who shall assist in the resolution of any disputes between the
418 requester and the agency. Refusal by the person to reasonably
419 modify the request or arrange an alternative time frame must be
420 considered as a factor in determining whether exceptional
421 circumstances exist for purposes of subsection (3).

422 (c) As used in this subsection, the term "unusual
423 circumstances" means, but only to the extent reasonably necessary
424 to the proper processing of the particular requests, the
425 following:

426 (i) The need to search for and collect the
427 requested records from field facilities or other establishments
428 that are separate from the office processing the request;

429 (ii) The need to search for, collect and
430 appropriately examine a voluminous amount of separate and distinct
431 records which are demanded in a single request; or



432 (iii) The need for consultation, which must be
433 conducted with all practicable speed, with another agency having a
434 substantial interest in the determination of the request or among
435 two (2) or more components of the agency having substantial
436 subject-matter interest in the request.

437 (d) Each agency may promulgate regulations, pursuant to
438 notice and receipt of public comment, providing for the
439 aggregation of certain requests by the same requester, or by a
440 group of requesters acting in concert, if the agency reasonably
441 believes that the requests actually constitute a single request
442 and the requests involve clearly related matters. Multiple
443 requests involving unrelated matters may not be aggregated.

444 (3) (a) Any person making a request to any agency for
445 records under Sections 2, 3 or 4 of this act shall be deemed to
446 have exhausted his administrative remedies with respect to the
447 request if the agency fails to comply with the applicable time
448 limit provisions of this section. If the government can show
449 exceptional circumstances exist and that the agency is exercising
450 due diligence in responding to the request, the court may retain
451 jurisdiction and allow the agency additional time to complete its
452 review of the records. Upon any determination by an agency to
453 comply with a request for records, the records must be made
454 available promptly to the person making the request. Any
455 notification of denial of a request for records under this act



456 must set forth the names and titles or positions of each person
457 responsible for the denial of that request.

458 (b) For purposes of this subsection, the term
459 "exceptional circumstances" does not include a delay that results
460 from a predictable agency workload of requests under this act,
461 unless the agency demonstrates reasonable progress in reducing its
462 backlog of pending requests.

463 (c) Refusal by a person to reasonably modify the scope
464 of a request or arrange an alternative time frame for processing a
465 request (or a modified request) after being given an opportunity
466 to do so by the agency to whom the person made the request must be
467 considered a factor in determining whether exceptional
468 circumstances exist for purposes of this subsection.

469 (4) (a) Each agency may promulgate regulations, pursuant to
470 notice and receipt of public comment, providing for multitrack
471 processing of requests for records based on the amount of work or
472 time, or both, involved in processing requests.

473 (b) Regulations promulgated under this subsection may
474 require that a person making a request that does not qualify for
475 the fastest multitrack processing be provided an opportunity to
476 limit the scope of the request in order to qualify for faster
477 processing.

478 (c) This subsection may not be considered to affect the
479 requirement under subsection (3) to exercise due diligence.



480 (5) (a) Each agency shall promulgate regulations, pursuant
481 to notice and receipt of public comment, providing for expedited
482 processing of requests for records:

483 (i) In cases in which the person requesting the
484 records demonstrates a compelling need; and

485 (ii) In other cases determined by the agency.

486 (b) Notwithstanding subparagraph (i) of this paragraph
487 (a), regulations under this subsection must ensure:

488 (i) That a determination of whether to provide
489 expedited processing must be made, and notice of the determination
490 must be provided to the person making the request, within ten (10)
491 days after the date of the request; and

492 (ii) Expeditious consideration of administrative
493 appeals of such determinations of whether to provide expedited
494 processing.

495 (c) An agency shall process as soon as practicable any
496 request for records to which the agency has granted expedited
497 processing under this subsection. Agency action to deny or affirm
498 denial of a request for expedited processing, and failure by an
499 agency to respond in a timely manner to such a request must be
500 subject to judicial review under Section 4 of this act, except
501 that the judicial review shall be based on the record before the
502 agency at the time of the determination.

503 (d) A circuit or chancery court of the district of the
504 complainant shall have jurisdiction to review an agency denial of



505 expedited processing of a request for records after the agency has
506 provided a complete response to the request. This review must be
507 de novo.

508 (e) For purposes of this subsection, the term
509 "compelling need" means:

510 (i) That a failure to obtain requested records on
511 an expedited basis reasonably could be expected to pose an
512 imminent threat to the life or physical safety of an individual;
513 or

514 (ii) With respect to a request made by a person
515 primarily engaged in disseminating information, urgency to inform
516 the public concerning actual or alleged government activity.

517 A demonstration of a compelling need by a person making a
518 request for expedited processing must be made by a statement
519 certified by the person to be true and correct to the best of that
520 person's knowledge and belief.

521 (6) In denying a request for records, in whole or in part,
522 an agency shall make a reasonable effort to estimate the volume of
523 any requested matter that has been denied and shall provide the
524 estimate to the person making the request unless providing the
525 estimate would harm an interest protected by an exemption in
526 Section 8 of this act.

527 **SECTION 8.** Each agency shall:

528 (a) Establish a system to assign an individualized
529 tracking number for each request received which will take longer



530 than ten (10) days to process and provide to each person making a
531 request the tracking number assigned to that request; and

532 (b) Establish a telephone line or Internet service that
533 provides information about the status of a request to the person
534 making the request using the assigned tracking number, including
535 the date on which the agency originally received the request and
536 an estimated date on which the agency will complete action on the
537 request.

538 **SECTION 9.** (1) This act does not apply to matters that are:

539 (a) Specifically authorized under criteria established
540 by an executive order to be kept secret and which matters are, in
541 fact, properly classified pursuant to such executive order;

542 (b) Medical files and similar files, the disclosure of
543 which would constitute a clearly unwarranted invasion of personal
544 privacy; and

545 (c) Records or information compiled for law enforcement
546 purposes, but only to the extent that the production of those law
547 enforcement records or information reasonably could be expected to
548 endanger the life or physical safety of any individual.

549 (2) This section does not authorize the withholding of any
550 information or limiting the availability of records to the public,
551 except as specifically stated in this section. This section is
552 not authority to withhold any information from the Legislature.

553 **SECTION 10.** (1) On or before February 1 of each year, each
554 agency shall submit to the Chairmen of the Judiciary A Committees



555 of the House of Representatives and the Mississippi Senate a
556 report that covers the preceding fiscal year and includes the
557 following:

558 (a) The number of determinations made by the agency not
559 to comply with requests for records made to that agency under this
560 act and the reasons for each determination;

561 (b) The number of appeals made by persons, the result
562 of those appeals and the reason for the action upon each appeal
563 that resulted in a denial of information; in addition, the agency
564 must include a complete list of all statutes that the agency
565 relies upon as authority for the agency to withhold information,
566 the number of occasions upon which each statute was relied,
567 whether or not a court has upheld the agency's decision to
568 withhold information under each statute listed, and a concise
569 description of the scope of any information withheld;

570 (c) The number of requests for records pending before
571 the agency on September 30 of the preceding year and the median
572 and average number of days that those requests had been pending
573 before the agency on September 30;

574 (d) The number of requests for records received by the
575 agency and the number of requests which the agency processed;

576 (e) The median number of days taken by the agency to
577 process different types of requests, based on the date on which
578 the requests were received by the agency;



579 (f) The average number of days taken by the agency to
580 respond to a request beginning on the date on which the request
581 was received by the agency, the median number of days for the
582 agency to respond to those requests and the range in number of
583 days for the agency to respond to the requests;

584 (g) Based on the number of business days that have
585 elapsed since each request originally was received by the agency:

586 (i) The number of requests for records to which
587 the agency has responded with a determination within a period of
588 twenty (20) days, and in twenty-day increments, up to and
589 including two hundred (200) days;

590 (ii) The number of requests for records to which
591 the agency has responded with a determination within a period
592 greater than two hundred (200) days but less than three hundred
593 one (301) days;

594 (iii) The number of requests for records to which
595 the agency has responded with a determination within a period
596 greater than three hundred (300) days but less than four hundred
597 one (401) days; and

598 (iv) The number of requests for records to which
599 the agency has responded with a determination within a period
600 greater than four hundred (400) days;

601 (h) The average number of days for the agency to
602 provide the granted information beginning on the date on which the
603 request was originally filed, the median number of days for the



604 agency to provide the granted information and the range in number
605 of days for the agency to provide the granted information;

606 (i) The median and average number of days for the
607 agency to respond to administrative appeals based on the date on
608 which the appeals originally were received by the agency and the
609 highest number and lowest number of business days taken by the
610 agency to respond to an administrative appeal;

611 (j) Data on the ten (10) active requests with the
612 earliest filing dates pending at each agency, including the amount
613 of time which has elapsed since each request was received
614 originally by the agency;

615 (k) Data on the ten (10) active administrative appeals
616 with the earliest filing dates pending before the agency as of
617 September 30 of the preceding year, including the number of
618 business days that have elapsed since the requests were received
619 originally by the agency;

620 (l) The number of expedited review requests that were
621 granted and denied, the average and median number of days for
622 adjudicating expedited review requests, and the number adjudicated
623 within the required ten (10) days;

624 (m) The number of fee waiver requests that were granted
625 and denied, and the average and median number of days for
626 adjudicating fee waiver determinations;

627 (n) The total amount of fees collected by the agency
628 for processing requests; and



629 (o) The number of full-time staff of the agency devoted
630 to processing requests for records under this act and the total
631 amount expended by the agency for processing those requests.

632 (2) Information in each report submitted under subsection
633 (1) must be expressed in terms of each principal component of the
634 agency and for the agency overall.

635 (3) Each agency shall make each report available to the
636 public, including by computer telecommunications, or if computer
637 telecommunications means have not been established by the agency,
638 by other electronic means. In addition, upon request, each agency
639 shall make the raw statistical data used in its reports available
640 electronically to the public.

641 (4) The Chairmen of the Judiciary A Committees of the House
642 of Representatives and the Mississippi Senate shall make each
643 report that has been made available by electronic means available
644 at a single electronic access point. Before April 1 of the year
645 in which each such report is issued, the Chairmen of the Judiciary
646 A Committees of the House of Representatives and Senate shall
647 notify the Chairmen of Ethics Committees of the House of
648 Representatives and the Senate that the reports are available by
649 electronic means.

650 (5) The Chairmen of the Judiciary A Committees of the House
651 of Representatives and the Senate, in consultation with the
652 Legislative Budget Office, shall develop reporting and performance
653 guidelines in connection with reports required by this section and



654 may establish additional requirements for the reports which they
655 determine may be useful.

656 (6) On or before April 1 of each year, the Chairmen of the
657 Judiciary A Committees of the House of Representatives and Senate
658 shall submit an annual report that includes, for the prior
659 calendar year, a listing of the number of cases arising under this
660 act, the exemption involved in each case, the disposition of each
661 case, and the cost, fees and penalties assessed under Section 5 of
662 this act. The report also must include a description of the
663 efforts undertaken by the Attorney General to encourage agency
664 compliance with this act.

665 **SECTION 11.** (1) For purposes of this section, the term:

666 (a) "Agency," as defined in Section 1 of this act,
667 includes any executive department, military department, government
668 corporation, government controlled corporation or other
669 establishment in the executive branch of the government, including
670 the Executive Office of the Governor, or any independent
671 regulatory agency; and

672 (b) "Record" and any other term used in this section in
673 reference to information includes:

674 (i) Any information that would be an agency record
675 subject to the requirements of this act when maintained by an
676 agency in any format, including an electronic format; and



677 (ii) Any information described under subparagraph
678 (i) which is maintained for an agency by an entity under
679 government contract for the purposes of records management.

680 (2) The head of each agency shall prepare and make publicly
681 available, upon request, reference material or a guide for
682 requesting records or information from the agency, subject to the
683 exemptions in Section 9, including:

684 (a) An index of all major information systems of the
685 agency;

686 (b) A description of major information and record
687 locator systems maintained by the agency; and

688 (c) A handbook for obtaining various types and
689 categories of public information from the agency under this
690 section.

691 (3) The House of Representatives and the Mississippi Senate
692 shall conduct audits of administrative agencies on the
693 implementation of this section and issue reports detailing the
694 results of those audits.

695 (4) Each agency shall designate a Chief Freedom of
696 Information Act ("FOIA") Officer who must be a senior official at
697 the assistant director or equivalent level of the agency.

698 (5) Subject to the authority of the head of the agency, the
699 Chief FOIA Officer of each agency shall:

700 (a) Have agency-wide responsibility for efficient and
701 appropriate compliance with this section;



702 (b) Monitor implementation of this section throughout
703 the agency and keep the head of the agency, the chief legal
704 officer of the agency and the Chairmen of the Judiciary A
705 Committees of the House of Representatives and Senate
706 appropriately informed of the agency's performance in implementing
707 this section;

708 (c) Recommend to the head of the agency such
709 adjustments to agency practices, policies, personnel and funding
710 as may be necessary to improve its implementation of this section;
711 and

712 (d) Review and report to the Chairmen of the Judiciary
713 A Committees of the House of Representatives and Senate, through
714 the head of the agency, at such times and in such formats as the
715 Chairmen of the Judiciary A Committees of the House of
716 Representatives and Senate may direct, on the agency's performance
717 in implementing this section.

718 **SECTION 12.** For purposes of Sections 12 through 22 of this
719 act, the following words and phrases have the meanings ascribed in
720 this section unless the context clearly indicates otherwise:

721 (a) "Agency" means an agency as defined in Section 1 of
722 this act.

723 (b) "Individual" means a citizen of the United States
724 or an alien lawfully admitted for permanent residence.

725 (c) "Maintain" includes maintain, collect, use or
726 disseminate.



727 (d) "Record" means any item, collection or grouping of
728 information about an individual which is maintained by an agency,
729 including, but not limited to, his education, financial
730 transactions, medical history and criminal or employment history,
731 and which contains his name or the identifying number, symbol or
732 other identifying particular assigned to the individual, such as a
733 finger or voice print or a photograph.

734 (e) "System of records" means a group of any records
735 under the control of any agency from which information is
736 retrieved by the name of the individual or by some identifying
737 number, symbol or other identifying particular assigned to the
738 individual.

739 (f) "Statistical record" means a record in a system of
740 records maintained for statistical research or reporting purposes
741 only and not used, in whole or in part, in making any
742 determination about an identifiable individual.

743 (g) "Routine use" means, with respect to the disclosure
744 of a record, the use of the record for a purpose that is
745 compatible with the purpose for which it was collected.

746 (h) "Matching program" means:

747 (i) Any computerized comparison of two (2) or more
748 automated systems of records or a system of records with nonstate
749 records for the purpose of:

750 1. Establishing or verifying the eligibility
751 of, or continuing compliance with statutory and regulatory



752 requirements by, applicants for, recipients or beneficiaries of,
753 participants in, or providers of services with respect to cash or
754 in-kind assistance or payments under state benefit programs; or
755 2. Recouping payments or delinquent debts
756 under such state benefit programs.

757 (ii) "Matching program" does not include:

758 1. Matches performed to produce aggregate
759 statistical data without any personal identifiers;

760 2. Matches performed to support any research
761 or statistical project, the specific data of which may not be used
762 to make decisions concerning the rights, benefits or privileges of
763 specific individuals;

764 3. Matches performed by an agency that
765 performs as its principal function any activity pertaining to the
766 enforcement of criminal laws, subsequent to the initiation of a
767 specific criminal or civil law enforcement investigation of a
768 named person or persons for the purpose of gathering evidence
769 against the person or persons;

770 4. Matches of tax information: pursuant to
771 Section 6103(d) of the Internal Revenue Code of 1986; for purposes
772 of tax administration, as defined in Section 6103(b)(4) of the
773 Internal Revenue Code; for the purpose of intercepting a tax
774 refund due an individual under authority granted by Section
775 404(e), 464, or 1137 of the Social Security Act; or for the
776 purpose of intercepting a tax refund due an individual under any



777 other tax refund intercept program authorized by statute which has
778 been determined by the Director of the Office of Management and
779 Budget to contain verification, notice and hearing requirements
780 that are substantially similar to the procedures in Section 1137
781 of the Social Security Act;

782 5. Matches, if the purpose is not to take any
783 adverse financial, personnel, disciplinary or other adverse action
784 against state personnel, which:

785 a. Use records predominantly relating to
786 state personnel which are performed for routine administrative
787 purposes, subject to guidance provided by the Department of
788 Finance and Administration; or

789 b. Are conducted by an agency using only
790 records from systems of records maintained by that agency;

791 6. Matches performed for security clearances
792 of state personnel or state contractor personnel;

793 7. Matches performed incident to a levy
794 described in Section 6103(k)(8) of the Internal Revenue Code of
795 1986; and

796 8. Matches performed pursuant to Section
797 202(x)(3) or 1611(e)(1) of the Social Security Act (42 USCS
798 402(x)(3), 1382(e)(1)).

799 (i) "Recipient agency" means any agency or contractor
800 thereof receiving records contained in a system of records from a
801 source agency for use in a matching program.



802 (j) "Nonstate agency" means any state or local
803 government or agency thereof which receives records contained in a
804 system of records from a source agency for use in a matching
805 program.

806 (k) "Source agency" means any agency that discloses
807 records contained in a system of records to be used in a matching
808 program, or any state or local government or agency thereof which
809 discloses records to be used in a matching program.

810 (l) "State benefit program" means any program
811 administered or funded by the State of Mississippi, or by any
812 agent on behalf of the State of Mississippi, providing cash or
813 in-kind assistance in the form of payments, grants, loans or loan
814 guarantees to individuals.

815 (m) "State personnel" means officers and employees of
816 the State of Mississippi, members of the uniformed services,
817 including members of the Mississippi National Guard, and
818 individuals entitled to receive immediate or deferred retirement
819 benefits, including survivor benefits, under any retirement
820 program of the State of Mississippi.

821 **SECTION 13.** No agency shall disclose any record that is
822 contained in a system of records by any means of communication to
823 any person or to another agency except pursuant to a written
824 request by, or with the prior written consent of, the individual
825 to whom the record pertains, unless disclosure of the record would
826 be:



827 (a) To those officers and employees of the agency that
828 maintains the records who have a need for the record in the
829 performance of their duties;

830 (b) Required under Section 1 through 11 of this act;

831 (c) For a routine use;

832 (d) To a recipient who has provided the agency with
833 advance adequate written assurance that the record will be used
834 solely as a statistical research or reporting record, and the
835 record is to be transferred in a form that is not individually
836 identifiable;

837 (e) To another agency or to an instrumentality of any
838 governmental jurisdiction within or under the control of the State
839 of Mississippi for a civil or criminal law enforcement activity if
840 the activity is authorized by law, and if the head of the agency
841 or instrumentality has made a written request to the agency that
842 maintains the record specifying the particular portion desired and
843 the law enforcement activity for which the record is sought;

844 (f) To a person pursuant to a showing of compelling
845 circumstances affecting the health or safety of an individual if,
846 upon the disclosure, notification is transmitted to the last known
847 address of the individual;

848 (g) To either chamber or committee of the Legislature
849 or, to the extent the matter is within its jurisdiction, any
850 committee or subcommittee thereof, any joint committee of the
851 Legislature or subcommittee of any such joint committee;



852 (h) To the State Auditor or any of his authorized
853 representatives; or

854 (i) Pursuant to the order of a court of competent
855 jurisdiction.

