

YOUNG WILLIAMS TODAY

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MISSISSIPPI ADMINISTRATIVE PROCEDURES ACT SIGNED INTO LAW

On February 19, 2003, Governor Ronnie Musgrove signed into law House Bill 651 or the Mississippi Administrative Procedures Law (the “Act”) aimed at making the state’s myriad agency rules and regulations more accessible and accountable to the public. The Act establishes rule-making procedures for all state agencies and gives the public a chance to review and respond to rules before they go into effect. We wanted to provide you with information on the most significant aspects of the new law and the rights it affords the public.

Applicability and Effective Date

The Act applies to all state agencies and proceedings thereunder and takes effect July 1, 2005. The Act will not apply to the state legislature, the judiciary, the Governor, any political subdivision of the state or any of the administrative units of a political subdivision.

Purpose

The purposes of the Act are to provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; to increase public access to governmental information; and to increase public participation in the formulation of administrative rules.

Public Input and Access to Agency Rules

The Secretary of State (the “Secretary”) will publish an indexed administrative bulletin providing public notice of the subject matter of any proposed agency rules or changes in the law due to new agency rules. The bulletin will indicate where, when and how persons may comment on proposed rules and where more information may be obtained. Agencies have discretion to schedule oral hearings on proposal rules, but they are required to conduct hearings if requested to do so by a political subdivision, an agency, or ten or more persons. Interested persons may also request to be put on a mailing list which will provide notice of any proposed rules or adoptions by either mail, fax or e-mail. The Secretary will also publish an administrative code containing an indexed list of the effective rules of each agency. The bulletin and code will be furnished to subscribers at a reasonable cost. Each agency will allow public inspection and copying of the relevant portions of the indexed administrative bulletin and code containing the rules adopted or used by the agency. The Secretary will also maintain a permanent register of all filed rules and attachments from each agency, which will be open to the public for inspection.

Public Access to Agency Orders

Agencies must make available for public inspection and copying all final written orders indexed by name and subject. These orders may not be used as precedent to the detriment of any person until the order has been made available for public inspection and indexed. However, this exception may not be relied upon by a person who the agency proves had actual, timely knowledge of the order.

Declaratory Opinions

Written requests can be made of any agency for a declaratory opinion as to how a statute, rule or order within the primary jurisdiction of the agency will be applied under specified circumstances. The specific facts upon which the opinion is sought must be clearly set forth and relate only to a single transaction or occurrence. The agency must provide a written response to the requesting person within 45 days after it receives the request. The requesting party can rely upon the declaratory opinion as long as they follow the direction of the opinion in good faith and act in accordance therewith. However, no declaratory opinion is binding upon anyone other than the agency issuing the opinion and the person to whom the opinion is issued. The opinion cannot be used as precedent for other transactions or occurrences. Agencies are required to make available for public inspection and copying all declaratory opinions indexed by name and subject unless information contained therein is confidential by statute or exempt from public disclosure pursuant to law.

Internal Agency Rules

Agencies must adopt rules describing the general nature of the agency's operations, where and how the public can obtain information or make submissions or requests, and setting forth the requirements of all formal and informal proceedings available to the public. At least every five years each agency must review its rules and determine whether any should be repealed, amended or if a new rule should be adopted.

Model Rules of Procedure

The Secretary will adopt model rules of procedure dealing with all general functions and duties performed in common by as many agencies as possible. Each agency may adopt as much of the model rules as is practicable under its circumstances.

Public Rule-Making Docket

Each agency is required to maintain a current, public rule-making docket. This docket must include information on each pending rule-making proceeding and indicate:

- (a) the subject matter of the proposed rule;
- (b) a citation to all published notices relating to the proceeding;
- (c) where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected;
- (d) the time during which written submissions may be made;
- (e) if applicable, where and when oral presentations may be made;
- (f) where any economic impact statement and written requests for the issuance of and other information concerning an economic impact statement of the proposed rule may be inspected;
- (g) the current status of the proposed rule;
- (h) the date of the rule's adoption; and
- (i) when the rule will become effective.

Economic Impact Statement

An agency proposing the adoption of a rule or significant amendment to an existing rule (defined as any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds \$100,000.00) imposing a duty, responsibility or requirement on any person must consider the economic impact the rule will have on the citizens of Mississippi and the benefits the rule will provide to those citizens. Such agency must then prepare a detailed written report providing an economic impact statement for the proposed rule or amendment. Any person wishing to protest a rule or regulation based on the economic impact statement is provided limited means and must provide the agency certain information sufficient to make the agency aware of specific concerns regarding the statement.

This Client Alert Bulletin is not intended to cover the entire Act and provides general information only. It does not constitute legal advice applicable to any particular situation. If you have any questions concerning the Act, please contact one of the following YoungWilliams attorneys:

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New Attorney Note: YoungWilliams is pleased to welcome John Sanford McDavid to the firm as a shareholder. John has extensive experience in handling commercial real estate and financing transactions and developments, oil and gas matters, business matters and title and other property disputes and litigation. He is admitted to practice in both Mississippi and Louisiana and has practiced at another firm in Jackson for 19 years. John joined us March 1st and can be reached at (601) 360-9014 or jmc david@youngwilliams.com.

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