

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 956

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25 exemption shall stand repealed.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, 2005.