SENATE BILL NO. 2299

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

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

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

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

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

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

(a) To exercise general supervision over the design, construction, operation and maintenance of individual on-site wastewater disposal systems with flows substantially equivalent to a single family residential generator, except when the property owner or lessee chooses to employ a professional engineer to comply with this chapter. To effectively administer this law, the department and the Department of Environmental Quality shall enter into a memorandum of understanding, which at a minimum shall clearly define the jurisdiction of each department with regard to wastewater disposal and procedures for interdepartmental interaction and cooperation;
(b) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to, to grant exemptions from and to enforce rules and regulations implementing or effectuating the duties of the board under this chapter to protect the public health. The board may grant variances from rules and regulations adopted under this chapter, including requirements for buffer zones, or from setbacks required under Section 41-67-7 where the granting of a variance shall not subject the public to unreasonable health risks or jeopardize environmental resources;

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

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

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

(2) Nothing in this chapter shall preclude a professional engineer from providing services relating to the design, construction or installation of an individual on-site wastewater disposal system to comply with this chapter. Except as otherwise required by subsection (4) of this section or Section 41-67-8, a professional engineer shall notify the department in writing of those services being provided. If a professional engineer
designs, constructs or installs or directly supervises the
construction or installation of a design-based individual on-site
wastewater disposal system consistent with this chapter and stamps
the appropriate documentation with that professional engineer's
seal, the department shall approve the design, construction or
installation of the system, if requested. Professional engineers
engaging in the design, construction or installation of individual
on-site wastewater disposal systems shall not require
certification under this chapter.

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

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

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

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

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

(a) A standard application form and requirements for supporting documentation;
(b) Application review;
(c) Approval or denial of authorization for proposed systems;
(d) Requirements, as deemed appropriate by the board, for annual renewal of authorization;
(e) Enforcement of the requirements and conditions of authorization; and
(f) Inspection, monitoring, sampling and reporting on the performance of the system.

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

(5) To the extent practicable, all rules and regulations adopted under this chapter shall give maximum flexibility to persons installing individual on-site wastewater disposal systems and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator except as authorized under Section 41-67-8, and consistent with protection of the public health. In addition, all rules and regulations, to the extent practicable, shall encourage the use of economically feasible systems, including alternative techniques and technologies for individual on-site wastewater disposal.
All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations.

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

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

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

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

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

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

(a) Sewers are not available or feasible;
(b) The existing disposal systems in the area are functioning satisfactorily;
(c) Soil types, soil texture, seasonal water tables and other limiting factors are satisfactory for underground absorption; and
(d) Any private water supply is located at a higher elevation and at least fifty (50) feet from the individual on-site wastewater disposal system and at least one hundred (100) feet from the disposal field of the system.

(2) Except for systems utilizing underground absorption, alternative individual on-site wastewater disposal systems shall be considered acceptable, provided the following requirements are met:
(a) Sewers are not available or feasible;
(b) The systems meet applicable water quality requirements of the federal Clean Water Act and also requirements of the board and department; and
(c) Any discharge is confined within the boundaries of the property of the generator except as authorized under Section 41-67-8.

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

41-67-9. (1) Existing individual on-site wastewater disposal systems shall be considered acceptable, provided the following requirements are met:
(a) The lot is located in an area or subdivision where individual on-site wastewater disposal systems are considered acceptable under this chapter;
(b) The residence, building or facility has previously been occupied for a period of time deemed by the department necessary to determine the functioning capability of the individual on-site wastewater disposal system;
(c) The system is functioning properly with no evidence that any insufficiently treated effluent is or has been seeping to the surface of the ground and any discharge of treated effluent is confined within the boundaries of the property of the generator except as authorized under Section 41-67-8; and

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

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

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

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

(a) When the municipal or community sewers shall not be completed and available for use within six (6) months, a complete individual on-site wastewater disposal system complying with all
requirements of the board may be installed. Upon completion of
the sewer construction all systems shall be abandoned and all
residences, buildings or facilities connected to the sewer.

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

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

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

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

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

(b) A fee of Fifty Dollars ($50.00) shall be levied
annually for the certification of installers and persons engaging
in the removal and disposal of the sludge and liquid wastes from individual on-site wastewater disposal systems.

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

(3) The property owner or lessee may be assessed a civil penalty not to exceed Five Dollars ($5.00) for each day the individual on-site wastewater disposal system remains unrepaired.
after the thirty-day period specified in subsection (1) of this section.

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

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

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

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

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

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

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

(2) An installer of aerobic treatment plants or subsurface drip disposal systems must be a factory-trained and authorized representative. The manufacturer must furnish documentation to
the department certifying the satisfactory completion of factory
training and the establishment of the installer as an authorized
manufacturer's representative.

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

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

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

(c) Pays the annual certification fee; and

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

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

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

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

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

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

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

41-67-27. It is unlawful for a manufacturer of an individual
on-site wastewater disposal system to operate a business in or to
do business in the State of Mississippi without holding a valid
registration issued by the department.

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

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

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

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

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

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

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

(b) Nothing in this chapter shall be construed to
permit any class action or suit, but every private action must be
maintained in the name of and for the sole use and benefit of the
individual person.
(4) A person who violates this chapter thereby causing a discharge off the property of the generator shall be liable to the party aggrieved or damaged by that violation for the actual damages and additional punitive damages equal to a maximum of twenty-five percent (25%) of the actual damages proven by the aggrieved party, to be taxed by the court where the suit is heard on an original action, by appeal or otherwise and recovered by a suit at law in any court of competent jurisdiction. In addition, the court may award the prevailing party reasonable attorneys fees and court costs. Before filing suit, the party aggrieved or damaged must give thirty (30) days' written notice of its intent to file suit to the alleged violator.

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

41-67-29. Any person who is aggrieved by any final decision of the board may appeal that final decision to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in a sum to be fixed by the board or the court and to be filed with and approved by the clerk of the court. The aggrieved party may, within thirty (30) days following a final decision of the board, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition. Upon good cause shown the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in his district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact and may enter a final order or remand the matter to the board for appropriate action as may be indicated.
or necessary under the circumstances. Appeals may be taken from
the chancery court to the Supreme Court in the manner as now
required by law, but if a supersedeas is desired by the party
appealing to the chancery court, that party may apply therefor to
the chancellor, who shall award a writ of supersedeas, without
additional bond, if in the chancellor's judgment material damage
is not likely to result. If material damage is likely to result,
the chancellor shall require a supersedeas bond as deemed proper,
which shall be liable to the state for any damage.

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

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

SECTION 18. This act shall take effect and be in force from