



MISSISSIPPI CENTER FOR
PUBLIC POLICY

Drain the Swamp?

The Administrative State in Mississippi



"When you create a government bureaucracy, no matter how well-intentioned it is, almost instantly its primary priority becomes the preservation of the bureaucracy."

-Ronald Reagan, speaking at the Neshoba County Fair in 1980

Executive Summary

Government agencies increasingly create, adjudicate, and enforce their own rules. They have not merely expanded in size, function, and power. They often lack meaningful democratic oversight.

The emergence of this administrative state is a cause of concern for those who believe in limited government. In response to this, conservative leaders have talked about “draining the swamp” of federal agencies in Washington DC.

But what about the growth of the administrative state closer to home? What about the plethora of executive boards, agencies, and commissions that exist in Jackson, Mississippi?

Anyone in Mississippi who believes in limited government should be as, if not more, concerned about the growth in executive agencies closer to home.

This report is an attempt to assess the true size and scale of the administrative state in Mississippi. We offer a quantitative assessment of over 200 state government boards, commissions, and agencies, measuring the size of their budgets, their relative regulatory power, and assessing the extent to which they are meaningfully accountable.

Our findings show that:

- **Much of the administrative state in Mississippi is unaccountable to Mississippians.** Of the 222 state government bureaucracies that we reviewed, only 5% of the officials who led them were directly elected. The Senate only approves a minority of appointees.
- **Much of the administrative state can spend public money without real accountability to the public.** Many of the most well-resourced state bureaucracies were the least accountable. Our findings show that over 80% of the spending power within the state bureaucracy was exercised by agencies that had no meaningful direct democratic accountability to Mississippians.
- **Some smaller spending entities have enormous regulatory power.** It is not enough to control the spending of the administrative state, since some bureaucratic agencies wield enormous power in specific areas, even if they do not have large budgets.
- **Certain agencies have enormous power over specific industries,** making cronyism and corporate capture by vested interests a real danger.

We go on to make several policy recommendations:

- **Bureaucrats should be given less discretion:** Mississippi’s state legislature needs to do a better job of defining what executive agencies ought to do.

- **Active accountability:** We suggest several ways in which those that preside over agencies and commissions could be made more accountable to the public. This includes the use of regular audits that assess how bureaucrats are using their legislatively granted authority.
- **Abolition and consolidation:** Private businesses must periodically downsize. We believe that Mississippi's state bureaucracy needs downsizing, too. There are dozens of agencies and boards that we can cope without. We have no doubt that there are plenty of good people busily working for the Auctioneer Commission, the Board of Massage Therapists, and the Board of Physical Therapists. However, plenty of other states cope without such entities. Might not Mississippi be able to manage without an Interior Design Advisory Committee?
- **Periodic assessments of whether an entity is still needed:** The administrative state that exists today in Jackson is the consequence of cumulative bureaucratic growth. The legislature should periodically assess whether certain government entities have outlived their initial purpose.

Introduction

The administrative state in Mississippi can expand because it is able to gain money and power without proper accountability. After decades of the state government continually expanding, many attempts have been made by some to reduce the power of the bureaucratic state by reducing the number of government boards, agencies, and commissions.

In 2014, Senate Bill 2535 was introduced as sweeping legislation that would have abolished several inactive and unnecessary boards.¹ Also, the bill brought forward many other boards with the potential to reduce the regulations imposed by these boards. However, the bill died within just three weeks of its introduction.

Later, in the 2021 legislative session, House Bill 1315 was introduced in the Mississippi legislature,² which would have abolished just five boards from the Mississippi administrative state with its hundreds of entities. Despite passing with a majority in the House of Representatives, the bill failed to move forward in the Senate.

State bureaucracy has grown in Mississippi because of pressure from vested interests. Unless deliberate effort is made to reduce the size and scope of the administrative state, it will continue to grow, fueled by more public money and more power over public policymaking.

Money

Many state executive agencies are funded directly by the state legislature. However, much of the state bureaucracy is detached from such legislative oversight and receives funding from other branches of the state bureaucracy. Sometimes, executive departments fund agencies and commissions. In some cases, statutory agencies can raise revenue directly through fees.

Power

Many agencies derive their authority from a specific mandate given to them by the state legislature. However, the state legislature has often granted a bureaucratic organization a general mandate and allowed them broad discretion to interpret the mandate as they wish. For example, the legislature might pass a bill that requires sanitation in barbershops. However, the legislature might appoint a bureaucracy to write the actual rules and give it enforcement power against any violations. Thus, through the power of legislatively delegated regulation, the bureaucrat would have the authority to create actual rules.

