

By: Representative Henley

To: Judiciary A

HOUSE BILL NO. 943

1 AN ACT TO AMEND SECTION 25-43-2.103, MISSISSIPPI CODE OF
 2 1972, TO PROVIDE THAT ANY PERSON WHO MAKES A REQUEST OF AN AGENCY
 3 FOR A DECLARATORY OPINION MAY MAKE THE REQUEST ELECTRONICALLY OR
 4 IN WRITING; TO REQUIRE EACH AGENCY TO INCLUDE INSTRUCTIONS ON ITS
 5 WEBSITE DETAILING HOW AN ELECTRONIC REQUEST OF AN AGENCY FOR A
 6 DECLARATORY OPINION MAY BE MADE AND WHAT INFORMATION MUST BE
 7 CONTAINED IN EACH SUCH REQUEST; TO REQUIRE AN AGENCY TO ESTABLISH
 8 THE PROPER ONLINE PORTALS TO ALLOW A PERSON TO SUBMIT AN
 9 ELECTRONIC REQUEST FOR A DECLARATORY OPINION; TO AMEND SECTION
 10 41-7-205, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS
 11 OF THIS ACT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 25-43-2.103, Mississippi Code of 1972, is
 14 amended as follows:

15 25-43-2.103. **Declaratory opinions.** (1) Any person with a
 16 substantial interest in the subject matter may make a written or
 17 electronic request of an agency for a declaratory opinion as to
 18 the applicability to specified circumstances of a statute, rule or
 19 order within the primary jurisdiction of the agency. Each agency
 20 shall include instructions on its website detailing how a person
 21 may submit an electronic request of that agency for a declaratory
 22 opinion and what information must be contained in each such



23 request. The person may choose whether to submit a request of an
24 agency for a declaratory opinion in writing or
25 electronically. * * * The written or electronic request must
26 clearly set forth the specific facts upon which an opinion is
27 asked for and shall be limited to a single transaction or
28 occurrence. An agency, through the agency head or its designee(s)
29 by rule, shall issue a declaratory opinion in response to a
30 written or electronic request for that opinion unless the agency
31 determines that issuance of the opinion under the circumstances
32 would be contrary to a rule adopted in accordance with subsection
33 (2) of this section.

34 (2) Each agency shall issue rules that provide for: (a) the
35 form, contents and filing of written and electronic requests for
36 declaratory opinions; (b) the procedural rights of persons in
37 relation to the written and electronic requests; and (c) the
38 disposition of the written and electronic requests. Those rules
39 must describe the classes of circumstances in which the agency
40 will not issue a declaratory opinion.

41 (3) Within forty-five (45) days after receipt of a written
42 or electronic request for a declaratory opinion, an agency, in
43 writing or electronically, shall:

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



46 (b) Agree to issue a declaratory opinion by a specified
47 time but no later than ninety (90) days after receipt of the
48 written or electronic request; or

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

51 (4) A copy of all opinions issued in response to a written
52 request for a declaratory opinion must be mailed promptly to the
53 requesting person. A copy of all opinions issued in response to
54 an electronic request for a declaratory opinion must be
55 electronically delivered promptly to the requesting person.

56 (5) (a) When any person receives a declaratory opinion from
57 an agency and * * * has stated all the facts to govern * * * that
58 opinion, the agency shall take no civil or criminal action
59 against * * * the person who, in good faith, follows the direction
60 of * * * the opinion and acts in accordance * * * with the opinion
61 unless a court of competent jurisdiction, after a full
62 hearing, * * * judicially declares that * * * the opinion is
63 manifestly wrong and without any substantial support. No
64 declaratory opinion shall be given or considered if the opinion is
65 requested after suit is filed or prosecution begun. Any
66 declaratory opinion rendered pursuant to this chapter shall not be
67 binding or effective for any third party or person other than the
68 agency issuing the declaratory opinion and the person to whom the
69 opinion is issued and shall not be used as precedent for any other



70 transaction or occurrence beyond that set forth by the requesting
71 person.

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

76 (c) Subject to any confidentiality provisions
77 established by law, each agency shall make all declaratory
78 opinions available for public inspection and copying and shall
79 index them by name and subject, unless information contained
80 within * * * the opinions is confidential by statute or exempt
81 from public disclosure pursuant to another provision of law.

82 (6) Without in any way limiting a person's right to request
83 and receive a declaratory opinion under this section, or an
84 agency's duty to issue a declaratory opinion under this section,
85 nothing contained in this section shall prohibit an agency from
86 providing informal responses or advice, orally or in writing, to
87 any inquiries or requests for information submitted to the agency.
88 Informal responses shall not be considered a declaratory opinion
89 under this section.

90 **SECTION 2.** Section 41-7-205, Mississippi Code of 1972, is
91 amended as follows:

92 41-7-205. An applicant proposing a project which may be
93 governed by the provisions of Section 41-7-171 et seq. may submit
94 a determination of reviewability request to obtain a written or



95 electronic declaratory opinion regarding the reviewability of the
96 proposed project. If such an opinion is sought, the requestor and
97 department shall abide by the provisions of Section 25-43-2.103 as
98 they are effective on July 1, * * * 2018, except that the
99 department's response shall be provided within forty-five (45)
100 days of the request.

101 **SECTION 3.** This act shall take effect and be in force from
102 and after July 1, 2018.

