

By: Representative Smith

To: Judiciary A

HOUSE BILL NO. 686

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 2016"; TO DEFINE
5 CERTAIN TERMS; TO REQUIRE CERTAIN INFORMATION TO BE PUBLISHED BY
6 STATE AGENCIES WITH THE SECRETARY OF STATE AND MADE AVAILABLE TO
7 THE PUBLIC; TO AUTHORIZE THE CHARGING OF FEES FOR INFORMATION
8 PROVIDED TO THE PUBLIC; TO PROVIDE PROCEDURES FOR OBTAINING
9 RECORDS; TO REQUIRE AGENCIES TO PROMULGATE RULES AND REGULATIONS
10 AND TO PRESCRIBE THE PROCEDURE TO BE FOLLOWED IN THE PROMULGATION
11 OF RULES AND REGULATIONS; TO REQUIRE REPORTING OF PROPOSED RULES
12 TO THE LEGISLATURE; TO PRESCRIBE THE MANNER IN WHICH AGENCIES ARE
13 TO 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 2016."

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, 2017;
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, 2017, 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 this act, unless unusual circumstances, as defined for
311 purposes of Section 7, apply to the processing of the request.



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

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

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

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

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



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

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

355 (b) The Attorney General shall:

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

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



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

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

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

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

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

377 (b) Make a determination, with respect to any appeal,
378 within twenty (20) days (excepting Saturdays, Sundays, and legal
379 public holidays) after the receipt of the appeal. If on appeal
380 the denial of the request for records is upheld, in whole or in
381 part, the agency shall notify the person making the request of the
382 provisions for judicial review of that determination under Section
383 5 of this act.



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

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

406 (b) With respect to a request for which a written
407 notice under paragraph (a) extends the time limits prescribed
408 under paragraph (a) of subsection (1), the agency shall notify the



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

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

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

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

431 (iii) The need for consultation, which must be
432 conducted with all practicable speed, with another agency having a
433 substantial interest in the determination of the request or among



434 two (2) or more components of the agency having substantial
435 subject-matter interest in the request.

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

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

457 (b) For purposes of this subsection, the term
458 "exceptional circumstances" does not include a delay that results



459 from a predictable agency workload of requests under this act,
460 unless the agency demonstrates reasonable progress in reducing its
461 backlog of pending requests.

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

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

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

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

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

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



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

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

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

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

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

502 (d) A circuit or chancery court of the district of the
503 complainant shall have jurisdiction to review an agency denial of
504 expedited processing of a request for records after the agency has
505 provided a complete response to the request. This review must be
506 de novo.

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



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

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

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

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

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

527 (a) Establish a system to assign an individualized
528 tracking number for each request received which will take longer
529 than ten (10) days to process and provide to each person making a
530 request the tracking number assigned to that request; and

531 (b) Establish a telephone line or Internet service that
532 provides information about the status of a request to the person



533 making the request using the assigned tracking number, including
534 the date on which the agency originally received the request and
535 an estimated date on which the agency will complete action on the
536 request.

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

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

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

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

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

552 **SECTION 10.** (1) On or before February 1 of each year, each
553 agency shall submit to the Chairmen of the Judiciary A Committees
554 of the House of Representatives and the Mississippi Senate a
555 report that covers the preceding fiscal year and includes the
556 following:



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

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

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

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

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

578 (f) The average number of days taken by the agency to
579 respond to a request beginning on the date on which the request
580 was received by the agency, the median number of days for the



581 agency to respond to those requests and the range in number of
582 days for the agency to respond to the requests;

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

745 (h) "Matching program" means:

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

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



751 requirements by, applicants for, recipients or beneficiaries of,
752 participants in, or providers of services with respect to cash or
753 in-kind assistance or payments under state benefit programs; or

754 2. Recouping payments or delinquent debts
755 under such state benefit programs.

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

830 (c) For a routine use;

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

891 (ii) Promptly either:

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

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



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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

1004 (k) At least thirty (30) days before publication of
1005 information under paragraph (d)(iv) of this section, publish
1006 notice of any new use or intended use of the information in the
1007 system and provide an opportunity for interested persons to submit
1008 written data, views or arguments to the agency; and

1009 (l) If the agency is a recipient agency or a source
1010 agency in a matching program with a nonfederal agency, with
1011 respect to any establishment or revision of a matching program, at
1012 least thirty (30) days before conducting the program, publish in
1013 the notice of the establishment or revision.

1014 **SECTION 17.** In order to carry out the provisions of Sections
1015 12 through 22 of this act, each agency that maintains a system of
1016 records shall promulgate rules in accordance with the
1017 requirements, including general notice, of this act. The rules
1018 must:

1019 (a) Establish procedures by which an individual can be
1020 notified in response to his request if any system of records named
1021 by the individual contains a record pertaining to him;



1022 (b) Define reasonable times, places and requirements
1023 for identifying an individual who requests his record or
1024 information pertaining to him before the agency makes the record
1025 or information available to the individual;

1026 (c) Establish procedures for the disclosure to an
1027 individual, upon his request, of his record or information
1028 pertaining to him, including any special procedure, if deemed
1029 necessary, for the disclosure to an individual of medical records,
1030 including psychological records, pertaining to him;

1031 (d) Establish procedures for reviewing a request from
1032 an individual concerning the amendment of any record or
1033 information pertaining to the individual, for making a
1034 determination on the request, for an appeal within the agency of
1035 an initial adverse agency determination, and for whatever
1036 additional means may be necessary for each individual to be able
1037 to exercise fully his rights under this act; and

1038 (e) Establish fees to be charged, if any, to any
1039 individual for making copies of his record, excluding the cost of
1040 any search for and review of the record.

1041 The Office of the Secretary of State shall compile and
1042 publish biennially the rules promulgated under this section and
1043 agency notices published under paragraph (d) of Section 16 in a
1044 form available to the public at low cost.

1045 **SECTION 18.** (1) An individual may bring a civil action
1046 against an agency, and the circuit or chancery court in the



1047 district in which the complaint resides or has his principal place
1048 of business or in which the agency records are situated shall have
1049 jurisdiction in the matter, whenever any agency:

1050 (a) Makes a determination under paragraph (c) of
1051 Section 15 of this act not to amend an individual's record in
1052 accordance with his request or fails to make a review in
1053 conformity with that paragraph;

1054 (b) Refuses to comply with an individual request under
1055 paragraph (a) of Section 15;

1056 (c) Fails to maintain any record concerning any
1057 individual with such accuracy, relevance, timeliness and
1058 completeness as is necessary to assure fairness in any
1059 determination relating to the qualifications, character, rights or
1060 opportunities of, or benefits to, the individual which may be made
1061 on the basis of the record, and consequently, a determination is
1062 made which is adverse to the individual; or

1063 (d) Fails to comply with any other provision of
1064 Sections 12 through 22 of this act or any rule promulgated
1065 thereunder, in such a way as to have an adverse effect on an
1066 individual.

1067 (2) (a) In any suit brought under the subsection (1)(a) of
1068 this section, the court may order the agency to amend the
1069 individual's record in accordance with his request or in such
1070 other way as the court may direct. In such a case, the court
1071 shall determine the matter de novo.



1072 (b) The court may assess against the agency reasonable
1073 attorney's fees and other litigation costs reasonably incurred in
1074 any case under this subsection in which the complainant
1075 substantially has prevailed.

1076 (3) (a) In any suit brought under subsection (1)(b), the
1077 court may enjoin the agency from withholding the records and order
1078 the production to the complainant of any agency records improperly
1079 withheld from him. In such a case, the court shall determine the
1080 matter de novo and may examine the contents of any agency records
1081 in camera to determine whether the records or any portion thereof
1082 may be withheld under any of the exemptions set forth in this act,
1083 and the burden is on the agency to sustain its action.

1084 (b) The court may assess against the agency reasonable
1085 attorney's fees and other litigation costs reasonably incurred in
1086 any case under this subsection in which the complainant
1087 substantially has prevailed.

1088 (4) In any suit brought under subsection (1)(c) or (d) of
1089 this section in which the court determines that the agency acted
1090 in a manner that was intentional or willful, the agency shall be
1091 liable to the individual in an amount equal to the sum of:

1092 (a) Actual damages sustained by the individual as a
1093 result of the refusal or failure, but in no case shall a person
1094 entitled to recovery receive less than the sum of Ten Thousand
1095 Dollars (\$10,000.00); and



1096 (b) The costs of the action, together with reasonable
1097 attorney's fees, as determined by the court.

1098 (5) An action to enforce any liability created under
1099 Sections 12 through 22 of this act may be brought in the circuit
1100 or chancery court in the district in which the complainant resides
1101 or has his principal place of business or in which the agency
1102 records are situated, without regard to the amount in controversy,
1103 within two (2) years from the date on which the cause of action
1104 arises; however, where an agency has materially and willfully
1105 misrepresented any information required under this act to be
1106 disclosed to an individual and the information so misrepresented
1107 is material to establishment of the liability of the agency to the
1108 individual, the action may be brought at any time within two (2)
1109 years after discovery by the individual of the misrepresentation.
1110 Nothing in this act may be construed to authorize any civil action
1111 by reason of any injury sustained as the result of a disclosure of
1112 a record before July 1, 2016.

1113 **SECTION 19.** For the purposes of Sections 12 through 22 of
1114 this act, the parent of any minor, or the legal guardian of any
1115 individual who has been declared to be incompetent due to physical
1116 or mental incapacity or age by a court of competent jurisdiction,
1117 may act on behalf of the individual.

1118 **SECTION 20.** (1) Any officer or employee of an agency who,
1119 by virtue of his employment or official position, has possession
1120 of or access to agency records that contain individually



1121 identifiable information, the disclosure of which is prohibited by
1122 Sections 12 through 22 of this act or by rules or regulations
1123 established thereunder, and who, knowing that disclosure of the
1124 specific material is so prohibited, willfully discloses the
1125 material in any manner to any person or agency not entitled to
1126 receive it, is guilty of a misdemeanor and must be fined not less
1127 than Five Thousand Dollars (\$5,000.00).

1128 (2) Any officer or employee of any agency who willfully
1129 maintains a system of records without meeting the notice
1130 requirements of paragraph (d) of Section 16 of this act is guilty
1131 of a misdemeanor and must be fined not less than Five thousand
1132 Dollars (\$5,000.00).

1133 (3) Any person who knowingly and willfully requests or
1134 obtains any record concerning an individual from an agency under
1135 false pretenses is guilty of a misdemeanor and must be fined not
1136 less than Five Thousand Dollars (\$5,000.00).

1137 **SECTION 21.** When an agency provides by a contract for the
1138 operation by or on behalf of the agency of a system of records to
1139 accomplish an agency function, the agency shall cause, consistent
1140 with its authority, the requirements of Sections 12 through 22 of
1141 this act to be applied to the system. For purposes of Section 20,
1142 any such contractor and any employee of the contractor, if the
1143 contract is agreed to on or after July 1, 2016, must be considered
1144 to be an employee of an agency.



1145 **SECTION 22.** An individual's name and address may not be sold
1146 or rented by an agency unless the action specifically is
1147 authorized by law. This section may not be construed to require
1148 the withholding of names and addresses otherwise permitted to be
1149 made public.

1150 **SECTION 23.** For purposes of Sections 23 through 34 of this
1151 act, the following words and phrases have the meanings ascribed in
1152 this section unless the context clearly indicates otherwise:

1153 (a) "Agency" means any agency headed by a body composed
1154 of two (2) or more individual members, a majority of whom are
1155 appointed to their position by the Governor, and any subdivision
1156 thereof authorized to act on behalf of the agency.

1157 (b) "Meeting" means the deliberations of at least the
1158 number of individual agency members required to take action on
1159 behalf of the agency where the deliberations determine or result
1160 in the joint conduct or disposition of official agency business,
1161 but does not include deliberations required or permitted by
1162 Section 26 or 27.

1163 (c) "Member" means an individual who belongs to a body
1164 heading an agency.

1165 **SECTION 24.** (1) Members may not jointly conduct or dispose
1166 of agency business other than in accordance with Sections 23
1167 through 34 of this act.

1168 (2) Except as provided in Section 25, every portion of every
1169 meeting of an agency must be open to public observation.



1170 **SECTION 25.** Except in a case where the agency finds that the
1171 public interest requires otherwise, subsection (2) of Section 24
1172 does not apply to any portion of an agency meeting, and the
1173 requirements of Sections 26 and 27 do not apply to any information
1174 pertaining to the meeting otherwise required by Sections 23
1175 through 34 of this act to be disclosed to the public, where the
1176 agency properly determines that the portion or portions of its
1177 meeting or the disclosure of the information is likely to:

1178 (a) Disclose information of a personal nature where
1179 disclosure would constitute a clearly unwarranted invasion of
1180 personal privacy; or

1181 (b) Disclose investigatory records compiled for law
1182 enforcement purposes or information which, if written, would be
1183 contained in those records, but only to the extent that the
1184 production of the records or information would endanger the life
1185 or physical safety of law enforcement personnel.

1186 **SECTION 26.** (1) Action under Section 25 may be taken only
1187 when a majority of the entire membership of the agency votes to
1188 take the action. A separate vote of the agency members must be
1189 taken with respect to each agency meeting during which a portion
1190 or portions are proposed to be closed to the public under Section
1191 25, or with respect to any information that is proposed to be
1192 withheld under Section 25. A single vote may be taken with
1193 respect to a series of meetings, a portion or portions of which
1194 are proposed to be closed to the public, or with respect to any



1195 information concerning the series of meetings, so long as each
1196 meeting in the series involves the same particular matters and is
1197 scheduled to be held no more than thirty (30) days after the
1198 initial meeting in that series. The vote of each agency member
1199 participating in the vote must be recorded, and no proxies may be
1200 allowed.

1201 (2) Whenever any person whose interests may be directly
1202 affected by a portion of a meeting requests that the agency close
1203 that portion to the public for any of the reasons referred to in
1204 Section 25, the agency, upon request of any one of its members,
1205 shall vote by recorded vote whether or not to close the meeting.

1206 (3) Within one (1) day of any vote taken under subsection
1207 (1) or (2) of this section, the agency shall make available
1208 publicly a written copy of the vote reflecting the vote of each
1209 member on the question. If a portion of a meeting will be closed
1210 to the public, within one (1) day of the vote taken under
1211 subsection (1) or (2), the agency must make publicly available a
1212 full written explanation of its action closing that portion,
1213 together with a list of all persons expected to attend the meeting
1214 and their affiliation.

1215 (4) Any agency may provide, by regulation, for the closing
1216 of a meeting or portion of a meeting if a majority of the members
1217 of the agency votes by recorded vote at the beginning of that
1218 meeting, or portion of the meeting, to close the exempt portion or
1219 portions of the meeting. A copy of the vote, reflecting the vote



1220 of each member on the question, must be made available to the
1221 public. Subsections (1), (2), and (3) of this section and Section
1222 27 do not apply to any portion of a meeting to which such a
1223 regulation applies; however, except to the extent that the
1224 information is exempt from disclosure under Section 25, the agency
1225 must provide the public with a public announcement of the time,
1226 place and subject matter of the meeting and of each portion of the
1227 meeting at the earliest practicable time.

1228 **SECTION 27.** (1) In the case of each meeting, the agency
1229 shall make a public announcement, at least one (1) week before the
1230 meeting, of the time, place and subject matter of the meeting,
1231 whether it is to be open or closed to the public, and the name and
1232 phone number of the official designated by the agency to respond
1233 to requests for information about the meeting. The announcement
1234 must be made unless a majority of the members of the agency
1235 determines by a recorded vote that agency business requires that
1236 the meeting be called at an earlier date, in which case, the
1237 agency must make a public announcement of the time, place and
1238 subject matter of the meeting and whether the meeting will be open
1239 or closed to the public at the earliest practicable time.

1240 (2) The time or place of a meeting may be changed following
1241 the public announcement required under subsection (1) only if the
1242 agency publicly announces the change at the earliest practicable
1243 time. The subject matter of a meeting, or the determination of
1244 the agency to open or close a meeting or portion of a meeting to



1245 the public, may be changed following the public announcement
1246 required by this section only if:

1247 (a) A majority of the entire membership of the agency
1248 determines by a recorded vote that agency business so requires and
1249 that no earlier announcement of the change was possible; and

1250 (b) The agency publicly announces the change and the
1251 vote of each member upon the change at the earliest practicable
1252 time.