It is a measure of how powerful the bureaucracy has become that while the Mississippi state code is passed by the legislature, the state administrative code is largely a product of the bureaucracy, often written by the bureaucracy in the interests of the bureaucracy.

¹ <http://billstatus.ls.state.ms.us/2014/pdf/history/SB/SB2535.xml>

² <http://billstatus.ls.state.ms.us/2021/pdf/history/HB/HB1315.xml>

Mapping the Swamp

We asked four key questions about 222 state boards, agencies, and commissions:

1. **Accountability:** How is the agency/board/commission accountable to Mississippians?
2. **Spending power and size:** How many dollars per Mississippian does this entity's spending cost?
3. **Regulatory power:** How many rules fall under the authority of the entity?
4. **Function:** How wide is this agency/board/commission's remit, and over what sector does it have control?

Our findings reveal that much of the state bureaucracy is unaccountable and well-resourced and has expanded in terms of its regulatory remit.

1. Accountability

In most cases, state officials are appointed, not elected. In fact, of the 222 state government entities reviewed in the study, only 10 were directed by elected officials. Moreover, even for appointed positions, 75 are partially or entirely selected by other unelected individuals, such as state government bureaucrats, university administrators, and business leaders.

If a large portion of administrative officials have no direct accountability to the citizens, then we should not be surprised when they do not always act in the best interests of the citizens. A study was conducted by economists from Cornell University and the London School of Economics. Using advanced statistical modeling, the study found that appointed officials were *less* likely to prioritize consumers than their elected counterparts.³

Some may object, as if increasing the number of elected officials instead of appointed officials is a novel concept. However, it is significant to note that there are over a dozen statewide, unelected officials in Mississippi with elected counterparts in other states.⁴

Also, it is important to note that some state officials in Mississippi are already elected, such as the Commissioner of Agriculture and Commerce, the Secretary of State, and the Commissioner of Insurance. With this being the case, it is questionable why the agricultural and insurance regulators are directly accountable to the people, while other offices, such as the Superintendent of Education and the Director of Public Safety, are subject to no such scrutiny.

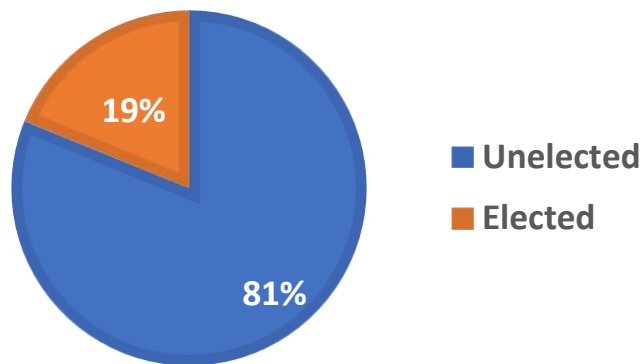
³ <https://econ.lse.ac.uk/staff/tbesley/papers/jeea.pdf>

⁴ https://ballotpedia.org/State_executive_officials

2. Spending power and size

We also reviewed the amount of spending overseen by unelected officials. While it is important to note that the legislature must approve most budgets for different entities, the actual spending and spending requests are largely made by unelected officials. Of the total spending for the entities we reviewed, 81% was spent by unelected officials.⁵

Figure 1: Spending by appointment type for reviewed entities



We also analyzed the amount of spending per entity. To quantify the administrative spending in the state, we compared each entity's spending⁶ with the per capita cost of that spending for each Mississippian.⁷ This allows for a perspective into the size of each entity as it relates to individual Mississippians.

For instance, if one divides the total annual expenditures for the Division of Medicaid into the state's total population, this translates into a yearly cost of approximately \$2,199 for every man, woman, and child in the state. The Department of Education's expenditures would equate to approximately \$1,252, and the Department of Human Services would equate to \$204.⁸

