

By: Senator(s) Huggins

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2299

1 AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-29,  
2 MISSISSIPPI CODE OF 1972, WHICH IS THE MISSISSIPPI INDIVIDUAL  
3 ON-SITE WASTEWATER DISPOSAL LAW; TO AMEND SECTION 41-67-25,  
4 MISSISSIPPI CODE OF 1972, TO REQUIRE WASTEWATER DISPOSAL SYSTEM  
5 INSTALLERS TO POST A PERFORMANCE BOND; TO AMEND SECTION 41-67-31,  
6 MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE  
7 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL LAW; AND FOR  
8 RELATED PURPOSES.

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

10 SECTION 1. Section 41-67-1, Mississippi Code of 1972, is  
11 reenacted as follows:

12 41-67-1. This chapter shall be known and may be cited as the  
13 "Mississippi Individual On-Site Wastewater Disposal System Law."

14 SECTION 2. Section 41-67-3, Mississippi Code of 1972, is  
15 reenacted as follows:

16 41-67-3. (1) The State Board of Health shall have the  
17 following duties and responsibilities:

18 (a) To exercise general supervision over the design,  
19 construction, operation and maintenance of individual on-site  
20 wastewater disposal systems with flows substantially equivalent to  
21 a single family residential generator, except when the property  
22 owner or lessee chooses to employ a professional engineer to  
23 comply with this chapter. To effectively administer this law, the  
24 department and the Department of Environmental Quality shall enter  
25 into a memorandum of understanding, which at a minimum shall  
26 clearly define the jurisdiction of each department with regard to  
27 wastewater disposal and procedures for interdepartmental  
28 interaction and cooperation;

29           (b) To adopt, modify, repeal and promulgate rules and  
30 regulations, after due notice and hearing, and where not otherwise  
31 prohibited by federal or state law, to make exceptions to, to  
32 grant exemptions from and to enforce rules and regulations  
33 implementing or effectuating the duties of the board under this  
34 chapter to protect the public health. The board may grant  
35 variances from rules and regulations adopted under this chapter,  
36 including requirements for buffer zones, or from setbacks required  
37 under Section 41-67-7 where the granting of a variance shall not  
38 subject the public to unreasonable health risks or jeopardize  
39 environmental resources;

40           (c) To provide or deny certification for persons  
41 engaging in the business of the design, construction or  
42 installation of individual on-site wastewater disposal systems and  
43 persons engaging in the removal and disposal of the sludge and  
44 liquid waste from those systems;

45           (d) To suspend or revoke certifications issued to  
46 persons engaging in the business of the design, construction or  
47 installation of individual on-site wastewater disposal systems or  
48 persons engaging in the removal and disposal of the sludge and  
49 liquid waste from those systems, when it is determined the person  
50 has violated this chapter or applicable rules and regulations; and

51           (e) To require the submission of information deemed  
52 necessary by the department to determine the suitability of  
53 individual lots for individual on-site wastewater disposal  
54 systems.

55           (2) Nothing in this chapter shall preclude a professional  
56 engineer from providing services relating to the design,  
57 construction or installation of an individual on-site wastewater  
58 disposal system to comply with this chapter. Except as otherwise  
59 required by subsection (4) of this section or Section 41-67-8, a  
60 professional engineer shall notify the department in writing of  
61 those services being provided. If a professional engineer

62 designs, constructs or installs or directly supervises the  
63 construction or installation of a design-based individual on-site  
64 wastewater disposal system consistent with this chapter and stamps  
65 the appropriate documentation with that professional engineer's  
66 seal, the department shall approve the design, construction or  
67 installation of the system, if requested. Professional engineers  
68 engaging in the design, construction or installation of individual  
69 on-site wastewater disposal systems shall not require  
70 certification under this chapter.