1253 (3) Immediately following each public announcement required
1254 by this section, notice of the time, place and subject matter of a
1255 meeting, whether the meeting is open or closed, any change in one
1256 (1) of the preceding and the name and phone number of the official
1257 designated by the agency to respond to requests for information
1258 about the meeting shall be submitted for publication on the
1259 agency's Internet website.

1260 **SECTION 28.** For every meeting closed under Section 25,
1261 counsel or the chief legal officer of the agency shall certify
1262 publicly that, in his or her opinion, the meeting may be closed to
1263 the public and shall state each relevant exemptive provision. A
1264 copy of the certification, together with a statement from the
1265 presiding officer of the meeting setting forth the time and place
1266 of the meeting, and the persons present, must be retained by the
1267 agency. The agency shall maintain a complete transcript or
1268 electronic recording adequate to record fully the proceedings of
1269 each meeting, or portion of a meeting, closed to the public,



1270 except that in the case of a meeting, or portion of a meeting,
1271 closed to the public pursuant to relevant provision, the agency
1272 shall maintain either such a transcript or recording, or a set of
1273 minutes. The minutes must fully and clearly describe all matters
1274 discussed and must provide a full and accurate summary of any
1275 actions taken, and the reasons therefor, including a description
1276 of each of the views expressed on any item and the record of any
1277 roll call vote reflecting the vote of each member on the question.
1278 All documents considered in connection with any action must be
1279 identified in such minutes.

1280 **SECTION 29.** The agency shall make promptly available to the
1281 public, in a place easily accessible to the public, the
1282 transcript, electronic recording or minutes of the discussion of
1283 any item on the agenda, or of any item of the testimony of a
1284 witness received at the meeting, except for any item or items of
1285 the discussion or testimony as the agency determines to contain
1286 information which may be withheld under Section 25. Copies of the
1287 transcript or minutes or a transcription of the recording
1288 disclosing the identity of each speaker must be furnished to any
1289 person at the actual cost of duplication or transcription. The
1290 agency shall maintain a complete verbatim copy of the transcript,
1291 a complete copy of the minutes or a complete electronic recording
1292 of each meeting or portion of a meeting closed to the public for a
1293 period of at least two (2) years after that meeting, or until one
1294 (1) year after the conclusion of any agency proceeding with



1295 respect to which the meeting or portion was held, whichever occurs
1296 later.

1297 **SECTION 30.** Within one hundred eighty (180) days after July
1298 1, 2016, each agency subject to the requirements of Sections 23
1299 through 34 of this act shall promulgate regulations to implement
1300 the requirements of Sections 24 through 28 of this act. Any
1301 person may bring a proceeding in the circuit, county or chancery
1302 court of the home county of the complainant to require an agency
1303 to promulgate the regulations if the agency has not promulgated
1304 the regulations within the designated time period. Subject to any
1305 limitations of time provided by law, any person may bring a
1306 proceeding in the circuit, county or chancery court of the home
1307 county of the complainant to set aside agency regulations issued
1308 pursuant to this section which are not in accord with the
1309 requirements of Sections 24 through 28 of this section and to
1310 require the promulgation of regulations that are in accord with
1311 those sections.

1312 **SECTION 31.** (1) The circuit, county and chancery courts of
1313 the home county of the complainant shall have jurisdiction to
1314 enforce the requirements of Sections 24 through 28 of this act by
1315 declaratory judgment, injunctive relief or other relief as may be
1316 appropriate. Actions may be brought by any person against an
1317 agency before, or within sixty (60) days after, the meeting out of
1318 which the violation of Sections 23 through 34 arises. However,
1319 that if a public announcement of the meeting is not initially



1320 provided by the agency in accordance with the requirements of
1321 Sections 23 through 34, the action may be instituted under those
1322 sections at any time before sixty (60) days after any public
1323 announcement of the meeting. Actions may be brought in the
1324 circuit, county and chancery courts of the home county of the
1325 complainant. In such an action, a defendant must serve his answer
1326 within thirty (30) days after the service of the complaint. The
1327 burden is on the defendant to sustain his action. In deciding
1328 these cases, the court may examine in camera any portion of the
1329 transcript, electronic recording or minutes of a meeting closed to
1330 the public and may take such additional evidence as it deems
1331 necessary. The court, having due regard for orderly
1332 administration and the public interest as well as the interests of
1333 the parties, may grant such equitable relief as it deems
1334 appropriate, including granting an injunction against future
1335 violations of Sections 23 through 34 of this act or ordering the
1336 agency to make available to the public the portion of the
1337 transcript, recording or minutes of a meeting which are not
1338 authorized to be withheld under Section 25.

1339 (2) Any court otherwise authorized by law to review agency
1340 action may inquire, at the application of any person properly
1341 participating in the proceeding pursuant to other applicable law,
1342 into violations by the agency of the requirements of Sections 23
1343 through 34 and afford such relief as it deems appropriate.



1344 (3) The court may assess against any party reasonable
1345 attorney's fees and other litigation costs reasonably incurred by
1346 any other party who substantially prevails in any action brought
1347 in accordance with Section 29 or 30, except that costs may be
1348 assessed against the plaintiff only where the court finds that the
1349 suit was initiated by the plaintiff primarily for frivolous or
1350 dilatory purposes. In the case of assessment of costs against an
1351 agency, the costs may be assessed by the court against the state.

1352 **SECTION 32.** Each agency subject to the requirements of
1353 Sections 23 through 34 of this act shall report annually to the
1354 Legislature regarding the following:

1355 (a) The changes in the policies and procedures of the
1356 agency under Sections 23 through 34 which have occurred during the
1357 preceding one-year period.

1358 (b) A tabulation of the number of meetings held, the
1359 exemptions applied to close meetings and the days of public notice
1360 provided to close meetings.

1361 (c) A brief description of litigation or formal
1362 complaints concerning the implementation of Sections 23 through 34
1363 by the agency.

1364 (d) A brief explanation of any changes in law that have
1365 affected the responsibilities of the agency under Sections 23
1366 through 34 of this act.

1367 **SECTION 33.** Sections 23 through 34 do not constitute
1368 authority to withhold any information from the Legislature and do



1369 not authorize the closing of any agency meeting or portion of an
1370 agency meeting required by any other provision of law to be open.

1371 **SECTION 34.** Nothing in Sections 23 through 34 of this act
1372 authorizes any agency to withhold from any individual any record,
1373 including transcripts, recordings or minutes required by Sections
1374 23 through 34, which is otherwise accessible to the individual
1375 under Sections 12 through 22 of this act.

1376 **SECTION 35.** (1) After notice required by this section, the
1377 agency shall give interested persons an opportunity to participate
1378 in the rule making process through submission of written data,
1379 views or arguments, with or without opportunity for oral
1380 presentation. After consideration of the relevant matter
1381 presented, the agency shall incorporate in the rules adopted a
1382 concise general statement of their basis and purpose.

1383 (2) The required publication or service of a substantive
1384 rule must be made not less than thirty (30) days before its
1385 effective date.

1386 (3) Each agency shall give an interested person the right to
1387 petition for the issuance, amendment or repeal of a rule.

1388 **SECTION 36.** (1) This section applies in every case of
1389 adjudication required by statute to be determined on the record
1390 after opportunity for an agency hearing. The requirements of this
1391 section are in addition to any requirements that may be
1392 established for a particular agency conducting an agency hearing.



1393 (2) Persons entitled to notice of an agency hearing must be
1394 timely informed of:

1395 (a) The time, place and nature of the hearing;

1396 (b) The legal authority and jurisdiction under which
1397 the hearing is to be held; and

1398 (c) The matters of fact and law asserted.

1399 (3) Any and all agency hearings must be conducted pursuant
1400 to the Mississippi Rules of Civil Procedure, the Mississippi Rules
1401 of Evidence and the Mississippi Rules of Court. When private
1402 persons are the moving parties, other parties to the proceeding
1403 must give prompt notice of issues controverted in fact or law; and
1404 in other instances agencies may require, by rule, responsive
1405 pleading. In fixing the time and place for hearings, due regard
1406 must be had for the convenience and necessity of the parties or
1407 their representatives.

1408 (4) The agency shall give all interested parties opportunity
1409 for:

1410 (a) The submission and consideration of facts,
1411 arguments, offers of settlement or proposals of adjustment when
1412 time, the nature of the proceeding and the public interest permit;

1413 (b) To the extent that the parties are unable to
1414 determine a controversy by consent, hearing and decision on
1415 notice; and



1416 (c) Any and all discovery allowed under the Mississippi
1417 Rules of Civil Procedure, including, but not limited to,
1418 depositions of parties.

1419 (5) The employee who presides at the reception of evidence
1420 shall make the recommended decision or initial decision, unless he
1421 becomes unavailable to the agency. Except to the extent required
1422 for the disposition of ex parte matters as authorized by law, an
1423 employee may not:

1424 (a) Consult a person or party on a fact in issue,
1425 unless on notice and opportunity for all parties to participate;
1426 or

1427 (b) Be responsible to or subject to the supervision or
1428 direction of an employee or agent engaged in the performance of
1429 investigative or prosecuting functions for an agency.

1430 (6) An agency conducting a hearing may not perform both the
1431 judiciary and investigative/prosecutorial function. Performing
1432 both of these functions is repugnant to the public policy of
1433 Mississippi and is a clear violation of the separation of powers
1434 doctrine. All investigative and prosecutorial functions must be
1435 performed by the Attorney General.

1436 Any employee or agent engaged in the performance of
1437 investigative or prosecuting functions for an agency in a case
1438 shall be guilty of a misdemeanor and fined no more than
1439 Twenty-five Thousand Dollars (\$25,000.00) and sentenced to no more
1440 than thirty (30) days of incarceration.



1441 **SECTION 37.** (1) A person compelled to appear in person
1442 before an agency or representative of an agency is entitled to be
1443 accompanied, represented and advised by counsel or, if permitted
1444 by the agency, by another qualified representative. A party is
1445 entitled to appear in person or by or with counsel or other duly
1446 qualified representative in an agency proceeding. So far as the
1447 orderly conduct of public business permits, an interested person
1448 may appear before an agency or its responsible employees for the
1449 presentation, adjustment or determination of an issue, request or
1450 controversy in a proceeding, whether interlocutory, summary or
1451 otherwise, or in connection with an agency function. With due
1452 regard for the convenience and necessity of the parties or their
1453 representatives and within a reasonable time, each agency shall
1454 proceed to conclude a matter presented to it. This subsection
1455 does not grant or deny a person who is not a lawyer the right to
1456 appear for or represent others before an agency or in an agency
1457 proceeding.

1458 (2) An agency act, proceeding or procedure may not be
1459 instituted by an anonymous complaint. Anonymous complaints, as a
1460 basis for initiating a proceeding, are repugnant to the public
1461 policy of Mississippi and violate the Confrontation Clause of the
1462 Constitutions of the United States and Mississippi. Any agency or
1463 individual acting on or trying to institute an anonymous act shall
1464 be liable for any and all tortuous remedies available under the
1465 laws of the State of Mississippi and the common law.



1466 (3) Process, requirement of a report, inspection or other
1467 investigative act or demand may not be issued, made or enforced
1468 except as authorized by law. A person compelled to submit data or
1469 evidence may retain or, on payment of lawfully prescribed costs,
1470 procure a copy or transcript thereof, except that in a nonpublic
1471 investigatory proceeding, the witness may for good cause be
1472 limited to inspection of the official transcript of his testimony.

1473 (4) Agency subpoenas authorized by law must be issued to a
1474 party on request and, when required by rules of procedure, on a
1475 statement or showing of general relevance and reasonable scope of
1476 the evidence sought. On contest, the court shall sustain the
1477 subpoena or similar process or demand to the extent that it is
1478 found to be in accordance with law. In a proceeding for
1479 enforcement, the court shall issue an order requiring the
1480 appearance of the witness or the production of the evidence or
1481 data within a reasonable time under penalty of punishment for
1482 contempt in case of contumacious failure to comply.

1483 (5) Prompt notice must be given of the denial, in whole or
1484 in part, of a written application, petition or other request of an
1485 interested person made in connection with any agency proceeding.
1486 Except in affirming a prior denial or when the denial is
1487 self-explanatory, the notice must be accompanied by a brief
1488 statement of the grounds for denial.

1489 **SECTION 38.** (1) This section applies to those hearings
1490 required to be conducted in accordance with this section.



1491 (2) There shall preside at the taking of evidence:
1492 (a) The agency;
1493 (b) One or more members of the body which comprises the
1494 agency; or
1495 (c) A judge, who may not be a current or former member
1496 of the body comprising the agency or a current or former employee
1497 of the Office of the Attorney General, appointed under the laws of
1498 the State of Mississippi.

1499 (3) Subject to published rules of the agency and within its
1500 powers, only judges presiding at hearings may:
1501 (a) Administer oaths and affirmations;
1502 (b) Issue subpoenas authorized by law;
1503 (c) Rule on offers of proof and receive relevant
1504 evidence;
1505 (d) Take depositions or have depositions taken when the
1506 ends of justice would be served;
1507 (e) Regulate the course of the hearing;
1508 (f) Hold conferences for the settlement or
1509 simplification of the issues by consent of the parties or by the
1510 use of alternative means of dispute resolution;
1511 (g) Inform the parties as to the availability of one or
1512 more alternative means of dispute resolution and encourage use of
1513 those methods;
1514 (h) Require the attendance at any conference held
1515 pursuant to paragraph (f) of at least one (1) representative of



1516 each party who has authority to negotiate concerning resolution of
1517 issues in controversy;

1518 (i) Dispose of procedural requests or similar matters;
1519 and

1520 (j) Take other action authorized by agency rule
1521 consistent with this act.

1522 (4) Except as may otherwise be provided, the proponent of a
1523 rule or order has the burden of proof. Any oral or documentary
1524 evidence may be received, but the agency, as a matter of policy,
1525 shall provide for the exclusion of irrelevant, immaterial or
1526 unduly repetitious evidence. A sanction may not be imposed on
1527 rule or order issued except on consideration of the whole record
1528 or those parts of the record cited by a party and supported by and
1529 in accordance with the reliable, probative and substantial
1530 evidence. A party is entitled to present his case or defense by
1531 oral or documentary evidence, to submit rebuttal evidence and to
1532 conduct such cross-examination as may be required for a full and
1533 true disclosure of the facts. In rule making or determining
1534 claims for money or benefits or applications for initial licenses
1535 an agency may adopt procedures for the submission of all or part
1536 of the evidence in written form if a party will not be prejudiced
1537 by those procedures.

1538 (5) When an agency decision rests on official notice of a
1539 material fact not appearing in the evidence in the record, on a



1540 timely request, a party is entitled to an opportunity to show the
1541 contrary.

1542 **SECTION 39.** (1) This section applies when a hearing is
1543 required to be conducted in accordance with Section 38 of this
1544 act.

1545 (2) (a) Before a recommended, initial or tentative
1546 decision, or a decision on agency review of the decision of
1547 subordinate employees, the parties are entitled to a reasonable
1548 opportunity for a show cause hearing to submit for the
1549 consideration of the agency and its employees participating in the
1550 decisions:

1551 (i) Proposed findings and conclusions, or
1552 exceptions to the decisions or recommended decisions of
1553 subordinate employees or to tentative agency decisions; and

1554 (ii) Supporting reasons for the exceptions or
1555 proposed findings or conclusions.

1556 (b) The record must show the ruling on each finding,
1557 conclusion or exception presented. All decisions, including
1558 initial, recommended and tentative decisions, are a part of the
1559 record and must include a statement of:

1560 (i) Findings and conclusions, and the reasons or
1561 basis therefor, on all the material issues of fact, law or
1562 discretion presented on the record; and

1563 (ii) The appropriate rule, order, sanction, relief
1564 or denial thereof.