856 **SECTION 14.** Each agency, with respect to each system of
857 records under its control, shall:

858 (a) Except for disclosures made under (a) or (b) of
859 Section 13, keep an accurate accounting of:

860 (i) The date, nature and purpose of each
861 disclosure of a record to any person or to another agency made
862 under Section 13 of this act; and

863 (ii) The name and address of the person or agency
864 to whom the disclosure is made;

865 (b) Retain the accounting made under paragraph (a) of
866 this subsection for at least five (5) years or the life of the
867 record, whichever is longer, after the disclosure for which the
868 accounting is made;

869 (c) Make the accounting made under paragraph (a) of
870 this subsection available to the individual named in the record at
871 his request; and

872 (d) Inform any person or other agency about any
873 correction or notation of dispute made by the agency in accordance
874 with Section 15 of this act of any record that has been disclosed
875 to the person or agency if an accounting of the disclosure was
876 made.



877 SECTION 15. Each agency that maintains a system of records
878 shall:

879 (a) Upon request by any individual to gain access to
880 his record or to any information pertaining to him which is
881 contained in the system, permit him and upon his request, a person
882 of his own choosing to accompany him, to review the record and
883 have a copy made of all or any portion thereof in a form
884 comprehensible to him, except that the agency may require the
885 individual to furnish a written statement authorizing discussion
886 of that individual's record in the accompanying person's presence;

887 (b) Permit the individual to request an amendment of a
888 record pertaining to him; and

889 (i) Not later than ten (10) days, excluding
890 Saturdays, Sundays and legal public holidays, after the date of
891 receipt of the request, acknowledge in writing the receipt; and

892 (ii) Promptly either:

893 1. Make any correction of any portion thereof
894 which the individual believes is not accurate, relevant, timely or
895 complete; or

896 2. Inform the individual of its refusal to
897 amend the record in accordance with his request, the reason for
898 the refusal, the procedures established by the agency for the
899 individual to request a review of that refusal by the head of the
900 agency or an officer designated by the head of the agency, and the
901 name and business address of that official;



902 (c) Permit the individual who disagrees with the
903 refusal of the agency to amend his record to request a review of
904 the refusal, and not later than thirty (30) days, excluding
905 Saturdays, Sundays and legal public holidays, from the date on
906 which the individual requests the review, complete the review and
907 make a final determination unless, for good cause shown, the head
908 of the agency extends the thirty-day period. If, after his
909 review, the reviewing official also refuses to amend the record in
910 accordance with the request, the agency must permit the individual
911 to file with the agency a concise statement setting forth the
912 reasons for his disagreement with the refusal of the agency and
913 notify the individual of the provisions for judicial review of the
914 reviewing official's determination under this act;

915 (d) In any disclosure containing information about
916 which the individual has filed a statement of disagreement
917 occurring after the filing of the statement under paragraph (c) of
918 this section, clearly note any portion of the record which is
919 disputed and provide copies of the statement and, if the agency
920 deems it appropriate, copies of a concise statement of the
921 agency's reasons for not making the amendments requested to
922 persons or other agencies to whom the disputed record has been
923 disclosed.

924 **SECTION 16.** Each agency that maintains a system of records
925 shall:



926 (a) Maintain in its records only such information about
927 an individual as is relevant and necessary to accomplish a purpose
928 of the agency required to be accomplished by statute or by
929 executive order of the Governor;

930 (b) Collect information to the greatest extent
931 practicable directly from the subject individual when the
932 information may result in adverse determinations about an
933 individual's rights, benefits and privileges under state programs;

934 (c) Inform each individual whom it asks to supply
935 information, on the form which it uses to collect the information
936 or on a separate form that can be retained by the individual:

937 (i) The authority, whether granted by statute or
938 executive order of the Governor, which authorizes the solicitation
939 of the information and whether disclosure of the information is
940 mandatory or voluntary;

941 (ii) The principal purpose or purposes for which
942 the information is intended to be used;

943 (iii) The routine uses that may be made of the
944 information, as published pursuant to paragraph (d)(iv) of this
945 section; and

946 (iv) The effects on him, if any, of not providing
947 all or any part of the requested information;

948 (d) Subject to the provisions of paragraph (k) of this
949 section, publish upon establishment or revision a notice of the



950 existence and character of the system of records, which notice
951 must include:

952 (i) The name and location of the system;

953 (ii) The categories of individuals on whom records
954 are maintained in the system;

955 (iii) The categories of records maintained in the
956 system;

957 (iv) Each routine use of the records contained in
958 the system, including the categories of users and the purpose of
959 the use;

960 (v) The policies and practices of the agency
961 regarding storage, retrievability, access controls, retention and
962 disposal of the records;

963 (vi) The title and business address of the agency
964 official who is responsible for the system of records;

965 (vii) The agency procedures by which an individual
966 can be notified, at his request, if the system of records contains
967 a record pertaining to him;

968 (viii) The agency procedures by which an
969 individual can be notified, at his request, how he can gain access
970 to any record pertaining to him contained in the system of records
971 and how he can contest its content; and

972 (ix) The categories of sources of records in the
973 system;



974 (e) Maintain all records that are used by the agency in
975 making any determination about any individual with such accuracy,
976 relevance, timeliness and completeness as is reasonably necessary
977 to assure fairness to the individual in the determination;

978 (f) Before disseminating any record about an individual
979 to any person other than an agency, unless the dissemination is
980 made pursuant to paragraph (b) of Section 13 of this act, make
981 reasonable efforts to assure that the records are accurate,
982 complete, timely and relevant for agency purposes;

983 (g) Maintain no record describing how any individual
984 exercises rights guaranteed by the First Amendment of the United
985 States Constitution unless expressly authorized by statute or by
986 the individual about whom the record is maintained or unless
987 pertinent to and within the scope of an authorized law enforcement
988 activity;

989 (h) Make reasonable efforts to serve notice on an
990 individual when any record on the individual is made available to
991 any person under compulsory legal process when the process becomes
992 a matter of public record;

993 (i) Establish rules of conduct for persons involved in
994 the design, development, operation or maintenance of any system of
995 records or in maintaining any record, and instruct those persons
996 with respect to the rules and the requirements of Sections 12
997 through 22 of this act, including any other rules and procedures
998 adopted pursuant to this act and the penalties for noncompliance;



999 (j) Establish appropriate administrative, technical and
1000 physical safeguards to insure the security and confidentiality of
1001 records and to protect against any anticipated threats or hazards
1002 to their security or integrity which could result in substantial
1003 harm, embarrassment, inconvenience or unfairness to any individual
1004 on whom information is maintained;

1005 (k) At least thirty (30) days before publication of
1006 information under paragraph (d)(iv) of this section, publish
1007 notice of any new use or intended use of the information in the
1008 system and provide an opportunity for interested persons to submit
1009 written data, views or arguments to the agency; and

1010 (l) If the agency is a recipient agency or a source
1011 agency in a matching program with a nonfederal agency, with
1012 respect to any establishment or revision of a matching program, at
1013 least thirty (30) days before conducting the program, publish in
1014 the notice of the establishment or revision.

1015 **SECTION 17.** In order to carry out the provisions of Sections
1016 12 through 22 of this act, each agency that maintains a system of
1017 records shall promulgate rules in accordance with the
1018 requirements, including general notice, of this act. The rules
1019 must:

1020 (a) Establish procedures by which an individual can be
1021 notified in response to his request if any system of records named
1022 by the individual contains a record pertaining to him;



1023 (b) Define reasonable times, places and requirements
1024 for identifying an individual who requests his record or
1025 information pertaining to him before the agency makes the record
1026 or information available to the individual;

1027 (c) Establish procedures for the disclosure to an
1028 individual, upon his request, of his record or information
1029 pertaining to him, including any special procedure, if deemed
1030 necessary, for the disclosure to an individual of medical records,
1031 including psychological records, pertaining to him;

1032 (d) Establish procedures for reviewing a request from
1033 an individual concerning the amendment of any record or
1034 information pertaining to the individual, for making a
1035 determination on the request, for an appeal within the agency of
1036 an initial adverse agency determination, and for whatever
1037 additional means may be necessary for each individual to be able
1038 to exercise fully his rights under this act; and

1039 (e) Establish fees to be charged, if any, to any
1040 individual for making copies of his record, excluding the cost of
1041 any search for and review of the record.

1042 The Office of the Secretary of State shall compile and
1043 publish biennially the rules promulgated under this section and
1044 agency notices published under paragraph (d) of Section 16 in a
1045 form available to the public at low cost.



1046 **SECTION 18.** (1) An individual may bring a civil action
1047 against an agency, and the district courts of the United States
1048 shall have jurisdiction in the matter, whenever any agency:

1049 (a) Makes a determination under paragraph (c) of
1050 Section 15 of this act not to amend an individual's record in
1051 accordance with his request or fails to make a review in
1052 conformity with that paragraph;

1053 (b) Refuses to comply with an individual request under
1054 paragraph (a) of Section 15;

1055 (c) Fails to maintain any record concerning any
1056 individual with such accuracy, relevance, timeliness and
1057 completeness as is necessary to assure fairness in any
1058 determination relating to the qualifications, character, rights or
1059 opportunities of, or benefits to, the individual which may be made
1060 on the basis of the record, and consequently, a determination is
1061 made which is adverse to the individual; or

1062 (d) Fails to comply with any other provision of
1063 Sections 12 through 22 of this act or any rule promulgated
1064 thereunder, in such a way as to have an adverse effect on an
1065 individual.

1066 (2) (a) In any suit brought under the subsection (1)(a) of
1067 this section, the court may order the agency to amend the
1068 individual's record in accordance with his request or in such
1069 other way as the court may direct. In such a case, the court
1070 shall determine the matter de novo.



1071 (b) The court may assess against the United States
1072 reasonable attorney's fees and other litigation costs reasonably
1073 incurred in any case under this subsection in which the
1074 complainant substantially has prevailed.

1075 (3) (a) In any suit brought under subsection (1)(b), the
1076 court may enjoin the agency from withholding the records and order
1077 the production to the complainant of any agency records improperly
1078 withheld from him. In such a case, the court shall determine the
1079 matter de novo and may examine the contents of any agency records
1080 in camera to determine whether the records or any portion thereof
1081 may be withheld under any of the exemptions set forth in this act,
1082 and the burden is on the agency to sustain its action.

1083 (b) The court may assess against the agency reasonable
1084 attorney's fees and other litigation costs reasonably incurred in
1085 any case under this subsection in which the complainant
1086 substantially has prevailed.

1087 (4) In any suit brought under subsection (1)(c) or (d) of
1088 this section in which the court determines that the agency acted
1089 in a manner that was intentional or willful, the agency shall be
1090 liable to the individual in an amount equal to the sum of:

1091 (a) Actual damages sustained by the individual as a
1092 result of the refusal or failure, but in no case shall a person
1093 entitled to recovery receive less than the sum of Ten Thousand
1094 Dollars (\$10,000.00); and



1095 (b) The costs of the action, together with reasonable
1096 attorney's fees, as determined by the court.

1097 (5) An action to enforce any liability created under
1098 Sections 12 through 22 of this act may be brought in the circuit
1099 or chancery court in the district in which the complainant resides
1100 or has his principal place of business or in which the agency
1101 records are situated, without regard to the amount in controversy,
1102 within two (2) years from the date on which the cause of action
1103 arises; however, where an agency has materially and willfully
1104 misrepresented any information required under this act to be
1105 disclosed to an individual and the information so misrepresented
1106 is material to establishment of the liability of the agency to the
1107 individual, the action may be brought at any time within two (2)
1108 years after discovery by the individual of the misrepresentation.
1109 Nothing in this act may be construed to authorize any civil action
1110 by reason of any injury sustained as the result of a disclosure of
1111 a record before July 1, 2014.

1112 **SECTION 19.** For the purposes of Sections 12 through 22 of
1113 this act, the parent of any minor, or the legal guardian of any
1114 individual who has been declared to be incompetent due to physical
1115 or mental incapacity or age by a court of competent jurisdiction,
1116 may act on behalf of the individual.

1117 **SECTION 20.** (1) Any officer or employee of an agency who,
1118 by virtue of his employment or official position, has possession
1119 of or access to agency records that contain individually



1120 identifiable information, the disclosure of which is prohibited by
1121 Sections 12 through 22 of this act or by rules or regulations
1122 established thereunder, and who, knowing that disclosure of the
1123 specific material is so prohibited, willfully discloses the
1124 material in any manner to any person or agency not entitled to
1125 receive it, is guilty of a misdemeanor and must be fined not less
1126 than Five Thousand Dollars (\$5,000.00).

1127 (2) Any officer or employee of any agency who willfully
1128 maintains a system of records without meeting the notice
1129 requirements of paragraph (d) of Section 16 of this act is guilty
1130 of a misdemeanor and must be fined not less than Five thousand
1131 Dollars (\$5,000.00).

1132 (3) Any person who knowingly and willfully requests or
1133 obtains any record concerning an individual from an agency under
1134 false pretenses is guilty of a misdemeanor and must be fined not
1135 less than Five Thousand Dollars (\$5,000.00).

1136 **SECTION 21.** When an agency provides by a contract for the
1137 operation by or on behalf of the agency of a system of records to
1138 accomplish an agency function, the agency shall cause, consistent
1139 with its authority, the requirements of Sections 12 through 22 of
1140 this act to be applied to the system. For purposes of Section 20,
1141 any such contractor and any employee of the contractor, if the
1142 contract is agreed to on or after July 1, 2014, must be considered
1143 to be an employee of an agency.



1144 **SECTION 22.** An individual's name and address may not be sold
1145 or rented by an agency unless the action specifically is
1146 authorized by law. This section may not be construed to require
1147 the withholding of names and addresses otherwise permitted to be
1148 made public.

1149 **SECTION 23.** For purposes of Sections 23 through 34 of this
1150 act, the following words and phrases have the meanings ascribed in
1151 this section unless the context clearly indicates otherwise:

1152 (a) "Agency" means any agency headed by a collegial
1153 body composed of two (2) or more individual members, a majority of
1154 whom are appointed to their position by the Governor, and any
1155 subdivision thereof authorized to act on behalf of the agency.

1156 (b) "Meeting" means the deliberations of at least the
1157 number of individual agency members required to take action on
1158 behalf of the agency where the deliberations determine or result
1159 in the joint conduct or disposition of official agency business,
1160 but does not include deliberations required or permitted by
1161 Section 26 or 27.

1162 (c) "Member" means an individual who belongs to a
1163 collegial body heading an agency.

1164 **SECTION 24.** (1) Members may not jointly conduct or dispose
1165 of agency business other than in accordance with Sections 23
1166 through 34 of this act.

1167 (2) Except as provided in Section 25, every portion of every
1168 meeting of an agency must be open to public observation.



1169 **SECTION 25.** Except in a case where the agency finds that the
1170 public interest requires otherwise, subsection (2) of Section 24
1171 does not apply to any portion of an agency meeting, and the
1172 requirements of Sections 26 and 27 do not apply to any information
1173 pertaining to the meeting otherwise required by Sections 23
1174 through 34 of this act to be disclosed to the public, where the
1175 agency properly determines that the portion or portions of its
1176 meeting or the disclosure of the information is likely to:

1177 (a) Disclose information of a personal nature where
1178 disclosure would constitute a clearly unwarranted invasion of
1179 personal privacy; or

1180 (b) Disclose investigatory records compiled for law
1181 enforcement purposes or information which, if written, would be
1182 contained in those records, but only to the extent that the
1183 production of the records or information would endanger the life
1184 or physical safety of law enforcement personnel.

1185 **SECTION 26.** (1) Action under Section 25 may be taken only
1186 when a majority of the entire membership of the agency votes to
1187 take the action. A separate vote of the agency members must be
1188 taken with respect to each agency meeting during which a portion
1189 or portions are proposed to be closed to the public under Section
1190 25, or with respect to any information that is proposed to be
1191 withheld under Section 25. A single vote may be taken with
1192 respect to a series of meetings, a portion or portions of which
1193 are proposed to be closed to the public, or with respect to any



1194 information concerning the series of meetings, so long as each
1195 meeting in the series involves the same particular matters and is
1196 scheduled to be held no more than thirty (30) days after the
1197 initial meeting in that series. The vote of each agency member
1198 participating in the vote must be recorded, and no proxies may be
1199 allowed.

1200 (2) Whenever any person whose interests may be directly
1201 affected by a portion of a meeting requests that the agency close
1202 that portion to the public for any of the reasons referred to in
1203 Section 25, the agency, upon request of any one of its members,
1204 shall vote by recorded vote whether or not to close the meeting.

1205 (3) Within one (1) day of any vote taken under subsection
1206 (1) or (2) of this section, the agency shall make available
1207 publicly a written copy of the vote reflecting the vote of each
1208 member on the question. If a portion of a meeting will be closed
1209 to the public, within one (1) day of the vote taken under
1210 subsection (1) or (2), the agency must make publicly available a
1211 full written explanation of its action closing that portion,
1212 together with a list of all persons expected to attend the meeting
1213 and their affiliation.

1214 (4) Any agency may provide, by regulation, for the closing
1215 of a meeting or portion of a meeting if a majority of the members
1216 of the agency votes by recorded vote at the beginning of that
1217 meeting, or portion of the meeting, to close the exempt portion or
1218 portions of the meeting. A copy of the vote, reflecting the vote



1219 of each member on the question, must be made available to the
1220 public. Subsections (1), (2), and (3) of this section and Section
1221 27 do not apply to any portion of a meeting to which such a
1222 regulation applies; however, except to the extent that the
1223 information is exempt from disclosure under Section 25, the agency
1224 must provide the public with a public announcement of the time,
1225 place and subject matter of the meeting and of each portion of the
1226 meeting at the earliest practicable time.

1227 **SECTION 27.** (1) In the case of each meeting, the agency
1228 shall make a public announcement, at least one (1) week before the
1229 meeting, of the time, place and subject matter of the meeting,
1230 whether it is to be open or closed to the public, and the name and
1231 phone number of the official designated by the agency to respond
1232 to requests for information about the meeting. The announcement
1233 must be made unless a majority of the members of the agency
1234 determines by a recorded vote that agency business requires that
1235 the meeting be called at an earlier date, in which case, the
1236 agency must make a public announcement of the time, place and
1237 subject matter of the meeting and whether the meeting will be open
1238 or closed to the public at the earliest practicable time.