71 (3) To assure the effective and efficient administration of  
72 this chapter, the board shall adopt rules governing the design,  
73 construction or installation, operation and maintenance of  
74 individual on-site wastewater disposal systems, including rules  
75 concerning the:

76 (a) Review and approval of individual on-site  
77 wastewater disposal systems in accordance with Section 41-67-6;

78 (b) Certification of installers of individual on-site  
79 wastewater disposal systems and persons engaging in the removal  
80 and disposal of the sludge and liquid waste from those systems;  
81 and

82 (c) Registration and requirements for testing and  
83 listing of manufacturers of aerobic treatment systems.

84 (4) In addition, the board shall adopt rules establishing  
85 performance standards for individual on-site wastewater disposal  
86 systems for single family residential generators and rules  
87 concerning the operation and maintenance of individual on-site  
88 wastewater disposal systems designed to meet those standards. The  
89 performance standards shall be consistent with the federal Clean  
90 Water Act, maintaining the wastes on the property of the generator  
91 except as authorized under Section 41-67-8, and protection of the  
92 public health. Rules for the operation and maintenance of  
93 individual on-site wastewater disposal systems designed to meet

94 performance standards shall include rules concerning the  
95 following:

96 (a) A standard application form and requirements for  
97 supporting documentation;

98 (b) Application review;

99 (c) Approval or denial of authorization for proposed  
100 systems;

101 (d) Requirements, as deemed appropriate by the board,  
102 for annual renewal of authorization;

103 (e) Enforcement of the requirements and conditions of  
104 authorization; and

105 (f) Inspection, monitoring, sampling and reporting on  
106 the performance of the system.

107 Any system proposed for authorization in accordance with  
108 performance standards must be designed and certified by a  
109 professional engineer and must be authorized by the board before  
110 installation. Appeals from a final decision of the board  
111 regarding the authorization of an individual on-site wastewater  
112 disposal system based upon performance standards shall be taken  
113 using a procedure substantially equivalent to the procedure  
114 specified for hospital licenses in Chapter 9 of Title 41.

115 (5) To the extent practicable, all rules and regulations  
116 adopted under this chapter shall give maximum flexibility to  
117 persons installing individual on-site wastewater disposal systems  
118 and a maximum number of options consistent with the federal Clean  
119 Water Act, consistent with maintaining the wastes on the property  
120 of the generator except as authorized under Section 41-67-8, and  
121 consistent with protection of the public health. In addition, all  
122 rules and regulations, to the extent practicable, shall encourage  
123 the use of economically feasible systems, including alternative  
124 techniques and technologies for individual on-site wastewater  
125 disposal.

126           (6) All regulations shall be applied uniformly in all areas  
127 of the state and shall take into consideration and make provision  
128 for different types of soil in the state when performing soil and  
129 site evaluations.

130           SECTION 3. Section 41-67-5, Mississippi Code of 1972, is  
131 reenacted as follows:

132           41-67-5. (1) No owner, lessee or developer shall construct  
133 or place any mobile, modular or permanently constructed residence,  
134 building or facility, which may require the installation of an  
135 individual on-site wastewater disposal system, without having  
136 first submitted a notice of intent to the department. Upon  
137 receipt of a notice of intent, the department shall provide the  
138 owner, lessee or developer with complete information on individual  
139 on-site wastewater disposal systems, including but not limited to  
140 applicable rules and regulations regarding the design,  
141 construction, installation, operation and maintenance of  
142 individual on-site wastewater disposal systems and known  
143 requirements of lending institutions for approval of the systems.

144           (2) No new permanent water service connection shall be  
145 provided to any mobile, modular or permanently constructed  
146 residence, building or facility unless the owner, lessee or  
147 developer shows proof of the submission of the notice of intent  
148 required by this section.