1565 (3) (a) In an agency proceeding that is subject to
1566 subsection (1) of this section, except to the extent required for
1567 the disposition of ex parte matters as authorized by law:

1568 (i) No interested person outside the agency may
1569 make or knowingly cause to be made an ex parte communication
1570 relevant to the merits of the proceeding to any member of the body
1571 comprising the agency, judge or other employee who is or
1572 reasonably may be expected to be involved in the decisional
1573 process of the proceeding;

1574 (ii) No member of the body comprising the agency,
1575 judge or other employee who is or may reasonably be expected to be
1576 involved in the decisional process of the proceeding may make or
1577 knowingly cause to be made an ex parte communication relevant to
1578 the merits of the proceeding to any interested person outside the
1579 agency;

1580 (iii) A member of the body comprising the agency,
1581 judge or other employee who is or may reasonably be expected to be
1582 involved in the decisional process of the proceeding who receives,
1583 or who makes or knowingly causes to be made, a communication
1584 prohibited by this subsection shall place on the public record of
1585 the proceeding:

- 1586 1. All such written communications;
1587 2. Memoranda stating the substance of all
1588 such oral communications; and



1589 3. All written responses and memoranda
1590 stating the substance of all oral responses to the materials
1591 described in 1. and 2. of this subparagraph;

1592 (iv) Upon receipt of a communication knowingly
1593 made or knowingly caused to be made by a party in violation of
1594 this subsection, the agency, judge or other employee presiding at
1595 the hearing may require, to the extent consistent with the
1596 interests of justice and the policy of the underlying statutes,
1597 the party to show cause why his claim or interest in the
1598 proceeding should not be dismissed, denied, disregarded or
1599 otherwise adversely affected on account of the violation;

1600 (v) An agency, employee or agent may not be an
1601 interested party in any proceeding of that agency at any stage of
1602 the agency's business; and

1603 (vi) The prohibitions of this subsection shall
1604 apply beginning at such time as the agency may designate, but in
1605 no case may they begin to apply later than the time at which a
1606 proceeding is noticed for hearing unless the person responsible
1607 for the communication has knowledge that it will be noticed, in
1608 which case the prohibitions shall apply beginning at the time of
1609 his acquisition of that knowledge.

1610 (b) This subsection does not constitute authority to
1611 withhold information from the Legislature.

1612 SECTION 40. (1) This section applies to the exercise of a
1613 power or authority.



1614 (2) A sanction may not be imposed or a substantive rule or
1615 order issued except within jurisdiction delegated to the agency
1616 and as authorized by law.

1617 (3) When application is made for a license required by law,
1618 the agency, with due regard for the rights and privileges of all
1619 the interested parties or adversely affected persons and within a
1620 reasonable time, shall set and complete proceedings required to be
1621 conducted in accordance with Sections 37 and 38 of this act or
1622 other proceedings required by law and shall make its decision.

1623 **SECTION 41.** This act does not limit or repeal additional
1624 requirements imposed by statute or otherwise recognized by law.
1625 Except as otherwise required by law, requirements or privileges
1626 relating to evidence or procedure apply equally to agencies and
1627 persons.

1628 **SECTION 42.** A person suffering legal wrong because of agency
1629 action or adversely affected or aggrieved by agency action within
1630 the meaning of a relevant statute is entitled to judicial review
1631 of the agency action. An action in a circuit, county or chancery
1632 court of the home county of the complainant seeking any relief and
1633 stating a claim that an agency or an officer or employee thereof
1634 acted or failed to act in an official capacity or under color of
1635 legal authority may not be dismissed, nor relief therein denied,
1636 on the ground that it is against the agency or that the State of
1637 Mississippi is an indispensable party. The State of Mississippi
1638 may be named as a defendant in any such action, and a judgment or



1639 decree may be entered against the State of Mississippi: however,
1640 any mandatory or injunctive decree must specify the state officer
1641 or officers, by name or title, and their successors in office
1642 personally responsible for compliance. Nothing in this section:
1643 affects other limitations on judicial review or the power or duty
1644 of the court to dismiss any action or deny relief on any other
1645 appropriate legal or equitable ground; or confers authority to
1646 grant relief if any other statute that grants consent to suit
1647 expressly or impliedly forbids the relief that is sought.

1648 **SECTION 43.** The form of proceeding for judicial review is
1649 the special statutory review proceeding relevant to the subject
1650 matter in a court specified by statute or, in the absence or
1651 inadequacy thereof, any applicable form of legal action, including
1652 actions for declaratory judgments or writs of prohibitory or
1653 mandatory injunction or habeas corpus, in a court of competent
1654 jurisdiction. If no special statutory review proceeding is
1655 applicable, the action for judicial review may be brought against
1656 the State of Mississippi, the agency by its official title or the
1657 appropriate officer. Except to the extent that prior, adequate
1658 and exclusive opportunity for judicial review is provided by law,
1659 agency action is subject to judicial review in civil or criminal
1660 proceedings for judicial enforcement.

1661 **SECTION 44.** Agency action made reviewable by statute and
1662 final agency action for which there is no other adequate remedy in
1663 a court are subject to judicial review. A preliminary, procedural



1664 or intermediate agency action or ruling not directly reviewable is
1665 subject to review on the review of the final agency action.
1666 Except as otherwise expressly required by statute, agency action
1667 otherwise final is final for the purposes of this section whether
1668 or not there has been presented or determined an application for a
1669 declaratory order, for any form of reconsideration, or, unless the
1670 agency otherwise requires by rule and provides that the action
1671 meanwhile is inoperative, for an appeal to superior agency
1672 authority.

1673 **SECTION 45.** When an agency ruling and an appeal is filed
1674 timely, the ruling and its execution must be postponed and the
1675 effective date of action taken by it postponed, pending judicial
1676 review. On such conditions as may be required and to the extent
1677 necessary to prevent irreparable injury, the reviewing court,
1678 including the court to which a case may be taken on appeal from or
1679 on application for certiorari or other writ to a reviewing court,
1680 may issue all necessary and appropriate process to postpone the
1681 effective date of an agency action or to preserve status or rights
1682 pending conclusion of the review proceedings.

1683 **SECTION 46.** To the extent necessary, the reviewing court
1684 shall decide all relevant questions of law, interpret
1685 constitutional and statutory provisions and determine the meaning
1686 or applicability of the terms of an agency action. The reviewing
1687 court shall determine all appeals de novo and should consider
1688 finding:



1689 (a) Compelling agency action unlawfully withheld or
1690 unreasonably delayed; and

1691 (b) Holding unlawful and setting aside agency action,
1692 findings and conclusions found to be:

1693 (i) Arbitrary, capricious, an abuse of discretion
1694 or otherwise not in accordance with law;

1695 (ii) Contrary to constitutional right, power,
1696 privilege or immunity;

1697 (iii) In excess of statutory jurisdiction,
1698 authority or limitations, or short of statutory right;

1699 (iv) Without observance of procedure required by
1700 law;

1701 (v) Unsupported by substantial evidence or
1702 otherwise reviewed on the record of an agency hearing provided by
1703 statute;

1704 (vi) Unwarranted by the facts to the extent that
1705 the facts are subject to trial de novo by the reviewing court; or

1706 (vii) Any and all other issues properly raised on
1707 appeal and within the legal and equitable powers of the court.

1708 In making the foregoing determinations, the court shall
1709 review the matter de novo, and due account must be taken of the
1710 rule of prejudicial error.

1711 **SECTION 47.** (1) (a) Before a rule can take effect, the
1712 agency promulgating the rule shall submit a report to each House



1713 of the Legislature and the Attorney General containing the
1714 following:

1715 (i) A copy of the rule;

1716 (ii) A concise general statement relating to the
1717 rule, including whether it is a major rule; and

1718 (iii) The proposed effective date of the rule.

1719 (b) On the date of the submission of the report under
1720 paragraph (a), the agency promulgating the rule shall submit to
1721 the Attorney General and make available to each House of the
1722 Legislature the following:

1723 (i) A complete copy of the cost-benefit analysis
1724 of the rule, if any;

1725 (ii) The agency's actions relevant to this act;
1726 and

1727 (iii) Any other relevant information or
1728 requirements under any other act and relevant executive orders.

1729 (c) Upon receipt of a report submitted under paragraph
1730 (a), each House shall provide copies of the report to the chairman
1731 of each standing committee with jurisdiction to report a bill to
1732 amend the provision of law under which the rule is issued.

1733 (2) (a) The Attorney General shall provide a report on each
1734 major rule to the committees of jurisdiction in each House of the
1735 Legislature by the end of fifteen (15) calendar days after the
1736 submission or publication date. The report of the Attorney



1737 General must include an assessment of the agency's compliance with
1738 procedural steps required under subsection (1) (b).

1739 (b) State agencies must cooperate with the Attorney
1740 General by providing information relevant to the Attorney
1741 General's report under paragraph (a).

1742 (3) A major rule relating to a report submitted under
1743 subsection (1) must take effect on the latest of:

1744 (a) The latter of the date occurring sixty (60) days
1745 after the date on which:

1746 (i) The Legislature receives the report submitted
1747 under subsection (1); or

1748 (ii) The rule is published, if so published;

1749 (b) If the Legislature passes a joint resolution of
1750 disapproval and the Governor signs a veto of the resolution, the
1751 earlier date:

1752 (i) On which either House of Legislature votes and
1753 fails to override the veto of the Governor; or

1754 (ii) Occurring thirty (30) legislative days after
1755 the date on which the Legislature received the veto and objections
1756 of the Governor; or

1757 (c) The date the rule would have otherwise taken
1758 effect, if not for this section (unless a joint resolution of
1759 disapproval).



1760 (4) Except for a major rule, a rule shall take effect as
1761 otherwise provided by law after submission to the Legislature
1762 under subsection (1).

1763 (5) A rule may not take effect or continue if the
1764 Legislature enacts a joint resolution of disapproval of the rule.

1765 (6) A rule that does not take effect or does not continue
1766 under subsection (1) may not be reissued in substantially the same
1767 form, and a new rule that is substantially the same as such a rule
1768 may not be issued unless the reissued or new rule is authorized
1769 specifically by a law enacted after the date of the joint
1770 resolution disapproving the original rule.

1771 **SECTION 48.** (1) For purposes of this section, the term
1772 "joint resolution" means only a joint resolution introduced in the
1773 period beginning on the date on which the report referred to in
1774 Section 47 of this act received by the Legislature and ending
1775 sixty (60) days thereafter, the matter after the resolving clause
1776 of which is as follows: "That the Mississippi Legislature, by way
1777 of the House of Representatives and the Senate, disapproves the
1778 rule submitted by the _____ relating to _____, and such
1779 rule shall have no force or effect." (The blank spaces being
1780 appropriately filled in).

1781 (2) (a) A joint resolution described in subsection (1) must
1782 be referred to the committees in each House of the Legislature
1783 with jurisdiction.



1784 (b) For purposes of this section, the term "submission
1785 or publication date" means the later of the date on which:

1786 (i) The Legislative receives the report; or

1787 (ii) The rule is published, if so published.

1788 (3) In the Senate, if the committee to which a joint
1789 resolution described in subsection (1) has been referred has not
1790 reported the joint resolution or an identical joint resolution at
1791 the end of twenty (20) calendar days after the submission or
1792 publication date defined under subsection (2) (b), the committee
1793 may be discharged from further consideration of such joint
1794 resolution upon a petition supported in writing by thirty (30)
1795 members of the Senate, and the joint resolution must be placed on
1796 the calendar.

1797 (4) (a) In the Senate, when the committee to which a joint
1798 resolution is referred has reported, or when a committee is
1799 discharged under subsection (2) from further consideration of a
1800 joint resolution described in subsection (1), at any time
1801 thereafter, it is in order, even though a previous motion to the
1802 same effect has been disagreed to, for a motion to proceed to
1803 consideration of the joint resolution, and all points of order
1804 against the joint resolution and against consideration of the
1805 joint resolution are waived. The motion is not subject to
1806 amendment, to a motion to postpone or to a motion to proceed to
1807 the consideration of other business. A motion to reconsider the
1808 vote by which the motion is agreed to or disagreed to shall not be



1809 in order. If a motion to proceed to the consideration of the
1810 joint resolution is agreed to, the joint resolution shall remain
1811 the unfinished business of the Senate until disposed of.

1812 (b) In the Senate, debate on the joint resolution, and
1813 on all debatable motions and appeals in connection therewith,
1814 shall be limited to not more than ten (10) hours, which must be
1815 divided equally between those favoring and those opposing the
1816 joint resolution. A motion further to limit debate is in order
1817 and not debatable. An amendment to, or a motion to postpone, or a
1818 motion to proceed to the consideration of other business, or a
1819 motion to recommit the joint resolution is not in order.

1820 (c) In the Senate, immediately following the conclusion
1821 of the debate on a joint resolution described in subsection (1),
1822 and a single quorum call at the conclusion of the debate if
1823 requested in accordance with the rules of the Senate, the vote on
1824 final passage of the joint resolution shall occur.

1825 (d) Appeals from the decisions of the chair relating to
1826 the application of the rules of the Senate to the procedure
1827 relating to a joint resolution described in subsection (1) shall
1828 be decided without debate.

1829 (5) In the Senate, the procedure specified in subsections
1830 (3) and (4) shall not apply to the consideration of a joint
1831 resolution respecting a rule:



1832 (a) After the expiration of the sixty (60) legislative
1833 days beginning with the applicable submission or publication date;
1834 or

1835 (b) If the report was submitted during the applicable
1836 period, after the expiration of the sixty (60) legislative days
1837 beginning on the 15th legislative day after the succeeding session
1838 of the Legislature first convenes.

1839 (6) If, before the passage by one (1) House of a joint
1840 resolution of that House it receives from the other House a joint
1841 resolution described in subsection (1), then the following
1842 procedures shall apply:

1843 (a) The joint resolution of the other House shall not
1844 be referred to a committee.

1845 (b) With respect to a joint resolution described in
1846 subsection (1) of the House receiving the joint resolution:

1847 (i) The procedure in that House shall be the same
1848 as if no joint resolution had been received from the other House;
1849 but

1850 (ii) The vote on final passage shall be on the
1851 joint resolution of the other House.

1852 (7) This section is enacted by the Legislature:

1853 (a) As an exercise of the rulemaking power of the House
1854 of Representatives and Senate, respectively, and as such, it is
1855 deemed a part of the Joint Rules of the Mississippi Legislature
1856 but applicable only with respect to the procedure to be followed



1857 in that House in the case of a joint resolution described in
1858 subsection (1), and it supersedes other rules only to the extent
1859 that it is inconsistent with those rules; and

1860 (b) With full recognition of the constitutional right
1861 of either House to change the rules (so far as relating to the
1862 procedure of that House) at any time, in the same manner, and to
1863 the same extent as is the case of any other rule of that House.

1864 (8) No determination, finding, action or omission under this
1865 section shall be subject to judicial review.

1866 **SECTION 49.** Section 25-43-1.101, Mississippi Code of 1972,
1867 is brought forward as follows:

1868 25-43-1.101. (1) This chapter may be cited as the
1869 "Mississippi Administrative Procedures Law."

1870 (2) This chapter is intended to provide a minimum procedural
1871 code for the operation of all state agencies when they take action
1872 affecting the rights and duties of the public. Nothing in this
1873 chapter shall be construed as invalidating any rule or regulation
1874 adopted before July 1, 2005, if such rule or regulation was
1875 properly adopted in accordance with the law as it existed at the
1876 time of adoption. Nothing in this chapter is meant to discourage
1877 agencies from adopting procedures providing greater protections to
1878 the public or conferring additional rights upon the public; and
1879 save for express provisions of this chapter to the contrary,
1880 nothing in this chapter is meant to abrogate in whole or in part
1881 any statute prescribing procedural duties for an agency which are



1882 greater than or in addition to those provided here. This chapter
1883 is meant to apply to all rule-making that is not specifically
1884 excluded from this chapter or some portion thereof by its express
1885 terms or by the express terms of another chapter.

1886 The purposes of the Mississippi Administrative Procedures Law
1887 are: to provide legislative oversight of powers and duties
1888 delegated to administrative agencies; to increase public
1889 accountability of administrative agencies; to simplify government
1890 by assuring a uniform minimum procedure to which all agencies will
1891 be held in the conduct of their most important functions; to
1892 increase public access to governmental information; and to
1893 increase public participation in the formulation of administrative
1894 rules. In accomplishing its objectives, the intention of this
1895 chapter is to strike a fair balance between these purposes and the
1896 need for efficient, economical and effective government
1897 administration. This chapter is not meant to alter the
1898 substantive rights of any person or agency. Its impact is limited
1899 to procedural rights with the expectation that better substantive
1900 results will be achieved in the everyday conduct of state
1901 government by improving the process by which those results are
1902 attained.