1239 (2) The time or place of a meeting may be changed following
1240 the public announcement required under subsection (1) only if the
1241 agency publicly announces the change at the earliest practicable
1242 time. The subject matter of a meeting, or the determination of
1243 the agency to open or close a meeting or portion of a meeting to



1244 the public, may be changed following the public announcement
1245 required by this section only if:

1246 (a) A majority of the entire membership of the agency
1247 determines by a recorded vote that agency business so requires and
1248 that no earlier announcement of the change was possible; and

1249 (b) The agency publicly announces the change and the
1250 vote of each member upon the change at the earliest practicable
1251 time.

1252 (3) Immediately following each public announcement required
1253 by this section, notice of the time, place and subject matter of a
1254 meeting, whether the meeting is open or closed, any change in one
1255 (1) of the preceding and the name and phone number of the official
1256 designated by the agency to respond to requests for information
1257 about the meeting shall be submitted for publication on the
1258 agency's Internet website.

1259 **SECTION 28.** For every meeting closed under Section 25,
1260 counsel or the chief legal officer of the agency shall certify
1261 publicly that, in his or her opinion, the meeting may be closed to
1262 the public and shall state each relevant exemptive provision. A
1263 copy of the certification, together with a statement from the
1264 presiding officer of the meeting setting forth the time and place
1265 of the meeting, and the persons present, must be retained by the
1266 agency. The agency shall maintain a complete transcript or
1267 electronic recording adequate to record fully the proceedings of
1268 each meeting, or portion of a meeting, closed to the public,



1269 except that in the case of a meeting, or portion of a meeting,
1270 closed to the public pursuant to relevant provision, the agency
1271 shall maintain either such a transcript or recording, or a set of
1272 minutes. The minutes must fully and clearly describe all matters
1273 discussed and must provide a full and accurate summary of any
1274 actions taken, and the reasons therefor, including a description
1275 of each of the views expressed on any item and the record of any
1276 roll call vote reflecting the vote of each member on the question.
1277 All documents considered in connection with any action must be
1278 identified in such minutes.

1279 SECTION 29. The agency shall make promptly available to the
1280 public, in a place easily accessible to the public, the
1281 transcript, electronic recording or minutes of the discussion of
1282 any item on the agenda, or of any item of the testimony of a
1283 witness received at the meeting, except for any item or items of
1284 the discussion or testimony as the agency determines to contain
1285 information which may be withheld under Section 25. Copies of the
1286 transcript or minutes or a transcription of the recording
1287 disclosing the identity of each speaker must be furnished to any
1288 person at the actual cost of duplication or transcription. The
1289 agency shall maintain a complete verbatim copy of the transcript,
1290 a complete copy of the minutes or a complete electronic recording
1291 of each meeting or portion of a meeting closed to the public for a
1292 period of at least two (2) years after that meeting, or until one
1293 (1) year after the conclusion of any agency proceeding with



1294 respect to which the meeting or portion was held, whichever occurs
1295 later.

1296 **SECTION 30.** Within one hundred eighty (180) days after July
1297 1, 2014, each agency subject to the requirements of Sections 23
1298 through 34 of this act shall promulgate regulations to implement
1299 the requirements of Sections 24 through 28 of this act. Any
1300 person may bring a proceeding in the circuit, county or chancery
1301 court of the home county of the complainant to require an agency
1302 to promulgate the regulations if the agency has not promulgated
1303 the regulations within the designated time period. Subject to any
1304 limitations of time provided by law, any person may bring a
1305 proceeding in the circuit, county or chancery court of the home
1306 county of the complainant to set aside agency regulations issued
1307 pursuant to this section which are not in accord with the
1308 requirements of Sections 24 through 28 of this section and to
1309 require the promulgation of regulations that are in accord with
1310 those sections.

1311 **SECTION 31.** (1) The circuit, county and chancery courts of
1312 the home county of the complainant shall have jurisdiction to
1313 enforce the requirements of Sections 24 through 28 of this act by
1314 declaratory judgment, injunctive relief or other relief as may be
1315 appropriate. Actions may be brought by any person against an
1316 agency before, or within sixty (60) days after, the meeting out of
1317 which the violation of Sections 23 through 34 arises. However,
1318 that if a public announcement of the meeting is not initially



1319 provided by the agency in accordance with the requirements of
1320 Sections 23 through 34, the action may be instituted under those
1321 sections at any time before sixty (60) days after any public
1322 announcement of the meeting. Actions may be brought in the
1323 circuit, county and chancery courts of the home county of the
1324 complainant. In such an action, a defendant must serve his answer
1325 within thirty (30) days after the service of the complaint. The
1326 burden is on the defendant to sustain his action. In deciding
1327 these cases, the court may examine in camera any portion of the
1328 transcript, electronic recording or minutes of a meeting closed to
1329 the public and may take such additional evidence as it deems
1330 necessary. The court, having due regard for orderly
1331 administration and the public interest as well as the interests of
1332 the parties, may grant such equitable relief as it deems
1333 appropriate, including granting an injunction against future
1334 violations of Sections 23 through 34 of this act or ordering the
1335 agency to make available to the public the portion of the
1336 transcript, recording or minutes of a meeting which are not
1337 authorized to be withheld under Section 25.

1338 (2) Any court otherwise authorized by law to review agency
1339 action may inquire, at the application of any person properly
1340 participating in the proceeding pursuant to other applicable law,
1341 into violations by the agency of the requirements of Sections 23
1342 through 34 and afford such relief as it deems appropriate.



1343 (3) The court may assess against any party reasonable
1344 attorney's fees and other litigation costs reasonably incurred by
1345 any other party who substantially prevails in any action brought
1346 in accordance with Section 29 or 30, except that costs may be
1347 assessed against the plaintiff only where the court finds that the
1348 suit was initiated by the plaintiff primarily for frivolous or
1349 dilatory purposes. In the case of assessment of costs against an
1350 agency, the costs may be assessed by the court against the state.

1351 **SECTION 32.** Each agency subject to the requirements of
1352 Sections 23 through 34 of this act shall report annually to the
1353 Legislature regarding the following:

1354 (a) The changes in the policies and procedures of the
1355 agency under Sections 23 through 34 which have occurred during the
1356 preceding one-year period.

1357 (b) A tabulation of the number of meetings held, the
1358 exemptions applied to close meetings and the days of public notice
1359 provided to close meetings.

1360 (c) A brief description of litigation or formal
1361 complaints concerning the implementation of Sections 23 through 34
1362 by the agency.

1363 (d) A brief explanation of any changes in law that have
1364 affected the responsibilities of the agency under Sections 23
1365 through 34 of this act.

1366 **SECTION 33.** Sections 23 through 34 do not constitute
1367 authority to withhold any information from the Legislature and do



1368 not authorize the closing of any agency meeting or portion of an
1369 agency meeting required by any other provision of law to be open.

1370 **SECTION 34.** Nothing in Sections 23 through 34 of this act
1371 authorizes any agency to withhold from any individual any record,
1372 including transcripts, recordings or minutes required by Sections
1373 23 through 34, which is otherwise accessible to the individual
1374 under Sections 12 through 22 of this act.

1375 **SECTION 35.** (1) After notice required by this section, the
1376 agency shall give interested persons an opportunity to participate
1377 in the rule making process through submission of written data,
1378 views or arguments, with or without opportunity for oral
1379 presentation. After consideration of the relevant matter
1380 presented, the agency shall incorporate in the rules adopted a
1381 concise general statement of their basis and purpose.

1382 (2) The required publication or service of a substantive
1383 rule must be made not less than thirty (30) days before its
1384 effective date.

1385 (3) Each agency shall give an interested person the right to
1386 petition for the issuance, amendment or repeal of a rule.

1387 **SECTION 36.** (1) This section applies in every case of
1388 adjudication required by statute to be determined on the record
1389 after opportunity for an agency hearing. The requirements of this
1390 section are in addition to any requirements that may be
1391 established for a particular agency conducting an agency hearing.



1392 (2) Persons entitled to notice of an agency hearing must be
1393 timely informed of:

1394 (a) The time, place and nature of the hearing;

1395 (b) The legal authority and jurisdiction under which
1396 the hearing is to be held; and

1397 (c) The matters of fact and law asserted.

1398 (3) Any and all agency hearings must be conducted pursuant
1399 to the Mississippi Rules of Civil Procedure, the Mississippi Rules
1400 of Evidence and the Mississippi Rules of Court. When private
1401 persons are the moving parties, other parties to the proceeding
1402 must give prompt notice of issues controverted in fact or law; and
1403 in other instances agencies may require, by rule, responsive
1404 pleading. In fixing the time and place for hearings, due regard
1405 must be had for the convenience and necessity of the parties or
1406 their representatives.

1407 (4) The agency shall give all interested parties opportunity
1408 for:

1409 (a) The submission and consideration of facts,
1410 arguments, offers of settlement or proposals of adjustment when
1411 time, the nature of the proceeding and the public interest permit;

1412 (b) To the extent that the parties are unable to
1413 determine a controversy by consent, hearing and decision on
1414 notice; and



1415 (c) Any and all discovery allowed under the Mississippi
1416 Rules of Civil Procedure, including, but not limited to,
1417 depositions of parties.

1418 (5) The employee who presides at the reception of evidence
1419 shall make the recommended decision or initial decision, unless he
1420 becomes unavailable to the agency. Except to the extent required
1421 for the disposition of ex parte matters as authorized by law, an
1422 employee may not:

1423 (a) Consult a person or party on a fact in issue,
1424 unless on notice and opportunity for all parties to participate;
1425 or

1426 (b) Be responsible to or subject to the supervision or
1427 direction of an employee or agent engaged in the performance of
1428 investigative or prosecuting functions for an agency.

1429 (6) An agency conducting a hearing may not perform both the
1430 judiciary and investigative/prosecutorial function. Performing
1431 both of these functions is repugnant to the public policy of
1432 Mississippi and is a clear violation of the separation of powers
1433 doctrine. All investigative and prosecutorial functions must be
1434 performed by the Attorney General.

1435 Any employee or agent engaged in the performance of
1436 investigative or prosecuting functions for an agency in a case
1437 shall be guilty of a misdemeanor and fined no more than
1438 Twenty-five Thousand Dollars (\$25,000.00) and sentenced to no more
1439 than thirty (30) days of incarceration.



1440 SECTION 37. (1) A person compelled to appear in person
1441 before an agency or representative of an agency is entitled to be
1442 accompanied, represented and advised by counsel or, if permitted
1443 by the agency, by another qualified representative. A party is
1444 entitled to appear in person or by or with counsel or other duly
1445 qualified representative in an agency proceeding. So far as the
1446 orderly conduct of public business permits, an interested person
1447 may appear before an agency or its responsible employees for the
1448 presentation, adjustment or determination of an issue, request or
1449 controversy in a proceeding, whether interlocutory, summary or
1450 otherwise, or in connection with an agency function. With due
1451 regard for the convenience and necessity of the parties or their
1452 representatives and within a reasonable time, each agency shall
1453 proceed to conclude a matter presented to it. This subsection
1454 does not grant or deny a person who is not a lawyer the right to
1455 appear for or represent others before an agency or in an agency
1456 proceeding.

1457 (2) An agency act, proceeding or procedure may not be
1458 instituted by an anonymous complaint. Anonymous complaints, as a
1459 basis for initiating a proceeding, are repugnant to the public
1460 policy of Mississippi and violate the Confrontation Clause of the
1461 Constitutions of the United States and Mississippi. Any agency or
1462 individual acting on or trying to institute an anonymous act shall
1463 be liable for any and all tortuous remedies available under the
1464 laws of the State of Mississippi and the common law.



1465 (3) Process, requirement of a report, inspection or other
1466 investigative act or demand may not be issued, made or enforced
1467 except as authorized by law. A person compelled to submit data or
1468 evidence may retain or, on payment of lawfully prescribed costs,
1469 procure a copy or transcript thereof, except that in a nonpublic
1470 investigatory proceeding, the witness may for good cause be
1471 limited to inspection of the official transcript of his testimony.

1472 (4) Agency subpoenas authorized by law must be issued to a
1473 party on request and, when required by rules of procedure, on a
1474 statement or showing of general relevance and reasonable scope of
1475 the evidence sought. On contest, the court shall sustain the
1476 subpoena or similar process or demand to the extent that it is
1477 found to be in accordance with law. In a proceeding for
1478 enforcement, the court shall issue an order requiring the
1479 appearance of the witness or the production of the evidence or
1480 data within a reasonable time under penalty of punishment for
1481 contempt in case of contumacious failure to comply.

1482 (5) Prompt notice must be given of the denial, in whole or
1483 in part, of a written application, petition or other request of an
1484 interested person made in connection with any agency proceeding.
1485 Except in affirming a prior denial or when the denial is
1486 self-explanatory, the notice must be accompanied by a brief
1487 statement of the grounds for denial.

1488 **SECTION 38.** (1) This section applies to those hearings
1489 required to be conducted in accordance with this section.



1490 (2) There shall preside at the taking of evidence:
1491 (a) The agency;
1492 (b) One or more members of the body which comprises the
1493 agency; or
1494 (c) One or more judges appointed under the laws of the
1495 State of Mississippi.
1496 (3) Subject to published rules of the agency and within its
1497 powers, only judges presiding at hearings may:
1498 (a) Administer oaths and affirmations;
1499 (b) Issue subpoenas authorized by law;
1500 (c) Rule on offers of proof and receive relevant
1501 evidence;
1502 (d) Take depositions or have depositions taken when the
1503 ends of justice would be served;
1504 (e) Regulate the course of the hearing;
1505 (f) Hold conferences for the settlement or
1506 simplification of the issues by consent of the parties or by the
1507 use of alternative means of dispute resolution;
1508 (g) Inform the parties as to the availability of one or
1509 more alternative means of dispute resolution and encourage use of
1510 those methods;
1511 (h) Require the attendance at any conference held
1512 pursuant to paragraph (f) of at least one (1) representative of
1513 each party who has authority to negotiate concerning resolution of
1514 issues in controversy;



1515 (i) Dispose of procedural requests or similar matters;
1516 and

1517 (j) Take other action authorized by agency rule
1518 consistent with this act.

1519 (4) Except as may otherwise be provided, the proponent of a
1520 rule or order has the burden of proof. Any oral or documentary
1521 evidence may be received, but the agency, as a matter of policy,
1522 shall provide for the exclusion of irrelevant, immaterial or
1523 unduly repetitious evidence. A sanction may not be imposed or
1524 rule or order issued except on consideration of the whole record
1525 or those parts of the record cited by a party and supported by and
1526 in accordance with the reliable, probative and substantial
1527 evidence. A party is entitled to present his case or defense by
1528 oral or documentary evidence, to submit rebuttal evidence and to
1529 conduct such cross-examination as may be required for a full and
1530 true disclosure of the facts. In rule making or determining
1531 claims for money or benefits or applications for initial licenses
1532 an agency may adopt procedures for the submission of all or part
1533 of the evidence in written form if a party will not be prejudiced
1534 by those procedures.

1535 (5) When an agency decision rests on official notice of a
1536 material fact not appearing in the evidence in the record, on a
1537 timely request, a party is entitled to an opportunity to show the
1538 contrary.



1539 SECTION 39. (1) This section applies when a hearing is
1540 required to be conducted in accordance with Section 38 of this
1541 act.

1542 (2) (a) Before a recommended, initial or tentative
1543 decision, or a decision on agency review of the decision of
1544 subordinate employees, the parties are entitled to a reasonable
1545 opportunity for a show cause hearing to submit for the
1546 consideration of the agency and its employees participating in the
1547 decisions:

1548 (i) Proposed findings and conclusions, or
1549 exceptions to the decisions or recommended decisions of
1550 subordinate employees or to tentative agency decisions; and

1551 (ii) Supporting reasons for the exceptions or
1552 proposed findings or conclusions.

1553 (b) The record must show the ruling on each finding,
1554 conclusion or exception presented. All decisions, including
1555 initial, recommended and tentative decisions, are a part of the
1556 record and must include a statement of:

1557 (i) Findings and conclusions, and the reasons or
1558 basis therefor, on all the material issues of fact, law or
1559 discretion presented on the record; and

1560 (ii) The appropriate rule, order, sanction, relief
1561 or denial thereof.



1562 (3) (a) In an agency proceeding that is subject to
1563 subsection (1) of this section, except to the extent required for
1564 the disposition of ex parte matters as authorized by law:

1565 (i) No interested person outside the agency may
1566 make or knowingly cause to be made an ex parte communication
1567 relevant to the merits of the proceeding to any member of the body
1568 comprising the agency, judge or other employee who is or
1569 reasonably may be expected to be involved in the decisional
1570 process of the proceeding;

1571 (ii) No member of the body comprising the agency,
1572 judge or other employee who is or may reasonably be expected to be
1573 involved in the decisional process of the proceeding may make or
1574 knowingly cause to be made an ex parte communication relevant to
1575 the merits of the proceeding to any interested person outside the
1576 agency;

1577 (iii) A member of the body comprising the agency,
1578 judge or other employee who is or may reasonably be expected to be
1579 involved in the decisional process of the proceeding who receives,
1580 or who makes or knowingly causes to be made, a communication
1581 prohibited by this subsection shall place on the public record of
1582 the proceeding:

- 1583 1. All such written communications;
1584 2. Memoranda stating the substance of all
1585 such oral communications; and



1586 3. All written responses and memoranda
1587 stating the substance of all oral responses to the materials
1588 described in 1. and 2. of this subparagraph;

1589 (iv) Upon receipt of a communication knowingly
1590 made or knowingly caused to be made by a party in violation of
1591 this subsection, the agency, judge or other employee presiding at
1592 the hearing may require, to the extent consistent with the
1593 interests of justice and the policy of the underlying statutes,
1594 the party to show cause why his claim or interest in the
1595 proceeding should not be dismissed, denied, disregarded or
1596 otherwise adversely affected on account of the violation;

1597 (v) An agency, employee or agent may not be an
1598 interested party in any proceeding of that agency at any stage of
1599 the agency's business; and

1600 (vi) The prohibitions of this subsection shall
1601 apply beginning at such time as the agency may designate, but in
1602 no case may they begin to apply later than the time at which a
1603 proceeding is noticed for hearing unless the person responsible
1604 for the communication has knowledge that it will be noticed, in
1605 which case the prohibitions shall apply beginning at the time of
1606 his acquisition of that knowledge.

1607 (b) This subsection does not constitute authority to
1608 withhold information from the Legislature.

1609 **SECTION 40.** (1) This section applies to the exercise of a
1610 power or authority.



