HOUSE BILL NO. 1614

AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PRESCRIBE THE ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO PROVIDE FOR THE SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW RIGHTS UNDER THE ACT MAY BE WAIVED, HOW MATTERS MAY BE SETTLED INFORMALLY UNDER THE ACT AND HOW PROCEEDINGS UNDER THE ACT MAY BE CONVERTED TO ANOTHER TYPE OF AGENCY PROCEEDING; TO PRESCRIBE THE MANNER OF SERVICE AND COMPUTATION OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION, COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURE PROVIDED IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO REPEAL SECTIONS 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 AND 25-43-19, MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW, PROVIDE DEFINITIONS FOR TERMS USED IN SUCH LAW, PRESCRIBE DEFINITIONS FOR TERMS USED IN THE ACT, REQUIRE FILING AND NOTICE BEFORE SUCH RULES MAY BECOME EFFECTIVE, REQUIRE AGENCIES TO INDEX ALL EFFECTIVE RULES ADOPTED, PROVIDE THAT REVOCATION OR SUSPENSION OF ANY LICENSE SHALL NOT BE EFFECTIVE UNLESS NOTICE OF SUCH INTENDED ACTION IS GIVEN TO THE LICENSEE, AND REQUIRE AGENCIES TO ADOPT PROCEDURES TO ASSURE THAT OPPONENTS OF PROPOSED RULES HAVE THE OPPORTUNITY TO PRESENT THEIR VIEWS AND REVIEW ADVERSE RULINGS; AND FOR RELATED PURPOSES.

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

ARTICLE I

GENERAL PROVISIONS
SECTION 1. The following shall be codified as Section 25-43-1.101, Mississippi Code of 1972:

25-43-1.101. Title; Statement of Purpose.

(1) This chapter may be cited as the "Mississippi Administrative Procedures Law."

(2) This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter shall be construed as invalidating any rule or regulation adopted before July 1, 2003, if such rule or regulation was properly adopted in accordance with the law as it existed at the time of adoption. Nothing in this chapter is meant to discourage agencies from adopting procedures providing greater protections to the public or conferring additional rights upon the public; and save for express provisions of this chapter to the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here. This chapter is meant to apply to all rule-making that is not specifically excluded from this chapter or some portion thereof by its express terms or by the express terms of another chapter.

The purposes of the Mississippi Administrative Procedures Law 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; to increase public participation in the formulation of administrative rules; and to simplify the process of judicial review of agency action as well as increase its ease and availability. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient,
economical and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

(3) From and after July 1, 2003, any reference to the Mississippi Administrative Procedure Act, the Mississippi Administrative Procedures Act, the Mississippi Administrative Procedure Law, or the Mississippi Administrative Procedures Law, being Section 25-43-1 et seq., Mississippi Code of 1972, shall be deemed to mean and refer to this chapter.

SECTION 2. The following shall be codified as Section 25-43-1.102, Mississippi Code of 1972:

25-43-1.102. Definitions.

As used in this chapter the following terms shall have the meanings ascribed to them in this section unless the context otherwise requires:

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

(b) "Agency action" means: (i) the whole or a part of a rule, an order or a declaratory opinion; or (ii) the failure to