1903 (3) From and after July 1, 2005, any reference to the
1904 Mississippi Administrative Procedure Act, the Mississippi
1905 Administrative Procedures Act, the Mississippi Administrative
1906 Procedure Law, or the Mississippi Administrative Procedures Law,



1907 being Section 25-43-1 et seq., Mississippi Code of 1972, shall be
1908 deemed to mean and refer to this chapter.

1909 **SECTION 50.** Section 25-43-1.102, Mississippi Code of 1972,
1910 is brought forward as follows:

1911 25-43-1.102. As used in this chapter, the following terms
1912 shall have the meanings ascribed to them in this section unless
1913 the context otherwise requires:

1914 (a) "Agency" means a board, commission, department,
1915 officer or other administrative unit of this state, including the
1916 agency head, and one or more members of the agency head or agency
1917 employees directly or indirectly purporting to act on behalf or
1918 under the authority of the agency head. The term does not include
1919 the Legislature or any of its component units, the judiciary or
1920 any of its component units or the Governor. The term does not
1921 include a political subdivision of the state or any of the
1922 administrative units of a political subdivision. To the extent it
1923 purports to exercise authority subject to any provision of this
1924 chapter, an administrative unit otherwise qualifying as an
1925 "agency" must be treated as a separate agency even if the unit is
1926 located within or subordinate to another agency.

1927 (b) "Agency head" or "head of the agency" means an
1928 individual or body of individuals in whom the ultimate legal
1929 authority of the agency is vested by any provision of law.

1930 (c) "Agency proceeding" or "proceeding" means the
1931 process by which an agency considers:



1932 (i) A declaratory opinion pursuant to Section
1933 25-43-2.103, or

1934 (ii) A rule pursuant to Article III of this
1935 chapter.

1936 (d) "Agency record" means the official rule-making
1937 record of an agency pursuant to Section 25-43-3.112.

1938 (e) "Declaratory opinion" means an agency opinion
1939 rendered in accordance with the provisions of Section 25-43-2.103.

1940 (f) "Order" means an agency action of particular
1941 applicability that determines the legal rights, duties,
1942 privileges, immunities or other legal interests of one or more
1943 specific persons. An order shall be in writing signed by a person
1944 with authority to render the order, or if more than one (1) person
1945 has such authority by at least that number of such persons as
1946 jointly have the authority to render the order, or by a person
1947 authorized to render the order on behalf of all such persons. The
1948 term does not include an executive order issued by the Governor
1949 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
1950 General pursuant to Section 7-5-25, an opinion issued by the
1951 Ethics Commission pursuant to Section 25-4-17, or a declaratory
1952 opinion rendered in accordance with Section 25-43-2.103.

1953 (g) "Person" means an individual, partnership,
1954 corporation, association, governmental subdivision or unit
1955 thereof, or public or private organization or entity of any
1956 character, and includes another agency.



1957 (h) "Provision of law" or "law" means the whole or a
1958 part of the federal or state Constitution, or of any federal or
1959 state (i) statute, (ii) case law or common law, (iii) rule of
1960 court, (iv) executive order, or (v) rule or order of an
1961 administrative agency.

1962 (i) "Rule" means the whole or a part of an agency
1963 regulation or other statement of general applicability that
1964 implements, interprets or prescribes:

1965 (i) Law or policy, or

1966 (ii) The organization, procedure or practice
1967 requirements of an agency. The term includes the amendment,
1968 repeal or suspension of an existing rule. "Rule" does not
1969 include:

1970 1. A regulation or statement concerning only
1971 the internal management of an agency which does not directly and
1972 substantially affect the procedural or substantive rights or
1973 duties of any segment of the public;

1974 2. A regulation or statement that establishes
1975 criteria or guidelines to be used by the staff of an agency in
1976 performing audits, investigations or inspections, settling
1977 commercial disputes, negotiating commercial arrangements or in the
1978 defense, prosecution or settlement of cases, if disclosure of the
1979 criteria or guidelines would:

1980 a. Enable law violators to avoid
1981 detection;



1982 b. Facilitate disregard of requirements
1983 imposed by law; or

1984 c. Give a clearly improper advantage to
1985 persons who are in an adverse position to the state;

1986 3. A regulation or statement that only
1987 establishes specific prices to be charged for particular goods or
1988 services sold by an agency;

1989 4. A regulation or statement concerning only
1990 the physical servicing, maintenance or care of agency owned or
1991 operated facilities or property;

1992 5. A regulation or statement relating only to
1993 the use of a particular facility or property owned, operated or
1994 maintained by the state or any of its subdivisions, if the
1995 substance of the regulation or statement is adequately indicated
1996 by means of signs or signals to persons who use the facility or
1997 property;

1998 6. A regulation or statement directly related
1999 only to inmates of a correctional or detention facility, students
2000 enrolled in an educational institution or patients admitted to a
2001 hospital, if adopted by that facility, institution or hospital;

2002 7. A form whose contents or substantive
2003 requirements are prescribed by rule or statute, and instructions
2004 for the execution or use of the form;

2005 8. An agency budget;



2006 9. A compact or agreement between an agency
2007 of this state and one or more agencies of another state or states;
2008 or

2009 10. An opinion of the Attorney General
2010 pursuant to Section 7-5-25, an opinion of the Ethics Commission
2011 pursuant to Section 25-4-17, or an Executive Order of the
2012 Governor.

2013 (j) "Rule-making" means the process for formulation and
2014 adoption of a rule.

2015 **SECTION 51.** Section 25-43-1.103, Mississippi Code of 1972,
2016 is brought forward as follows:

2017 25-43-1.103. **Applicability and relation to other law.**

2018 (1) This chapter applies to all agencies and all proceedings
2019 not expressly exempted under this chapter.

2020 (2) This chapter creates only procedural rights and imposes
2021 only procedural duties. They are in addition to those created and
2022 imposed by other statutes.

2023 (3) Specific statutory provisions which govern agency
2024 proceedings and which are in conflict with any of the provisions
2025 of this chapter shall continue to be applied to all proceedings of
2026 any such agency to the extent of such conflict only.

2027 (4) The provisions of this chapter shall not be construed to
2028 amend, repeal or supersede the provisions of any other law; and,
2029 to the extent that the provisions of any other law conflict or are



2030 inconsistent with the provisions of this chapter, the provisions
2031 of such other law shall govern and control.

2032 (5) An agency may grant procedural rights to persons in
2033 addition to those conferred by this chapter so long as rights
2034 conferred upon other persons by any provision of law are not
2035 substantially prejudiced.

2036 **SECTION 52.** Section 25-43-1.104, Mississippi Code of 1972,
2037 is brought forward as follows:

2038 25-43-1.104. **Suspension of chapter's provisions when**
2039 **necessary to avoid loss of federal funds or services.**

2040 (1) To the extent necessary to avoid a denial of funds or
2041 services from the United States which would otherwise be available
2042 to the state, the Governor, by executive order, may suspend, in
2043 whole or in part, one or more provisions of this chapter. The
2044 Governor, by executive order, shall declare the termination of a
2045 suspension as soon as it is no longer necessary to prevent the
2046 loss of funds or services from the United States.

2047 (2) If any provision of this chapter is suspended pursuant
2048 to this section, the Governor shall promptly report the suspension
2049 to the Legislature. The report may include recommendations
2050 concerning desirable legislation that may be necessary to conform
2051 this chapter to federal law, including the exemption, if
2052 appropriate, of a particular program from the provisions of this
2053 chapter.



2054 **SECTION 53.** Section 25-43-1.105, Mississippi Code of 1972,
2055 is brought forward as follows:

2056 25-43-1.105. **Waiver of rights.**

2057 Except to the extent precluded by another provision of law, a
2058 person may waive any right conferred upon that person by this
2059 chapter, or by any rule made pursuant to this chapter.

2060 **SECTION 54.** Section 25-43-1.106, Mississippi Code of 1972,
2061 is brought forward as follows:

2062 25-43-1.106. **Filings with agency; service; computation of**
2063 **time.**

2064 (1) (a) Whenever, under this chapter, a party or any person
2065 is permitted or required to file with an agency any pleading,
2066 motion or other document, filing must be made by delivery of the
2067 document to the agency, by mailing it to the agency or by
2068 transmitting it to the agency by electronic means, including, but
2069 not limited to, facsimile transfer or e-mail. Filing by
2070 electronic means is complete when the electronic equipment being
2071 used by the agency acknowledges receipt of the material. If the
2072 equipment used by the agency does not automatically acknowledge
2073 transmission, service is not complete until the filing party
2074 obtains an acknowledgment from the agency. Filing by mail is
2075 complete upon receipt by the agency.

2076 (b) The agency may implement this section by agency
2077 rule.



2078 (2) (a) Whenever service is required by this chapter, and
2079 whether the service is made by a party, an agency or a presiding
2080 officer, service of orders, notices, pleadings, motions and other
2081 documents upon a party shall be made by delivering a copy to the
2082 party, by transmitting it to the party by electronic means,
2083 including, but not limited to, facsimile transfer or e-mail, or by
2084 mailing it to the party at the party's last known address.
2085 Delivery of a copy means handing it to a party, leaving it at the
2086 office of a party with a person in charge thereof, or leaving it
2087 at the dwelling house or usual place of abode of the party with
2088 some person of suitable age and discretion then residing therein.
2089 Service by electronic means is complete when the electronic
2090 equipment being used by the party being served acknowledges
2091 receipt of the material. If the equipment used by the party being
2092 served does not automatically acknowledge the transmission,
2093 service is not complete until the sending party obtains an
2094 acknowledgment from the recipient. Service by mail is complete
2095 upon mailing.

2096 (b) Whenever service is required or permitted to be
2097 made upon a party who is represented by an attorney of record in
2098 the proceedings, the service shall be made upon such attorney.

2099 (c) Whenever an agency issues an order or serves a
2100 notice or other document, the order or notice or other document
2101 shall be dated and shall be deemed to have been issued on the day
2102 it is served on the parties to the matter. If the order or notice



2103 or other document is to be served by mail, it shall be dated and
2104 shall be deemed to have been issued on the day it is mailed.

2105 (3) (a) In computing any period of time prescribed or
2106 allowed by this Article 1, by order of an agency, or by any
2107 applicable statute or agency rule, the day of the act, event or
2108 default from which the designated period of time begins to run
2109 shall not be included. The last day of the period so computed
2110 shall be included, unless it is a Saturday, a Sunday or a legal
2111 holiday, as defined by statute, or any other day when the agency's
2112 office is in fact closed, whether with or without legal authority,
2113 in which event the period runs until the end of the next day which
2114 is not a Saturday, a Sunday, a legal holiday or any other day when
2115 the agency's office is closed. When the period of time prescribed
2116 or allowed is less than seven (7) days, intermediate Saturdays,
2117 Sundays and legal holidays shall be excluded in the computation.
2118 In the event any legal holiday falls on a Sunday, the next
2119 following day shall be a legal holiday.

2120 (b) Whenever a party has the right or is required to do
2121 some act or take some proceedings within a prescribed period after
2122 the service of a notice, order, pleading, motion or other paper
2123 upon him and the notice or paper is served upon him by mail, three
2124 (3) days shall be added to the prescribed period.

2125 **SECTION 55.** Section 25-43-1.107, Mississippi Code of 1972,
2126 is brought forward as follows:



2127 25-43-1.107. Every agency as defined in this chapter shall,
2128 no later than October 1, 2003, file with the Secretary of the
2129 Senate and the Clerk of the House a report which outlines any
2130 conflicts between this chapter and any other laws affecting the
2131 agency. This report shall include proposed legislation to bring
2132 the other laws into conformity with the requirements of this
2133 chapter. The Secretary of State shall, no later than December 1,
2134 2003, file with the Secretary of the Senate and the Clerk of the
2135 House a list of sections which the Secretary of State believes
2136 conflict with this chapter. The Secretary of the Senate and the
2137 Clerk of the House shall maintain a list of agencies which have
2138 complied with this section.

2139 **SECTION 56.** Section 25-43-2.101, Mississippi Code of 1972,
2140 is brought forward as follows:

2141 25-43-2.101. **Publication, compilation, indexing and public**
2142 **inspection of rules.**

2143 (1) Subject to the provisions of this chapter, the Secretary
2144 of State shall prescribe a uniform numbering system, form, style
2145 and transmitting format for all proposed and adopted rules caused
2146 to be published by him and, with prior approval of each respective
2147 agency involved, may edit rules for publication and codification
2148 without changing the meaning or effect of any rule.

2149 (2) The Secretary of State shall cause an administrative
2150 bulletin to be published in a format and at such regular intervals
2151 as the Secretary of State shall prescribe by rule. Upon proper



2152 filing of proposed rules, the Secretary of State shall publish
2153 them in the administrative bulletin as expeditiously as possible.
2154 The administrative bulletin must contain:

2155 (a) Notices of proposed rule adoption prepared so that
2156 the text of the proposed rule shows the text of any existing rule
2157 proposed to be changed and the change proposed;

2158 (b) Any other notices and materials designated by law
2159 for publication therein; and

2160 (c) An index to its contents by subject.

2161 (3) The Secretary of State shall cause an administrative
2162 bulletin to be published in a format and at such regular intervals
2163 as the Secretary of State shall prescribe by rule. Upon proper
2164 filing of newly adopted rules, the Secretary of State shall
2165 publish them as expeditiously as possible. The administrative
2166 bulletin must contain:

2167 (a) Newly filed adopted rules prepared so that the text
2168 shows the text of any existing rule being changed and the change
2169 being made;

2170 (b) Any other notices and materials designated by law
2171 for publication therein; and

2172 (c) An index to its contents by subject.

2173 (4) The Secretary of State retains the authority to reject
2174 proposed and newly adopted rules not properly filed in accordance
2175 with the Secretary of State's rules prescribing the numbering
2176 system, form, style or transmitting format for such filings. The



2177 Secretary of State shall not be empowered to reject filings for
2178 reasons of the substance or content or any proposed or newly
2179 adopted rule. The Secretary of State shall notify the agency of
2180 its rejection of a proposed or newly adopted rule as expeditiously
2181 as possible and accompany such notification with a stated reason
2182 for the rejection. A rejected filing of a proposed or newly
2183 adopted rule does not constitute filing pursuant to Section
2184 25-43-3.101 et seq. of this chapter.

2185 (5) (a) The Secretary of State shall cause an
2186 administrative code to be compiled, indexed by subject and
2187 published in a format prescribed by the Secretary of State by
2188 rule. All of the effective rules of each agency must be published
2189 and indexed in that publication. The Secretary of State shall
2190 also cause supplements to the administrative code to be published
2191 in a format and at such regular intervals as the Secretary of
2192 State shall prescribe by rule.

2193 (b) The Joint Legislative Committee on Compilation,
2194 Revision and Publication of Legislation is hereby authorized to
2195 contract with a reputable and competent publishing company on such
2196 terms and conditions and at such prices as may be deemed proper to
2197 digest, compile, annotate, index and publish the state agency
2198 rules and regulations.

2199 (6) (a) Copyrights of the Mississippi Administrative Code,
2200 including, but not limited to, cross references, tables of cases,
2201 notes of decisions, tables of contents, indices, source notes,



2202 authority notes, numerical lists and codification guides, other
2203 than the actual text of rules or regulations, shall be taken by
2204 and in the name of the publishers of said compilation. Such
2205 publishers shall thereafter promptly assign the same to the State
2206 of Mississippi and said copyright shall be owned by the state.

2207 (b) Any information appearing on the same leaf with the
2208 text of any rule or regulation may be incidentally reproduced in
2209 connection with the reproduction of such rule or regulation, if
2210 such reproduction is for private use and not for resale.

2211 (7) The Secretary of State may omit from the administrative
2212 bulletin or code any proposed or filed adopted rule, the
2213 publication in hard copy of which would be unduly cumbersome,
2214 expensive or otherwise inexpedient, if:

2215 (a) Knowledge of the rule is likely to be important to
2216 only a small class of persons;

2217 (b) On application to the issuing agency, the proposed
2218 or adopted rule in printed or processed form is made available at
2219 no more than its cost of reproduction; and

2220 (c) The administrative bulletin or code contains a
2221 notice stating in detail the specific subject matter of the
2222 omitted proposed or adopted rule and how a copy of the omitted
2223 material may be obtained.