149           SECTION 4. Section 41-67-7, Mississippi Code of 1972, is  
150 reenacted as follows:

151           41-67-7. Individual on-site wastewater disposal systems  
152 shall be considered acceptable on lots in areas or subdivisions  
153 where prior to the sale of the lots, the following requirements  
154 are met:

155           (1) Individual on-site wastewater disposal systems with  
156 underground absorption fields shall be considered acceptable,  
157 provided the following requirements are met:

158           (a) Sewers are not available or feasible;

159 (b) The existing disposal systems in the area are  
160 functioning satisfactorily;

161 (c) Soil types, soil texture, seasonal water tables and  
162 other limiting factors are satisfactory for underground  
163 absorption; and

164 (d) Any private water supply is located at a higher  
165 elevation and at least fifty (50) feet from the individual on-site  
166 wastewater disposal system and at least one hundred (100) feet  
167 from the disposal field of the system.

168 (2) Except for systems utilizing underground absorption,  
169 alternative individual on-site wastewater disposal systems shall  
170 be considered acceptable, provided the following requirements are  
171 met:

172 (a) Sewers are not available or feasible;

173 (b) The systems meet applicable water quality  
174 requirements of the federal Clean Water Act and also requirements  
175 of the board and department; and

176 (c) Any discharge is confined within the boundaries of  
177 the property of the generator except as authorized under Section  
178 41-67-8.

179 SECTION 5. Section 41-67-9, Mississippi Code of 1972, is  
180 reenacted as follows:

181 41-67-9. (1) Existing individual on-site wastewater  
182 disposal systems shall be considered acceptable, provided the  
183 following requirements are met:

184 (a) The lot is located in an area or subdivision where  
185 individual on-site wastewater disposal systems are considered  
186 acceptable under this chapter;

187 (b) The residence, building or facility has previously  
188 been occupied for a period of time deemed by the department  
189 necessary to determine the functioning capability of the  
190 individual on-site wastewater disposal system;

191 (c) The system is functioning properly with no evidence  
192 that any insufficiently treated effluent is or has been seeping to  
193 the surface of the ground and any discharge of treated effluent is  
194 confined within the boundaries of the property of the generator  
195 except as authorized under Section 41-67-8; and

196 (d) If a private water supply well is present, the well  
197 is located at a higher elevation than the disposal system and is  
198 protected from surface contamination by a concrete slab of a  
199 thickness of at least four (4) inches extending at least two (2)  
200 feet in all directions from the well casing.

201 (2) If an existing residential individual on-site wastewater  
202 disposal system is malfunctioning, the system should be replaced,  
203 where possible, with a system meeting all requirements of this  
204 chapter and rules and regulations of the board. If replacement of  
205 the existing system is not possible, the existing system shall be  
206 repaired to reduce the volume of effluent, to adequately treat the  
207 effluent and to the greatest extent possible, to confine the  
208 discharge to the property of the generator except as authorized  
209 under Section 41-67-8. If repairs are made to significantly  
210 upgrade the existing individual on-site wastewater disposal  
211 system, the department shall approve the system, if requested.

212 SECTION 6. Section 41-67-11, Mississippi Code of 1972, is  
213 reenacted as follows:

214 41-67-11. (1) Temporary individual on-site wastewater  
215 disposal systems may be approved in otherwise unapprovable areas  
216 only after a contract has been awarded for the construction of  
217 municipal or community sewers that upon completion will adequately  
218 serve the property. Temporary individual on-site wastewater  
219 disposal systems shall only be approved under the following  
220 conditions:

221 (a) When the municipal or community sewers shall not be  
222 completed and available for use within six (6) months, a complete  
223 individual on-site wastewater disposal system complying with all

224 requirements of the board may be installed. Upon completion of  
225 the sewer construction all systems shall be abandoned and all  
226 residences, buildings or facilities connected to the sewer.

227 (b) When the public sewers shall be available and ready  
228 for use within a period not to exceed six (6) months, or where a  
229 minor extension is to be made to a municipal system by the  
230 municipality and no contract is to be awarded, an individual  
231 on-site wastewater disposal system with a minimum capacity of  
232 three hundred (300) gallons and at least sixty percent (60%) of  
233 the required disposal field may be installed. The board shall not  
234 approve a temporary system under this subsection unless the  
235 professional engineer designing the sewer system has certified to  
236 the board in writing that the public sewer or extension shall be  
237 completed within six (6) months, and the owner of the temporary  
238 system has certified in writing that connection to the public  
239 sewer shall be made as soon as it becomes available.

