

By: Representatives Zuber, Hopkins

To: Accountability,
Efficiency, Transparency;
Judiciary A

HOUSE BILL NO. 38

1 AN ACT TO AMEND SECTIONS 25-43-3.112 AND 25-43-3.113,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO AGENCY RULE OR
3 REGULATION THAT AFFECTS THE GENERAL PUBLIC SHALL BECOME EFFECTIVE
4 UNTIL IT HAS BEEN APPROVED BY THE STATE AUDITOR OR HIS OR HER
5 DESIGNEE; TO PROVIDE THE MINIMUM CRITERIA FOR THE STATE AUDITOR OR
6 HIS OR HER DESIGNEE TO USE WHEN DETERMINING WHETHER TO OBJECT TO
7 OR APPROVE ANY PROPOSED RULE; TO AMEND SECTIONS 25-43-3.108 AND
8 25-43-3.110, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
9 SECTIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 25-43-3.112, Mississippi Code of 1972, is
12 amended as follows:

13 25-43-3.112. An agency shall file in the Office of the
14 Secretary of State each rule it adopts and all rules existing on
15 July 1, 2005, that have not previously been filed. The filing
16 must be done as soon after adoption of the rule as is practicable.
17 At the time of filing, each rule adopted after July 1, 2005, must
18 have included in or attached to it the material set out in Section
19 25-43-3.109. The Secretary of State shall affix to each rule and
20 statement a certification of the date of filing and keep a
21 permanent register open to public inspection of all filed rules



22 and attached material. In filing a rule, each agency shall use a
23 standard format prescribed by the Secretary of State. The
24 Secretary of State shall file a copy of each rule filed with him,
25 along with his statement and certification, with the Office of the
26 State Auditor.

27 **SECTION 2.** Section 25-43-3.113, Mississippi Code of 1972, is
28 amended as follows:

29 25-43-3.113. (1) Except to the extent subsection (2) * * *,
30 (3) or (4) of this section provides otherwise, each rule adopted
31 after July 1, 2005, becomes effective thirty (30) days after its
32 proper filing in the Office of the Secretary of State.

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

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

40 (i) It is required by Constitution, statute or
41 court order;

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

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



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

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

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

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

59 (3) Except as otherwise provided in subsection (2) of this
60 section, no agency rule or regulation that affects the general
61 public shall become effective until it has been approved by the
62 State Auditor or his or her designee. In determining whether to
63 object to or approve any proposed rule, the State Auditor or his
64 or her designee shall consider, at a minimum, the following
65 criteria:

66 (a) Would the absence of the rule significantly harm or
67 endanger the public health, safety or welfare?

68 (b) Is there a reasonable relationship between the
69 state's police power and the protection of the public health,
70 safety or welfare?



71 (c) Is there another, less restrictive method of
72 regulation available that could adequately protect the public?

73 (d) Does the rule have the effect of directly or
74 indirectly increasing the costs of any goods or services involved
75 and, if so, to what degree?

76 (e) Is the increase in cost, if any, more harmful to
77 the public than the harm that might result from the absence of the
78 rule?

79 (f) Are all facets of the rulemaking process designed
80 solely for the purpose of, and do they have as their primary
81 effect, the protection of the public?

82 (g) Any other criteria the committee may deem
83 appropriate.

84 (* * *4) This section does not relieve an agency from
85 compliance with any provision of law requiring that some or all of
86 its rules be approved by other designated officials or bodies
87 before they become effective.

88 **SECTION 3.** Section 25-43-3.108, Mississippi Code of 1972, is
89 amended as follows:

90 25-43-3.108. If an agency finds that an imminent peril to
91 the public health, safety or welfare requires adoption of a rule
92 upon fewer than twenty-five (25) days' notice and without the
93 approval of the State Auditor or his or her designee and states in
94 writing its reasons for that finding, it may proceed without prior
95 notice of hearing or upon any abbreviated notice and hearing and



96 without approval of the State Auditor or his or her designee that
97 it finds practicable to adopt an emergency rule. The rule may be
98 effective for a period of not longer than one hundred twenty (120)
99 days, renewable once for a period not exceeding ninety (90) days,
100 but the adoption of an identical rule under this Article III is
101 not precluded.

102 **SECTION 4.** Section 25-43-3.110, Mississippi Code of 1972, is
103 amended as follows:

104 25-43-3.110. (1) An agency shall maintain an official
105 rule-making record for each rule it (a) proposes or (b) adopts.
106 The agency has the exclusive authority to prepare and exclusive
107 authority to certify the record or any part thereof, including,
108 but not limited to, any transcript of the proceedings, and the
109 agency's certificate shall be accepted by the court and by any
110 other agency. The record must be available for public inspection.

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

112 (a) Copies of all notices of proposed rule-making or
113 oral proceedings or other publications in the administrative
114 bulletin with respect to the rule or the proceeding upon which the
115 rule is based;

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

119 (c) All written requests, submissions and comments
120 received by the agency and all other written materials considered



121 by the agency in connection with the formulation, proposal or
122 adoption of the rule or the proceeding upon which the rule is
123 based;

124 (d) Any official transcript of oral presentations made
125 in the proceeding upon which the rule is based or, if not
126 transcribed, any tape recording or stenographic record of those
127 presentations, and any memorandum prepared by a presiding official
128 summarizing the contents of those presentations. The word
129 "transcript" includes a written transcript, a printed transcript,
130 an audible audiotape or videotape that is indexed and annotated so
131 that it is readily accessible and any other means that the agency
132 may have by rule provided for the reliable and accessible
133 preservation of the proceeding;

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

136 (f) A copy of the rule and related information set out
137 in Section 25-43-3.109 as filed in the Office of the Secretary of
138 State * * *; and

139 (g) The approval of the State Auditor, or his or her
140 designee, or, if the rule was not approved by the State Auditor
141 upon first application, the reasons therefore.

142 (3) The agency shall have authority to engage such persons
143 and acquire such equipment as may be reasonably necessary to
144 record and preserve in any technically and practicably feasible



145 manner all matters and all proceedings had at any rule-making
146 proceeding.

147 (4) Upon judicial review, the record required by this
148 section constitutes the official agency rule-making record with
149 respect to a rule. Except as otherwise required by a provision of
150 law, the agency rule-making record need not constitute the
151 exclusive basis for agency action on that rule or for judicial
152 review thereof.

153 **SECTION 5.** This act shall take effect and be in force from
154 and after July 1, 2023.