2224 (8) The administrative bulletin and administrative code with
2225 supplements must be furnished to designated officials without
2226 charge and to all subscribers at a reasonable cost to be



2227 determined by the Secretary of State. Each agency shall also make
2228 available for public inspection and copying those portions of the
2229 administrative bulletin and administrative code containing all
2230 rules adopted or used by the agency in the discharge of its
2231 functions, and the index to those rules.

2232 **SECTION 57.** Section 25-43-2.102, Mississippi Code of 1972,
2233 is brought forward as follows:

2234 25-43-2.102. **Public inspection and indexing of agency**
2235 **orders.**

2236 (1) In addition to other requirements imposed by any
2237 provision of law, and subject to any confidentiality provisions
2238 established by law, each agency shall make all written final
2239 orders available for public inspection and copying and index them
2240 by name and subject.

2241 (2) A written final order available for public inspection
2242 pursuant to subsection (1) may not be relied on as precedent by an
2243 agency to the detriment of any person until it has been made
2244 available for public inspection and indexed in the manner
2245 described in subsection (1) of this section. This provision is
2246 inapplicable to any person who has actual, timely knowledge of the
2247 order. The burden of proving that knowledge is on the agency.

2248 **SECTION 58.** Section 25-43-2.103, Mississippi Code of 1972,
2249 is brought forward as follows:

2250 25-43-2.103. **Declaratory opinions.** (1) Any person with a
2251 substantial interest in the subject matter may make a written



2252 request of an agency for a declaratory opinion as to the
2253 applicability to specified circumstances of a statute, rule or
2254 order within the primary jurisdiction of the agency. Such written
2255 request must clearly set forth the specific facts upon which an
2256 opinion is asked for and shall be limited to a single transaction
2257 or occurrence. An agency, through the agency head or its
2258 designee(s) by rule, shall issue a declaratory opinion in response
2259 to a written request for that opinion unless the agency determines
2260 that issuance of the opinion under the circumstances would be
2261 contrary to a rule adopted in accordance with subsection (2) of
2262 this section.

2263 (2) Each agency shall issue rules that provide for: (a) the
2264 form, contents and filing of written requests for declaratory
2265 opinions; (b) the procedural rights of persons in relation to the
2266 written requests; and (c) the disposition of the written requests.
2267 Those rules must describe the classes of circumstances in which
2268 the agency will not issue a declaratory opinion.

2269 (3) Within forty-five (45) days after receipt of a written
2270 request for a declaratory opinion, an agency, in writing, shall:

2271 (a) Issue an opinion declaring the applicability of the
2272 statute, rule or order in question to the specified circumstances;

2273 (b) Agree to issue a declaratory opinion by a specified
2274 time but no later than ninety (90) days after receipt of the
2275 written request; or



2276 (c) Decline to issue a declaratory opinion, stating the
2277 reasons for its action.

2278 (4) A copy of all opinions issued in response to a written
2279 request for a declaratory opinion must be mailed promptly to the
2280 requesting person.

2281 (5) (a) When any person receives a declaratory opinion from
2282 an agency and shall have stated all the facts to govern such
2283 opinion, the agency shall take no civil or criminal action against
2284 such person who, in good faith, follows the direction of such
2285 opinion and acts in accordance therewith unless a court of
2286 competent jurisdiction, after a full hearing, shall judicially
2287 declare that such opinion is manifestly wrong and without any
2288 substantial support. No declaratory opinion shall be given or
2289 considered if the opinion is requested after suit is filed or
2290 prosecution begun. Any declaratory opinion rendered pursuant to
2291 this chapter shall not be binding or effective for any third party
2292 or person other than the agency issuing the declaratory opinion
2293 and the person to whom the opinion is issued and shall not be used
2294 as precedent for any other transaction or occurrence beyond that
2295 set forth by the requesting person.

2296 (b) The authority of persons to request and receive
2297 agency declaratory opinions in no way affects the ability of any
2298 person authorized by Section 7-5-25 to request a legal opinion
2299 from the Attorney General.



2300 (c) Subject to any confidentiality provisions
2301 established by law, each agency shall make all declaratory
2302 opinions available for public inspection and copying and shall
2303 index them by name and subject, unless information contained
2304 within such opinions is confidential by statute or exempt from
2305 public disclosure pursuant to another provision of law.

2306 (6) Without in any way limiting a person's right to request
2307 and receive a declaratory opinion under this section, or an
2308 agency's duty to issue a declaratory opinion under this section,
2309 nothing contained in this section shall prohibit an agency from
2310 providing informal responses or advice, orally or in writing, to
2311 any inquiries or requests for information submitted to the agency.
2312 Informal responses shall not be considered a declaratory opinion
2313 under this section.

2314 **SECTION 59.** Section 25-43-2.104, Mississippi Code of 1972,
2315 is brought forward as follows:

2316 25-43-2.104. **Required rule-making.**

2317 In addition to other rule-making requirements imposed by law,
2318 each agency shall:

2319 (a) Adopt as a rule a description of the organization
2320 of the agency which states the general course and method of its
2321 operations and where and how the public may obtain information or
2322 make submissions or requests;



2323 (b) Adopt rules of practice setting forth the nature
2324 and requirements of all formal and informal proceedings available
2325 to the public.

2326 **SECTION 60.** Section 25-43-2.105, Mississippi Code of 1972,
2327 is brought forward as follows:

2328 25-43-2.105. **Model rules of procedure.**

2329 In accordance with the rule-making requirements of this
2330 chapter, the Secretary of State shall adopt model rules of
2331 procedure appropriate for use by as many agencies as possible.
2332 The model rules must deal with all general functions and duties
2333 performed in common by several agencies. Each agency may adopt as
2334 much of the model rules as is practicable under its circumstances.
2335 To the extent an agency adopts the model rules, it shall do so in
2336 accordance with the rule-making requirements of this chapter.

2337 **SECTION 61.** Section 25-43-3.101, Mississippi Code of 1972,
2338 is brought forward as follows:

2339 25-43-3.101. (1) In addition to seeking information by
2340 other methods, an agency, before filing of a notice of proposed
2341 rule adoption under Section 25-43-3.103, may solicit comments from
2342 the public on a subject matter of possible rulemaking under active
2343 consideration within the agency by causing notice to be filed with
2344 the Secretary of State for publication in the administrative
2345 bulletin of the subject matter and indicating where, when and how
2346 persons may comment.



2347 (2) Each agency may also appoint committees of nonagency
2348 personnel or other members of the public to comment, before filing
2349 of a notice of proposed rule adoption under Section 25-43-3.103,
2350 on the subject matter of a possible rulemaking under active
2351 consideration within the agency. The membership of those
2352 committees must be filed with the Secretary of State for
2353 publication in the administrative bulletin.

2354 **SECTION 62.** Section 25-43-3.102, Mississippi Code of 1972,
2355 is brought forward as follows:

2356 25-43-3.102. **Public rule-making docket.**

2357 (1) Each agency shall maintain a current, public rule-making
2358 docket.

2359 (2) The rule-making docket may, but need not, contain a
2360 listing of the subject matter of possible rules currently under
2361 active consideration within the agency for proposal under Section
2362 25-43-3.103 and the name and address of agency personnel with whom
2363 persons may communicate with respect to the matter.

2364 (3) The rule-making docket must list each pending
2365 rule-making proceeding. A rule-making proceeding is pending from
2366 the time it is commenced, by proper filing with the Secretary of
2367 State of a notice of proposed rule adoption, to the time it is
2368 terminated by the filing with the Secretary of State of a notice
2369 of termination or the rule becoming effective. For each pending
2370 rule-making proceeding, the docket must indicate:

2371 (a) The subject matter of the proposed rule;



2372 (b) A citation to all published notices relating to the
2373 proceeding;

2374 (c) Where written submissions or written requests for
2375 an opportunity to make oral presentations on the proposed rule may
2376 be inspected;

2377 (d) The time during which written submissions may be
2378 made;

2379 (e) If applicable, where and when oral presentations
2380 may be made;

2381 (f) Where any economic impact statement and written
2382 requests for the issuance of and other information concerning an
2383 economic impact statement of the proposed rule may be inspected;

2384 (g) The current status of the proposed rule;

2385 (h) The date of the rule's adoption; and

2386 (i) When the rule will become effective.

2387 **SECTION 63.** Section 25-43-3.103, Mississippi Code of 1972,
2388 is brought forward as follows:

2389 25-43-3.103. (1) At least twenty-five (25) days before the
2390 adoption of a rule an agency shall cause notice of its
2391 contemplated action to be properly filed with the Secretary of
2392 State for publication in the administrative bulletin. The notice
2393 of proposed rule adoption must include:

2394 (a) A short explanation of the purpose of the proposed
2395 rule and the agency's reasons for proposing the rule;



2396 (b) The specific legal authority authorizing the
2397 promulgation of rules;

2398 (c) A reference to all rules repealed, amended or
2399 suspended by the proposed rule;

2400 (d) Subject to Section 25-43-2.101(5), the text of the
2401 proposed rule;

2402 (e) Where, when and how persons may present their views
2403 on the proposed rule; and

2404 (f) Where, when and how persons may demand an oral
2405 proceeding on the proposed rule if the notice does not already
2406 provide for one.

2407 (2) Within three (3) days after its proper filing with the
2408 Secretary of State for publication in the administrative bulletin,
2409 the agency shall cause a copy of the notice of proposed rule
2410 adoption to be provided to each person who has made a timely
2411 request to the agency to be placed on the mailing list maintained
2412 by the agency of persons who have requested notices of proposed
2413 rule adoptions. An agency may mail the copy to the person and may
2414 charge the person a reasonable fee for such service, which fee may
2415 be in excess of the actual cost of providing the person with a
2416 mailed copy. Alternatively, the agency may provide the copy via
2417 the Internet or by transmitting it to the person by electronic
2418 means, including, but not limited to, facsimile transfer or e-mail
2419 at no charge to the person, if the person consents to this form of
2420 delivery.



2421 **SECTION 64.** Section 25-43-3.104, Mississippi Code of 1972,
2422 is brought forward as follows:

2423 25-43-3.104. **Public participation.**

2424 (1) For at least twenty-five (25) days after proper filing
2425 with the Secretary of State of the notice of proposed rule
2426 adoption, an agency shall afford persons the opportunity to
2427 submit, in writing, argument, data and views on the proposed rule.

2428 (2) (a) An agency, in its discretion, may schedule an oral
2429 proceeding on any proposed rule. However, an agency shall
2430 schedule an oral proceeding on a proposed rule if, within twenty
2431 (20) days after the proper filing of the notice of proposed rule
2432 adoption, a written request for an oral proceeding is submitted by
2433 a political subdivision, an agency or ten (10) persons. At that
2434 proceeding, persons may present oral or written argument, data and
2435 views on the proposed rule.

2436 (b) An oral proceeding on a proposed rule, if required,
2437 may not be held earlier than twenty (20) days after notice of its
2438 location and time is properly filed with the Secretary of State
2439 for publication in the administrative bulletin. Within three (3)
2440 days after its proper filing with the Secretary of State for
2441 publication in the administrative bulletin, the agency shall cause
2442 a copy of the notice of the location and time of the oral
2443 proceeding to be mailed to each person who has made a timely
2444 request to the agency to be placed on the mailing list maintained



2445 by the agency of persons who have requested notices of proposed
2446 rule adoptions.

2447 (c) The agency, a member of the agency, or another
2448 presiding officer designated by the agency shall preside at a
2449 required oral proceeding on a proposed rule. Oral proceedings
2450 must be open to the public and may be recorded by stenographic or
2451 other means.

2452 (d) An agency may issue rules for the conduct of oral
2453 rule-making proceedings or prepare reasonable guidelines or
2454 procedures for the conduct of any such proceedings. Those rules
2455 may include, but not be limited to, provisions calculated to
2456 prevent undue repetition in the oral proceedings.

2457 **SECTION 65.** Section 25-43-3.105, Mississippi Code of 1972,
2458 is brought forward as follows:

2459 **[Through June 30, 2016, this section shall read as follows:]**

2460 25-43-3.105. (1) Prior to giving the notice required in
2461 Section 25-43-3.103, each agency proposing the adoption of a rule
2462 or amendment of an existing rule imposing a duty, responsibility
2463 or requirement on any person shall consider the economic impact
2464 the rule will have on the citizens of our state and the benefits
2465 the rule will cause to accrue to those citizens.

2466 (2) Each agency shall prepare a written report providing an
2467 economic impact statement for the adoption of a rule or amendment
2468 to an existing rule imposing a duty, responsibility or requirement



2469 on any person. The economic impact statement shall include the
2470 following:

2471 (a) The specific legal authority authorizing the
2472 promulgation of the rule.

2473 (b) A description of:

2474 (i) The need for the proposed action;

2475 (ii) The benefits which will likely accrue as the
2476 result of the proposed action; and

2477 (iii) The effect the proposed action will have on
2478 the public health, safety and welfare.

2479 (c) An estimate of the cost to the agency, and to any
2480 other state or local government entities, of implementing and
2481 enforcing the proposed action, including the estimated amount of
2482 paperwork, and any anticipated effect on state or local revenues;

2483 (d) An estimate of the cost or economic benefit to all
2484 persons directly affected by the proposed action;

2485 (e) An analysis of the impact of the proposed rule on
2486 small business;

2487 (f) A comparison of the costs and benefits of the
2488 proposed rule to the probable costs and benefits of not adopting
2489 the proposed rule or significantly amending an existing rule;

2490 (g) A determination of whether less costly methods or
2491 less intrusive methods exist for achieving the purpose of the
2492 proposed rule where reasonable alternative methods exist which are
2493 not precluded by law;



2494 (h) A description of reasonable alternative methods,
2495 where applicable, for achieving the purpose of the proposed action
2496 which were considered by the agency and a statement of reasons for
2497 rejecting those alternatives in favor of the proposed rule; and

2498 (i) A detailed statement of the data and methodology
2499 used in making estimates required by this subsection.

2500 (3) No rule or regulation shall be declared invalid based on
2501 a challenge to the economic impact statement for the rule unless
2502 the issue is raised in the agency proceeding. No person shall
2503 have standing to challenge a rule, based upon the economic impact
2504 statement or lack thereof, unless that person provided the agency
2505 with information sufficient to make the agency aware of specific
2506 concerns regarding the statement in an oral proceeding or in
2507 written comments regarding the rule. The grounds for invalidation
2508 of an agency action, based upon the economic impact statement, are
2509 limited to the agency's failure to adhere to the procedure for
2510 preparation of the economic impact statement as provided in this
2511 section, or the agency's failure to consider information submitted
2512 to the agency regarding specific concerns about the statement, if
2513 that failure substantially impairs the fairness of the rule-making
2514 proceeding.

2515 (4) A concise summary and the full text of the economic
2516 impact statement must be properly filed with the Secretary of
2517 State for publication in the administrative bulletin and the
2518 period during which persons may make written submissions on the



2519 proposed rule shall not expire until at least twenty (20) days
2520 after the date of such proper filing.

2521 (5) The properly filed summary of the economic impact
2522 statement must also indicate where, when and how persons may
2523 present their views on the proposed rule and demand an oral
2524 proceeding on the proposed rule if one is not already provided.

2525 **[From and after July 1, 2016, this section shall read as**
2526 **follows:]**

2527 25-43-3.105. (1) Prior to giving the notice required in
2528 Section 25-43-3.103, each agency proposing the adoption of a rule
2529 or significant amendment of an existing rule imposing a duty,
2530 responsibility or requirement on any person shall consider the
2531 economic impact the rule will have on the citizens of our state
2532 and the benefits the rule will cause to accrue to those citizens.
2533 For purposes of this section, a "significant amendment" means any
2534 amendment to a rule for which the total aggregate cost to all
2535 persons required to comply with that rule exceeds One Hundred
2536 Thousand Dollars (\$100,000.00).

