

By: Representative Boyd (19th)

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 868

1 AN ACT TO AMEND SECTION 25-43-3.103, MISSISSIPPI CODE OF
2 1972, TO PROVIDE THAT THE NOTICE OF AN AGENCY'S PROPOSED RULE
3 ADOPTION SHALL INCLUDE HOW MUCH THE PROPOSED RULE WILL COST THE
4 STATE; TO REQUIRE A COPY OF THE NOTICE OF PROPOSED RULE ADOPTION
5 TO BE PROVIDED TO EACH MEMBER OF THE MISSISSIPPI LEGISLATURE; TO
6 AMEND SECTION 25-43-3.105, MISSISSIPPI CODE OF 1972, TO PROVIDE
7 THAT A COPY OF THE ECONOMIC IMPACT STATEMENT SHALL BE FORWARDED TO
8 EACH MEMBER OF THE MISSISSIPPI LEGISLATURE AT NO COST TO THE
9 MEMBER; TO BRING FORWARD SECTION 25-43-4.104, MISSISSIPPI CODE OF
10 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED
11 PURPOSES.

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

13 **SECTION 1.** Section 25-43-3.103, Mississippi Code of 1972, is
14 amended as follows:

15 25-43-3.103. (1) At least twenty-five (25) days before the
16 adoption of a rule an agency shall cause notice of its
17 contemplated action to be properly filed with the Secretary of
18 State for publication in the administrative bulletin. The notice
19 of proposed rule adoption must include:

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

22 (b) The specific legal authority authorizing the
23 promulgation of rules;

24 (c) A reference to all rules repealed, amended or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

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

28 (e) Where, when and how persons may present their views
29 on the proposed rule; * * *

30 (f) Where, when and how persons may demand an oral
31 proceeding on the proposed rule if the notice does not already
32 provide for one * * *;

33 (g) How much the proposed rule will cost the state.

34 (2) Within three (3) days after its proper filing with the
35 Secretary of State for publication in the administrative bulletin,
36 the agency shall cause a copy of the notice of proposed rule
37 adoption to be provided to each member of the Mississippi
38 Legislature and to each person who has made a timely request to
39 the agency to be placed on the mailing list maintained by the
40 agency of persons who have requested notices of proposed rule
41 adoptions. An agency may mail the copy to the person and may
42 charge the person a reasonable fee for such service, which fee may
43 be in excess of the actual cost of providing the person with a
44 mailed copy; however, no such fee shall be charged to members of
45 the Mississippi Legislature. Alternatively, the agency may
46 provide the copy via the Internet or by transmitting it to the



47 person by electronic means, including, but not limited to,
48 facsimile transfer or e-mail at no charge to the person, if the
49 person consents to this form of delivery.

50 **SECTION 2.** Section 25-43-3.105, Mississippi Code of 1972, is
51 amended as follows:

52 25-43-3.105. (1) Prior to giving the notice required in
53 Section 25-43-3.103, each agency proposing the adoption of a rule
54 or significant amendment of an existing rule imposing a duty,
55 responsibility or requirement on any person shall consider the
56 economic impact the rule will have on the citizens of our state
57 and the benefits the rule will cause to accrue to those citizens.
58 For purposes of this section, a "significant amendment" means any
59 amendment to a rule for which the total aggregate cost to all
60 persons required to comply with that rule exceeds One Hundred
61 Thousand Dollars (\$100,000.00).

62 (2) Each agency shall prepare a written report providing an
63 economic impact statement for the adoption of a rule or
64 significant amendment to an existing rule imposing a duty,
65 responsibility or requirement on any person, except as provided in
66 subsection (7) of this section. The economic impact statement
67 shall include the following:

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

70 (b) An estimate of the cost to the agency, and to any
71 other state or local government entities, of implementing and



72 enforcing the proposed action, including the estimated amount of
73 paperwork, and any anticipated effect on state or local revenues;

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

76 (d) An analysis of the impact of the proposed rule on
77 small business;

78 (e) A comparison of the costs and benefits of the
79 proposed rule to the probable costs and benefits of not adopting
80 the proposed rule or significantly amending an existing rule;

81 (f) A determination of whether less costly methods or
82 less intrusive methods exist for achieving the purpose of the
83 proposed rule where reasonable alternative methods exist which are
84 not precluded by law;