240 (2) The board may approve the installation of sewage holding  
241 tanks in districts created under Sections 19-5-151 through  
242 19-5-207 for the purpose of providing sewage services. The  
243 district shall be required to maintain or provide for the  
244 maintenance of those holding tanks. The board shall require that  
245 residences be connected to a municipal or community sewage system  
246 when that system is available and ready to use.

247 SECTION 7. Section 41-67-12, Mississippi Code of 1972, is  
248 reenacted as follows:

249 41-67-12. (1) The department shall assess fees in the  
250 following amounts for the following purposes:

251 (a) A fee of Fifty Dollars (\$50.00) shall be levied for  
252 soil and site evaluation and recommendation of individual on-site  
253 wastewater disposal systems.

254 (b) A fee of Fifty Dollars (\$50.00) shall be levied  
255 annually for the certification of installers and persons engaging



256 in the removal and disposal of the sludge and liquid wastes from  
257 individual on-site wastewater disposal systems.

258 (c) A fee of One Hundred Dollars (\$100.00) shall be  
259 levied annually for the registration of manufacturers.

260 (2) In the discretion of the board, a person shall be liable  
261 for a penalty equal to one and one-half (1-1/2) times the amount  
262 of the fee due and payable for failure to pay the fee on or before  
263 the date due, plus any amount necessary to reimburse the cost of  
264 collection.

265 (3) The fee authorized under this section shall not be  
266 assessed for any system operated by state agencies or  
267 institutions, including without limitation, foster homes licensed  
268 by the State Department of Human Services. The fee authorized  
269 under this section shall not be charged again after payment of the  
270 initial fee for any system that has been installed in accordance  
271 with this chapter, within a period of twenty-four (24) months  
272 following the date that the system was originally installed.

273 SECTION 8. Section 41-67-15, Mississippi Code of 1972, is  
274 reenacted as follows:

275 41-67-15. Nothing in this chapter shall limit the authority  
276 of a municipality or board of supervisors to adopt similar  
277 ordinances which may be, in whole or in part, more restrictive  
278 than this chapter, and in those cases the more restrictive  
279 ordinances will govern.

280 SECTION 9. Section 41-67-16, Mississippi Code of 1972, is  
281 reenacted as follows:

282 41-67-16. (1) Before January 1, 1997, the department shall  
283 conduct a study of all individual on-site wastewater disposal  
284 systems currently being recommended for use in the state to  
285 determine the suitability of using those systems on lots or tracts  
286 in areas of the state given the various soil types and  
287 classifications. In conducting the study, the department shall  
288 consider the type of system, lot size, effluent quality and other

289 recommended limitations which should be placed on the use of each  
290 system.

291 (2) The department shall prepare and submit a report to the  
292 Governor and the Legislature describing the results of its study.

293 SECTION 10. Section 41-67-19, Mississippi Code of 1972, is  
294 reenacted as follows:

295 41-67-19. Each authorized agent of the department  
296 implementing this chapter shall demonstrate to the department's  
297 satisfaction that the person:

298 (a) Is competent to review and provide any requested  
299 approval of design, construction and installation of individual  
300 on-site wastewater disposal systems, as well as the operation,  
301 repair or maintenance of those systems, to make soil permeability  
302 tests or soil and site evaluations, and to conduct inspections of  
303 individual on-site wastewater disposal systems in accordance with  
304 this chapter and rules and regulations adopted under this chapter;  
305 and

306 (b) Has successfully completed the installer  
307 certification training program provided by the department.

308 SECTION 11. Section 41-67-21, Mississippi Code of 1972, is  
309 reenacted as follows:

310 41-67-21. (1) The board or the department may require a  
311 property owner or lessee to repair a malfunctioning individual  
312 on-site wastewater disposal system on the owner's or lessee's  
313 property before the thirtieth day after the date on which the  
314 owner or lessee is notified by the department of the  
315 malfunctioning system.