2537 (2) Each agency shall prepare a written report providing an
2538 economic impact statement for the adoption of a rule or
2539 significant amendment to an existing rule imposing a duty,
2540 responsibility or requirement on any person, except as provided in
2541 subsection (7) of this section. The economic impact statement
2542 shall include the following:



2543 (a) A description of the need for and the benefits
2544 which will likely accrue as the result of the proposed action;

2545 (b) An estimate of the cost to the agency, and to any
2546 other state or local government entities, of implementing and
2547 enforcing the proposed action, including the estimated amount of
2548 paperwork, and any anticipated effect on state or local revenues;

2549 (c) An estimate of the cost or economic benefit to all
2550 persons directly affected by the proposed action;

2551 (d) An analysis of the impact of the proposed rule on
2552 small business;

2553 (e) A comparison of the costs and benefits of the
2554 proposed rule to the probable costs and benefits of not adopting
2555 the proposed rule or significantly amending an existing rule;

2556 (f) A determination of whether less costly methods or
2557 less intrusive methods exist for achieving the purpose of the
2558 proposed rule where reasonable alternative methods exist which are
2559 not precluded by law;

2560 (g) A description of reasonable alternative methods,
2561 where applicable, for achieving the purpose of the proposed action
2562 which were considered by the agency and a statement of reasons for
2563 rejecting those alternatives in favor of the proposed rule; and

2564 (h) A detailed statement of the data and methodology
2565 used in making estimates required by this subsection.

2566 (3) No rule or regulation shall be declared invalid based on
2567 a challenge to the economic impact statement for the rule unless



2568 the issue is raised in the agency proceeding. No person shall
2569 have standing to challenge a rule, based upon the economic impact
2570 statement or lack thereof, unless that person provided the agency
2571 with information sufficient to make the agency aware of specific
2572 concerns regarding the statement in an oral proceeding or in
2573 written comments regarding the rule. The grounds for invalidation
2574 of an agency action, based upon the economic impact statement, are
2575 limited to the agency's failure to adhere to the procedure for
2576 preparation of the economic impact statement as provided in this
2577 section, or the agency's failure to consider information submitted
2578 to the agency regarding specific concerns about the statement, if
2579 that failure substantially impairs the fairness of the rule-making
2580 proceeding.

2581 (4) A concise summary of the economic impact statement must
2582 be properly filed with the Secretary of State for publication in
2583 the administrative bulletin and the period during which persons
2584 may make written submissions on the proposed rule shall not expire
2585 until at least twenty (20) days after the date of such proper
2586 filing.

2587 (5) The properly filed summary of the economic impact
2588 statement must also indicate where persons may obtain copies of
2589 the full text of the economic impact statement and where, when and
2590 how persons may present their views on the proposed rule and
2591 demand an oral proceeding on the proposed rule if one is not
2592 already provided.



2593 (6) If the agency has made a good-faith effort to comply
2594 with the requirements of subsections (1) and (2) of this section,
2595 the rule may not be invalidated on the ground that the contents of
2596 the economic impact statement are insufficient or inaccurate.

2597 (7) This section does not apply to the adoption of:

2598 (a) Any rule which is required by the federal
2599 government pursuant to a state/federal program delegation
2600 agreement or contract;

2601 (b) Any rule which is expressly required by state law;
2602 and

2603 (c) A temporary rule adopted pursuant to Section
2604 25-43-3.108.

2605 **SECTION 66.** Section 25-43-3.106, Mississippi Code of 1972,
2606 is brought forward as follows:

2607 25-43-3.106. **Time and manner of rule adoption.**

2608 (1) An agency may not adopt a rule until the period for
2609 making written submissions and oral presentations has expired.

2610 (2) Following the proper filing with the Secretary of State
2611 of the notice of proposed rule adoption, an agency shall adopt a
2612 rule pursuant to the rule-making proceeding or terminate the
2613 proceeding by proper filing with the Secretary of State of a
2614 notice to that effect for publication in the administrative
2615 bulletin.

2616 (3) Before the adoption of a rule, an agency shall consider
2617 the written submissions, oral submissions or any memorandum



2618 summarizing oral submissions, and any economic impact statement,
2619 provided for by this Article III.

2620 (4) Within the scope of its delegated authority, an agency
2621 may use its own experience, technical competence, specialized
2622 knowledge and judgment in the adoption of a rule.

2623 **SECTION 67.** Section 25-43-3.107, Mississippi Code of 1972,
2624 is brought forward as follows:

2625 25-43-3.107. (1) An agency shall not adopt a rule that
2626 differs from the rule proposed in the notice of proposed rule
2627 adoption on which the rule is based unless all of the following
2628 apply:

2629 (a) The differences are within the scope of the matter
2630 announced in the notice of proposed rule adoption and are in
2631 character with the issues raised in that notice;

2632 (b) The differences are a logical outgrowth of the
2633 contents of that notice of proposed rule adoption and the comments
2634 submitted in response thereto; and

2635 (c) The notice of proposed rule adoption provided fair
2636 warning that the outcome of that rulemaking proceeding could be
2637 the rule in question.

2638 (2) In determining whether the notice of proposed rule
2639 adoption provided fair warning that the outcome of that rulemaking
2640 proceeding could be the rule in question, an agency shall consider
2641 all of the following factors:



2642 (a) The extent to which persons who will be affected by
2643 the rule should have understood that the rulemaking proceeding on
2644 which it is based could affect their interests;

2645 (b) The extent to which the subject matter of the rule
2646 or issues determined by the rule are different from the subject
2647 matter or issues contained in the notice of proposed rule
2648 adoption; and

2649 (c) The extent to which the effects of the rule differ
2650 from the effects of the proposed rule contained in the notice of
2651 proposed rule adoption.

2652 **SECTION 68.** Section 25-43-3.108, Mississippi Code of 1972,
2653 is brought forward as follows:

2654 25-43-3.108. **Exemption from public rule-making procedures**
2655 **for temporary rules.**

2656 If an agency finds that an imminent peril to the public
2657 health, safety or welfare requires adoption of a rule upon fewer
2658 than twenty-five (25) days' notice and states in writing its
2659 reasons for that finding, it may proceed without prior notice of
2660 hearing or upon any abbreviated notice and hearing that it finds
2661 practicable to adopt an emergency rule. The rule may be effective
2662 for a period of not longer than one hundred twenty (120) days,
2663 renewable once for a period not exceeding ninety (90) days, but
2664 the adoption of an identical rule under subsection (1) of this
2665 section is not precluded.



2666 **SECTION 69.** Section 25-43-3.109, Mississippi Code of 1972,
2667 is brought forward as follows:

2668 25-43-3.109. (1) Each rule adopted by an agency must
2669 contain the text of the rule and:

2670 (a) The date the agency adopted the rule;

2671 (b) An indication of any change between the text of the
2672 proposed rule contained in the published notice of proposed rule
2673 adoption and the text of the rule as finally adopted, with the
2674 reasons for any substantive change;

2675 (c) Any changes to the information contained in the
2676 notice of proposed rule adoption as required by subsection (1) (a),
2677 (b) or (c) of Section 25-43-3.103;

2678 (d) Any findings required by any provision of law as a
2679 prerequisite to adoption or effectiveness of the rule; and

2680 (e) The effective date of the rule if other than that
2681 specified in Section 25-43-3.113(1).

2682 (2) To the extent feasible, each rule should be written in
2683 clear and concise language understandable to persons who may be
2684 affected by it.

2685 (3) An agency may incorporate, by reference in its rules and
2686 without publishing the incorporated matter in full, all or any
2687 part of a code, standard, rule or regulation that has been adopted
2688 by an agency of the United States or of this state, another state
2689 or by a nationally recognized organization or association, if
2690 incorporation of its text in agency rules would be unduly



2691 cumbersome, expensive or otherwise inexpedient. The reference in
2692 the agency rules must fully identify the incorporated matter with
2693 an appropriate citation. An agency may incorporate by reference
2694 such matter in its rules only if the agency, organization or
2695 association originally issuing that matter makes copies of it
2696 readily available to the public. The rules must state if copies
2697 of the incorporated matter are available from the agency issuing
2698 the rule or where copies of the incorporated matter are available
2699 from the agency of the United States, this state, another state or
2700 the organization or association originally issuing that matter.

2701 (4) In preparing its rules pursuant to this Article III,
2702 each agency shall follow the uniform numbering system, form and
2703 style prescribed by the Secretary of State.

2704 **SECTION 70.** Section 25-43-3.110, Mississippi Code of 1972,
2705 is brought forward as follows:

2706 25-43-3.110. **Agency rule-making record.**

2707 (1) An agency shall maintain an official rule-making record
2708 for each rule it (a) proposes or (b) adopts. The agency has the
2709 exclusive authority to prepare and exclusive authority to certify
2710 the record or any part thereof, including, but not limited to, any
2711 transcript of the proceedings, and the agency's certificate shall
2712 be accepted by the court and by any other agency. The record must
2713 be available for public inspection.

2714 (2) The agency rule-making record must contain:



2715 (a) Copies of all notices of proposed rule-making or
2716 oral proceedings or other publications in the administrative
2717 bulletin with respect to the rule or the proceeding upon which the
2718 rule is based;

2719 (b) Copies of any portions of the agency's public
2720 rule-making docket containing entries relating to the rule or the
2721 proceeding upon which the rule is based;

2722 (c) All written requests, submissions and comments
2723 received by the agency and all other written materials considered
2724 by the agency in connection with the formulation, proposal or
2725 adoption of the rule or the proceeding upon which the rule is
2726 based;

2727 (d) Any official transcript of oral presentations made
2728 in the proceeding upon which the rule is based or, if not
2729 transcribed, any tape recording or stenographic record of those
2730 presentations, and any memorandum prepared by a presiding official
2731 summarizing the contents of those presentations. The word
2732 "transcript" includes a written transcript, a printed transcript,
2733 an audible audiotape or videotape that is indexed and annotated so
2734 that it is readily accessible and any other means that the agency
2735 may have by rule provided for the reliable and accessible
2736 preservation of the proceeding;

2737 (e) A copy of any economic impact statement prepared
2738 for the proceeding upon which the rule is based; and



2739 (f) A copy of the rule and related information set out
2740 in Section 25-43-3.109 as filed in the Office of the Secretary of
2741 State.

2742 (3) The agency shall have authority to engage such persons
2743 and acquire such equipment as may be reasonably necessary to
2744 record and preserve in any technically and practicably feasible
2745 manner all matters and all proceedings had at any rule-making
2746 proceeding.

2747 (4) Upon judicial review, the record required by this
2748 section constitutes the official agency rule-making record with
2749 respect to a rule. Except as otherwise required by a provision of
2750 law, the agency rule-making record need not constitute the
2751 exclusive basis for agency action on that rule or for judicial
2752 review thereof.

2753 **SECTION 71.** Section 25-43-3.111, Mississippi Code of 1972,
2754 is brought forward as follows:

2755 25-43-3.111. (1) A rule adopted after July 1, 2005, is
2756 invalid unless adopted in substantial compliance with the
2757 provisions of Sections 25-43-3.102 through 25-43-3.110.
2758 Inadvertent failure to mail a notice of proposed rule adoption to
2759 any person as required by Section 25-43-3.103(2) does not
2760 invalidate a rule.

2761 (2) An action to contest the validity of a rule on the
2762 grounds of its noncompliance with any provision of Sections



2763 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
2764 year after the effective date of the rule.

2765 **SECTION 72.** Section 25-43-3.112, Mississippi Code of 1972,
2766 is brought forward as follows:

2767 25-43-3.112. An agency shall file in the Office of the
2768 Secretary of State each rule it adopts and all rules existing on
2769 July 1, 2005, that have not previously been filed. The filing
2770 must be done as soon after adoption of the rule as is practicable.
2771 At the time of filing, each rule adopted after July 1, 2005, must
2772 have included in or attached to it the material set out in Section
2773 25-43-3.109. The Secretary of State shall affix to each rule and
2774 statement a certification of the date of filing and keep a
2775 permanent register open to public inspection of all filed rules
2776 and attached material. In filing a rule, each agency shall use a
2777 standard format prescribed by the Secretary of State.

2778 **SECTION 73.** Section 25-43-3.113, Mississippi Code of 1972,
2779 is brought forward as follows:

2780 25-43-3.113. (1) Except to the extent subsection (2) or (3)
2781 of this section provides otherwise, each rule adopted after July
2782 1, 2005, becomes effective thirty (30) days after its proper
2783 filing in the Office of the Secretary of State.

2784 (2) (a) A rule becomes effective on a date later than that
2785 established by subsection (1) of this section if a later date is
2786 required by another statute or specified in the rule.



2787 (b) A rule may become effective immediately upon its
2788 filing or on any subsequent date earlier than that established by
2789 subsection (1) of this section if the agency establishes such an
2790 effective date and finds that:

2791 (i) It is required by Constitution, statute or
2792 court order;

2793 (ii) The rule only confers a benefit or removes a
2794 restriction on the public or some segment thereof;

2795 (iii) The rule only delays the effective date of
2796 another rule that is not yet effective; or

2797 (iv) The earlier effective date is necessary
2798 because of imminent peril to the public health, safety or welfare.

2799 (c) The finding and a brief statement of the reasons
2800 therefor required by paragraph (b) of this subsection must be made
2801 a part of the rule. In any action contesting the effective date
2802 of a rule made effective under paragraph (b) of this subsection,
2803 the burden is on the agency to justify its finding.

2804 (d) A temporary rule may become effective immediately
2805 upon its filing or on any subsequent date earlier than that
2806 established by subsection (1) of this section.

2807 (e) Each agency shall make a reasonable effort to make
2808 known to persons who may be affected by it a rule made effective
2809 before any date established by subsection (1) of this section.

2810 (3) This section does not relieve an agency from compliance
2811 with any provision of law requiring that some or all of its rules



2812 be approved by other designated officials or bodies before they
2813 become effective.

2814 **SECTION 74.** Section 25-43-3.114, Mississippi Code of 1972,
2815 is brought forward as follows:

2816 25-43-3.114. **Review by agency.**

2817 At least every five (5) years, each agency shall review all
2818 of its rules to determine whether any rule should be repealed,
2819 amended or a new rule adopted.

2820 **SECTION 75.** Section 25-61-1, Mississippi Code of 1972, is
2821 brought forward as follows:

2822 25-61-1. This chapter shall be known and may be cited as the
2823 "Mississippi Public Records Act of 1983." It is the policy of the
2824 Legislature that public records must be available for inspection
2825 by any person unless otherwise provided by this act [Laws, 1996,
2826 Chapter 453]. Furthermore, providing access to public records is
2827 a duty of each public body and automation of public records must
2828 not erode the right of access to those records. As each agency
2829 increases its use of and dependence on electronic record keeping,
2830 each agency must ensure reasonable access to records
2831 electronically maintained, subject to the rules of records
2832 retention.

2833 **SECTION 76.** Section 25-61-2, Mississippi Code of 1972, is
2834 brought forward as follows:

2835 25-61-2. It is the policy of this state that public records
2836 shall be available for inspection by any person unless otherwise



2837 provided by this chapter; furthermore, providing access to public
2838 records is a duty of each public body and automation of public
2839 records must not erode the right of access to those records. As
2840 each public body increases its use of, and dependence on,
2841 electronic record keeping, each public body must ensure reasonable
2842 access to records electronically maintained, subject to records
2843 retention.

2844 **SECTION 77.** Section 25-61-3, Mississippi Code of 1972, is
2845 brought forward as follows:

2846 25-61-3. The following words shall have the meanings
2847 ascribed herein unless the context clearly requires otherwise:

2848 (a) "Public body" shall mean any department, bureau,
2849 division, council, commission, committee, subcommittee, board,
2850 agency and any other entity of the state or a political
2851 subdivision thereof, and any municipal corporation and any other
2852 entity created by the Constitution or by law, executive order,
2853 ordinance or resolution. The term "public body" includes the
2854 governing board of a charter school authorized by the Mississippi
2855 Charter School Authorizer Board. Within the meaning of this
2856 chapter, the term "entity" shall not be construed to include
2857 individuals employed by a public body or any appointed or elected
2858 public official.

2859 (b) "Public records" shall mean all books, records,
2860 papers, accounts, letters, maps, photographs, films, cards, tapes,
2861 recordings or reproductions thereof, and any other documentary



2862 materials, regardless of physical form or characteristics, having
2863 been used, being in use, or prepared, possessed or retained for
2864 use in the conduct, transaction or performance of any business,
2865 transaction, work, duty or function of any public body, or
2866 required to be maintained by any public body.

2867 (c) "Data processing software" means the programs and
2868 routines used to employ and control the capabilities of data
2869 processing hardware, including, but not limited to, operating
2870 systems, compilers, assemblers, utilities, library routines,
2871 maintenance routines, applications and computer networking
2872 programs.

