

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1412

1 AN ACT TO AMEND SECTION 25-43-1.102, MISSISSIPPI CODE OF
2 1972, TO EXTEND THE EXEMPTION FOR THE BOARD OF TRUSTEES OF STATE
3 INSTITUTIONS OF HIGHER LEARNING OR ANY COLLEGE OR UNIVERSITY
4 THEREUNDER FROM THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURES
5 ACT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 25-43-1.102, Mississippi Code of 1972, is
8 amended as follows:

9 25-43-1.102. **Definitions.**

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

13 (a) "Agency" means a board, commission, department,
14 officer or other administrative unit of this state, including the
15 agency head, and one or more members of the agency head or agency
16 employees directly or indirectly purporting to act on behalf or
17 under the authority of the agency head. The term does not include
18 the Legislature or any of its component units, the judiciary or
19 any of its component units or the Governor. The term does not
20 include a political subdivision of the state or any of the
21 administrative units of a political subdivision. Furthermore, the
22 Board of Trustees of State Institutions of Higher Learning, or any
23 college or university thereunder, shall be exempt from the
24 provisions of this chapter until July 1, 2009, at which time this
25 exemption shall stand repealed. To the extent it purports to
26 exercise authority subject to any provision of this chapter, an
27 administrative unit otherwise qualifying as an "agency" must be

28 treated as a separate agency even if the unit is located within or
29 subordinate to another agency.

30 (b) "Agency head" or "head of the agency" means an
31 individual or body of individuals in whom the ultimate legal
32 authority of the agency is vested by any provision of law.

33 (c) "Agency proceeding" or "proceeding" means the
34 process by which an agency considers:

35 (i) A declaratory opinion pursuant to Section
36 25-43-2.103, or

37 (ii) A rule pursuant to Article III of this
38 chapter.

39 (d) "Agency record" means the official rule-making
40 record of an agency pursuant to Section 25-43-3.112.

41 (e) "Declaratory opinion" means an agency opinion
42 rendered in accordance with the provisions of Section 25-43-2.103.

43 (f) "Order" means an agency action of particular
44 applicability that determines the legal rights, duties,
45 privileges, immunities or other legal interests of one or more
46 specific persons. An order shall be in writing signed by a person
47 with authority to render the order, or if more than one (1) person
48 has such authority by at least that number of such persons as
49 jointly have the authority to render the order, or by a person
50 authorized to render the order on behalf of all such persons. The
51 term does not include an executive order issued by the Governor
52 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
53 General pursuant to Section 7-5-25, an opinion issued by the
54 Ethics Commission pursuant to Section 25-4-17, or a declaratory
55 opinion rendered in accordance with Section 25-43-2.103.

56 (g) "Person" means an individual, partnership,
57 corporation, association, governmental subdivision or unit
58 thereof, or public or private organization or entity of any
59 character, and includes another agency.

60 (h) "Provision of law" or "law" means the whole or a
61 part of the federal or state Constitution, or of any federal or
62 state (i) statute, (ii) case law or common law, (iii) rule of
63 court, (iv) executive order, or (v) rule or order of an
64 administrative agency.

65 (i) "Rule" means the whole or a part of an agency
66 regulation or other statement of general applicability that
67 implements, interprets or prescribes:

68 (i) Law or policy, or

69 (ii) The organization, procedure or practice
70 requirements of an agency. The term includes the amendment,
71 repeal or suspension of an existing rule. "Rule" does not
72 include:

73 1. A regulation or statement concerning only
74 the internal management of an agency which does not directly and
75 substantially affect the procedural or substantive rights or
76 duties of any segment of the public;

77 2. A regulation or statement that establishes
78 criteria or guidelines to be used by the staff of an agency in
79 performing audits, investigations or inspections, settling
80 commercial disputes, negotiating commercial arrangements or in the
81 defense, prosecution or settlement of cases, if disclosure of the
82 criteria or guidelines would:

83 a. Enable law violators to avoid
84 detection;

85 b. Facilitate disregard of requirements
86 imposed by law; or

87 c. Give a clearly improper advantage to
88 persons who are in an adverse position to the state;

89 3. A regulation or statement that only
90 establishes specific prices to be charged for particular goods or
91 services sold by an agency;

92 4. A regulation or statement concerning only
93 the physical servicing, maintenance or care of agency owned or
94 operated facilities or property;

95 5. A regulation or statement relating only to
96 the use of a particular facility or property owned, operated or
97 maintained by the state or any of its subdivisions, if the
98 substance of the regulation or statement is adequately indicated
99 by means of signs or signals to persons who use the facility or
100 property;

101 6. A regulation or statement directly related
102 only to inmates of a correctional or detention facility, students
103 enrolled in an educational institution or patients admitted to a
104 hospital, if adopted by that facility, institution or hospital;

105 7. A form whose contents or substantive
106 requirements are prescribed by rule or statute, and instructions
107 for the execution or use of the form;

108 8. An agency budget;

109 9. A compact or agreement between an agency
110 of this state and one or more agencies of another state or states;
111 or

112 10. An opinion of the Attorney General
113 pursuant to Section 7-5-25, an opinion of the Ethics Commission
114 pursuant to Section 25-4-17, or an Executive Order of the
115 Governor.

116 (j) "Rule-making" means the process for formulation and
117 adoption of a rule.

118 **SECTION 2.** This act shall take effect and be in force from
119 and after July 1, 2004.