

By: Representative Bomgar

To: Judiciary A

HOUSE BILL NO. 803

1 AN ACT TO AMEND SECTION 25-43-2.104, MISSISSIPPI CODE OF
 2 1972, TO REVISE THE ADMINISTRATIVE PROCEDURES ACT TO PROVIDE THAT
 3 AN AGENCY MAY ADOPT RULES PROVIDING FOR THE USE OF STREAMLINED
 4 PROCEEDINGS FOR A SMALL BUSINESS THAT IS INVOLVED IN AN
 5 ADJUDICATORY PROCEEDING BEFORE THE AGENCY; TO AMEND SECTIONS
 6 25-43-1.102, 25-43-1.106, 25-43-2.103 AND 25-43-3.105, MISSISSIPPI
 7 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; TO
 8 BRING FORWARD SECTIONS 25-43-4.104 AND 25-43-4.105, MISSISSIPPI
 9 CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED
 10 PURPOSES.

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

12 **SECTION 1.** Section 25-43-2.104, Mississippi Code of 1972, is
 13 amended as follows:

14 25-43-2.104. (1) In addition to other rule-making
 15 requirements imposed by law, each agency shall:

16 (a) Adopt as a rule a description of the organization
 17 of the agency which states the general course and method of its
 18 operations and where and how the public may obtain information or
 19 make submissions or requests;

20 (b) Adopt rules of practice setting forth the nature
 21 and requirements of all formal and informal proceedings available
 22 to the public.



23 (2) In addition to any other rule-making requirements
24 pertaining to a small business, an agency may adopt rules
25 providing that a small business may opt to participate in
26 streamlined adjudicatory proceedings, to be conducted by remote
27 means such as mail, electronic mail, telephone conference or
28 videoconference, instead of a personal appearance. In adopting
29 these rules, the agency shall:

30 (a) Consider the types of programs and issues for which
31 the streamlined proceedings may reasonably be conducted, and limit
32 the availability of streamlined proceedings to programs and issues
33 in which the public interest in fair outcomes can continue to be
34 assured, by taking into account the following:

35 (i) The complexity of the matters to be resolved
36 in the proceeding;

37 (ii) The severity of potential sanctions;

38 (iii) Any necessity for personal appearances,
39 including, but not limited to, requirements for sworn testimony or
40 cross-examination; and

41 (iv) Any potential reduction in the costs and
42 burdens of participating in the proceeding for the agency and for
43 other parties.

44 (b) Ensure that a streamlined proceeding may only be
45 used at the option of the respondent small business with the
46 consent of the agency and any other necessary party to the
47 proceeding, and that the rights of respondents and other parties



48 will not be diminished in any respect by virtue of participation
49 in a streamlined proceeding.

50 (c) Specify the format and procedural requirements for
51 the conduct of streamlined proceedings.

52 (d) Establish procedures for requesting, scheduling,
53 conducting and developing a complete record of the proceedings.

54 (e) Provide that, if it becomes impractical or
55 inappropriate to continue a proceeding as a streamlined
56 proceeding, then the proceeding may be rescheduled as an
57 adjudicatory proceeding under the agency's rules for same.

58 **SECTION 2.** Section 25-43-1.102, Mississippi Code of 1972, is
59 amended as follows:

60 25-43-1.102. As used in this chapter, the following terms
61 shall have the meanings ascribed to them in this section unless
62 the context otherwise requires:

63 (a) "Agency" means a board, commission, department,
64 officer or other administrative unit of this state, including the
65 agency head, and one or more members of the agency head or agency
66 employees directly or indirectly purporting to act on behalf or
67 under the authority of the agency head. The term does not include
68 the Legislature or any of its component units, the judiciary or
69 any of its component units or the Governor. The term does not
70 include a political subdivision of the state or any of the
71 administrative units of a political subdivision. To the extent it
72 purports to exercise authority subject to any provision of this



73 chapter, an administrative unit otherwise qualifying as an
74 "agency" must be treated as a separate agency even if the unit is
75 located within or subordinate to another agency.

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

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

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

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

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

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

89 (f) "Order" means an agency action of particular
90 applicability that determines the legal rights, duties,
91 privileges, immunities or other legal interests of one or more
92 specific persons. An order shall be in writing signed by a person
93 with authority to render the order, or if more than one (1) person
94 has such authority by at least that number of such persons as
95 jointly have the authority to render the order, or by a person
96 authorized to render the order on behalf of all such persons. The
97 term does not include an executive order issued by the Governor



98 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
99 General pursuant to Section 7-5-25, an opinion issued by the
100 Ethics Commission pursuant to Section 25-4-17, or a declaratory
101 opinion rendered in accordance with Section 25-43-2.103.

