

**CONCLUSION:** Most states have adopted some form of rules oversight that can benefit a general program or agency. While many programs adopted over the years were found to be unconstitutional, effective programs can be adopted that can reduce the risk of constitutional litigation and provide an effective system of rules oversight. A logical first step in developing a rules review process would be to establish a joint committee with the discretion to review newly adopted or proposed rules and advise the Legislature on the subject of whether or not the rules are consistent with several legal standards including the intention of the Legislature.



## BACKGROUND

Agencies authorized by broad laws have been empowered to create their own rules and regulations. Over the years, as government agencies have grown, efforts at the state and federal level have been made to oversee the administrative process, particularly rulemaking.

Legislatures have always had broad authority to review the activities of government, particularly the executive branch. There are many processes that can be used to accomplish this, including appropriations hearings and legislative audits and evaluations.

The purpose of this issue brief is to explain the uses and pitfalls of Mississippi's methods of oversight and critique of agency rulemaking.



## RECOMMENDATIONS

**Option 1:** Establish a joint committee with the power to selectively review newly adopted/proposed rules and give advice to the Legislature on these rules.

**Option 2:** Adopt a general law empowering a Joint Committee to conduct rules reviews on proposed or new rule adoptions to advise the Legislature on the legality of the rules. Additionally, provide that new rules must be approved by the Legislature through general bills in the session following their adoption. Failure to approve constitutes a rejection of the rule.

**Option 3:** The PEER Committee could review agency rules in a limited capacity based on its existing enabling legislation through MISS. CODE ANN. Section 5-3-57 (1972).



## KEY FINDINGS

- **What forms of oversight does Mississippi currently use to regulate agency rulemaking?**

Mississippi regularly uses all forms of traditional oversight (e.g., advice and consent, standing committee hearings). The Levin Center for Oversight and Democracy of Wayne State University Law School notes that while Mississippi actively uses these forms of oversight, it is noticeably lacking in any formal method of administrative rules review.

- **What are the options for legislative involvement in the rule review process?**

Some strategies for enhanced legislative oversight include non-systemic forms of oversight, systemic advisory bodies, rule suspension, and litigation burden shifting. In some states, legislatures combine these strategies.

### How are other states' legislatures involved in rules review?

In this issue brief, PEER discussed several states whose experience in administrative rules review might be instructive if Mississippi wished to consider establishing a legislative rules review program. These states generally review newly adopted or proposed rules, and methods vary from state to state.

Of the states discussed, those of Colorado, Kansas, and Tennessee are not likely to raise constitutional concerns in Mississippi and could be used to offer effective oversight of the rulemaking process.

- **Colorado and Tennessee** have adopted general laws that empower joint committees to conduct rules reviews and advise the state legislatures on the legality of the rules.
- **Kansas** has established a committee that has been effective in reviewing rules and has had influence on amendments that have enabled rules to become effective without challenges in the Legislature.