2873 (d) "Proprietary software" means data processing
2874 software that is obtained under a licensing agreement and is
2875 protected by copyright or trade secret laws.

2876 (e) "Incident report" means a narrative description, if
2877 such narrative description exists and if such narrative
2878 description does not contain investigative information, of an
2879 alleged offense, and at a minimum shall include the name and
2880 identification of each person charged with and arrested for the
2881 alleged offense, the time, date and location of the alleged
2882 offense, and the property involved, to the extent this information
2883 is known.

2884 (f) "Investigative report" means records of a law
2885 enforcement agency containing information beyond the scope of the
2886 matters contained in an incident report, and generally will



2887 include, but not be limited to, the following matters if beyond
2888 the scope of the matters contained in an incident report:

2889 (i) Records that are compiled in the process of
2890 detecting and investigating any unlawful activity or alleged
2891 unlawful activity, the disclosure of which would harm the
2892 investigation which may include crime scene reports and
2893 demonstrative evidence;

2894 (ii) Records that would reveal the identity of
2895 informants and/or witnesses;

2896 (iii) Records that would prematurely release
2897 information that would impede the public body's enforcement,
2898 investigative or detection efforts;

2899 (iv) Records that would disclose investigatory
2900 techniques and/or results of investigative techniques;

2901 (v) Records that would deprive a person of a right
2902 to a fair trial or an impartial adjudication;

2903 (vi) Records that would endanger the life or
2904 safety of a public official or law enforcement personnel, or
2905 confidential informants or witnesses;

2906 (vii) Records pertaining to quality control or
2907 PEER review activities; or

2908 (viii) Records that would impede or jeopardize a
2909 prosecutor's ability to prosecute the alleged offense.

2910 (g) "Law enforcement agency" means a public body that
2911 performs as one (1) of its principal functions activities



2912 pertaining to the enforcement of criminal laws, the apprehension
2913 and investigation of criminal offenders, or the investigation of
2914 criminal activities.

2915 **SECTION 78.** Section 25-61-5, Mississippi Code of 1972, is
2916 brought forward as follows:

2917 25-61-5. (1) (a) Except as otherwise provided by Sections
2918 25-61-9 and 25-61-11, all public records are hereby declared to be
2919 public property, and any person shall have the right to inspect,
2920 copy or mechanically reproduce or obtain a reproduction of any
2921 public record of a public body in accordance with reasonable
2922 written procedures adopted by the public body concerning the cost,
2923 time, place and method of access, and public notice of the
2924 procedures shall be given by the public body, or, if a public body
2925 has not adopted written procedures, the right to inspect, copy or
2926 mechanically reproduce or obtain a reproduction of a public record
2927 of the public body shall be provided within one (1) working day
2928 after a written request for a public record is made. No public
2929 body shall adopt procedures which will authorize the public body
2930 to produce or deny production of a public record later than seven
2931 (7) working days from the date of the receipt of the request for
2932 the production of the record.

2933 (b) If a public body is unable to produce a public
2934 record by the seventh working day after the request is made, the
2935 public body must provide a written explanation to the person
2936 making the request stating that the record requested will be



2937 produced and specifying with particularity why the records cannot
2938 be produced within the seven-day period. Unless there is mutual
2939 agreement of the parties, in no event shall the date for the
2940 public body's production of the requested records be any later
2941 than fourteen (14) working days from the receipt by the public
2942 body of the original request.

2943 (2) If any public record contains material which is not
2944 exempted under this chapter, the public agency shall redact the
2945 exempted and make the nonexempted material available for
2946 examination. Such public agency shall be entitled to charge a
2947 reasonable fee for the redaction of any exempted material, not to
2948 exceed the agency's actual cost.

2949 (3) Denial by a public body of a request for access to or
2950 copies of public records under this chapter shall be in writing
2951 and shall contain a statement of the specific exemption relied
2952 upon by the public body for the denial. Each public body shall
2953 maintain a file of all denials of requests for public records.
2954 Public bodies shall be required to preserve such denials on file
2955 for not less than three (3) years from the date such denials are
2956 made. This file shall be made available for inspection or copying
2957 or both during regular office hours to any person upon written
2958 request.

2959 **SECTION 79.** Section 25-61-7, Mississippi Code of 1972, is
2960 brought forward as follows:



2961 25-61-7. (1) Except as provided in subsection (2) of this
2962 section, each public body may establish and collect fees
2963 reasonably calculated to reimburse it for, and in no case to
2964 exceed, the actual cost of searching, reviewing and/or duplicating
2965 and, if applicable, mailing copies of public records. Any staff
2966 time or contractual services included in actual cost shall be at
2967 the pay scale of the lowest level employee or contractor competent
2968 to respond to the request. Such fees shall be collected by the
2969 public body in advance of complying with the request.

2970 (2) A public body may establish a standard fee scale to
2971 reimburse it for the costs of creating, acquiring and maintaining
2972 a geographic information system or multipurpose cadastre as
2973 authorized and defined under Section 25-61-1 et seq., or any other
2974 electronically accessible data. Such fees must be reasonably
2975 related to the costs of creating, acquiring and maintaining the
2976 geographic information system, multipurpose cadastre or other
2977 electronically accessible data, for the data or information
2978 contained therein or taken therefrom and for any records, papers,
2979 accounts, maps, photographs, films, cards, tapes, recordings or
2980 other materials, data or information relating thereto, whether in
2981 printed, digital or other format. In determining the fees or
2982 charges under this subsection, the public body may consider the
2983 type of information requested, the purpose or purposes for which
2984 the information has been requested and the commercial value of the
2985 information.



2986 **SECTION 80.** Section 25-61-9, Mississippi Code of 1972, is
2987 brought forward as follows:

2988 25-61-9. (1) Records furnished to public bodies by third
2989 parties which contain trade secrets or confidential commercial or
2990 financial information shall not be subject to inspection,
2991 examination, copying or reproduction under this chapter until
2992 notice to third parties has been given, but the records shall be
2993 released within a reasonable period of time unless the third
2994 parties have obtained a court order protecting the records as
2995 confidential.

2996 (2) If any public record which is held to be exempt from
2997 disclosure pursuant to this chapter contains material which is not
2998 exempt pursuant to this chapter, the public body shall separate
2999 the exempt material and make the nonexempt material available for
3000 examination or copying, or both, as provided for in this chapter.

3001 (3) Trade secrets and confidential commercial and financial
3002 information of a proprietary nature developed by a college,
3003 university or public hospital under contract with a firm,
3004 business, partnership, association, corporation, individual or
3005 other like entity shall not be subject to inspection, examination,
3006 copying or reproduction under this chapter.

3007 (4) Misappropriation of a trade secret shall be governed by
3008 the provisions of the Mississippi Uniform Trade Secrets Act,
3009 Sections 75-26-1 through 75-26-19.



3010 (5) A waste minimization plan and any updates developed by
3011 generators and facility operators under the Mississippi
3012 Comprehensive Multimedia Waste Minimization Act of 1990 shall be
3013 retained at the facility and shall not be subject to inspection,
3014 examination, copying or reproduction under this chapter.

3015 (6) Data processing software obtained by an agency under a
3016 licensing agreement that prohibits its disclosure and which
3017 software is a trade secret, as defined in Section 75-26-3, and
3018 data processing software produced by a public body which is
3019 sensitive must not be subject to inspection, copying or
3020 reproduction under this chapter.

3021 As used in this subsection, "sensitive" means only those
3022 portions of data processing software, including the specifications
3023 and documentation, used to:

3024 (a) Collect, process, store, and retrieve information
3025 which is exempt under this chapter.

3026 (b) Control and direct access authorizations and
3027 security measures for automated systems.

3028 (c) Collect, process, store, and retrieve information,
3029 disclosure of which would require a significant intrusion into the
3030 business of the public body.

3031 (7) For all procurement contracts awarded by state agencies,
3032 the provisions of the contract which contain the commodities
3033 purchased or the personal or professional services provided, the
3034 price to be paid, and the term of the contract shall not be deemed



3035 to be a trade secret or confidential commercial or financial
3036 information under this section, and shall be available for
3037 examination, copying or reproduction as provided for in this
3038 chapter.

3039 **SECTION 81.** Section 25-61-10, Mississippi Code of 1972, is
3040 brought forward as follows:

3041 25-61-10. (1) Any public body that uses sensitive software,
3042 as defined in Section 25-61-9, or proprietary software must not
3043 thereby diminish the right of the public to inspect and copy a
3044 public record. A public body that uses sensitive software, as
3045 defined in Section 25-61-9, or proprietary software to store,
3046 manipulate, or retrieve a public record will not be deemed to have
3047 diminished the right of the public if it either: (a) if legally
3048 obtainable, makes a copy of the software available to the public
3049 for application to the public records stored, manipulated, or
3050 retrieved by the software; or (b) ensures that the software has
3051 the capacity to create an electronic copy of each public record
3052 stored, manipulated, or retrieved by the software in some common
3053 format such as, but not limited to, the American Standard Code for
3054 Information Interchange.

3055 (2) A public body shall provide a copy of the record in the
3056 format requested if the public body maintains the record in that
3057 format, and the public body may charge a fee which must be in
3058 accordance with Section 25-61-7.



3059 (3) Before a public body acquires or makes a major
3060 modification to any information technology system, equipment, or
3061 software used to store, retrieve, or manipulate a public record,
3062 the public body shall adequately plan for the provision of public
3063 access and redaction of exempt or confidential information by the
3064 proposed system, equipment or software.

3065 (4) A public body may not enter into a contract for the
3066 creation or maintenance of a public records data base if that
3067 contract impairs the ability of the public to inspect or copy the
3068 public records of that agency, including public records that are
3069 online or stored in an information technology system used by the
3070 public body.

3071 **SECTION 82.** Section 25-61-11, Mississippi Code of 1972, is
3072 brought forward as follows:

3073 25-61-11. The provisions of this chapter shall not be
3074 construed to conflict with, amend, repeal or supersede any
3075 constitutional law, state or federal statutory law, or decision of
3076 a court of this state or the United States which at the time of
3077 this chapter is effective or thereafter specifically declares a
3078 public record to be confidential or privileged, or provides that a
3079 public record shall be exempt from the provisions of this chapter.

3080 **SECTION 83.** Section 25-61-11.1, Mississippi Code of 1972, is
3081 brought forward as follows:

3082 25-61-11.1. The name, home address, any telephone number or
3083 other private information of any person who possesses a weapon



3084 permit issued under Section 45-9-101 or Section 97-37-7 shall be
3085 exempt from the Mississippi Public Records Act of 1983.

3086 **SECTION 84.** Section 25-61-12, Mississippi Code of 1972, is
3087 brought forward as follows:

3088 25-61-12. (1) The home address, any telephone number of a
3089 privately paid account or other private information of any law
3090 enforcement officer, criminal investigator, judge or district
3091 attorney or the spouse or child of the law enforcement officer,
3092 criminal investigator, judge or district attorney shall be exempt
3093 from the Mississippi Public Records Act of 1983. This exemption
3094 does not apply to any court transcript or recording if given under
3095 oath and not otherwise excluded by law.

3096 (2) (a) When in the possession of a law enforcement agency,
3097 investigative reports shall be exempt from the provisions of this
3098 chapter; however, a law enforcement agency, in its discretion, may
3099 choose to make public all or any part of any investigative report.

3100 (b) Nothing in this chapter shall be construed to
3101 prevent any and all public bodies from having among themselves a
3102 free flow of information for the purpose of achieving a
3103 coordinated and effective detection and investigation of unlawful
3104 activity. Where the confidentiality of records covered by this
3105 section is being determined in a private hearing before a judge
3106 under Section 25-61-13, the public body may redact or separate
3107 from the records the identity of confidential informants or the
3108 identity of the person or persons under investigation or other



3109 information other than the nature of the incident, time, date and
3110 location.

3111 (c) Nothing in this chapter shall be construed to
3112 exempt from public disclosure a law enforcement incident report.
3113 An incident report shall be a public record. A law enforcement
3114 agency may release information in addition to the information
3115 contained in the incident report.

3116 (d) Nothing in this chapter shall be construed to
3117 require the disclosure of information that would reveal the
3118 identity of the victim.

3119 (3) Personal information of victims, including victim impact
3120 statements and letters of support on behalf of victims that are
3121 contained in records on file with the Mississippi Department of
3122 Corrections and State Parole Board, shall be exempt from the
3123 provisions of this chapter.

3124 (4) Records of a public hospital board relating to the
3125 purchase or sale of medical or other practices or other business
3126 operations, and the recruitment of physicians and other health
3127 care professionals, shall be exempt from the provisions of this
3128 chapter.

3129 **SECTION 85.** Section 25-61-13, Mississippi Code of 1972, is
3130 brought forward as follows:

3131 25-61-13. The Mississippi Ethics Commission shall have the
3132 authority to enforce the provisions of this chapter upon a
3133 complaint filed by any person denied the right granted under



3134 Section 25-61-5 to inspect or copy public records. Upon receiving
3135 a complaint, the commission shall forward a copy of the complaint
3136 to the head of the public body involved. The public body shall
3137 have fourteen (14) days from receipt of the complaint to file a
3138 response with the commission. After receiving the response to the
3139 complaint or, if no response is received after fourteen (14) days,
3140 the commission, in its discretion, may dismiss the complaint or
3141 proceed by setting a hearing in accordance with rules and
3142 regulations promulgated by the Ethics Commission. The Ethics
3143 Commission may order the public body and any individual employees
3144 or officials of the public body to produce records or take other
3145 reasonable measures necessary, if any, to comply with this
3146 chapter. The Ethics Commission may also impose penalties as
3147 authorized in this chapter. The Ethics Commission may order a
3148 public body to produce records for private review by the
3149 commission, its staff or designee. The Ethics Commission shall
3150 complete its private review of the records within thirty (30) days
3151 after receipt of the records from the public body. Records
3152 produced to the commission for private review shall remain exempt
3153 from disclosure under this chapter while in the custody of the
3154 commission.

3155 Nothing in this chapter shall be construed to prohibit the
3156 Ethics Commission from mediating or otherwise resolving disputes
3157 arising under this chapter, from issuing an order based on a
3158 complaint and response where no facts are in dispute, or from



3159 entering orders agreed to by the parties. In carrying out its
3160 responsibilities under this section, the Ethics Commission shall
3161 have all the powers and authority granted to it in Title 25,
3162 Chapter 4, Mississippi Code of 1972, including the authority to
3163 promulgate rules and regulations in furtherance of this chapter.

3164 Any party may petition the chancery court of the county in
3165 which the public body is located to enforce or appeal any order of
3166 the Ethics Commission issued pursuant to this chapter. In any
3167 such appeal the chancery court shall conduct a de novo review.
3168 Nothing in this chapter shall be construed to prohibit any party
3169 from filing a complaint in any chancery court having jurisdiction,
3170 nor shall a party be obligated to exhaust administrative remedies
3171 before filing a complaint. However, any party filing such a
3172 complaint in chancery court shall serve written notice upon the
3173 Ethics Commission at the time of filing the complaint. The
3174 written notice is for information only and does not make the
3175 Ethics Commission a party to the case.

3176 **SECTION 86.** Section 25-61-15, Mississippi Code of 1972, is
3177 brought forward as follows:

3178 25-61-15. Any person who shall deny to any person access to
3179 any public record which is not exempt from the provisions of this
3180 chapter or who charges an unreasonable fee for providing a public
3181 record may be liable civilly in his personal capacity in a sum not
3182 to exceed One Hundred Dollars (\$100.00) per violation, plus all



3183 reasonable expenses incurred by such person bringing the
3184 proceeding.

3185 **SECTION 87.** Section 25-61-17, Mississippi Code of 1972, is
3186 brought forward as follows:

3187 25-61-17. Nothing in this chapter shall be construed as
3188 denying the Legislature the right to determine the rules of its
3189 own proceedings and to regulate public access to its records.
3190 However, notwithstanding the provisions of this section, the
3191 Legislature shall be subject to the provisions of Sections
3192 27-104-151 through 27-104-159.