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

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

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

114 (i) Law or policy, or

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

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



123 2. A regulation or statement that establishes
124 criteria or guidelines to be used by the staff of an agency in
125 performing audits, investigations or inspections, settling
126 commercial disputes, negotiating commercial arrangements or in the
127 defense, prosecution or settlement of cases, if disclosure of the
128 criteria or guidelines would:

129 a. Enable law violators to avoid
130 detection;

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

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

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

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

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



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

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

154 8. An agency budget;

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

158 10. An opinion of the Attorney General
159 pursuant to Section 7-5-25, an opinion of the Ethics Commission
160 pursuant to Section 25-4-17, or an Executive Order of the
161 Governor.

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

164 (k) "Small business" has the meaning as defined in
165 Section 25-43-4.102.

166 **SECTION 3.** Section 25-43-1.106, Mississippi Code of 1972, is
167 amended as follows:

168 25-43-1.106. (1) (a) Except as may otherwise be provided
169 under Section 25-43-2.104, whenever, under this chapter, a party
170 or any person is permitted or required to file with an agency any
171 pleading, motion or other document, filing must be made by



172 delivery of the document to the agency, by mailing it to the
173 agency or by transmitting it to the agency by electronic means,
174 including, but not limited to, facsimile transfer or e-mail.
175 Filing by electronic means is complete when the electronic
176 equipment being used by the agency acknowledges receipt of the
177 material. If the equipment used by the agency does not
178 automatically acknowledge transmission, service is not complete
179 until the filing party obtains an acknowledgment from the agency.
180 Filing by mail is complete upon receipt by the agency.

181 (b) The agency may implement this section by agency
182 rule.

183 (2) (a) Except as may otherwise be provided under Section
184 25-43-2.104, whenever service is required by this chapter, and
185 whether the service is made by a party, an agency or a presiding
186 officer, service of orders, notices, pleadings, motions and other
187 documents upon a party shall be made by delivering a copy to the
188 party, by transmitting it to the party by electronic means,
189 including, but not limited to, facsimile transfer or e-mail, or by
190 mailing it to the party at the party's last known address.
191 Delivery of a copy means handing it to a party, leaving it at the
192 office of a party with a person in charge thereof, or leaving it
193 at the dwelling house or usual place of abode of the party with
194 some person of suitable age and discretion then residing therein.
195 Service by electronic means is complete when the electronic
196 equipment being used by the party being served acknowledges



197 receipt of the material. If the equipment used by the party being
198 served does not automatically acknowledge the transmission,
199 service is not complete until the sending party obtains an
200 acknowledgment from the recipient. Service by mail is complete
201 upon mailing.

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

205 (c) Whenever an agency issues an order or serves a
206 notice or other document, the order or notice or other document
207 shall be dated and shall be deemed to have been issued on the day
208 it is served on the parties to the matter. If the order or notice
209 or other document is to be served by mail, it shall be dated and
210 shall be deemed to have been issued on the day it is mailed.

211 (3) (a) Except as may otherwise be provided under Section
212 25-43-2.104, in computing any period of time prescribed or allowed
213 by this Article 1, by order of an agency, or by any applicable
214 statute or agency rule, the day of the act, event or default from
215 which the designated period of time begins to run shall not be
216 included. The last day of the period so computed shall be
217 included, unless it is a Saturday, a Sunday or a legal holiday, as
218 defined by statute, or any other day when the agency's office is
219 in fact closed, whether with or without legal authority, in which
220 event the period runs until the end of the next day which is not a
221 Saturday, a Sunday, a legal holiday or any other day when the



222 agency's office is closed. When the period of time prescribed or
223 allowed is less than seven (7) days, intermediate Saturdays,
224 Sundays and legal holidays shall be excluded in the computation.
225 In the event any legal holiday falls on a Sunday, the next
226 following day shall be a legal holiday.