1611 (2) A sanction may not be imposed or a substantive rule or
1612 order issued except within jurisdiction delegated to the agency
1613 and as authorized by law.

1614 (3) When application is made for a license required by law,
1615 the agency, with due regard for the rights and privileges of all
1616 the interested parties or adversely affected persons and within a
1617 reasonable time, shall set and complete proceedings required to be
1618 conducted in accordance with Sections 37 and 38 of this act or
1619 other proceedings required by law and shall make its decision.

1620 **SECTION 41.** This act does not limit or repeal additional
1621 requirements imposed by statute or otherwise recognized by law.
1622 Except as otherwise required by law, requirements or privileges
1623 relating to evidence or procedure apply equally to agencies and
1624 persons.

1625 **SECTION 42.** A person suffering legal wrong because of agency
1626 action or adversely affected or aggrieved by agency action within
1627 the meaning of a relevant statute is entitled to judicial review
1628 of the agency action. An action in a circuit, county or chancery
1629 court of the home county of the complainant seeking any relief and
1630 stating a claim that an agency or an officer or employee thereof
1631 acted or failed to act in an official capacity or under color of
1632 legal authority may not be dismissed, nor relief therein denied,
1633 on the ground that it is against the agency or that the State of
1634 Mississippi is an indispensable party. The State of Mississippi
1635 may be named as a defendant in any such action, and a judgment or



1636 decree may be entered against the State of Mississippi: however,
1637 any mandatory or injunctive decree must specify the state officer
1638 or officers, by name or title, and their successors in office
1639 personally responsible for compliance. Nothing in this section:
1640 affects other limitations on judicial review or the power or duty
1641 of the court to dismiss any action or deny relief on any other
1642 appropriate legal or equitable ground; or confers authority to
1643 grant relief if any other statute that grants consent to suit
1644 expressly or impliedly forbids the relief that is sought.

1645 **SECTION 43.** The form of proceeding for judicial review is
1646 the special statutory review proceeding relevant to the subject
1647 matter in a court specified by statute or, in the absence or
1648 inadequacy thereof, any applicable form of legal action, including
1649 actions for declaratory judgments or writs of prohibitory or
1650 mandatory injunction or habeas corpus, in a court of competent
1651 jurisdiction. If no special statutory review proceeding is
1652 applicable, the action for judicial review may be brought against
1653 the State of Mississippi, the agency by its official title or the
1654 appropriate officer. Except to the extent that prior, adequate
1655 and exclusive opportunity for judicial review is provided by law,
1656 agency action is subject to judicial review in civil or criminal
1657 proceedings for judicial enforcement.

1658 **SECTION 44.** Agency action made reviewable by statute and
1659 final agency action for which there is no other adequate remedy in
1660 a court are subject to judicial review. A preliminary, procedural



1661 or intermediate agency action or ruling not directly reviewable is
1662 subject to review on the review of the final agency action.
1663 Except as otherwise expressly required by statute, agency action
1664 otherwise final is final for the purposes of this section whether
1665 or not there has been presented or determined an application for a
1666 declaratory order, for any form of reconsideration, or, unless the
1667 agency otherwise requires by rule and provides that the action
1668 meanwhile is inoperative, for an appeal to superior agency
1669 authority.

1670 **SECTION 45.** When an agency ruling and an appeal is filed
1671 timely, the ruling and its execution must be postponed and the
1672 effective date of action taken by it postponed, pending judicial
1673 review. On such conditions as may be required and to the extent
1674 necessary to prevent irreparable injury, the reviewing court,
1675 including the court to which a case may be taken on appeal from or
1676 on application for certiorari or other writ to a reviewing court,
1677 may issue all necessary and appropriate process to postpone the
1678 effective date of an agency action or to preserve status or rights
1679 pending conclusion of the review proceedings.

1680 **SECTION 46.** To the extent necessary, the reviewing court
1681 shall decide all relevant questions of law, interpret
1682 constitutional and statutory provisions and determine the meaning
1683 or applicability of the terms of an agency action. The reviewing
1684 court shall determine all appeals de novo and should consider
1685 finding:



1686 (a) Compelling agency action unlawfully withheld or
1687 unreasonably delayed; and

1688 (b) Holding unlawful and setting aside agency action,
1689 findings and conclusions found to be:

1690 (i) Arbitrary, capricious, an abuse of discretion
1691 or otherwise not in accordance with law;

1692 (ii) Contrary to constitutional right, power,
1693 privilege or immunity;

1694 (iii) In excess of statutory jurisdiction,
1695 authority or limitations, or short of statutory right;

1696 (iv) Without observance of procedure required by
1697 law;

1698 (v) Unsupported by substantial evidence or
1699 otherwise reviewed on the record of an agency hearing provided by
1700 statute;

1701 (vi) Unwarranted by the facts to the extent that
1702 the facts are subject to trial de novo by the reviewing court; or

1703 (vii) Any and all other issues properly raised on
1704 appeal and within the legal and equitable powers of the court.

1705 In making the foregoing determinations, the court shall
1706 review the matter de novo, and due account must be taken of the
1707 rule of prejudicial error.

1708 **SECTION 47.** (1) (a) Before a rule can take effect, the
1709 agency promulgating the rule shall submit a report to each House



1710 of the Legislature and the Attorney General containing the
1711 following:

1712 (i) A copy of the rule;

1713 (ii) A concise general statement relating to the
1714 rule, including whether it is a major rule; and

1715 (iii) The proposed effective date of the rule.

1716 (b) On the date of the submission of the report under
1717 paragraph (a), the agency promulgating the rule shall submit to
1718 the Attorney General and make available to each House of the
1719 Legislature the following:

1720 (i) A complete copy of the cost-benefit analysis
1721 of the rule, if any;

1722 (ii) The agency's actions relevant to this act;
1723 and

1724 (iii) Any other relevant information or
1725 requirements under any other act and relevant executive orders.

1726 (c) Upon receipt of a report submitted under paragraph
1727 (a), each House shall provide copies of the report to the chairman
1728 of each standing committee with jurisdiction to report a bill to
1729 amend the provision of law under which the rule is issued.

1730 (2) (a) The Attorney General shall provide a report on each
1731 major rule to the committees of jurisdiction in each House of the
1732 Legislature by the end of fifteen (15) calendar days after the
1733 submission or publication date. The report of the Attorney



1734 General must include an assessment of the agency's compliance with
1735 procedural steps required under subsection (1) (b).

1736 (b) State agencies must cooperate with the Attorney
1737 General by providing information relevant to the Attorney
1738 General's report under paragraph (a).

1739 (3) A major rule relating to a report submitted under
1740 subsection (1) must take effect on the latest of:

1741 (a) The latter of the date occurring sixty (60) days
1742 after the date on which:

1743 (i) The Legislature receives the report submitted
1744 under subsection (1); or

1745 (ii) The rule is published, if so published;

1746 (b) If the Legislature passes a joint resolution of
1747 disapproval and the Governor signs a veto of the resolution, the
1748 earlier date:

1749 (i) On which either House of Legislature votes and
1750 fails to override the veto of the Governor; or

1751 (ii) Occurring thirty (30) legislative days after
1752 the date on which the Legislature received the veto and objections
1753 of the Governor; or

1754 (c) The date the rule would have otherwise taken
1755 effect, if not for this section (unless a joint resolution of
1756 disapproval).



1757 (4) Except for a major rule, a rule shall take effect as
1758 otherwise provided by law after submission to the Legislature
1759 under subsection (1).

1760 (5) A rule may not take effect or continue if the
1761 Legislature enacts a joint resolution of disapproval of the rule.

1762 (6) A rule that does not take effect or does not continue
1763 under subsection (1) may not be reissued in substantially the same
1764 form, and a new rule that is substantially the same as such a rule
1765 may not be issued unless the reissued or new rule is authorized
1766 specifically by a law enacted after the date of the joint
1767 resolution disapproving the original rule.

1768 **SECTION 48.** (1) For purposes of this section, the term
1769 "joint resolution" means only a joint resolution introduced in the
1770 period beginning on the date on which the report referred to in
1771 Section 47 of this act received by the Legislature and ending
1772 sixty (60) days thereafter, the matter after the resolving clause
1773 of which is as follows: "That the Mississippi Legislature, by way
1774 of the House of Representatives and the Senate, disapproves the
1775 rule submitted by the _____ relating to _____, and such
1776 rule shall have no force or effect." (The blank spaces being
1777 appropriately filled in).

1778 (2) (a) A joint resolution described in subsection (1) must
1779 be referred to the committees in each House of the Legislature
1780 with jurisdiction.



1781 (b) For purposes of this section, the term "submission
1782 or publication date" means the later of the date on which:

1783 (i) The Legislative receives the report; or

1784 (ii) The rule is published, if so published.

1785 (3) In the Senate, if the committee to which a joint
1786 resolution described in subsection (1) has been referred has not
1787 reported the joint resolution or an identical joint resolution at
1788 the end of twenty (20) calendar days after the submission or
1789 publication date defined under subsection (2) (b), the committee
1790 may be discharged from further consideration of such joint
1791 resolution upon a petition supported in writing by thirty (30)
1792 members of the Senate, and the joint resolution must be placed on
1793 the calendar.

1794 (4) (a) In the Senate, when the committee to which a joint
1795 resolution is referred has reported, or when a committee is
1796 discharged under subsection (2) from further consideration of a
1797 joint resolution described in subsection (1), at any time
1798 thereafter, it is in order, even though a previous motion to the
1799 same effect has been disagreed to, for a motion to proceed to
1800 consideration of the joint resolution, and all points of order
1801 against the joint resolution and against consideration of the
1802 joint resolution are waived. The motion is not subject to
1803 amendment, to a motion to postpone or to a motion to proceed to
1804 the consideration of other business. A motion to reconsider the
1805 vote by which the motion is agreed to or disagreed to shall not be



1806 in order. If a motion to proceed to the consideration of the
1807 joint resolution is agreed to, the joint resolution shall remain
1808 the unfinished business of the Senate until disposed of.

1809 (b) In the Senate, debate on the joint resolution, and
1810 on all debatable motions and appeals in connection therewith,
1811 shall be limited to not more than ten (10) hours, which must be
1812 divided equally between those favoring and those opposing the
1813 joint resolution. A motion further to limit debate is in order
1814 and not debatable. An amendment to, or a motion to postpone, or a
1815 motion to proceed to the consideration of other business, or a
1816 motion to recommit the joint resolution is not in order.

1817 (c) In the Senate, immediately following the conclusion
1818 of the debate on a joint resolution described in subsection (1),
1819 and a single quorum call at the conclusion of the debate if
1820 requested in accordance with the rules of the Senate, the vote on
1821 final passage of the joint resolution shall occur.

1822 (d) Appeals from the decisions of the chair relating to
1823 the application of the rules of the Senate to the procedure
1824 relating to a joint resolution described in subsection (1) shall
1825 be decided without debate.

1826 (5) In the Senate, the procedure specified in subsections
1827 (3) and (4) shall not apply to the consideration of a joint
1828 resolution respecting a rule:



1829 (a) After the expiration of the sixty (60) legislative
1830 days beginning with the applicable submission or publication date;
1831 or

1832 (b) If the report was submitted during the applicable
1833 period, after the expiration of the sixty (60) legislative days
1834 beginning on the 15th legislative day after the succeeding session
1835 of the Legislature first convenes.

1836 (6) If, before the passage by one (1) House of a joint
1837 resolution of that House it receives from the other House a joint
1838 resolution described in subsection (1), then the following
1839 procedures shall apply:

1840 (a) The joint resolution of the other House shall not
1841 be referred to a committee.

1842 (b) With respect to a joint resolution described in
1843 subsection (1) of the House receiving the joint resolution:

1844 (i) The procedure in that House shall be the same
1845 as if no joint resolution had been received from the other House;
1846 but

1847 (ii) The vote on final passage shall be on the
1848 joint resolution of the other House.

1849 (7) This section is enacted by the Legislature:

1850 (a) As an exercise of the rulemaking power of the House
1851 of Representatives and Senate, respectively, and as such, it is
1852 deemed a part of the Joint Rules of the Mississippi Legislature
1853 but applicable only with respect to the procedure to be followed



1854 in that House in the case of a joint resolution described in
1855 subsection (1), and it supersedes other rules only to the extent
1856 that it is inconsistent with those rules; and

1857 (b) With full recognition of the constitutional right
1858 of either House to change the rules (so far as relating to the
1859 procedure of that House) at any time, in the same manner, and to
1860 the same extent as is the case of any other rule of that House.

1861 (8) No determination, finding, action or omission under this
1862 section shall be subject to judicial review.

1863 **SECTION 49.** Section 25-43-1.101, Mississippi Code of 1972,
1864 is brought forward as follows:

1865 25-43-1.101. (1) This chapter may be cited as the
1866 "Mississippi Administrative Procedures Law."

1867 (2) This chapter is intended to provide a minimum procedural
1868 code for the operation of all state agencies when they take action
1869 affecting the rights and duties of the public. Nothing in this
1870 chapter shall be construed as invalidating any rule or regulation
1871 adopted before July 1, 2005, if such rule or regulation was
1872 properly adopted in accordance with the law as it existed at the
1873 time of adoption. Nothing in this chapter is meant to discourage
1874 agencies from adopting procedures providing greater protections to
1875 the public or conferring additional rights upon the public; and
1876 save for express provisions of this chapter to the contrary,
1877 nothing in this chapter is meant to abrogate in whole or in part
1878 any statute prescribing procedural duties for an agency which are



1879 greater than or in addition to those provided here. This chapter
1880 is meant to apply to all rule-making that is not specifically
1881 excluded from this chapter or some portion thereof by its express
1882 terms or by the express terms of another chapter.

1883 The purposes of the Mississippi Administrative Procedures Law
1884 are: to provide legislative oversight of powers and duties
1885 delegated to administrative agencies; to increase public
1886 accountability of administrative agencies; to simplify government
1887 by assuring a uniform minimum procedure to which all agencies will
1888 be held in the conduct of their most important functions; to
1889 increase public access to governmental information; and to
1890 increase public participation in the formulation of administrative
1891 rules. In accomplishing its objectives, the intention of this
1892 chapter is to strike a fair balance between these purposes and the
1893 need for efficient, economical and effective government
1894 administration. This chapter is not meant to alter the
1895 substantive rights of any person or agency. Its impact is limited
1896 to procedural rights with the expectation that better substantive
1897 results will be achieved in the everyday conduct of state
1898 government by improving the process by which those results are
1899 attained.

1900 (3) From and after July 1, 2005, any reference to the
1901 Mississippi Administrative Procedure Act, the Mississippi
1902 Administrative Procedures Act, the Mississippi Administrative
1903 Procedure Law, or the Mississippi Administrative Procedures Law,



1904 being Section 25-43-1 et seq., Mississippi Code of 1972, shall be
1905 deemed to mean and refer to this chapter.

1906 **SECTION 50.** Section 25-43-1.102, Mississippi Code of 1972,
1907 is brought forward as follows:

1908 25-43-1.102. As used in this chapter, the following terms
1909 shall have the meanings ascribed to them in this section unless
1910 the context otherwise requires:

1911 (a) "Agency" means a board, commission, department,
1912 officer or other administrative unit of this state, including the
1913 agency head, and one or more members of the agency head or agency
1914 employees directly or indirectly purporting to act on behalf or
1915 under the authority of the agency head. The term does not include
1916 the Legislature or any of its component units, the judiciary or
1917 any of its component units or the Governor. The term does not
1918 include a political subdivision of the state or any of the
1919 administrative units of a political subdivision. To the extent it
1920 purports to exercise authority subject to any provision of this
1921 chapter, an administrative unit otherwise qualifying as an
1922 "agency" must be treated as a separate agency even if the unit is
1923 located within or subordinate to another agency.

1924 (b) "Agency head" or "head of the agency" means an
1925 individual or body of individuals in whom the ultimate legal
1926 authority of the agency is vested by any provision of law.

1927 (c) "Agency proceeding" or "proceeding" means the
1928 process by which an agency considers:



1929 (i) A declaratory opinion pursuant to Section
1930 25-43-2.103, or

1931 (ii) A rule pursuant to Article III of this
1932 chapter.

1933 (d) "Agency record" means the official rule-making
1934 record of an agency pursuant to Section 25-43-3.112.

1935 (e) "Declaratory opinion" means an agency opinion
1936 rendered in accordance with the provisions of Section 25-43-2.103.

1937 (f) "Order" means an agency action of particular
1938 applicability that determines the legal rights, duties,
1939 privileges, immunities or other legal interests of one or more
1940 specific persons. An order shall be in writing signed by a person
1941 with authority to render the order, or if more than one (1) person
1942 has such authority by at least that number of such persons as
1943 jointly have the authority to render the order, or by a person
1944 authorized to render the order on behalf of all such persons. The
1945 term does not include an executive order issued by the Governor
1946 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
1947 General pursuant to Section 7-5-25, an opinion issued by the
1948 Ethics Commission pursuant to Section 25-4-17, or a declaratory
1949 opinion rendered in accordance with Section 25-43-2.103.

1950 (g) "Person" means an individual, partnership,
1951 corporation, association, governmental subdivision or unit
1952 thereof, or public or private organization or entity of any
1953 character, and includes another agency.



1954 (h) "Provision of law" or "law" means the whole or a
1955 part of the federal or state Constitution, or of any federal or
1956 state (i) statute, (ii) case law or common law, (iii) rule of
1957 court, (iv) executive order, or (v) rule or order of an
1958 administrative agency.

1959 (i) "Rule" means the whole or a part of an agency
1960 regulation or other statement of general applicability that
1961 implements, interprets or prescribes:

1962 (i) Law or policy, or

1963 (ii) The organization, procedure or practice
1964 requirements of an agency. The term includes the amendment,
1965 repeal or suspension of an existing rule. "Rule" does not
1966 include:

1967 1. A regulation or statement concerning only
1968 the internal management of an agency which does not directly and
1969 substantially affect the procedural or substantive rights or
1970 duties of any segment of the public;

1971 2. A regulation or statement that establishes
1972 criteria or guidelines to be used by the staff of an agency in
1973 performing audits, investigations or inspections, settling
1974 commercial disputes, negotiating commercial arrangements or in the
1975 defense, prosecution or settlement of cases, if disclosure of the
1976 criteria or guidelines would:

1977 a. Enable law violators to avoid
1978 detection;



1979 b. Facilitate disregard of requirements
1980 imposed by law; or
1981 c. Give a clearly improper advantage to
1982 persons who are in an adverse position to the state;
1983 3. A regulation or statement that only
1984 establishes specific prices to be charged for particular goods or
1985 services sold by an agency;
1986 4. A regulation or statement concerning only
1987 the physical servicing, maintenance or care of agency owned or
1988 operated facilities or property;
1989 5. A regulation or statement relating only to
1990 the use of a particular facility or property owned, operated or
1991 maintained by the state or any of its subdivisions, if the
1992 substance of the regulation or statement is adequately indicated
1993 by means of signs or signals to persons who use the facility or
1994 property;
1995 6. A regulation or statement directly related
1996 only to inmates of a correctional or detention facility, students
1997 enrolled in an educational institution or patients admitted to a
1998 hospital, if adopted by that facility, institution or hospital;
1999 7. A form whose contents or substantive
2000 requirements are prescribed by rule or statute, and instructions
2001 for the execution or use of the form;
2002 8. An agency budget;



2003 9. A compact or agreement between an agency
2004 of this state and one or more agencies of another state or states;
2005 or

2006 10. An opinion of the Attorney General
2007 pursuant to Section 7-5-25, an opinion of the Ethics Commission
2008 pursuant to Section 25-4-17, or an Executive Order of the
2009 Governor.

