

By: Representatives Brown, Mayo, Simpson,
Whittington

To: Judiciary A

HOUSE BILL NO. 1614

1 AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURES
2 LAW"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PRESCRIBE THE
3 ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO PROVIDE FOR THE
4 SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF
5 FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW RIGHTS UNDER THE ACT
6 MAY BE WAIVED, HOW MATTERS MAY BE SETTLED INFORMALLY UNDER THE ACT
7 AND HOW PROCEEDINGS UNDER THE ACT MAY BE CONVERTED TO ANOTHER TYPE
8 OF AGENCY PROCEEDING; TO PRESCRIBE THE MANNER OF SERVICE AND
9 COMPUTATION OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION,
10 COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND
11 ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR
12 REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO
13 THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY
14 AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S
15 ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO
16 ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO
17 PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO
18 ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE
19 FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A
20 REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO
21 PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY
22 VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE
23 RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURES PROVIDED
24 IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO
25 REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE
26 RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE
27 METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE
28 EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE
29 INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS
30 FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO
31 REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO REPEAL
32 SECTIONS 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9,
33 25-43-11, 25-43-13, 25-43-15, 25-43-17 AND 25-43-19, MISSISSIPPI
34 CODE OF 1972, WHICH CREATE THE MISSISSIPPI ADMINISTRATIVE
35 PROCEDURES LAW, PROVIDE DEFINITIONS FOR TERMS USED IN SUCH LAW,
36 PRESCRIBE PROCEDURES THAT MUST BE FOLLOWED BY AGENCIES IN THE
37 ADOPTION, AMENDMENT AND REPEAL OF AGENCY RULES, REQUIRE THE FILING
38 OF AN ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE,
39 REQUIRE FILING AND NOTICE BEFORE SUCH RULES MAY BECOME EFFECTIVE,
40 REQUIRE AGENCIES TO INDEX ALL EFFECTIVE RULES ADOPTED, PROVIDE
41 THAT REVOCATION OR SUSPENSION OF ANY LICENSE SHALL NOT BE
42 EFFECTIVE UNLESS NOTICE OF SUCH INTENDED ACTION IS GIVEN TO THE
43 LICENSEE, AND REQUIRE AGENCIES TO ADOPT PROCEDURES TO ASSURE THAT
44 OPPONENTS OF PROPOSED RULES HAVE THE OPPORTUNITY TO PRESENT THEIR
45 VIEWS AND REVIEW ADVERSE RULINGS; AND FOR RELATED PURPOSES.

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

47 **ARTICLE I**

48 **GENERAL PROVISIONS**



49 **SECTION 1.** The following shall be codified as Section
50 25-43-1.101, Mississippi Code of 1972:

51 25-43-1.101. **Title; Statement of Purpose.**

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

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

70 The purposes of the Mississippi Administrative Procedures Law
71 are: to provide legislative oversight of powers and duties
72 delegated to administrative agencies; to increase public
73 accountability of administrative agencies; to simplify government
74 by assuring a uniform minimum procedure to which all agencies will
75 be held in the conduct of their most important functions; to
76 increase public access to governmental information; to increase
77 public participation in the formulation of administrative rules;
78 and to simplify the process of judicial review of agency action as
79 well as increase its ease and availability. In accomplishing its
80 objectives, the intention of this chapter is to strike a fair
81 balance between these purposes and the need for efficient,



82 economical and effective government administration. The chapter
83 is not meant to alter the substantive rights of any person or
84 agency. Its impact is limited to procedural rights with the
85 expectation that better substantive results will be achieved in
86 the everyday conduct of state government by improving the process
87 by which those results are attained.

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

94 **SECTION 2.** The following shall be codified as Section
95 25-43-1.102, Mississippi Code of 1972:

96 25-43-1.102. **Definitions.**

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

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

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