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

232 **SECTION 4.** Section 25-43-2.103, Mississippi Code of 1972, is
233 amended as follows:

234 25-43-2.103. (1) Any person with a substantial interest in
235 the subject matter may make a written request of an agency for a
236 declaratory opinion as to the applicability to specified
237 circumstances of a statute, rule or order within the primary
238 jurisdiction of the agency. * * * The written request must
239 clearly set forth the specific facts upon which an opinion is
240 asked for and shall be limited to a single transaction or
241 occurrence. An agency, through the agency head or its designee(s)
242 by rule, shall issue a declaratory opinion in response to a
243 written request for that opinion unless the agency determines that
244 issuance of the opinion under the circumstances would be contrary
245 to a rule adopted in accordance with subsection (2) of this
246 section.



247 (2) Except as may otherwise be provided under Section
248 25-43-2.104, each agency shall issue rules that provide for: (a)
249 the form, contents and filing of written requests for declaratory
250 opinions; (b) the procedural rights of persons in relation to the
251 written requests; and (c) the disposition of the written requests.
252 Those rules must describe the classes of circumstances in which
253 the agency will not issue a declaratory opinion.

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

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

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

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

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

266 (5) (a) When any person receives a declaratory opinion from
267 an agency and * * * has stated all the facts to govern * * * the
268 opinion, the agency shall take no civil or criminal action
269 against * * * the person who, in good faith, follows the direction
270 of * * * the opinion and acts in accordance * * * with the opinion
271 unless a court of competent jurisdiction, after a full



272 hearing, * * * judicially declares that * * * the opinion is
273 manifestly wrong and without any substantial support. No
274 declaratory opinion shall be given or considered if the opinion is
275 requested after suit is filed or prosecution begun. Any
276 declaratory opinion rendered pursuant to this chapter shall not be
277 binding or effective for any third party or person other than the
278 agency issuing the declaratory opinion and the person to whom the
279 opinion is issued and shall not be used as precedent for any other
280 transaction or occurrence beyond that set forth by the requesting
281 person.

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

286 (c) Subject to any confidentiality provisions
287 established by law, each agency shall make all declaratory
288 opinions available for public inspection and copying and shall
289 index them by name and subject, unless information contained
290 within * * * the opinions is confidential by statute or exempt
291 from public disclosure pursuant to another provision of law.

292 (6) Without in any way limiting a person's right to request
293 and receive a declaratory opinion under this section, or an
294 agency's duty to issue a declaratory opinion under this section,
295 nothing contained in this section shall prohibit an agency from
296 providing informal responses or advice, orally or in writing, to



297 any inquiries or requests for information submitted to the agency.
298 Informal responses shall not be considered a declaratory opinion
299 under this section.

300 **SECTION 5.** Section 25-43-3.105, Mississippi Code of 1972, is
301 amended as follows:

302 **[Through June 30, 2018, this section shall read as follows:]**

303 25-43-3.105. (1) * * * Before giving the notice required in
304 Section 25-43-3.103, each agency proposing the adoption of a rule
305 or amendment of an existing rule imposing a duty, responsibility
306 or requirement on any person shall consider the economic impact
307 the rule will have on the citizens of our state and the benefits
308 the rule will cause to accrue to those citizens.

309 (2) Each agency shall prepare a written report providing an
310 economic impact statement for the adoption of a rule or amendment
311 to an existing rule imposing a duty, responsibility or requirement
312 on any person. The economic impact statement shall include the
313 following:

314 (a) The specific legal authority authorizing the
315 promulgation of the rule * * *;

316 (b) A description of:

317 (i) The need for the proposed action;

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

320 (iii) The effect the proposed action will have on
321 the public health, safety and welfare * * *;



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

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

328 (e) An analysis of the impact of the proposed rule on
329 small business in the form of an economic impact statement as
330 described in Section 25-43-4.104;

331 (f) A comparison of the costs and benefits of the
332 proposed rule to the probable costs and benefits of not adopting
333 the proposed rule or significantly amending an existing rule;

334 (g) A determination of whether less costly methods or
335 less intrusive methods exist for achieving the purpose of the
336 proposed rule where reasonable alternative methods exist which are
337 not precluded by law;

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

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

344 (3) No rule or regulation shall be declared invalid based on
345 a challenge to the economic impact statement for the rule unless
346 the issue is raised in the agency proceeding. No person shall



347 have standing to challenge a rule, based upon the economic impact
348 statement or lack thereof, unless that person provided the agency
349 with information sufficient to make the agency aware of specific
350 concerns regarding the statement in an oral proceeding or in
351 written comments regarding the rule. The grounds for invalidation
352 of an agency action, based upon the economic impact statement, are
353 limited to the agency's failure to adhere to the procedure for
354 preparation of the economic impact statement as provided in this
355 section, or the agency's failure to consider information submitted
356 to the agency regarding specific concerns about the statement, if
357 that failure substantially impairs the fairness of the rule-making
358 proceeding.