2010 (j) "Rule-making" means the process for formulation and
2011 adoption of a rule.

2012 **SECTION 51.** Section 25-43-1.103, Mississippi Code of 1972,
2013 is brought forward as follows:

2014 25-43-1.103. **Applicability and relation to other law.**

2015 (1) This chapter applies to all agencies and all proceedings
2016 not expressly exempted under this chapter.

2017 (2) This chapter creates only procedural rights and imposes
2018 only procedural duties. They are in addition to those created and
2019 imposed by other statutes.

2020 (3) Specific statutory provisions which govern agency
2021 proceedings and which are in conflict with any of the provisions
2022 of this chapter shall continue to be applied to all proceedings of
2023 any such agency to the extent of such conflict only.

2024 (4) The provisions of this chapter shall not be construed to
2025 amend, repeal or supersede the provisions of any other law; and,
2026 to the extent that the provisions of any other law conflict or are



2027 inconsistent with the provisions of this chapter, the provisions
2028 of such other law shall govern and control.

2029 (5) An agency may grant procedural rights to persons in
2030 addition to those conferred by this chapter so long as rights
2031 conferred upon other persons by any provision of law are not
2032 substantially prejudiced.

2033 **SECTION 52.** Section 25-43-1.104, Mississippi Code of 1972,
2034 is brought forward as follows:

2035 25-43-1.104. **Suspension of chapter's provisions when**
2036 **necessary to avoid loss of federal funds or services.**

2037 (1) To the extent necessary to avoid a denial of funds or
2038 services from the United States which would otherwise be available
2039 to the state, the Governor, by executive order, may suspend, in
2040 whole or in part, one or more provisions of this chapter. The
2041 Governor, by executive order, shall declare the termination of a
2042 suspension as soon as it is no longer necessary to prevent the
2043 loss of funds or services from the United States.

2044 (2) If any provision of this chapter is suspended pursuant
2045 to this section, the Governor shall promptly report the suspension
2046 to the Legislature. The report may include recommendations
2047 concerning desirable legislation that may be necessary to conform
2048 this chapter to federal law, including the exemption, if
2049 appropriate, of a particular program from the provisions of this
2050 chapter.



2051 **SECTION 53.** Section 25-43-1.105, Mississippi Code of 1972,
2052 is brought forward as follows:

2053 25-43-1.105. **Waiver of rights.**

2054 Except to the extent precluded by another provision of law, a
2055 person may waive any right conferred upon that person by this
2056 chapter, or by any rule made pursuant to this chapter.

2057 **SECTION 54.** Section 25-43-1.106, Mississippi Code of 1972,
2058 is brought forward as follows:

2059 25-43-1.106. **Filings with agency; service; computation of**
2060 **time.**

2061 (1) (a) Whenever, under this chapter, a party or any person
2062 is permitted or required to file with an agency any pleading,
2063 motion or other document, filing must be made by delivery of the
2064 document to the agency, by mailing it to the agency or by
2065 transmitting it to the agency by electronic means, including, but
2066 not limited to, facsimile transfer or e-mail. Filing by
2067 electronic means is complete when the electronic equipment being
2068 used by the agency acknowledges receipt of the material. If the
2069 equipment used by the agency does not automatically acknowledge
2070 transmission, service is not complete until the filing party
2071 obtains an acknowledgment from the agency. Filing by mail is
2072 complete upon receipt by the agency.

2073 (b) The agency may implement this section by agency
2074 rule.



2075 (2) (a) Whenever service is required by this chapter, and
2076 whether the service is made by a party, an agency or a presiding
2077 officer, service of orders, notices, pleadings, motions and other
2078 documents upon a party shall be made by delivering a copy to the
2079 party, by transmitting it to the party by electronic means,
2080 including, but not limited to, facsimile transfer or e-mail, or by
2081 mailing it to the party at the party's last known address.
2082 Delivery of a copy means handing it to a party, leaving it at the
2083 office of a party with a person in charge thereof, or leaving it
2084 at the dwelling house or usual place of abode of the party with
2085 some person of suitable age and discretion then residing therein.
2086 Service by electronic means is complete when the electronic
2087 equipment being used by the party being served acknowledges
2088 receipt of the material. If the equipment used by the party being
2089 served does not automatically acknowledge the transmission,
2090 service is not complete until the sending party obtains an
2091 acknowledgment from the recipient. Service by mail is complete
2092 upon mailing.

2093 (b) Whenever service is required or permitted to be
2094 made upon a party who is represented by an attorney of record in
2095 the proceedings, the service shall be made upon such attorney.

2096 (c) Whenever an agency issues an order or serves a
2097 notice or other document, the order or notice or other document
2098 shall be dated and shall be deemed to have been issued on the day
2099 it is served on the parties to the matter. If the order or notice



2100 or other document is to be served by mail, it shall be dated and
2101 shall be deemed to have been issued on the day it is mailed.

2102 (3) (a) In computing any period of time prescribed or
2103 allowed by this Article 1, by order of an agency, or by any
2104 applicable statute or agency rule, the day of the act, event or
2105 default from which the designated period of time begins to run
2106 shall not be included. The last day of the period so computed
2107 shall be included, unless it is a Saturday, a Sunday or a legal
2108 holiday, as defined by statute, or any other day when the agency's
2109 office is in fact closed, whether with or without legal authority,
2110 in which event the period runs until the end of the next day which
2111 is not a Saturday, a Sunday, a legal holiday or any other day when
2112 the agency's office is closed. When the period of time prescribed
2113 or allowed is less than seven (7) days, intermediate Saturdays,
2114 Sundays and legal holidays shall be excluded in the computation.
2115 In the event any legal holiday falls on a Sunday, the next
2116 following day shall be a legal holiday.

2117 (b) Whenever a party has the right or is required to do
2118 some act or take some proceedings within a prescribed period after
2119 the service of a notice, order, pleading, motion or other paper
2120 upon him and the notice or paper is served upon him by mail, three
2121 (3) days shall be added to the prescribed period.

2122 **SECTION 55.** Section 25-43-1.107, Mississippi Code of 1972,
2123 is brought forward as follows:



2124 25-43-1.107. Every agency as defined in this chapter shall,
2125 no later than October 1, 2003, file with the Secretary of the
2126 Senate and the Clerk of the House a report which outlines any
2127 conflicts between this chapter and any other laws affecting the
2128 agency. This report shall include proposed legislation to bring
2129 the other laws into conformity with the requirements of this
2130 chapter. The Secretary of State shall, no later than December 1,
2131 2003, file with the Secretary of the Senate and the Clerk of the
2132 House a list of sections which the Secretary of State believes
2133 conflict with this chapter. The Secretary of the Senate and the
2134 Clerk of the House shall maintain a list of agencies which have
2135 complied with this section.

2136 **SECTION 56.** Section 25-43-2.101, Mississippi Code of 1972,
2137 is brought forward as follows:

2138 25-43-2.101. **Publication, compilation, indexing and public**
2139 **inspection of rules.**

2140 (1) Subject to the provisions of this chapter, the Secretary
2141 of State shall prescribe a uniform numbering system, form, style
2142 and transmitting format for all proposed and adopted rules caused
2143 to be published by him and, with prior approval of each respective
2144 agency involved, may edit rules for publication and codification
2145 without changing the meaning or effect of any rule.

2146 (2) The Secretary of State shall cause an administrative
2147 bulletin to be published in a format and at such regular intervals
2148 as the Secretary of State shall prescribe by rule. Upon proper



2149 filing of proposed rules, the Secretary of State shall publish
2150 them in the administrative bulletin as expeditiously as possible.
2151 The administrative bulletin must contain:

2152 (a) Notices of proposed rule adoption prepared so that
2153 the text of the proposed rule shows the text of any existing rule
2154 proposed to be changed and the change proposed;

2155 (b) Any other notices and materials designated by law
2156 for publication therein; and

2157 (c) An index to its contents by subject.

2158 (3) The Secretary of State shall cause an administrative
2159 bulletin to be published in a format and at such regular intervals
2160 as the Secretary of State shall prescribe by rule. Upon proper
2161 filing of newly adopted rules, the Secretary of State shall
2162 publish them as expeditiously as possible. The administrative
2163 bulletin must contain:

2164 (a) Newly filed adopted rules prepared so that the text
2165 shows the text of any existing rule being changed and the change
2166 being made;

2167 (b) Any other notices and materials designated by law
2168 for publication therein; and

2169 (c) An index to its contents by subject.

2170 (4) The Secretary of State retains the authority to reject
2171 proposed and newly adopted rules not properly filed in accordance
2172 with the Secretary of State's rules prescribing the numbering
2173 system, form, style or transmitting format for such filings. The



2174 Secretary of State shall not be empowered to reject filings for
2175 reasons of the substance or content or any proposed or newly
2176 adopted rule. The Secretary of State shall notify the agency of
2177 its rejection of a proposed or newly adopted rule as expeditiously
2178 as possible and accompany such notification with a stated reason
2179 for the rejection. A rejected filing of a proposed or newly
2180 adopted rule does not constitute filing pursuant to Section
2181 25-43-3.101 et seq. of this chapter.

2182 (5) (a) The Secretary of State shall cause an
2183 administrative code to be compiled, indexed by subject and
2184 published in a format prescribed by the Secretary of State by
2185 rule. All of the effective rules of each agency must be published
2186 and indexed in that publication. The Secretary of State shall
2187 also cause supplements to the administrative code to be published
2188 in a format and at such regular intervals as the Secretary of
2189 State shall prescribe by rule.

2190 (b) The Joint Legislative Committee on Compilation,
2191 Revision and Publication of Legislation is hereby authorized to
2192 contract with a reputable and competent publishing company on such
2193 terms and conditions and at such prices as may be deemed proper to
2194 digest, compile, annotate, index and publish the state agency
2195 rules and regulations.

2196 (6) (a) Copyrights of the Mississippi Administrative Code,
2197 including, but not limited to, cross references, tables of cases,
2198 notes of decisions, tables of contents, indices, source notes,



2199 authority notes, numerical lists and codification guides, other
2200 than the actual text of rules or regulations, shall be taken by
2201 and in the name of the publishers of said compilation. Such
2202 publishers shall thereafter promptly assign the same to the State
2203 of Mississippi and said copyright shall be owned by the state.

2204 (b) Any information appearing on the same leaf with the
2205 text of any rule or regulation may be incidentally reproduced in
2206 connection with the reproduction of such rule or regulation, if
2207 such reproduction is for private use and not for resale.

2208 (7) The Secretary of State may omit from the administrative
2209 bulletin or code any proposed or filed adopted rule, the
2210 publication in hard copy of which would be unduly cumbersome,
2211 expensive or otherwise inexpedient, if:

2212 (a) Knowledge of the rule is likely to be important to
2213 only a small class of persons;

2214 (b) On application to the issuing agency, the proposed
2215 or adopted rule in printed or processed form is made available at
2216 no more than its cost of reproduction; and

2217 (c) The administrative bulletin or code contains a
2218 notice stating in detail the specific subject matter of the
2219 omitted proposed or adopted rule and how a copy of the omitted
2220 material may be obtained.

2221 (8) The administrative bulletin and administrative code with
2222 supplements must be furnished to designated officials without
2223 charge and to all subscribers at a reasonable cost to be



2224 determined by the Secretary of State. Each agency shall also make
2225 available for public inspection and copying those portions of the
2226 administrative bulletin and administrative code containing all
2227 rules adopted or used by the agency in the discharge of its
2228 functions, and the index to those rules.

2229 **SECTION 57.** Section 25-43-2.102, Mississippi Code of 1972,
2230 is brought forward as follows:

2231 25-43-2.102. **Public inspection and indexing of agency**
2232 **orders.**

2233 (1) In addition to other requirements imposed by any
2234 provision of law, and subject to any confidentiality provisions
2235 established by law, each agency shall make all written final
2236 orders available for public inspection and copying and index them
2237 by name and subject.

2238 (2) A written final order available for public inspection
2239 pursuant to subsection (1) may not be relied on as precedent by an
2240 agency to the detriment of any person until it has been made
2241 available for public inspection and indexed in the manner
2242 described in subsection (1) of this section. This provision is
2243 inapplicable to any person who has actual, timely knowledge of the
2244 order. The burden of proving that knowledge is on the agency.

2245 **SECTION 58.** Section 25-43-2.103, Mississippi Code of 1972,
2246 is brought forward as follows:

2247 25-43-2.103. **Declaratory opinions.** (1) Any person with a
2248 substantial interest in the subject matter may make a written



2249 request of an agency for a declaratory opinion as to the
2250 applicability to specified circumstances of a statute, rule or
2251 order within the primary jurisdiction of the agency. Such written
2252 request must clearly set forth the specific facts upon which an
2253 opinion is asked for and shall be limited to a single transaction
2254 or occurrence. An agency, through the agency head or its
2255 designee(s) by rule, shall issue a declaratory opinion in response
2256 to a written request for that opinion unless the agency determines
2257 that issuance of the opinion under the circumstances would be
2258 contrary to a rule adopted in accordance with subsection (2) of
2259 this section.

2260 (2) Each agency shall issue rules that provide for: (a) the
2261 form, contents and filing of written requests for declaratory
2262 opinions; (b) the procedural rights of persons in relation to the
2263 written requests; and (c) the disposition of the written requests.
2264 Those rules must describe the classes of circumstances in which
2265 the agency will not issue a declaratory opinion.

2266 (3) Within forty-five (45) days after receipt of a written
2267 request for a declaratory opinion, an agency, in writing, shall:

2268 (a) Issue an opinion declaring the applicability of the
2269 statute, rule or order in question to the specified circumstances;

2270 (b) Agree to issue a declaratory opinion by a specified
2271 time but no later than ninety (90) days after receipt of the
2272 written request; or



2273 (c) Decline to issue a declaratory opinion, stating the
2274 reasons for its action.

2275 (4) A copy of all opinions issued in response to a written
2276 request for a declaratory opinion must be mailed promptly to the
2277 requesting person.

2278 (5) (a) When any person receives a declaratory opinion from
2279 an agency and shall have stated all the facts to govern such
2280 opinion, the agency shall take no civil or criminal action against
2281 such person who, in good faith, follows the direction of such
2282 opinion and acts in accordance therewith unless a court of
2283 competent jurisdiction, after a full hearing, shall judicially
2284 declare that such opinion is manifestly wrong and without any
2285 substantial support. No declaratory opinion shall be given or
2286 considered if the opinion is requested after suit is filed or
2287 prosecution begun. Any declaratory opinion rendered pursuant to
2288 this chapter shall not be binding or effective for any third party
2289 or person other than the agency issuing the declaratory opinion
2290 and the person to whom the opinion is issued and shall not be used
2291 as precedent for any other transaction or occurrence beyond that
2292 set forth by the requesting person.

2293 (b) The authority of persons to request and receive
2294 agency declaratory opinions in no way affects the ability of any
2295 person authorized by Section 7-5-25 to request a legal opinion
2296 from the Attorney General.



2297 (c) Subject to any confidentiality provisions
2298 established by law, each agency shall make all declaratory
2299 opinions available for public inspection and copying and shall
2300 index them by name and subject, unless information contained
2301 within such opinions is confidential by statute or exempt from
2302 public disclosure pursuant to another provision of law.

2303 (6) Without in any way limiting a person's right to request
2304 and receive a declaratory opinion under this section, or an
2305 agency's duty to issue a declaratory opinion under this section,
2306 nothing contained in this section shall prohibit an agency from
2307 providing informal responses or advice, orally or in writing, to
2308 any inquiries or requests for information submitted to the agency.
2309 Informal responses shall not be considered a declaratory opinion
2310 under this section.

2311 **SECTION 59.** Section 25-43-2.104, Mississippi Code of 1972,
2312 is brought forward as follows:

2313 25-43-2.104. **Required rule-making.**

2314 In addition to other rule-making requirements imposed by law,
2315 each agency shall:

2316 (a) Adopt as a rule a description of the organization
2317 of the agency which states the general course and method of its
2318 operations and where and how the public may obtain information or
2319 make submissions or requests;



2320 (b) Adopt rules of practice setting forth the nature
2321 and requirements of all formal and informal proceedings available
2322 to the public.

2323 **SECTION 60.** Section 25-43-2.105, Mississippi Code of 1972,
2324 is brought forward as follows:

2325 25-43-2.105. **Model rules of procedure.**

2326 In accordance with the rule-making requirements of this
2327 chapter, the Secretary of State shall adopt model rules of
2328 procedure appropriate for use by as many agencies as possible.
2329 The model rules must deal with all general functions and duties
2330 performed in common by several agencies. Each agency may adopt as
2331 much of the model rules as is practicable under its circumstances.
2332 To the extent an agency adopts the model rules, it shall do so in
2333 accordance with the rule-making requirements of this chapter.

2334 **SECTION 61.** Section 25-43-3.101, Mississippi Code of 1972,
2335 is brought forward as follows:

2336 25-43-3.101. (1) In addition to seeking information by
2337 other methods, an agency, before filing of a notice of proposed
2338 rule adoption under Section 25-43-3.103, may solicit comments from
2339 the public on a subject matter of possible rulemaking under active
2340 consideration within the agency by causing notice to be filed with
2341 the Secretary of State for publication in the administrative
2342 bulletin of the subject matter and indicating where, when and how
2343 persons may comment.



2344 (2) Each agency may also appoint committees of nonagency
2345 personnel or other members of the public to comment, before filing
2346 of a notice of proposed rule adoption under Section 25-43-3.103,
2347 on the subject matter of a possible rulemaking under active
2348 consideration within the agency. The membership of those
2349 committees must be filed with the Secretary of State for
2350 publication in the administrative bulletin.

2351 **SECTION 62.** Section 25-43-3.102, Mississippi Code of 1972,
2352 is brought forward as follows:

2353 25-43-3.102. **Public rule-making docket.**

2354 (1) Each agency shall maintain a current, public rule-making
2355 docket.