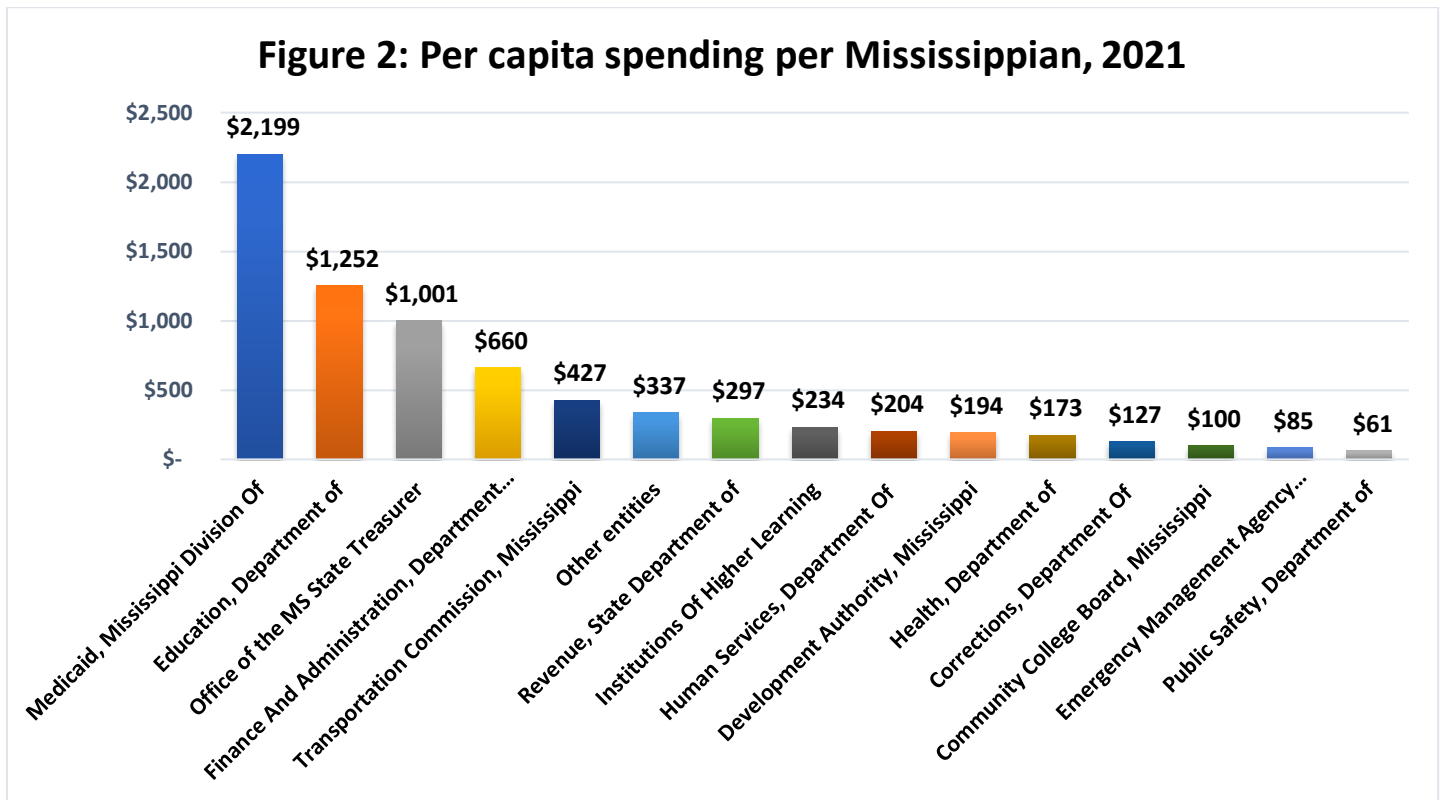
⁵ Figure 1

⁶ 2021 spending data extracted from Transparency Mississippi
<https://www.transparency.ms.gov/>

⁷ It should be noted that this does not translate into the per capita tax burden, rather, these numbers simply provide perspective. In some cases, certain entities' expenditures are built into the budgets of larger entities, so the sum of all expenditures does not necessarily equate the actual state spending for all government entities.

⁸ Figure 2

While many of the other entities had per-capita spending that was far lower than the previously mentioned entities, there was still a large collective impact. In essence, we see a "death by a thousand cuts" when considering the overall impact.⁹



3. Regulatory power

We measured the number of rules issued by the 222 entities reviewed. We used this as a rough measure of the regulatory power of each agency. Using data from the Mercatus Center at George Mason University,¹⁰ we analyzed the number of rules per state government entity in Mississippi. We compared these rules to the total annual expenditures to determine their size.