316 (2) The property owner or lessee shall take adequate  
317 measures as soon as practicable to abate an immediate health  
318 hazard.

319 (3) The property owner or lessee may be assessed a civil  
320 penalty not to exceed Five Dollars (\$5.00) for each day the  
321 individual on-site wastewater disposal system remains unrepaired

322 after the thirty-day period specified in subsection (1) of this  
323 section.

324 (4) The board may assess the property owner or lessee of an  
325 individual on-site wastewater disposal system authorized pursuant  
326 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars  
327 (\$50.00) for each day the system fails to meet the performance  
328 standards of that system after the thirty-day period specified in  
329 subsection (1) of this section.

330 (5) All penalties collected by the board under this section  
331 shall be deposited in the State General Fund.

332 (6) Appeals from the imposition of civil penalty under this  
333 section may be taken as provided in Section 41-67-29.

334 SECTION 12. Section 41-67-23, Mississippi Code of 1972, is  
335 reenacted as follows:

336 41-67-23. The department or its authorized representative  
337 may enter onto property and make inspections of any individual  
338 on-site wastewater disposal system as necessary to ensure that the  
339 system is in compliance with this chapter and the rules adopted  
340 under this chapter. The department shall give reasonable notice  
341 to any property owner, lessee or occupant prior to entry onto the  
342 property. The owner, lessee, owner's representative, or occupant  
343 of the property on which the system is located shall give the  
344 department or its authorized representative reasonable access to  
345 the property at reasonable times to make necessary inspections.

346 SECTION 13. Section 41-67-25, Mississippi Code of 1972, is  
347 reenacted and amended as follows:

348 41-67-25. (1) A person may not operate as an installer in  
349 this state unless that person is certified by the board except any  
350 individual who installs an individual on-site wastewater disposal  
351 system on his own property or a professional engineer.

352 (2) An installer of aerobic treatment plants or subsurface  
353 drip disposal systems must be a factory-trained and authorized  
354 representative. The manufacturer must furnish documentation to

355 the department certifying the satisfactory completion of factory  
356 training and the establishment of the installer as an authorized  
357 manufacturer's representative.

358 (3) The board shall issue a certification to an installer if  
359 the installer:

360 (a) Completes an application form that complies with  
361 this chapter and rules adopted under this chapter;

362 (b) Satisfactorily completes the training program  
363 provided by the department; \* \* \*

364 (c) Pays the annual certification fee; and

365 (d) Provides proof of holding a valid performance bond.

366 (4) Each installer shall furnish proof of certification to a  
367 property owner, lessee, the owner's representative or occupant of  
368 the property on which an individual on-site wastewater disposal  
369 system is to be designed, constructed, repaired or installed by  
370 that installer and to the department or its authorized  
371 representative, if requested.

372 (5) The department shall provide for annual renewal of  
373 certifications.

374 (6) (a) An installer's certification may be suspended or  
375 revoked by the board after notice and hearing if the installer  
376 violates this chapter or any rule or regulation adopted under this  
377 chapter.

378 (b) The installer may appeal a suspension or revocation  
379 under this section as provided by law.

380 (7) The department semiannually shall disseminate to the  
381 public an official list of certified installers and provide to  
382 county health departments a monthly update of the list.

383 SECTION 14. Section 41-67-27, Mississippi Code of 1972, is  
384 reenacted as follows:

385 41-67-27. It is unlawful for a manufacturer of an individual  
386 on-site wastewater disposal system to operate a business in or to

387 do business in the State of Mississippi without holding a valid  
388 registration issued by the department.

389 SECTION 15. Section 41-67-28, Mississippi Code of 1972, is  
390 reenacted as follows:

391 41-67-28. (1) Except as otherwise provided in this chapter,  
392 any person who shall knowingly violate this chapter or any rule or  
393 regulation or written order of the board in pursuance thereof is,  
394 upon conviction, guilty of a misdemeanor and shall be punished as  
395 provided in Section 41-3-59.