359 (4) A concise summary and the full text of the economic
360 impact statement must be properly filed with the Secretary of
361 State for publication in the administrative bulletin and the
362 period during which persons may make written submissions on the
363 proposed rule shall not expire until at least twenty (20) days
364 after the date of such proper filing.

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

369 **[From and after July 1, 2018, this section shall read as**
370 **follows:]**



371 25-43-3.105. (1) * * * Before giving the notice required in
372 Section 25-43-3.103, each agency proposing the adoption of a rule
373 or significant amendment of an existing rule imposing a duty,
374 responsibility or requirement on any person shall consider the
375 economic impact the rule will have on the citizens of our state
376 and the benefits the rule will cause to accrue to those citizens.
377 For purposes of this section, a "significant amendment" means any
378 amendment to a rule for which the total aggregate cost to all
379 persons required to comply with that rule exceeds One Hundred
380 Thousand Dollars (\$100,000.00).

381 (2) Each agency shall prepare a written report providing an
382 economic impact statement for the adoption of a rule or
383 significant amendment to an existing rule imposing a duty,
384 responsibility or requirement on any person, except as provided in
385 subsection (7) of this section. The economic impact statement
386 shall include the following:

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

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

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



395 (d) An analysis of the impact of the proposed rule on
396 small business in the form of an economic impact statement as
397 described in Section 25-43-4.104;

398 (e) A comparison of the costs and benefits of the
399 proposed rule to the probable costs and benefits of not adopting
400 the proposed rule or significantly amending an existing rule;

401 (f) A determination of whether less costly methods or
402 less intrusive methods exist for achieving the purpose of the
403 proposed rule where reasonable alternative methods exist which are
404 not precluded by law;

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

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

411 (3) No rule or regulation shall be declared invalid based on
412 a challenge to the economic impact statement for the rule unless
413 the issue is raised in the agency proceeding. No person shall
414 have standing to challenge a rule, based upon the economic impact
415 statement or lack thereof, unless that person provided the agency
416 with information sufficient to make the agency aware of specific
417 concerns regarding the statement in an oral proceeding or in
418 written comments regarding the rule. The grounds for invalidation
419 of an agency action, based upon the economic impact statement, are



420 limited to the agency's failure to adhere to the procedure for
421 preparation of the economic impact statement as provided in this
422 section, or the agency's failure to consider information submitted
423 to the agency regarding specific concerns about the statement, if
424 that failure substantially impairs the fairness of the rule-making
425 proceeding.

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

432 (5) The properly filed summary of the economic impact
433 statement must also indicate where persons may obtain copies of
434 the full text of the economic impact statement and where, when and
435 how persons may present their views on the proposed rule and
436 demand an oral proceeding on the proposed rule if one is not
437 already provided.

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

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



443 (a) Any rule which is required by the federal
444 government pursuant to a state/federal program delegation
445 agreement or contract;

446 (b) Any rule which is expressly required by state law;
447 and

448 (c) A temporary rule adopted pursuant to Section
449 25-43-3.108.

450 **SECTION 6.** Section 25-43-4.104, Mississippi Code of 1972, is
451 brought forward as follows:

452 25-43-4.104. (1) Prior to submitting proposed permanent
453 rules for adoption, amendment, revision or revocation pursuant to
454 the Mississippi Administrative Procedures Law, the agency shall
455 comply with Section 25-43-3.105(2)(d) in order to determine
456 whether the proposed rules affect small business by preparing an
457 economic impact statement that includes the following:

458 (a) An identification and estimate of the number of
459 small businesses subject to the proposed regulation;

460 (b) The projected reporting, recordkeeping and other
461 administrative costs required for compliance with the proposed
462 regulation, including the type of professional skills necessary
463 for preparation of the report or record;

464 (c) A statement of the probable effect on impacted
465 small businesses;

466 (d) A description of any less intrusive or less costly
467 alternative methods of achieving the purpose of the proposed



468 regulation, including the following regulatory flexibility
469 analysis:

470 (i) The establishment of less stringent compliance
471 or reporting requirements for small businesses;

472 (ii) The establishment of less stringent schedules
473 or deadlines for compliance or reporting requirements for small
474 businesses;

475 (iii) The consolidation or simplification of
476 compliance or reporting requirements for small businesses;

477 (iv) The establishment of performance standards
478 for small businesses to replace design or operational standards
479 required in the proposed regulation; and

480 (v) The exemption of some or all small businesses
481 from all or any part of the requirements contained in the proposed
482 regulations.