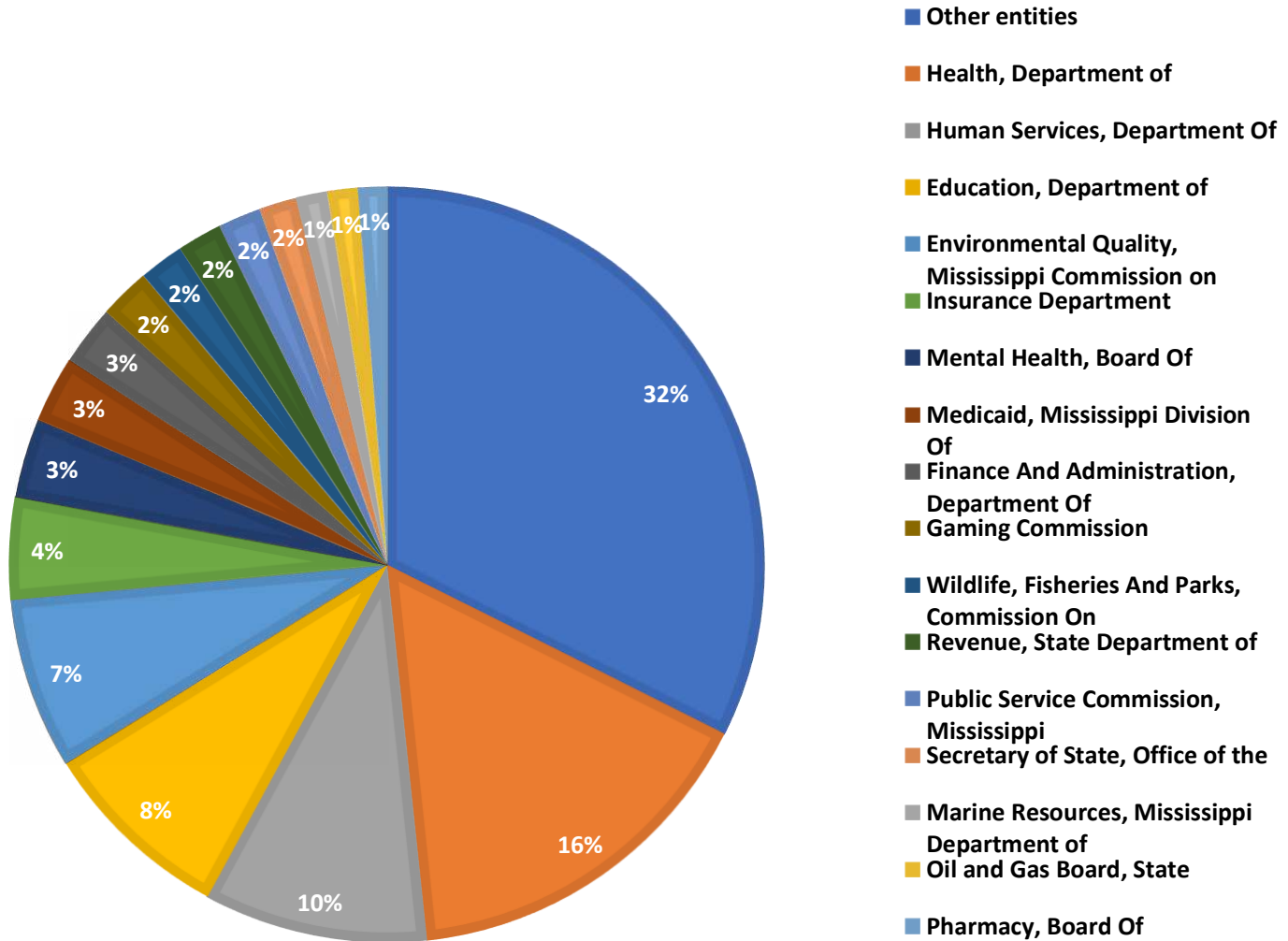
Nonetheless, we found that many entities with a relatively small amount of funding still wield an enormous amount of power. Upon reviewing the total number of rules, our analysis determined that many of the relatively smaller state entities actually have a higher number of regulations and rules. For instance, despite the Department of Health comprising 1.69% of state government expenditures

⁹ In Figure 2, "Other entities" refers to the small spending entities that could not fit on this chart. Their spending is combined into one value.

¹⁰ <https://www.mercatus.org/publications/regulation/snapshot-mississippi-regulation-2018>

(ranking 11th in total spending), the department handles 16% of state regulations.¹¹ Meanwhile, the Division of Medicaid is the highest spending entity, and it comprises only 3% of state regulations.¹²

Figure 3: Percentage of regulations



This analysis shows which agencies have the largest regulatory remit. However, it also reveals that many smaller bureaucracies together exercise enormous regulatory power.¹³

4. Function

¹¹ Figure 3

¹² It should be noted that federal regulations also play a large part in Medicaid regulation.