2356 (2) The rule-making docket may, but need not, contain a
2357 listing of the subject matter of possible rules currently under
2358 active consideration within the agency for proposal under Section
2359 25-43-3.103 and the name and address of agency personnel with whom
2360 persons may communicate with respect to the matter.

2361 (3) The rule-making docket must list each pending
2362 rule-making proceeding. A rule-making proceeding is pending from
2363 the time it is commenced, by proper filing with the Secretary of
2364 State of a notice of proposed rule adoption, to the time it is
2365 terminated by the filing with the Secretary of State of a notice
2366 of termination or the rule becoming effective. For each pending
2367 rule-making proceeding, the docket must indicate:

2368 (a) The subject matter of the proposed rule;



2369 (b) A citation to all published notices relating to the
2370 proceeding;

2371 (c) Where written submissions or written requests for
2372 an opportunity to make oral presentations on the proposed rule may
2373 be inspected;

2374 (d) The time during which written submissions may be
2375 made;

2376 (e) If applicable, where and when oral presentations
2377 may be made;

2378 (f) Where any economic impact statement and written
2379 requests for the issuance of and other information concerning an
2380 economic impact statement of the proposed rule may be inspected;

2381 (g) The current status of the proposed rule;

2382 (h) The date of the rule's adoption; and

2383 (i) When the rule will become effective.

2384 **SECTION 63.** Section 25-43-3.103, Mississippi Code of 1972,
2385 is brought forward as follows:

2386 25-43-3.103. (1) At least twenty-five (25) days before the
2387 adoption of a rule an agency shall cause notice of its
2388 contemplated action to be properly filed with the Secretary of
2389 State for publication in the administrative bulletin. The notice
2390 of proposed rule adoption must include:

2391 (a) A short explanation of the purpose of the proposed
2392 rule and the agency's reasons for proposing the rule;



2393 (b) The specific legal authority authorizing the
2394 promulgation of rules;

2395 (c) A reference to all rules repealed, amended or
2396 suspended by the proposed rule;

2397 (d) Subject to Section 25-43-2.101(5), the text of the
2398 proposed rule;

2399 (e) Where, when and how persons may present their views
2400 on the proposed rule; and

2401 (f) Where, when and how persons may demand an oral
2402 proceeding on the proposed rule if the notice does not already
2403 provide for one.

2404 (2) Within three (3) days after its proper filing with the
2405 Secretary of State for publication in the administrative bulletin,
2406 the agency shall cause a copy of the notice of proposed rule
2407 adoption to be provided to each person who has made a timely
2408 request to the agency to be placed on the mailing list maintained
2409 by the agency of persons who have requested notices of proposed
2410 rule adoptions. An agency may mail the copy to the person and may
2411 charge the person a reasonable fee for such service, which fee may
2412 be in excess of the actual cost of providing the person with a
2413 mailed copy. Alternatively, the agency may provide the copy via
2414 the Internet or by transmitting it to the person by electronic
2415 means, including, but not limited to, facsimile transfer or e-mail
2416 at no charge to the person, if the person consents to this form of
2417 delivery.



2418 **SECTION 64.** Section 25-43-3.104, Mississippi Code of 1972,
2419 is brought forward as follows:

2420 25-43-3.104. **Public participation.**

2421 (1) For at least twenty-five (25) days after proper filing
2422 with the Secretary of State of the notice of proposed rule
2423 adoption, an agency shall afford persons the opportunity to
2424 submit, in writing, argument, data and views on the proposed rule.

2425 (2) (a) An agency, in its discretion, may schedule an oral
2426 proceeding on any proposed rule. However, an agency shall
2427 schedule an oral proceeding on a proposed rule if, within twenty
2428 (20) days after the proper filing of the notice of proposed rule
2429 adoption, a written request for an oral proceeding is submitted by
2430 a political subdivision, an agency or ten (10) persons. At that
2431 proceeding, persons may present oral or written argument, data and
2432 views on the proposed rule.

2433 (b) An oral proceeding on a proposed rule, if required,
2434 may not be held earlier than twenty (20) days after notice of its
2435 location and time is properly filed with the Secretary of State
2436 for publication in the administrative bulletin. Within three (3)
2437 days after its proper filing with the Secretary of State for
2438 publication in the administrative bulletin, the agency shall cause
2439 a copy of the notice of the location and time of the oral
2440 proceeding to be mailed to each person who has made a timely
2441 request to the agency to be placed on the mailing list maintained



2442 by the agency of persons who have requested notices of proposed
2443 rule adoptions.

2444 (c) The agency, a member of the agency, or another
2445 presiding officer designated by the agency shall preside at a
2446 required oral proceeding on a proposed rule. Oral proceedings
2447 must be open to the public and may be recorded by stenographic or
2448 other means.

2449 (d) An agency may issue rules for the conduct of oral
2450 rule-making proceedings or prepare reasonable guidelines or
2451 procedures for the conduct of any such proceedings. Those rules
2452 may include, but not be limited to, provisions calculated to
2453 prevent undue repetition in the oral proceedings.

2454 **SECTION 65.** Section 25-43-3.105, Mississippi Code of 1972,
2455 is brought forward as follows:

2456 **[Through June 30, 2016, this section shall read as follows:]**

2457 25-43-3.105. (1) Prior to giving the notice required in
2458 Section 25-43-3.103, each agency proposing the adoption of a rule
2459 or amendment of an existing rule imposing a duty, responsibility
2460 or requirement on any person shall consider the economic impact
2461 the rule will have on the citizens of our state and the benefits
2462 the rule will cause to accrue to those citizens.

2463 (2) Each agency shall prepare a written report providing an
2464 economic impact statement for the adoption of a rule or amendment
2465 to an existing rule imposing a duty, responsibility or requirement



2466 on any person. The economic impact statement shall include the
2467 following:

2468 (a) The specific legal authority authorizing the
2469 promulgation of the rule.

2470 (b) A description of:

2471 (i) The need for the proposed action;

2472 (ii) The benefits which will likely accrue as the
2473 result of the proposed action; and

2474 (iii) The effect the proposed action will have on
2475 the public health, safety and welfare.

2476 (c) An estimate of the cost to the agency, and to any
2477 other state or local government entities, of implementing and
2478 enforcing the proposed action, including the estimated amount of
2479 paperwork, and any anticipated effect on state or local revenues;

2480 (d) An estimate of the cost or economic benefit to all
2481 persons directly affected by the proposed action;

2482 (e) An analysis of the impact of the proposed rule on
2483 small business;

2484 (f) A comparison of the costs and benefits of the
2485 proposed rule to the probable costs and benefits of not adopting
2486 the proposed rule or significantly amending an existing rule;

2487 (g) A determination of whether less costly methods or
2488 less intrusive methods exist for achieving the purpose of the
2489 proposed rule where reasonable alternative methods exist which are
2490 not precluded by law;



2491 (h) A description of reasonable alternative methods,
2492 where applicable, for achieving the purpose of the proposed action
2493 which were considered by the agency and a statement of reasons for
2494 rejecting those alternatives in favor of the proposed rule; and

2495 (i) A detailed statement of the data and methodology
2496 used in making estimates required by this subsection.

2497 (3) No rule or regulation shall be declared invalid based on
2498 a challenge to the economic impact statement for the rule unless
2499 the issue is raised in the agency proceeding. No person shall
2500 have standing to challenge a rule, based upon the economic impact
2501 statement or lack thereof, unless that person provided the agency
2502 with information sufficient to make the agency aware of specific
2503 concerns regarding the statement in an oral proceeding or in
2504 written comments regarding the rule. The grounds for invalidation
2505 of an agency action, based upon the economic impact statement, are
2506 limited to the agency's failure to adhere to the procedure for
2507 preparation of the economic impact statement as provided in this
2508 section, or the agency's failure to consider information submitted
2509 to the agency regarding specific concerns about the statement, if
2510 that failure substantially impairs the fairness of the rule-making
2511 proceeding.

2512 (4) A concise summary and the full text of the economic
2513 impact statement must be properly filed with the Secretary of
2514 State for publication in the administrative bulletin and the
2515 period during which persons may make written submissions on the



2516 proposed rule shall not expire until at least twenty (20) days
2517 after the date of such proper filing.

2518 (5) The properly filed summary of the economic impact
2519 statement must also indicate where, when and how persons may
2520 present their views on the proposed rule and demand an oral
2521 proceeding on the proposed rule if one is not already provided.

2522 **[From and after July 1, 2016, this section shall read as**
2523 **follows:]**

2524 25-43-3.105. (1) Prior to giving the notice required in
2525 Section 25-43-3.103, each agency proposing the adoption of a rule
2526 or significant amendment of an existing rule imposing a duty,
2527 responsibility or requirement on any person shall consider the
2528 economic impact the rule will have on the citizens of our state
2529 and the benefits the rule will cause to accrue to those citizens.
2530 For purposes of this section, a "significant amendment" means any
2531 amendment to a rule for which the total aggregate cost to all
2532 persons required to comply with that rule exceeds One Hundred
2533 Thousand Dollars (\$100,000.00).

2534 (2) Each agency shall prepare a written report providing an
2535 economic impact statement for the adoption of a rule or
2536 significant amendment to an existing rule imposing a duty,
2537 responsibility or requirement on any person, except as provided in
2538 subsection (7) of this section. The economic impact statement
2539 shall include the following:



2540 (a) A description of the need for and the benefits
2541 which will likely accrue as the result of the proposed action;

2542 (b) An estimate of the cost to the agency, and to any
2543 other state or local government entities, of implementing and
2544 enforcing the proposed action, including the estimated amount of
2545 paperwork, and any anticipated effect on state or local revenues;

2546 (c) An estimate of the cost or economic benefit to all
2547 persons directly affected by the proposed action;

2548 (d) An analysis of the impact of the proposed rule on
2549 small business;

2550 (e) A comparison of the costs and benefits of the
2551 proposed rule to the probable costs and benefits of not adopting
2552 the proposed rule or significantly amending an existing rule;

2553 (f) A determination of whether less costly methods or
2554 less intrusive methods exist for achieving the purpose of the
2555 proposed rule where reasonable alternative methods exist which are
2556 not precluded by law;

2557 (g) A description of reasonable alternative methods,
2558 where applicable, for achieving the purpose of the proposed action
2559 which were considered by the agency and a statement of reasons for
2560 rejecting those alternatives in favor of the proposed rule; and

2561 (h) A detailed statement of the data and methodology
2562 used in making estimates required by this subsection.

2563 (3) No rule or regulation shall be declared invalid based on
2564 a challenge to the economic impact statement for the rule unless



2565 the issue is raised in the agency proceeding. No person shall
2566 have standing to challenge a rule, based upon the economic impact
2567 statement or lack thereof, unless that person provided the agency
2568 with information sufficient to make the agency aware of specific
2569 concerns regarding the statement in an oral proceeding or in
2570 written comments regarding the rule. The grounds for invalidation
2571 of an agency action, based upon the economic impact statement, are
2572 limited to the agency's failure to adhere to the procedure for
2573 preparation of the economic impact statement as provided in this
2574 section, or the agency's failure to consider information submitted
2575 to the agency regarding specific concerns about the statement, if
2576 that failure substantially impairs the fairness of the rule-making
2577 proceeding.

2578 (4) A concise summary of the economic impact statement must
2579 be properly filed with the Secretary of State for publication in
2580 the administrative bulletin and the period during which persons
2581 may make written submissions on the proposed rule shall not expire
2582 until at least twenty (20) days after the date of such proper
2583 filing.

2584 (5) The properly filed summary of the economic impact
2585 statement must also indicate where persons may obtain copies of
2586 the full text of the economic impact statement and where, when and
2587 how persons may present their views on the proposed rule and
2588 demand an oral proceeding on the proposed rule if one is not
2589 already provided.



2590 (6) If the agency has made a good-faith effort to comply
2591 with the requirements of subsections (1) and (2) of this section,
2592 the rule may not be invalidated on the ground that the contents of
2593 the economic impact statement are insufficient or inaccurate.

2594 (7) This section does not apply to the adoption of:

2595 (a) Any rule which is required by the federal
2596 government pursuant to a state/federal program delegation
2597 agreement or contract;

2598 (b) Any rule which is expressly required by state law;
2599 and

2600 (c) A temporary rule adopted pursuant to Section
2601 25-43-3.108.

2602 **SECTION 66.** Section 25-43-3.106, Mississippi Code of 1972,
2603 is brought forward as follows:

2604 25-43-3.106. **Time and manner of rule adoption.**

2605 (1) An agency may not adopt a rule until the period for
2606 making written submissions and oral presentations has expired.

2607 (2) Following the proper filing with the Secretary of State
2608 of the notice of proposed rule adoption, an agency shall adopt a
2609 rule pursuant to the rule-making proceeding or terminate the
2610 proceeding by proper filing with the Secretary of State of a
2611 notice to that effect for publication in the administrative
2612 bulletin.

2613 (3) Before the adoption of a rule, an agency shall consider
2614 the written submissions, oral submissions or any memorandum



2615 summarizing oral submissions, and any economic impact statement,
2616 provided for by this Article III.

2617 (4) Within the scope of its delegated authority, an agency
2618 may use its own experience, technical competence, specialized
2619 knowledge and judgment in the adoption of a rule.

2620 **SECTION 67.** Section 25-43-3.107, Mississippi Code of 1972,
2621 is brought forward as follows:

2622 25-43-3.107. (1) An agency shall not adopt a rule that
2623 differs from the rule proposed in the notice of proposed rule
2624 adoption on which the rule is based unless all of the following
2625 apply:

2626 (a) The differences are within the scope of the matter
2627 announced in the notice of proposed rule adoption and are in
2628 character with the issues raised in that notice;

2629 (b) The differences are a logical outgrowth of the
2630 contents of that notice of proposed rule adoption and the comments
2631 submitted in response thereto; and

2632 (c) The notice of proposed rule adoption provided fair
2633 warning that the outcome of that rulemaking proceeding could be
2634 the rule in question.

2635 (2) In determining whether the notice of proposed rule
2636 adoption provided fair warning that the outcome of that rulemaking
2637 proceeding could be the rule in question, an agency shall consider
2638 all of the following factors:



2639 (a) The extent to which persons who will be affected by
2640 the rule should have understood that the rulemaking proceeding on
2641 which it is based could affect their interests;

2642 (b) The extent to which the subject matter of the rule
2643 or issues determined by the rule are different from the subject
2644 matter or issues contained in the notice of proposed rule
2645 adoption; and

2646 (c) The extent to which the effects of the rule differ
2647 from the effects of the proposed rule contained in the notice of
2648 proposed rule adoption.

2649 **SECTION 68.** Section 25-43-3.108, Mississippi Code of 1972,
2650 is brought forward as follows:

2651 25-43-3.108. **Exemption from public rule-making procedures**
2652 **for temporary rules.**

2653 If an agency finds that an imminent peril to the public
2654 health, safety or welfare requires adoption of a rule upon fewer
2655 than twenty-five (25) days' notice and states in writing its
2656 reasons for that finding, it may proceed without prior notice of
2657 hearing or upon any abbreviated notice and hearing that it finds
2658 practicable to adopt an emergency rule. The rule may be effective
2659 for a period of not longer than one hundred twenty (120) days,
2660 renewable once for a period not exceeding ninety (90) days, but
2661 the adoption of an identical rule under subsection (1) of this
2662 section is not precluded.



2663 **SECTION 69.** Section 25-43-3.109, Mississippi Code of 1972,
2664 is brought forward as follows:

2665 25-43-3.109. (1) Each rule adopted by an agency must
2666 contain the text of the rule and:

2667 (a) The date the agency adopted the rule;

2668 (b) An indication of any change between the text of the
2669 proposed rule contained in the published notice of proposed rule
2670 adoption and the text of the rule as finally adopted, with the
2671 reasons for any substantive change;

2672 (c) Any changes to the information contained in the
2673 notice of proposed rule adoption as required by subsection (1) (a),
2674 (b) or (c) of Section 25-43-3.103;

2675 (d) Any findings required by any provision of law as a
2676 prerequisite to adoption or effectiveness of the rule; and

2677 (e) The effective date of the rule if other than that
2678 specified in Section 25-43-3.113(1).

2679 (2) To the extent feasible, each rule should be written in
2680 clear and concise language understandable to persons who may be
2681 affected by it.

2682 (3) An agency may incorporate, by reference in its rules and
2683 without publishing the incorporated matter in full, all or any
2684 part of a code, standard, rule or regulation that has been adopted
2685 by an agency of the United States or of this state, another state
2686 or by a nationally recognized organization or association, if
2687 incorporation of its text in agency rules would be unduly



2688 cumbersome, expensive or otherwise inexpedient. The reference in
2689 the agency rules must fully identify the incorporated matter with
2690 an appropriate citation. An agency may incorporate by reference
2691 such matter in its rules only if the agency, organization or
2692 association originally issuing that matter makes copies of it
2693 readily available to the public. The rules must state if copies
2694 of the incorporated matter are available from the agency issuing
2695 the rule or where copies of the incorporated matter are available
2696 from the agency of the United States, this state, another state or
2697 the organization or association originally issuing that matter.

2698 (4) In preparing its rules pursuant to this Article III,
2699 each agency shall follow the uniform numbering system, form and
2700 style prescribed by the Secretary of State.

2701 **SECTION 70.** Section 25-43-3.110, Mississippi Code of 1972,
2702 is brought forward as follows:

2703 25-43-3.110. **Agency rule-making record.**

2704 (1) An agency shall maintain an official rule-making record
2705 for each rule it (a) proposes or (b) adopts. The agency has the
2706 exclusive authority to prepare and exclusive authority to certify
2707 the record or any part thereof, including, but not limited to, any
2708 transcript of the proceedings, and the agency's certificate shall
2709 be accepted by the court and by any other agency. The record must
2710 be available for public inspection.

2711 (2) The agency rule-making record must contain:



2712 (a) Copies of all notices of proposed rule-making or
2713 oral proceedings or other publications in the administrative
2714 bulletin with respect to the rule or the proceeding upon which the
2715 rule is based;

2716 (b) Copies of any portions of the agency's public
2717 rule-making docket containing entries relating to the rule or the
2718 proceeding upon which the rule is based;

2719 (c) All written requests, submissions and comments
2720 received by the agency and all other written materials considered
2721 by the agency in connection with the formulation, proposal or
2722 adoption of the rule or the proceeding upon which the rule is
2723 based;

2724 (d) Any official transcript of oral presentations made
2725 in the proceeding upon which the rule is based or, if not
2726 transcribed, any tape recording or stenographic record of those
2727 presentations, and any memorandum prepared by a presiding official
2728 summarizing the contents of those presentations. The word
2729 "transcript" includes a written transcript, a printed transcript,
2730 an audible audiotape or videotape that is indexed and annotated so
2731 that it is readily accessible and any other means that the agency
2732 may have by rule provided for the reliable and accessible
2733 preservation of the proceeding;

2734 (e) A copy of any economic impact statement prepared
2735 for the proceeding upon which the rule is based; and



2736 (f) A copy of the rule and related information set out
2737 in Section 25-43-3.109 as filed in the Office of the Secretary of
2738 State.