396 (2) Each day of a continuing violation is a separate  
397 violation.

398 (3) (a) In addition to all other statutory and common law  
399 rights, remedies and defenses, any person who purchases an  
400 individual on-site wastewater disposal system and suffers any  
401 ascertainable loss of money or property, real or personal, may  
402 bring an action at law in the court having jurisdiction in the  
403 county in which the installer or manufacturer has the principal  
404 place of business, where the act allegedly occurred, to recover  
405 any loss of money or damages for the loss of any property  
406 resulting from any of the following:

407 (i) Improper installation of an individual on-site  
408 wastewater disposal system due to faulty workmanship;

409 (ii) Failure of an individual on-site wastewater  
410 disposal system to operate properly due to failure to install the  
411 system in accordance with any requirements of the manufacturer or  
412 in compliance with any rules and regulations of the board; or

413 (iii) Failure of an individual on-site wastewater  
414 disposal system to operate properly due to defective design or  
415 construction.

416 (b) Nothing in this chapter shall be construed to  
417 permit any class action or suit, but every private action must be  
418 maintained in the name of and for the sole use and benefit of the  
419 individual person.

420 (4) A person who violates this chapter thereby causing a  
421 discharge off the property of the generator shall be liable to the  
422 party aggrieved or damaged by that violation for the actual  
423 damages and additional punitive damages equal to a maximum of  
424 twenty-five percent (25%) of the actual damages proven by the  
425 aggrieved party, to be taxed by the court where the suit is heard  
426 on an original action, by appeal or otherwise and recovered by a  
427 suit at law in any court of competent jurisdiction. In addition,  
428 the court may award the prevailing party reasonable attorneys fees  
429 and court costs. Before filing suit, the party aggrieved or  
430 damaged must give thirty (30) days' written notice of its intent  
431 to file suit to the alleged violator.

432 SECTION 16. Section 41-67-29, Mississippi Code of 1972, is  
433 reenacted as follows:

434 41-67-29. Any person who is aggrieved by any final decision  
435 of the board may appeal that final decision to the chancery court  
436 of the county of the situs in whole or in part of the subject  
437 matter. The appellant shall give a cost bond with sufficient  
438 sureties, payable to the state in a sum to be fixed by the board  
439 or the court and to be filed with and approved by the clerk of the  
440 court. The aggrieved party may, within thirty (30) days following  
441 a final decision of the board, petition the chancery court for an  
442 appeal with supersedeas and the chancellor shall grant a hearing  
443 on the petition. Upon good cause shown the chancellor may grant  
444 the appeal with supersedeas. The appellant shall be required to  
445 post a bond with sufficient sureties according to law in an amount  
446 to be determined by the chancellor. The chancery court shall  
447 always be deemed open for hearing of appeals and the chancellor  
448 may hear the appeal in termtime or in vacation at any place in his  
449 district. The appeal shall have precedence over all civil cases,  
450 except election contests. The chancery court shall review all  
451 questions of law and of fact and may enter a final order or remand  
452 the matter to the board for appropriate action as may be indicated

453 or necessary under the circumstances. Appeals may be taken from  
454 the chancery court to the Supreme Court in the manner as now  
455 required by law, but if a supersedeas is desired by the party  
456 appealing to the chancery court, that party may apply therefor to  
457 the chancellor, who shall award a writ of supersedeas, without  
458 additional bond, if in the chancellor's judgment material damage  
459 is not likely to result. If material damage is likely to result,  
460 the chancellor shall require a supersedeas bond as deemed proper,  
461 which shall be liable to the state for any damage.

462 SECTION 17. Section 41-67-31, Mississippi Code of 1972, is  
463 amended as follows:

464 41-67-31. Sections 41-67-1 through 41-67-29 shall stand  
465 repealed on July 1, 2007.

466 SECTION 18. This act shall take effect and be in force from  
467 and after June 30, 2001.