¹³ In Figure 3, "Other entities" refers to the *combined* number of rules for the entities whose rule number was too small to include on this chart.

In consideration of the various entities within the Mississippi government, many of them can control whole sectors of the state's economy. Thus, rather than these entities having limited control over certain parts of a sector, many of the government entities in Mississippi have expansive and overreaching authority over entire industries.

This is especially true in occupational licensing. Many of the boards, agencies, and commissions have full power to establish mandatory rules, regulations, and standards for entire industries, with relatively little outside oversight. Much of the statutory authority given to these entities by the legislature allows them to revoke an occupational license at their discretion.

In addition to occupational licensing, we observed a large extent of economic control exercised through regulations and housed in these various entities. Our review of the statutory authority found that approximately 40% of all the entities we reviewed had sector-wide control over certain parts of the economy.

In other words, approximately 40% of the entities we reviewed had *state-wide* economic control in varying ways and degrees. This does not include additional economic control exercised by local government entities, such as port commissions and flood district commissions. Such a large extent of control reflects a contrast with the economic freedom that should be prevalent for the economic growth of the state.

Policy Solutions

What should we do about the administrative state in Mississippi? Here are some suggestions:

1. Reign in the broad discretion given to bureaucrats.

When everyday citizens elect lawmakers, they do so with the expectation that the lawmakers will actually establish policies instead of just passing along their authority to third parties. As it currently stands, the legislature has abdicated much of its responsibilities by simply allowing bureaucrats and boards to regulate at their discretion. Instead, legislators should spell out the parameters that would allow regulators to exercise their authority.

On a practical level, implementation of this policy would entail a legislative audit of the places in the Mississippi Code where bureaucracies and boards are given discretionary authority. Then, the legislature should assess whether these discretionary grants of authority are too broad.

2. Establish more grassroots accountability through elections.

In addition to having more accountability to the elected representatives of the people, many of these entities should have more direct accountability to the people through direct elections rather than appointments.

A handful of bureaucracies and commissions in Mississippi already have elected offices, which demonstrates the workability of having direct elections for government executives. Several of Mississippi's government executives have counterparts in other states who are elected, and this demonstrates the possibility of such elections here in Mississippi. While it would not be workable to have every government official in an elected position, the expansion of direct accountability to citizens could have a significant positive impact.

3. Look at the possibility of term limits for high-level officials.

One of the root problems in the administrative state is the problem of an environment that simply seeks to preserve the status quo instead of serving the citizenry. High-ranking officials often become entrenched in the system rather than focusing on the role of true public service.

This policy would help alleviate the problems that can come with stagnation within the government. The imposition of term limits on certain public officials would help remove the problems that can come from a system of career-centered bureaucrats and regulators.

4. Consolidate or eliminate certain entities.

Based on the principles of limited government, an analysis of hundreds of boards, agencies, and commissions in Mississippi clearly demonstrates the need for the consolidation and/or elimination of many of them.

In some cases, there are existing entities that do not regularly meet, are no longer necessary, or have expired their legitimacy in the Mississippi Code. Rather than leaving a vast number of redundant entities that complicate government and waste taxpayer funds, the legislature should pursue actions to officially "clean house" and remove obsolete entities, while consolidating entities where it is appropriate.

5. Put in a sunset provision that would require an entity's authority to be renewed by the legislature.

Many of the issues with overbearing regulatory authority arise from the fact that there is no reassessment of regulatory authority once it is given. Considering this, the legislature should put in a "sunset" provision that requires any new regulation or regulatory authority to be automatically repealed after a certain period if the legislature does not extend it.

Such a policy would allow lawmakers to review how unelected regulators have used their authority and make any adjustments to the extent of that authority, if necessary.

6. Require all unelected regulators to submit annual public reports to the legislature outlining enforcement actions.

In many cases, one of the key problems with excesses in state government is a lack of awareness about such abuses. Quite often, boards, agencies, and commissions operate in silos and are relatively insulated from any legislative or public awareness of their actions.

A key policy reform to address this would be to require all regulators to submit publicly an annual report to the legislature outlining their enforcement actions and the use of their authority. Such a report would subject the entities to a higher degree of scrutiny under the purview of the people's elected representatives.