2739 (3) The agency shall have authority to engage such persons
2740 and acquire such equipment as may be reasonably necessary to
2741 record and preserve in any technically and practicably feasible
2742 manner all matters and all proceedings had at any rule-making
2743 proceeding.

2744 (4) Upon judicial review, the record required by this
2745 section constitutes the official agency rule-making record with
2746 respect to a rule. Except as otherwise required by a provision of
2747 law, the agency rule-making record need not constitute the
2748 exclusive basis for agency action on that rule or for judicial
2749 review thereof.

2750 **SECTION 71.** Section 25-43-3.111, Mississippi Code of 1972,
2751 is brought forward as follows:

2752 25-43-3.111. (1) A rule adopted after July 1, 2005, is
2753 invalid unless adopted in substantial compliance with the
2754 provisions of Sections 25-43-3.102 through 25-43-3.110.
2755 Inadvertent failure to mail a notice of proposed rule adoption to
2756 any person as required by Section 25-43-3.103(2) does not
2757 invalidate a rule.

2758 (2) An action to contest the validity of a rule on the
2759 grounds of its noncompliance with any provision of Sections



2760 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
2761 year after the effective date of the rule.

2762 **SECTION 72.** Section 25-43-3.112, Mississippi Code of 1972,
2763 is brought forward as follows:

2764 25-43-3.112. An agency shall file in the Office of the
2765 Secretary of State each rule it adopts and all rules existing on
2766 July 1, 2005, that have not previously been filed. The filing
2767 must be done as soon after adoption of the rule as is practicable.
2768 At the time of filing, each rule adopted after July 1, 2005, must
2769 have included in or attached to it the material set out in Section
2770 25-43-3.109. The Secretary of State shall affix to each rule and
2771 statement a certification of the date of filing and keep a
2772 permanent register open to public inspection of all filed rules
2773 and attached material. In filing a rule, each agency shall use a
2774 standard format prescribed by the Secretary of State.

2775 **SECTION 73.** Section 25-43-3.113, Mississippi Code of 1972,
2776 is brought forward as follows:

2777 25-43-3.113. (1) Except to the extent subsection (2) or (3)
2778 of this section provides otherwise, each rule adopted after July
2779 1, 2005, becomes effective thirty (30) days after its proper
2780 filing in the Office of the Secretary of State.

2781 (2) (a) A rule becomes effective on a date later than that
2782 established by subsection (1) of this section if a later date is
2783 required by another statute or specified in the rule.



2784 (b) A rule may become effective immediately upon its
2785 filing or on any subsequent date earlier than that established by
2786 subsection (1) of this section if the agency establishes such an
2787 effective date and finds that:

2788 (i) It is required by Constitution, statute or
2789 court order;

2790 (ii) The rule only confers a benefit or removes a
2791 restriction on the public or some segment thereof;

2792 (iii) The rule only delays the effective date of
2793 another rule that is not yet effective; or

2794 (iv) The earlier effective date is necessary
2795 because of imminent peril to the public health, safety or welfare.

2796 (c) The finding and a brief statement of the reasons
2797 therefor required by paragraph (b) of this subsection must be made
2798 a part of the rule. In any action contesting the effective date
2799 of a rule made effective under paragraph (b) of this subsection,
2800 the burden is on the agency to justify its finding.

2801 (d) A temporary rule may become effective immediately
2802 upon its filing or on any subsequent date earlier than that
2803 established by subsection (1) of this section.

2804 (e) Each agency shall make a reasonable effort to make
2805 known to persons who may be affected by it a rule made effective
2806 before any date established by subsection (1) of this section.

2807 (3) This section does not relieve an agency from compliance
2808 with any provision of law requiring that some or all of its rules



2809 be approved by other designated officials or bodies before they
2810 become effective.

2811 **SECTION 74.** Section 25-43-3.114, Mississippi Code of 1972,
2812 is brought forward as follows:

2813 25-43-3.114. **Review by agency.**

2814 At least every five (5) years, each agency shall review all
2815 of its rules to determine whether any rule should be repealed,
2816 amended or a new rule adopted.

2817 **SECTION 75.** Section 25-61-1, Mississippi Code of 1972, is
2818 brought forward as follows:

2819 25-61-1. This chapter shall be known and may be cited as the
2820 "Mississippi Public Records Act of 1983." It is the policy of the
2821 Legislature that public records must be available for inspection
2822 by any person unless otherwise provided by this act [Laws, 1996,
2823 Chapter 453]. Furthermore, providing access to public records is
2824 a duty of each public body and automation of public records must
2825 not erode the right of access to those records. As each agency
2826 increases its use of and dependence on electronic record keeping,
2827 each agency must ensure reasonable access to records
2828 electronically maintained, subject to the rules of records
2829 retention.

2830 **SECTION 76.** Section 25-61-2, Mississippi Code of 1972, is
2831 brought forward as follows:

2832 25-61-2. It is the policy of this state that public records
2833 shall be available for inspection by any person unless otherwise



2834 provided by this chapter; furthermore, providing access to public
2835 records is a duty of each public body and automation of public
2836 records must not erode the right of access to those records. As
2837 each public body increases its use of, and dependence on,
2838 electronic record keeping, each public body must ensure reasonable
2839 access to records electronically maintained, subject to records
2840 retention.

2841 **SECTION 77.** Section 25-61-3, Mississippi Code of 1972, is
2842 brought forward as follows:

2843 25-61-3. The following words shall have the meanings
2844 ascribed herein unless the context clearly requires otherwise:

2845 (a) "Public body" shall mean any department, bureau,
2846 division, council, commission, committee, subcommittee, board,
2847 agency and any other entity of the state or a political
2848 subdivision thereof, and any municipal corporation and any other
2849 entity created by the Constitution or by law, executive order,
2850 ordinance or resolution. The term "public body" includes the
2851 governing board of a charter school authorized by the Mississippi
2852 Charter School Authorizer Board. Within the meaning of this
2853 chapter, the term "entity" shall not be construed to include
2854 individuals employed by a public body or any appointed or elected
2855 public official.

2856 (b) "Public records" shall mean all books, records,
2857 papers, accounts, letters, maps, photographs, films, cards, tapes,
2858 recordings or reproductions thereof, and any other documentary



2859 materials, regardless of physical form or characteristics, having
2860 been used, being in use, or prepared, possessed or retained for
2861 use in the conduct, transaction or performance of any business,
2862 transaction, work, duty or function of any public body, or
2863 required to be maintained by any public body.

2864 (c) "Data processing software" means the programs and
2865 routines used to employ and control the capabilities of data
2866 processing hardware, including, but not limited to, operating
2867 systems, compilers, assemblers, utilities, library routines,
2868 maintenance routines, applications and computer networking
2869 programs.

2870 (d) "Proprietary software" means data processing
2871 software that is obtained under a licensing agreement and is
2872 protected by copyright or trade secret laws.

2873 (e) "Incident report" means a narrative description, if
2874 such narrative description exists and if such narrative
2875 description does not contain investigative information, of an
2876 alleged offense, and at a minimum shall include the name and
2877 identification of each person charged with and arrested for the
2878 alleged offense, the time, date and location of the alleged
2879 offense, and the property involved, to the extent this information
2880 is known.

2881 (f) "Investigative report" means records of a law
2882 enforcement agency containing information beyond the scope of the
2883 matters contained in an incident report, and generally will



2884 include, but not be limited to, the following matters if beyond
2885 the scope of the matters contained in an incident report:

2886 (i) Records that are compiled in the process of
2887 detecting and investigating any unlawful activity or alleged
2888 unlawful activity, the disclosure of which would harm the
2889 investigation which may include crime scene reports and
2890 demonstrative evidence;

2891 (ii) Records that would reveal the identity of
2892 informants and/or witnesses;

2893 (iii) Records that would prematurely release
2894 information that would impede the public body's enforcement,
2895 investigative or detection efforts;

2896 (iv) Records that would disclose investigatory
2897 techniques and/or results of investigative techniques;

2898 (v) Records that would deprive a person of a right
2899 to a fair trial or an impartial adjudication;

2900 (vi) Records that would endanger the life or
2901 safety of a public official or law enforcement personnel, or
2902 confidential informants or witnesses;

2903 (vii) Records pertaining to quality control or
2904 PEER review activities; or

2905 (viii) Records that would impede or jeopardize a
2906 prosecutor's ability to prosecute the alleged offense.

2907 (g) "Law enforcement agency" means a public body that
2908 performs as one (1) of its principal functions activities



2909 pertaining to the enforcement of criminal laws, the apprehension
2910 and investigation of criminal offenders, or the investigation of
2911 criminal activities.

2912 **SECTION 78.** Section 25-61-5, Mississippi Code of 1972, is
2913 brought forward as follows:

2914 25-61-5. (1) (a) Except as otherwise provided by Sections
2915 25-61-9 and 25-61-11, all public records are hereby declared to be
2916 public property, and any person shall have the right to inspect,
2917 copy or mechanically reproduce or obtain a reproduction of any
2918 public record of a public body in accordance with reasonable
2919 written procedures adopted by the public body concerning the cost,
2920 time, place and method of access, and public notice of the
2921 procedures shall be given by the public body, or, if a public body
2922 has not adopted written procedures, the right to inspect, copy or
2923 mechanically reproduce or obtain a reproduction of a public record
2924 of the public body shall be provided within one (1) working day
2925 after a written request for a public record is made. No public
2926 body shall adopt procedures which will authorize the public body
2927 to produce or deny production of a public record later than seven
2928 (7) working days from the date of the receipt of the request for
2929 the production of the record.

2930 (b) If a public body is unable to produce a public
2931 record by the seventh working day after the request is made, the
2932 public body must provide a written explanation to the person
2933 making the request stating that the record requested will be



2934 produced and specifying with particularity why the records cannot
2935 be produced within the seven-day period. Unless there is mutual
2936 agreement of the parties, in no event shall the date for the
2937 public body's production of the requested records be any later
2938 than fourteen (14) working days from the receipt by the public
2939 body of the original request.

2940 (2) If any public record contains material which is not
2941 exempted under this chapter, the public agency shall redact the
2942 exempted and make the nonexempted material available for
2943 examination. Such public agency shall be entitled to charge a
2944 reasonable fee for the redaction of any exempted material, not to
2945 exceed the agency's actual cost.

2946 (3) Denial by a public body of a request for access to or
2947 copies of public records under this chapter shall be in writing
2948 and shall contain a statement of the specific exemption relied
2949 upon by the public body for the denial. Each public body shall
2950 maintain a file of all denials of requests for public records.
2951 Public bodies shall be required to preserve such denials on file
2952 for not less than three (3) years from the date such denials are
2953 made. This file shall be made available for inspection or
2954 copying, or both, during regular office hours to any person upon
2955 written request.

2956 **SECTION 79.** Section 25-61-7, Mississippi Code of 1972, is
2957 brought forward as follows:



2958 25-61-7. (1) Except as provided in subsection (2) of this
2959 section, each public body may establish and collect fees
2960 reasonably calculated to reimburse it for, and in no case to
2961 exceed, the actual cost of searching, reviewing and/or duplicating
2962 and, if applicable, mailing copies of public records. Such fees
2963 shall be collected by the public body in advance of complying with
2964 the request.

2965 (2) A public body may establish a standard fee scale to
2966 reimburse it for the costs of creating, acquiring and maintaining
2967 a geographic information system or multipurpose cadastre as
2968 authorized and defined under Section 25-61-1 et seq., or any other
2969 electronically accessible data. Such fees must be reasonably
2970 related to the cost of creating, acquiring and maintaining the
2971 geographic information system, multipurpose cadastre or other
2972 electronically accessible data, for the data or information
2973 contained therein or taken therefrom and for any records, papers,
2974 accounts, maps, photographs, films, cards, tapes, recordings or
2975 other materials, data or information relating thereto, whether in
2976 printed, digital or other format. In determining the fees or
2977 charges under this subsection, the public body may consider the
2978 type of information requested, the purpose or purposes for which
2979 the information has been requested and the commercial value of the
2980 information.

2981 **SECTION 80.** Section 25-61-9, Mississippi Code of 1972, is
2982 brought forward as follows:



2983 25-61-9. (1) Records furnished to public bodies by third
2984 parties which contain trade secrets or confidential commercial or
2985 financial information shall not be subject to inspection,
2986 examination, copying or reproduction under this chapter until
2987 notice to said third parties has been given, but such records
2988 shall be released within a reasonable period of time unless the
2989 said third parties shall have obtained a court order protecting
2990 such records as confidential.

2991 (2) If any public record which is held to be exempt from
2992 disclosure pursuant to this chapter contains material which is not
2993 exempt pursuant to this chapter, the public body shall separate
2994 the exempt material and make the nonexempt material available for
2995 examination and/or copying as provided for in this chapter.

2996 (3) Trade secrets and confidential commercial and financial
2997 information of a proprietary nature developed by a college or
2998 university under contract with a firm, business, partnership,
2999 association, corporation, individual or other like entity shall
3000 not be subject to inspection, examination, copying or reproduction
3001 under this chapter.

3002 (4) Misappropriation of a trade secret shall be governed by
3003 the provisions of the Mississippi Uniform Trade Secrets Act,
3004 Sections 75-26-1 through 75-26-19.

3005 (5) A waste minimization plan and any updates developed by
3006 generators and facility operators under the Mississippi
3007 Comprehensive Multimedia Waste Minimization Act of 1990 shall be



3008 retained at the facility and shall not be subject to inspection,
3009 examination, copying or reproduction under this chapter.

3010 (6) Data processing software obtained by an agency under a
3011 licensing agreement that prohibits its disclosure and which
3012 software is a trade secret, as defined in Section 75-26-3, and
3013 data processing software produced by a public body which is
3014 sensitive must not be subject to inspection, copying or
3015 reproduction under this chapter.

3016 As used in this subsection, "sensitive" means only those
3017 portions of data processing software, including the specifications
3018 and documentation, used to:

3019 (a) Collect, process, store, and retrieve information
3020 which is exempt under this chapter.

3021 (b) Control and direct access authorizations and
3022 security measures for automated systems.

3023 (c) Collect, process, store, and retrieve information,
3024 disclosure of which would require a significant intrusion into the
3025 business of the public body.

3026 **SECTION 81.** Section 25-61-10, Mississippi Code of 1972, is
3027 brought forward as follows:

3028 25-61-10. (1) Any public body that uses sensitive software,
3029 as defined in Section 25-61-9, or proprietary software must not
3030 thereby diminish the right of the public to inspect and copy a
3031 public record. A public body that uses sensitive software, as
3032 defined in Section 25-61-9, or proprietary software to store,



3033 manipulate, or retrieve a public record will not be deemed to have
3034 diminished the right of the public if it either: (a) if legally
3035 obtainable, makes a copy of the software available to the public
3036 for application to the public records stored, manipulated, or
3037 retrieved by the software; or (b) ensures that the software has
3038 the capacity to create an electronic copy of each public record
3039 stored, manipulated, or retrieved by the software in some common
3040 format such as, but not limited to, the American Standard Code for
3041 Information Interchange.

3042 (2) A public body shall provide a copy of the record in the
3043 format requested if the public body maintains the record in that
3044 format, and the public body may charge a fee which must be in
3045 accordance with Section 25-61-7.

3046 (3) Before a public body acquires or makes a major
3047 modification to any information technology system, equipment, or
3048 software used to store, retrieve, or manipulate a public record,
3049 the public body shall adequately plan for the provision of public
3050 access and redaction of exempt or confidential information by the
3051 proposed system, equipment or software.

3052 (4) A public body may not enter into a contract for the
3053 creation or maintenance of a public records data base if that
3054 contract impairs the ability of the public to inspect or copy the
3055 public records of that agency, including public records that are
3056 online or stored in an information technology system used by the
3057 public body.



3058 **SECTION 82.** Section 25-61-11, Mississippi Code of 1972, is
3059 brought forward as follows:

3060 25-61-11. The provisions of this chapter shall not be
3061 construed to conflict with, amend, repeal or supersede any
3062 constitutional or statutory law or decision of a court of this
3063 state or the United States which at the time of this chapter is
3064 effective or thereafter specifically declares a public record to
3065 be confidential or privileged, or provides that a public record
3066 shall be exempt from the provisions of this chapter.

3067 **SECTION 83.** Section 25-61-11.1, Mississippi Code of 1972, is
3068 brought forward as follows:

3069 25-61-11.1. The name, home address, any telephone number or
3070 other private information of any person who possesses a weapon
3071 permit issued under Section 45-9-101 or Section 97-37-7 shall be
3072 exempt from the Mississippi Public Records Act of 1983.

3073 **SECTION 84.** Section 25-61-12, Mississippi Code of 1972, is
3074 brought forward as follows:

3075 25-61-12. (1) The home address, any telephone number of a
3076 privately paid account or other private information of any law
3077 enforcement officer, criminal investigator, judge or district
3078 attorney or the spouse or child of such law enforcement officer,
3079 criminal investigator, judge or district attorney shall be exempt
3080 from the Mississippi Public Records Act of 1983. This exemption
3081 does not apply to any court transcript or recording if given under
3082 oath and not otherwise excluded by law.



3083 (2) (a) When in the possession of a law enforcement agency,
3084 investigative reports shall be exempt from the provisions of this
3085 chapter; however, a law enforcement agency, in its discretion, may
3086 choose to make public all or any part of any investigative report.

3087 (b) Nothing in this chapter shall be construed to
3088 prevent any and all public bodies from having among themselves a
3089 free flow of information for the purpose of achieving a
3090 coordinated and effective detection and investigation of unlawful
3091 activity. Where the confidentiality of records covered by this
3092 section is being determined in a private hearing before a judge
3093 under Section 25-61-13, the public body may redact or separate
3094 from such records the identity of confidential informants or the
3095 identity of the person or persons under investigation or other
3096 information other than the nature of the incident, time, date and
3097 location.

3098 (c) Nothing in this chapter shall be construed to
3099 exempt from public disclosure a law enforcement incident report.
3100 An incident report shall be a public record. A law enforcement
3101 agency may release information in addition to the information
3102 contained in the incident report.

3103 (d) Nothing in this chapter shall be construed to
3104 require the disclosure of information that would reveal the
3105 identity of the victim.

3106 (3) Personal information of victims, including victim impact
3107 statements and letters of support on behalf of victims that are



3108 contained in records on file with the Mississippi Department of
3109 Corrections and State Parole Board shall be exempt from the
3110 provisions of this chapter.