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

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

91 (3) No rule or regulation shall be declared invalid based on
92 a challenge to the economic impact statement for the rule unless
93 the issue is raised in the agency proceeding. No person shall
94 have standing to challenge a rule, based upon the economic impact
95 statement or lack thereof, unless that person provided the agency
96 with information sufficient to make the agency aware of specific



97 concerns regarding the statement in an oral proceeding or in
98 written comments regarding the rule. The grounds for invalidation
99 of an agency action, based upon the economic impact statement, are
100 limited to the agency's failure to adhere to the procedure for
101 preparation of the economic impact statement as provided in this
102 section, or the agency's failure to consider information submitted
103 to the agency regarding specific concerns about the statement, if
104 that failure substantially impairs the fairness of the rule-making
105 proceeding.

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

112 (5) The properly filed summary of the economic impact
113 statement must also indicate where persons may obtain copies of
114 the full text of the economic impact statement and where, when and
115 how persons may present their views on the proposed rule and
116 demand an oral proceeding on the proposed rule if one is not
117 already provided.

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



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

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

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

and

(c) A temporary rule adopted pursuant to Section

25-43-3.108.

(8) A copy of the economic impact statement shall be

forwarded to each member of the Mississippi Legislature at no cost
to the member.

SECTION 3. Section 25-43-4.104, Mississippi Code of 1972, is

brought forward as follows:

25-43-4.104. (1) Prior to submitting proposed permanent

136 rules for adoption, amendment, revision or revocation pursuant to
137 the Mississippi Administrative Procedures Law, the agency shall
138 comply with Section 25-43-3.105(2)(d) in order to determine
139 whether the proposed rules affect small business by preparing an
140 economic impact statement that includes the following:

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

143 (b) The projected reporting, recordkeeping and other
144 administrative costs required for compliance with the proposed
145 regulation, including the type of professional skills necessary
146 for preparation of the report or record;



147 (c) A statement of the probable effect on impacted
148 small businesses;

149 (d) A description of any less intrusive or less costly
150 alternative methods of achieving the purpose of the proposed
151 regulation, including the following regulatory flexibility
152 analysis:

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

155 (ii) The establishment of less stringent schedules
156 or deadlines for compliance or reporting requirements for small
157 businesses;

158 (iii) The consolidation or simplification of
159 compliance or reporting requirements for small businesses;

160 (iv) The establishment of performance standards
161 for small businesses to replace design or operational standards
162 required in the proposed regulation; and

163 (v) The exemption of some or all small businesses
164 from all or any part of the requirements contained in the proposed
165 regulations.

166 (2) If the economic impact statement reflects that a
167 proposed rule may have an economic effect upon small business, the
168 agency shall submit a copy of the proposed rules and the economic
169 impact statement to the committee for its review and comment
170 pursuant to the review and comment provisions of the Mississippi
171 Administrative Procedures Law. During the committee review

172 process, the director or the director's designee of the
173 promulgating agency shall be available at the request of the
174 committee for comment on the proposed regulation.

175 (3) Within the review and comment period, if the committee
176 determines that the proposed rules may have an economic effect
177 upon small business, the committee may submit to the agency its
178 comments concerning the proposed regulation including its specific
179 recommendations.

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

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

188 (a) The continued need for the rule;

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

191 (c) The complexity of the rule;

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



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

(6) If an agency's economic impact statement reflects that a proposed rule will have no economic impact upon a small business, or if an agency fails to file an economic impact statement and the committee otherwise determines that the agency's proposed rule will have an economic impact, then the committee may file its own economic impact statement for the agency's proposed rule with the Secretary of State and notify the appropriate agency that the economic impact statement was filed. When the committee files its economic impact statement, if an agency has not completed the regulatory process that is required for the applicable proposed rule to become final, the committee shall have an additional sixty (60) days from the date of filing its economic impact statement with the Secretary of State to submit its comments concerning the proposed regulation and any specific recommendations to the agency, for its consideration. During the additional sixty (60) days' committee review process, the director of the promulgating agency, or his or her designee, shall be available at the request of the committee to comment on the proposed regulation.

216 **SECTION 4.** This act shall take effect and be in force from
217 and after July 1, 2025.