3193 **SECTION 88.** Section 25-61-19, Mississippi Code of 1972, is
3194 brought forward as follows:

3195 25-61-19. Within sixty (60) days after the end of each
3196 regular session of the Legislature, each agency or department of
3197 the State of Mississippi shall include on the Internet website of
3198 the agency or department a separate section that provides a
3199 legislative update on any legislation enacted at the legislative
3200 session that revises the powers and duties of the agency or
3201 department. The agency or department shall include a link to the
3202 legislative update section on the home page of the website. The
3203 legislative update section shall contain a summary of the
3204 revisions made to the powers and duties of the agency or
3205 department by the legislation, and a contact section or link so
3206 that members of the public may comment on or ask questions about
3207 the revisions or the effect of the revisions in the legislation.



3208 The legislative update section shall remain on the website of the
3209 agency or department until January 1 of the following year.

3210 **SECTION 89.** Section 25-41-1, Mississippi Code of 1972, is
3211 brought forward as follows:

3212 25-41-1. It being essential to the fundamental philosophy of
3213 the American constitutional form of representative government and
3214 to the maintenance of a democratic society that public business be
3215 performed in an open and public manner, and that citizens be
3216 advised of and be aware of the performance of public officials and
3217 the deliberations and decisions that go into the making of public
3218 policy, it is hereby declared to be the policy of the State of
3219 Mississippi that the formation and determination of public policy
3220 is public business and shall be conducted at open meetings except
3221 as otherwise provide herein.

3222 **SECTION 90.** Section 25-41-3, Mississippi Code of 1972, is
3223 brought forward as follows:

3224 25-41-3. For purposes of this chapter, the following words
3225 shall have the meaning ascribed herein, to wit:

3226 (a) "Public body" means any executive or administrative
3227 board, commission, authority, council, department, agency, bureau
3228 or any other policymaking entity, or committee thereof, of the
3229 State of Mississippi, or any political subdivision or municipal
3230 corporation of the state, whether the entity be created by statute
3231 or executive order, which is supported wholly or in part by public
3232 funds or expends public funds, and any standing, interim or



3233 special committee of the Mississippi Legislature. The term
3234 "public body" includes the governing board of a charter school
3235 authorized by the Mississippi Charter School Authorizer Board and
3236 the board of trustees of a community hospital as defined in
3237 Section 41-13-10. There shall be exempted from the provisions of
3238 this chapter:

3239 (i) The judiciary, including all jury
3240 deliberations;

3241 (ii) Law enforcement officials;

3242 (iii) The military;

3243 (iv) The State Probation and Parole Board;

3244 (v) The Workers' Compensation Commission;

3245 (vi) Legislative subcommittees and legislative
3246 conference committees;

3247 (vii) The arbitration council established in
3248 Section 69-3-19;

3249 (viii) License revocation, suspension and
3250 disciplinary proceedings held by the Mississippi State Board of
3251 Dental Examiners; and

3252 (ix) Hearings and meetings of the Board of Tax
3253 Appeals and of the hearing officers and the board of review of the
3254 Department of Revenue as provided in Section 27-77-15.

3255 (b) "Meeting" means an assemblage of members of a
3256 public body at which official acts may be taken upon a matter over
3257 which the public body has supervision, control, jurisdiction or



3258 advisory power; "meeting" also means any assemblage through the
3259 use of video or teleconference devices.

3260 **SECTION 91.** Section 25-41-5, Mississippi Code of 1972, is
3261 brought forward as follows:

3262 25-41-5. (1) All official meetings of any public body,
3263 unless otherwise provided in this chapter or in the Constitutions
3264 of the United States of America or the State of Mississippi, are
3265 declared to be public meetings and shall be open to the public at
3266 all times unless declared an executive session as provided in
3267 Section 25-41-7.

3268 (2) (a) A public body may conduct any meeting through
3269 teleconference or video means. A quorum of a public body as
3270 prescribed by law may be at different locations for the purpose of
3271 conducting a meeting through teleconference or video means
3272 provided participation is available to the general public at one
3273 or more public locations specified in the public meeting notice.

3274 (b) A municipal public body may establish a quorum with
3275 the members of such public body who are on active duty in any
3276 branch of the United States Armed Forces by using any
3277 teleconference or video device that allows such members of the
3278 municipal public body to clearly communicate with each other and
3279 clearly view each other for the purpose of conducting a meeting,
3280 voting on issues of the municipal public body and transacting
3281 business of the municipal public body provided that such



3282 participation is available to the general public at one or more
3283 public locations specified in the public meeting notice.

3284 (3) (a) Notice of any meetings held pursuant to subsection
3285 (2) of this section shall be provided at least five (5) days in
3286 advance of the date scheduled for the meeting. The notice shall
3287 include the date, time, place and purpose for the meeting and
3288 shall identify all locations for the meeting available to the
3289 general public. All persons attending the meeting at any of the
3290 public meeting locations shall be afforded the same opportunity to
3291 address the public body as persons attending the primary or
3292 central location. Any interruption in the teleconference or video
3293 broadcast of the meeting shall result in the suspension of action
3294 at the meeting until repairs are made and public access restored.

3295 (b) Five-day notice shall not be required for
3296 teleconference or video meetings continued to address an emergency
3297 as provided in subsection (5) of this section or to conclude the
3298 agenda of a teleconference or video meeting of the public body for
3299 which the proper notice has been given, when the date, time, place
3300 and purpose of the continued meeting are set during the meeting
3301 prior to adjournment.

3302 (4) An agenda and materials that will be distributed to
3303 members of the public body and that have been made available to
3304 the staff of the public body in sufficient time for duplication
3305 and forwarding to all locations where public access will be
3306 provided shall be made available to the public at the time of the



3307 meeting. Minutes of all meetings held by teleconference or video
3308 means shall be recorded as required by Section 25-41-11. Votes
3309 taken during any meeting conducted through teleconference or video
3310 means shall be recorded by name in roll-call fashion and included
3311 in the minutes. In addition, the public body shall make an audio
3312 recording of the meeting, if a teleconference medium is used, or
3313 an audio/visual recording, if the meeting is held by video means.
3314 The recording shall be preserved by the public body for a period
3315 of three (3) years following the date of the meeting and shall be
3316 available to the public.

3317 (5) A public body may meet by teleconference or video means
3318 as often as needed if an emergency exists and the public body is
3319 unable to meet in regular session. Public bodies conducting
3320 emergency meetings through teleconference or video means shall
3321 comply with the provisions of subsection (4) of this section
3322 requiring minutes, recordation and preservation of the audio or
3323 audio/visual recording of the meeting. The nature of the
3324 emergency shall be stated in the minutes.

3325 **SECTION 92.** Section 25-41-7, Mississippi Code of 1972, is
3326 brought forward as follows:

3327 25-41-7. (1) Any public body may enter into executive
3328 session for the transaction of public business; however, all
3329 meetings of any public body shall commence as an open meeting, and
3330 an affirmative vote of three-fifths (3/5) of all members present
3331 shall be required to declare an executive session.



3332 (2) The procedure to be followed by any public body in
3333 declaring an executive session shall be as follows: Any member
3334 shall have the right to request by motion a closed determination
3335 upon the issue of whether or not to declare an executive session.
3336 The motion, by majority vote, shall require the meeting to be
3337 closed for a preliminary determination of the necessity for
3338 executive session. No other business shall be transacted until
3339 the discussion of the nature of the matter requiring executive
3340 session has been completed and a vote, as required in subsection
3341 (1) hereof, has been taken on the issue.

3342 (3) An executive session shall be limited to matters allowed
3343 to be exempted from open meetings by subsection (4) of this
3344 section. The reason for holding an executive session shall be
3345 stated in an open meeting, and the reason so stated shall be
3346 recorded in the minutes of the meeting. Nothing in this section
3347 shall be construed to require that any meeting be closed to the
3348 public, nor shall any executive session be used to circumvent or
3349 to defeat the purposes of this chapter.

3350 (4) A public body may hold an executive session pursuant to
3351 this section for one or more of the following reasons:

3352 (a) Transaction of business and discussion of personnel
3353 matters relating to the job performance, character, professional
3354 competence, or physical or mental health of a person holding a
3355 specific position, or matters relating to the terms of any
3356 potential or current employment or services agreement with any



3357 physicians or other employees of public hospitals, including any
3358 discussion of any person applying for medical staff privileges or
3359 membership with a public hospital.

3360 (b) Strategy sessions or negotiations with respect to
3361 prospective litigation, litigation or issuance of an appealable
3362 order when an open meeting would have a detrimental effect on the
3363 litigating position of the public body.

3364 (c) Transaction of business and discussion regarding
3365 the report, development or course of action regarding security
3366 personnel, plans or devices.

3367 (d) Investigative proceedings by any public body
3368 regarding allegations of misconduct or violation of law.

3369 (e) Any body of the Legislature which is meeting on
3370 matters within the jurisdiction of that body.

3371 (f) Cases of extraordinary emergency which would pose
3372 immediate or irrevocable harm or damage to persons or property, or
3373 both, within the jurisdiction of the public body.

3374 (g) Transaction of business and discussion regarding
3375 the prospective purchase, sale or leasing of lands.

3376 (h) Discussions between a school board and individual
3377 students who attend a school within the jurisdiction of the school
3378 board or the parents or teachers of the students regarding
3379 problems of the students or their parents or teachers.



3380 (i) Transaction of business and discussion concerning
3381 the preparation of tests for admission to practice in recognized
3382 professions.

3383 (j) Transaction of business and discussions or
3384 negotiations regarding the location, relocation or expansion of a
3385 business, medical service or an industry.

3386 (k) Transaction of business and discussions regarding
3387 employment or job performance of a person in a specific position
3388 or termination of an employee holding a specific position. The
3389 exemption provided by this paragraph includes transaction of
3390 business and discussion in executive session by the board of
3391 trustees of a public hospital regarding any employee or medical
3392 staff member or applicant for medical staff privileges and any
3393 such individual's credentialing, health, performance, salary,
3394 raises or disciplinary action. The exemption provided by this
3395 paragraph includes the right to enter into executive session
3396 concerning a line item in a budget which might affect the
3397 termination of an employee or employees. All other budget items
3398 shall be considered in open meetings and final budgetary adoption
3399 shall not be taken in executive session.

3400 (l) Discussions regarding material or data exempt from
3401 the Mississippi Public Records Act of 1983 pursuant to Section
3402 25-11-121.

3403 (m) Transaction of business and discussion regarding
3404 prospective strategic business decisions of public hospitals,



3405 including without limitation, decisions to open a new service
3406 line, implement capital improvements, or file applications for
3407 certificates of need or determinations of nonreviewability with
3408 the State Department of Health.

3409 (n) Transaction of business of the boards of trustees
3410 of public hospitals that would require discussion of any
3411 identifiable patient information, including without limitation,
3412 patient complaints, patients' accounts, patients receiving charity
3413 care, or treatment that could be identified to a patient.

3414 (5) The total vote on the question of entering into an
3415 executive session shall be recorded and spread upon the minutes of
3416 the public body.

3417 (6) Any vote whereby an executive session is declared shall
3418 be applicable only to that particular meeting on that particular
3419 day.

3420 **SECTION 93.** Section 25-41-9, Mississippi Code of 1972, is
3421 brought forward as follows:

3422 25-41-9. Any public body may make and enforce reasonable
3423 rules and regulations for the conduct of persons attending its
3424 meetings.

3425 **SECTION 94.** Section 25-41-11, Mississippi Code of 1972, is
3426 brought forward as follows:

3427 25-41-11. (1) Minutes shall be kept of all meetings of a
3428 public body, whether in open or executive session, showing the
3429 members present and absent; the date, time and place of the



3430 meeting; an accurate recording of any final actions taken at such
3431 meeting; and a record, by individual member, of any votes taken;
3432 and any other information that the public body requests be
3433 included or reflected in the minutes. The minutes shall be
3434 recorded within a reasonable time not to exceed thirty (30) days
3435 after recess or adjournment and shall be open to public inspection
3436 during regular business hours.

3437 (2) Minutes of a meeting conducted by teleconference or
3438 video means shall comply with the requirements of Section 25-41-5.

3439 (3) Minutes of legislative committee meetings shall consist
3440 of a written record of attendance and final actions taken at such
3441 meetings.

3442 **SECTION 95.** Section 25-41-13, Mississippi Code of 1972, is
3443 brought forward as follows:

3444 25-41-13. (1) Any public body which holds its meetings at
3445 such times and places and by such procedures as are specifically
3446 prescribed by statute shall continue to do so and no additional
3447 notice of such meetings shall be required except that a notice of
3448 the place, date, hour and subject matter of any recess meeting,
3449 adjourned meeting, interim meeting or any called special meeting
3450 shall be posted within one (1) hour after such meeting is called
3451 in a prominent place available to examination and inspection by
3452 the general public in the building in which the public body
3453 normally meets. A copy of the notice shall be made a part of the
3454 minutes or other permanent official records of the public body.



3455 (2) Any public body, other than a legislative committee,
3456 which does not have statutory provisions prescribing the times and
3457 places and the procedures by which its meetings are to be held
3458 shall, at its first regular or special meeting after the effective
3459 date of this chapter spread upon its minutes the times and places
3460 and the procedures by which all of its meetings are to be held.

3461 (3) Notice of any regular meeting held by a state agency,
3462 other than a legislative committee, shall be submitted to the
3463 Department of Finance and Administration at least twenty-four (24)
3464 hours before the meeting in order to be posted on the department's
3465 searchable website created by the Mississippi Accountability and
3466 Transparency Act, Section 27-104-152 et seq. For purposes of this
3467 subsection, the term "state agency" means an agency, department,
3468 institution, board, commission, council, office, bureau, division,
3469 committee or subcommittee of the state. However, the term "state
3470 agency" does not include institutions of higher learning,
3471 community and junior colleges, counties or municipalities.

3472 (4) During a regular or special session of the Mississippi
3473 Legislature, notice of meetings of all committees, other than
3474 conference committees, shall be given by announcement on the
3475 loudspeaker during sessions of the House of Representatives or
3476 Senate or by posting on a bulletin board provided for that purpose
3477 by each body.

3478 (5) When not in session, the meeting times and places of all
3479 committees shall be kept by the Clerk of the House of



3480 Representatives as to House committees and by the Secretary of the
3481 Senate as to Senate committees, and shall be available at all
3482 times during regular working hours to the public and news media.

3483 **SECTION 96.** Section 25-41-15, Mississippi Code of 1972, is
3484 brought forward as follows:

3485 25-41-15. The Mississippi Ethics Commission shall have the
3486 authority to enforce the provisions of this chapter upon a
3487 complaint filed by any person. Upon receiving a complaint, the
3488 commission shall forward a copy of the complaint to the head of
3489 the public body involved. The public body shall have fourteen
3490 (14) days from receipt of the complaint to file a response with
3491 the commission. After receiving the response to the complaint or,
3492 if no response is received after fourteen (14) days, the
3493 commission, in its discretion, may dismiss the complaint or
3494 proceed by setting a hearing in accordance with rules and
3495 regulations promulgated by the Ethics Commission.

3496 After a hearing, the Ethics Commission may order the public
3497 body to take whatever reasonable measures necessary, if any, to
3498 comply with this chapter. If the Ethics Commission finds that a
3499 member or members of a public body has willfully and knowingly
3500 violated the provisions of this chapter, the Ethics Commission may
3501 impose a civil penalty upon the individual members of the public
3502 body found to be in violation of the provisions of this chapter in
3503 a sum not to exceed Five Hundred Dollars (\$500.00) for a first
3504 offense and One Thousand Dollars (\$1,000.00) for a second or



3505 subsequent offense, plus all reasonable expenses incurred by the
3506 person or persons in bringing the complaint to enforce this
3507 chapter.

3508 Nothing in this chapter shall be construed to prohibit the
3509 Ethics Commission from mediating or otherwise resolving disputes
3510 arising under this chapter or from entering orders agreed to by
3511 the parties. In carrying out its responsibilities under this
3512 section, the Ethics Commission shall have all the powers and
3513 authority granted to it in Title 25, Chapter 4, Mississippi Code
3514 of 1972.

3515 Any party may petition the chancery court of the county in
3516 which the public body is located to enforce or appeal any order of
3517 the Ethics Commission issued pursuant to this chapter. In any
3518 such appeal the chancery court shall conduct a de novo review.

3519 **SECTION 97.** Section 25-41-17, Mississippi Code of 1972, is
3520 brought forward as follows:

3521 25-41-17. The provisions of this chapter shall not apply to
3522 chance meetings or social gatherings of members of a public body.

3523 **SECTION 98.** This act shall take effect and be in force from
3524 and after July 1, 2016.