3111 **SECTION 85.** Section 25-61-13, Mississippi Code of 1972, is
3112 brought forward as follows:

3113 25-61-13. (1) (a) Any person denied the right granted by
3114 Section 25-61-5 to inspect or copy public records may institute a
3115 suit in the chancery court of the county in which the public body
3116 is located, and the court shall determine whether such public
3117 record is exempt from the provisions of this chapter, and in
3118 making such determination the court shall take into consideration
3119 any constitutional or statutory law or decision of any court of
3120 this state or the United States, any rule of common law, or any
3121 public records opinion of the Mississippi Ethics Commission.

3122 Process shall be served on the proper officials according to law.

3123 (b) Before instituting suit under this subsection, the
3124 person denied the right to inspect or copy public records may
3125 first request an opinion of the Ethics Commission as to whether
3126 the public body is obligated under this chapter to produce the
3127 records requested.

3128 (i) The person shall attach to the request for
3129 opinion a copy of the written denial of his records request, if
3130 any. The Ethics Commission shall forward a copy of the documents
3131 to the public official who denied the records request or failed to
3132 respond to it, as well as to the head of the public body involved.



3133 The public body shall have fourteen (14) days from receipt of the
3134 documents to file a response with the Ethics Commission. After
3135 receiving the response to the request for opinion or after
3136 fourteen (14) days, whichever comes first, the Ethics Commission
3137 shall issue its opinion.

3138 (ii) Nothing in this chapter shall be construed to
3139 prohibit the Ethics Commission from mediating or otherwise
3140 resolving disputes arising under this chapter.

3141 (2) In any suit filed under subsection (1) of this section,
3142 the court has the authority to prohibit the public body from
3143 withholding the public records, to order the production of any
3144 public records improperly withheld from the person seeking
3145 disclosure, and to grant such other equitable relief as may be
3146 proper. The court, on its own motion, may privately view the
3147 public records in controversy before reaching a decision.

3148 (3) Proceedings arising under this section shall take
3149 precedence on the docket over all other matters and shall be
3150 assigned for hearing and trial at the earliest practicable date
3151 and expedited in every way. Such suits may be heard in termtime
3152 or in vacation.

3153 (4) Any suit filed under this section shall be subject to
3154 all the rights and rules of appeal for other suits arising in
3155 chancery court.

3156 **SECTION 86.** Section 25-61-15, Mississippi Code of 1972, is
3157 brought forward as follows:



3158 25-61-15. Any person who shall deny to any person access to
3159 any public record which is not exempt from the provisions of this
3160 chapter may be liable civilly in a sum not to exceed One Hundred
3161 Dollars (\$100.00) per violation, plus all reasonable expenses
3162 incurred by such person bringing the proceeding.

3163 **SECTION 87.** Section 25-61-17, Mississippi Code of 1972, is
3164 brought forward as follows:

3165 25-61-17. Nothing in this chapter shall be construed as
3166 denying the Legislature the right to determine the rules of its
3167 own proceedings and to regulate public access to its records.
3168 However, notwithstanding the provisions of this section, the
3169 Legislature shall be subject to the provisions of Sections
3170 27-104-151 through 27-104-159.

3171 **SECTION 88.** Section 25-61-19, Mississippi Code of 1972, is
3172 brought forward as follows:

3173 25-61-19. Within sixty (60) days after the end of each
3174 regular session of the Legislature, each agency or department of
3175 the State of Mississippi shall include on the Internet website of
3176 the agency or department a separate section that provides a
3177 legislative update on any legislation enacted at the legislative
3178 session that revises the powers and duties of the agency or
3179 department. The agency or department shall include a link to the
3180 legislative update section on the home page of the website. The
3181 legislative update section shall contain a summary of the
3182 revisions made to the powers and duties of the agency or



3183 department by the legislation, and a contact section or link so
3184 that members of the public may comment on or ask questions about
3185 the revisions or the effect of the revisions in the legislation.
3186 The legislative update section shall remain on the website of the
3187 agency or department until January 1 of the following year.

3188 **SECTION 89.** Section 25-41-1, Mississippi Code of 1972, is
3189 brought forward as follows:

3190 25-41-1. It being essential to the fundamental philosophy of
3191 the American constitutional form of representative government and
3192 to the maintenance of a democratic society that public business be
3193 performed in an open and public manner, and that citizens be
3194 advised of and be aware of the performance of public officials and
3195 the deliberations and decisions that go into the making of public
3196 policy, it is hereby declared to be the policy of the State of
3197 Mississippi that the formation and determination of public policy
3198 is public business and shall be conducted at open meetings except
3199 as otherwise provided herein.

3200 **SECTION 90.** Section 25-41-3, Mississippi Code of 1972, is
3201 brought forward as follows:

3202 25-41-3. For purposes of this chapter, the following words
3203 shall have the meaning ascribed herein, to wit:

3204 (a) "Public body" means any executive or administrative
3205 board, commission, authority, council, department, agency, bureau
3206 or any other policy-making entity, or committee thereof, of the
3207 State of Mississippi, or any political subdivision or municipal



3208 corporation of the state, whether such entity be created by
3209 statute or executive order, which is supported wholly or in part
3210 by public funds or expends public funds, and any standing, interim
3211 or special committee of the Mississippi Legislature. The term
3212 "public body" includes the governing board of a charter school
3213 authorized by the Mississippi Charter School Authorizer Board.
3214 There shall be exempted from the provisions of this chapter:
3215 (i) The judiciary, including all jury deliberations;
3216 (ii) Public and private hospital staffs, public and
3217 private hospital boards and committees thereof;
3218 (iii) Law enforcement officials;
3219 (iv) The military;
3220 (v) The State Probation and Parole Board;
3221 (vi) The Workers' Compensation Commission;
3222 (vii) Legislative subcommittees and legislative
3223 conference committees;
3224 (viii) The arbitration council established in Section
3225 69-3-19;
3226 (ix) License revocation, suspension and disciplinary
3227 proceedings held by the Mississippi State Board of Dental
3228 Examiners; and
3229 (x) Hearings and meetings of the Board of Tax Appeals
3230 and of the hearing officers and the board of review of the
3231 Department of Revenue as provided in Section 27-77-15.



3232 (b) "Meeting" means an assemblage of members of a public
3233 body at which official acts may be taken upon a matter over which
3234 the public body has supervision, control, jurisdiction or advisory
3235 power; "meeting" also means any such assemblage through the use of
3236 video or teleconference devices.

3237 **SECTION 91.** Section 25-41-5, Mississippi Code of 1972, is
3238 brought forward as follows:

3239 25-41-5. (1) All official meetings of any public body,
3240 unless otherwise provided in this chapter or in the Constitutions
3241 of the United States of America or the State of Mississippi, are
3242 declared to be public meetings and shall be open to the public at
3243 all times unless declared an executive session as provided in
3244 Section 25-41-7.

3245 (2) (a) A public body may conduct any meeting through
3246 teleconference or video means. A quorum of a public body as
3247 prescribed by law may be at different locations for the purpose of
3248 conducting a meeting through teleconference or video means
3249 provided participation is available to the general public at one
3250 or more public locations specified in the public meeting notice.

3251 (b) A municipal public body may establish a quorum with
3252 the members of such public body who are on active duty in any
3253 branch of the United States Armed Forces by using any
3254 teleconference or video device that allows such members of the
3255 municipal public body to clearly communicate with each other and
3256 clearly view each other for the purpose of conducting a meeting,



3257 voting on issues of the municipal public body and transacting
3258 business of the municipal public body provided that such
3259 participation is available to the general public at one or more
3260 public locations specified in the public meeting notice.

3261 (3) (a) Notice of any meetings held pursuant to subsection
3262 (2) of this section shall be provided at least five (5) days in
3263 advance of the date scheduled for the meeting. The notice shall
3264 include the date, time, place and purpose for the meeting and
3265 shall identify all locations for the meeting available to the
3266 general public. All persons attending the meeting at any of the
3267 public meeting locations shall be afforded the same opportunity to
3268 address the public body as persons attending the primary or
3269 central location. Any interruption in the teleconference or video
3270 broadcast of the meeting shall result in the suspension of action
3271 at the meeting until repairs are made and public access restored.

3272 (b) Five-day notice shall not be required for
3273 teleconference or video meetings continued to address an emergency
3274 as provided in subsection (5) of this section or to conclude the
3275 agenda of a teleconference or video meeting of the public body for
3276 which the proper notice has been given, when the date, time, place
3277 and purpose of the continued meeting are set during the meeting
3278 prior to adjournment.

3279 (4) An agenda and materials that will be distributed to
3280 members of the public body and that have been made available to
3281 the staff of the public body in sufficient time for duplication



3282 and forwarding to all locations where public access will be
3283 provided shall be made available to the public at the time of the
3284 meeting. Minutes of all meetings held by teleconference or video
3285 means shall be recorded as required by Section 25-41-11. Votes
3286 taken during any meeting conducted through teleconference or video
3287 means shall be recorded by name in roll-call fashion and included
3288 in the minutes. In addition, the public body shall make an audio
3289 recording of the meeting, if a teleconference medium is used, or
3290 an audio/visual recording, if the meeting is held by video means.
3291 The recording shall be preserved by the public body for a period
3292 of three (3) years following the date of the meeting and shall be
3293 available to the public.

3294 (5) A public body may meet by teleconference or video means
3295 as often as needed if an emergency exists and the public body is
3296 unable to meet in regular session. Public bodies conducting
3297 emergency meetings through teleconference or video means shall
3298 comply with the provisions of subsection (4) of this section
3299 requiring minutes, recordation and preservation of the audio or
3300 audio/visual recording of the meeting. The nature of the
3301 emergency shall be stated in the minutes.

3302 **SECTION 92.** Section 25-41-7, Mississippi Code of 1972, is
3303 brought forward as follows:

3304 25-41-7. (1) Any public body may enter into executive
3305 session for the transaction of public business; provided, however,
3306 all meetings of any such public body shall commence as an open



3307 meeting, and an affirmative vote of three-fifths (3/5) of all
3308 members present shall be required to declare an executive session.

3309 (2) The procedure to be followed by any public body in
3310 declaring an executive session shall be as follows: Any member
3311 shall have the right to request by motion a closed determination
3312 upon the issue of whether or not to declare an executive session.
3313 Such motion, by majority vote, shall require the meeting to be
3314 closed for a preliminary determination of the necessity for
3315 executive session. No other business shall be transacted until
3316 the discussion of the nature of the matter requiring executive
3317 session has been completed and a vote, as required in subsection
3318 (1) hereof, has been taken on the issue.

3319 (3) An executive session shall be limited to matters allowed
3320 to be exempted from open meetings by subsection (4) of this
3321 section. The reason for holding such an executive session shall
3322 be stated in an open meeting, and the reason so stated shall be
3323 recorded in the minutes of the meeting. Nothing in this section
3324 shall be construed to require that any meeting be closed to the
3325 public, nor shall any executive session be used to circumvent or
3326 to defeat the purposes of this chapter.

3327 (4) A public body may hold an executive session pursuant to
3328 this section for one or more of the following reasons:

3329 (a) Transaction of business and discussion of personnel
3330 matters relating to the job performance, character, professional



3331 competence, or physical or mental health of a person holding a
3332 specific position.

3333 (b) Strategy sessions or negotiations with respect to
3334 prospective litigation, litigation or issuance of an appealable
3335 order when an open meeting would have a detrimental effect on the
3336 litigating position of the public body.

3337 (c) Transaction of business and discussion regarding
3338 the report, development or course of action regarding security
3339 personnel, plans or devices.

3340 (d) Investigative proceedings by any public body
3341 regarding allegations of misconduct or violation of law.

3342 (e) Any body of the Legislature which is meeting on
3343 matters within the jurisdiction of such body.

3344 (f) Cases of extraordinary emergency which would pose
3345 immediate or irrevocable harm or damage to persons and/or property
3346 within the jurisdiction of such public body.

3347 (g) Transaction of business and discussion regarding
3348 the prospective purchase, sale or leasing of lands.

3349 (h) Discussions between a school board and individual
3350 students who attend a school within the jurisdiction of such
3351 school board or the parents or teachers of such students regarding
3352 problems of such students or their parents or teachers.

3353 (i) Transaction of business and discussion concerning
3354 the preparation of tests for admission to practice in recognized
3355 professions.



3356 (j) Transaction of business and discussions or
3357 negotiations regarding the location, relocation or expansion of a
3358 business or an industry.

3359 (k) Transaction of business and discussions regarding
3360 employment or job performance of a person in a specific position
3361 or termination of an employee holding a specific position. The
3362 exemption provided by this paragraph includes the right to enter
3363 into executive session concerning a line item in a budget which
3364 might affect the termination of an employee or employees. All
3365 other budget items shall be considered in open meetings and final
3366 budgetary adoption shall not be taken in executive session.

3367 (l) Discussions regarding material or data exempt from
3368 the Mississippi Public Records Act of 1983 pursuant to Section
3369 25-11-121.

3370 (5) The total vote on the question of entering into an
3371 executive session shall be recorded and spread upon the minutes of
3372 such public body.

3373 (6) Any such vote whereby an executive session is declared
3374 shall be applicable only to that particular meeting on that
3375 particular day.

3376 **SECTION 93.** Section 25-41-9, Mississippi Code of 1972, is
3377 brought forward as follows:

3378 25-41-9. Any public body may make and enforce reasonable
3379 rules and regulations for the conduct of persons attending its
3380 meetings.



3381 **SECTION 94.** Section 25-41-11, Mississippi Code of 1972, is
3382 brought forward as follows:

3383 25-41-11. (1) Minutes shall be kept of all meetings of a
3384 public body, whether in open or executive session, showing the
3385 members present and absent; the date, time and place of the
3386 meeting; an accurate recording of any final actions taken at such
3387 meeting; and a record, by individual member, of any votes taken;
3388 and any other information that the public body requests be
3389 included or reflected in the minutes. The minutes shall be
3390 recorded within a reasonable time not to exceed thirty (30) days
3391 after recess or adjournment and shall be open to public inspection
3392 during regular business hours.

3393 (2) Minutes of a meeting conducted by teleconference or
3394 video means shall comply with the requirements of Section 25-41-5.

3395 (3) Minutes of legislative committee meetings shall consist
3396 of a written record of attendance and final actions taken at such
3397 meetings.

3398 **SECTION 95.** Section 25-41-13, Mississippi Code of 1972, is
3399 brought forward as follows:

3400 25-41-13. (1) Any public body which holds its meetings at
3401 such times and places and by such procedures as are specifically
3402 prescribed by statute shall continue to do so and no additional
3403 notice of such meetings shall be required except that a notice of
3404 the place, date, hour and subject matter of any recess meeting,
3405 adjourned meeting, interim meeting or any called special meeting



3406 shall be posted within one (1) hour after such meeting is called
3407 in a prominent place available to examination and inspection by
3408 the general public in the building in which the public body
3409 normally meets. A copy of the notice shall be made a part of the
3410 minutes or other permanent official records of the public body.

3411 (2) Any public body, other than a legislative committee,
3412 which does not have statutory provisions prescribing the times and
3413 places and the procedures by which its meetings are to be held
3414 shall, at its first regular or special meeting after the effective
3415 date of this chapter spread upon its minutes the times and places
3416 and the procedures by which all of its meetings are to be held.

3417 (3) Notice of any regular meeting held by a state agency,
3418 other than a legislative committee, shall be submitted to the
3419 Department of Finance and Administration at least twenty-four (24)
3420 hours before the meeting in order to be posted on the department's
3421 searchable website created by the Mississippi Accountability and
3422 Transparency Act, Section 27-104-152 et seq. For purposes of this
3423 subsection, the term "state agency" means an agency, department,
3424 institution, board, commission, council, office, bureau, division,
3425 committee or subcommittee of the state. However, the term "state
3426 agency" does not include institutions of higher learning,
3427 community and junior colleges, counties or municipalities.

3428 (4) During a regular or special session of the Mississippi
3429 Legislature, notice of meetings of all committees, other than
3430 conference committees, shall be given by announcement on the



3431 loudspeaker during sessions of the House of Representatives or
3432 Senate or by posting on a bulletin board provided for that purpose
3433 by each body.

3434 (5) When not in session, the meeting times and places of all
3435 committees shall be kept by the Clerk of the House of
3436 Representatives as to House committees and by the Secretary of the
3437 Senate as to Senate committees, and shall be available at all
3438 times during regular working hours to the public and news media.

3439 **SECTION 96.** Section 25-41-15, Mississippi Code of 1972, is
3440 brought forward as follows:

3441 25-41-15. The Mississippi Ethics Commission shall have the
3442 authority to enforce the provisions of this chapter upon a
3443 complaint filed by any person. Upon receiving a complaint, the
3444 commission shall forward a copy of the complaint to the head of
3445 the public body involved. The public body shall have fourteen
3446 (14) days from receipt of the complaint to file a response with
3447 the commission. After receiving the response to the complaint or,
3448 if no response is received after fourteen (14) days, the
3449 commission, in its discretion, may dismiss the complaint or
3450 proceed by setting a hearing in accordance with rules and
3451 regulations promulgated by the Ethics Commission.

3452 After a hearing, the Ethics Commission may order the public
3453 body to take whatever reasonable measures necessary, if any, to
3454 comply with this chapter. If the Ethics Commission finds that a
3455 member or members of a public body has willfully and knowingly



3456 violated the provisions of this chapter, the Ethics Commission may
3457 impose a civil penalty upon the individual members of the public
3458 body found to be in violation of the provisionsu of this chapter in
3459 a sum not to exceed Five Hundred Dollars (\$500.00) for a first
3460 offense and One Thousand Dollars (\$1,000.00) for a second or
3461 subsequent offense, plus all reasonable expenses incurred by the
3462 person or persons in bringing the complaint to enforce this
3463 chapter.

3464 Nothing in this chapter shall be construed to prohibit the
3465 Ethics Commission from mediating or otherwise resolving disputes
3466 arising under this chapter or from entering orders agreed to by
3467 the parties. In carrying out its responsibilities under this
3468 section, the Ethics Commission shall have all the powers and
3469 authority granted to it in Title 25, Chapter 4, Mississippi Code
3470 of 1972.

3471 Any party may petition the chancery court of the county in
3472 which the public body is located to enforce or appeal any order of
3473 the Ethics Commission issued pursuant to this chapter. In any
3474 such appeal the chancery court shall conduct a de novo review.

3475 **SECTION 97.** Section 25-41-17, Mississippi Code of 1972, is
3476 brought forward as follows:

3477 25-41-17. The provisions of this chapter shall not apply to
3478 chance meetings or social gatherings of members of a public body.

3479 **SECTION 98.** This act shall take effect and be in force from
3480 and after July 1, 2014.