483 (2) If the economic impact statement reflects that a
484 proposed rule may have an economic effect upon small business, the
485 agency shall submit a copy of the proposed rules and the economic
486 impact statement to the committee for its review and comment
487 pursuant to the review and comment provisions of the Mississippi
488 Administrative Procedures Law. During the committee review
489 process, the director or the director's designee of the
490 promulgating agency shall be available at the request of the
491 committee for comment on the proposed regulation.



492 (3) Within the review and comment period, if the committee
493 determines that the proposed rules may have an economic effect
494 upon small business, the committee may submit to the agency its
495 comments concerning the proposed regulation including its specific
496 recommendations.

497 (4) A small business that is affected or aggrieved by final
498 agency action to enforce a rule or regulation is entitled to
499 review of agency compliance with the requirements of this act.

500 (5) To ensure that any final rule continues to minimize
501 economic impact on small businesses in a manner consistent with
502 the stated objectives of applicable statutes, each agency shall,
503 during any periodic review required by this chapter, consider the
504 following factors:

505 (a) The continued need for the rule;

506 (b) The nature of complaints or comments received
507 concerning the rule from the public;

508 (c) The complexity of the rule;

509 (d) The extent to which the rule overlaps, duplicates,
510 or conflicts with other federal, state and local governmental law
511 or rules; and

512 (e) The length of time since the rule has been
513 evaluated or the degree to which technology, economic conditions,
514 or other factors have changed in the area affected by the rule.

515 (6) If an agency's economic impact statement reflects that a
516 proposed rule will have no economic impact upon a small business,



517 or if an agency fails to file an economic impact statement and the
518 committee otherwise determines that the agency's proposed rule
519 will have an economic impact, then the committee may file its own
520 economic impact statement for the agency's proposed rule with the
521 Secretary of State and notify the appropriate agency that the
522 economic impact statement was filed. When the committee files its
523 economic impact statement, if an agency has not completed the
524 regulatory process that is required for the applicable proposed
525 rule to become final, the committee shall have an additional sixty
526 (60) days from the date of filing its economic impact statement
527 with the Secretary of State to submit its comments concerning the
528 proposed regulation and any specific recommendations to the
529 agency, for its consideration. During the additional sixty (60)
530 days' committee review process, the director of the promulgating
531 agency, or his or her designee, shall be available at the request
532 of the committee to comment on the proposed regulation.

533 **SECTION 7.** Section 25-43-4.105, Mississippi Code of 1972, is
534 brought forward as follows:

535 25-43-4.105. (1) For promulgated regulations, the committee
536 may file a written petition with the agency that has promulgated
537 the regulations opposing all or part of a regulation that has an
538 impact on small business. In addition to distinctly setting forth
539 how the regulation has had an impact on small business, the
540 committee's petition shall address the following factors:

541 (a) The continued need for the rule;



- 542 (b) The nature of complaints or comments received
543 concerning the rule from the public;
- 544 (c) The complexity of the rule;
- 545 (d) The extent to which the rule overlaps, duplicates
546 or conflicts with other federal, state and local governmental laws
547 or rules; and
- 548 (e) The length of time since the rule has been
549 evaluated or the degree to which technology, economic conditions
550 or other factors have changed in the area affected by the rule.

551 The petition may also renew any earlier comments made by the
552 committee when the regulation was first promulgated, as provided
553 by Section 25-43-4.104(3). Furthermore, the committee's petition
554 shall make a specific recommendation concerning the regulation,
555 including, but not limited to, whether the regulation should be
556 amended, revised or revoked.

557 (2) The agency shall submit a written response of its
558 determination to the committee within sixty (60) days after
559 receipt of the petition. If the agency determines that the
560 petition merits the amendment, revision, or revocation of a
561 regulation, the agency may initiate proceedings in accordance with
562 the applicable requirements of the Mississippi Administrative
563 Procedures Law. If the agency determines that the petition is
564 without merit, the committee may submit within thirty (30) days
565 additional data in support of its petition.



566 **SECTION 8.** This act shall take effect and be in force from
567 and after July 1, 2017.

