To: Public Health and Welfare

MISSISSIPPI LEGISLATURE

By: Representative Moody

MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW

HOUSE BILL NO. 1046

AN ACT TO REENACT AND AMEND SECTION 41-67-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE PURPOSE OF THE "MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW"; TO REENACT AND AMEND SECTION 41-67-2, MISSISSIPPI CODE OF 1972, TO REDEFINE TERMS; TO REENACT AND AMEND SECTION 41-67-3, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR STATE DEPARTMENT OF HEALTH INSPECTION AND APPROVAL OF ALL NEW ON-SITE SYSTEM INSTALLATIONS PRIOR TO FINAL UTILITY CONNECTION, TO REQUIRE ENGINEERS TO SUBMIT ALL PLANS FOR SYSTEMS THEY WILL INSTALL FOR REVIEW BY THE DEPARTMENT AND TO ATTEND CERTAIN TRAINING COURSES AND TO REQUIRE REGISTRATION OF MANUFACTURERS OF ALTERNATIVE WASTEWATER TECHNOLOGY; TO REENACT AND AMEND SECTION 41-67-5, MISSISSIPPI CODE OF 1972, TO PROVIDE STANDARDS FOR THE INSTALLATION OF INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS WITH AND WITHOUT CENTRAL SEWERAGE SYSTEM AVAILABILITY AND TO PROVIDE PROCEDURES FOR CONSTRUCTION PERMITS WITH INFORMATION AND APPROVAL OF PROPER WASTEWATER DISPOSAL SYSTEMS, AND TO PROVIDE REQUIREMENTS FOR A CENTRALIZED SEWERAGE SYSTEM FOR SUBDIVISION DEVELOPMENT; TO REENACT AND AMEND SECTION 41-67-9, MISSISSIPPI CODE OF 1972, TO DEFINE THE RESPONSIBILITY OF PROPERTY OWNERS TO REPAIR EXISTING MALFUNCTIONING INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS; TO REENACT AND AMEND SECTION 41-67-10, MISSISSIPPI CODE OF 1972, TO CLARIFY ACCREDITATION REQUIREMENTS FOR AEROBIC TREATMENT SYSTEM CERTIFYING PROGRAMS; TO REENACT AND AMEND SECTION 41-67-11, MISSISSIPPI CODE OF 1972, TO PROVIDE REQUIREMENTS FOR TEMPORARY DISPOSAL SYSTEMS; TO REENACT AND AMEND SECTION 41-67-12, MISSISSIPPI CODE OF 1972, TO INCREASE THE INSTALLER ANNUAL CERTIFICATION FEE AND ADD A FEE FOR DEPARTMENT REVIEW OF PROPOSED SUBDIVISIONS AND REVIEW OF ENGINEER PLANS; TO REENACT AND Amend SECTION 41-67-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE DECENTRALIZED ON-SITE WASTEWATER MANAGEMENT DISTRICTS TO MAKE RULES; TO REENACT AND AMEND SECTIONS 41-67-25 AND 41-67-27, MISSISSIPPI CODE OF 1972, AND CODIFY SECTION 41-67-26, MISSISSIPPI CODE OF 1972, TO REQUIRE REGISTRATION OF MANUFACTURERS OF ALTERNATIVE TREATMENT OR DISPOSAL COMPONENTS AND TO PROVIDE STANDARDS FOR THE CERTIFICATION OF MAINTENANCE PROVIDERS AND PERSONS ENGAGED IN REMOVING AND DISPOSING SLUDGE AND SEPTAGE; TO REENACT AND AMEND SECTION 41-67-28, MISSISSIPPI CODE OF 1972, TO REQUIRE THE DEPARTMENT TO PROVIDE A PROPERTY OWNER WITH A MALFUNCTIONING SYSTEM A LIST OF REPAIR OR REPLACEMENT OPTIONS, TO AUTHORIZE THE DEPARTMENT TO FILE CRIMINAL CHARGES OR TO SEEK MANDATORY OR PROHIBITORY INJUNCTIVE RELIEF TO ENFORCE THIS ACT AND ANY ORDER ISSUED PURSUANT TO THIS ACT; TO REENACT SECTIONS 41-67-19 AND 41-67-23, MISSISSIPPI CODE OF 1972; TO REPEAL SECTIONS 41-67-4, 41-67-6, 41-67-7, 41-67-8, 41-67-16 AND 41-67-21, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBE CERTAIN DUTIES OF THE DEPARTMENT OF HEALTH RELATIVE TO INDIVIDUAL ON-SITE WASTEWATER SYSTEM REGULATIONS, PROVIDE CERTAIN PENALTIES FOR NONCOMPLIANCE, PROVIDE THE DETERMINATION OF APPLICABILITY OF THIS ACT, REQUIRE A STUDY OF ON-SITE WASTEWATER SYSTEMS AND PROVIDE FOR OWNER REPAIR OF MALFUNCTIONING SYSTEMS; TO AMEND SECTION 41-67-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; TO
AMEND SECTION 41-26-103, MISSISSIPPI CODE OF 1972, TO EXTEND THE
REPEALER ON THE PROVISION OF LAW THAT REQUIRES THE DEPARTMENT OF
HEALTH TO IDENTIFY POTENTIALLY NONViable COMMUNITY PUBLIC WATER
SYSTEMS AND PROVIDE NO COST TECHNICAL ASSISTANCE TO THOSE SYSTEMS;
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 and amended as follows:

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

(2) It is the purpose of the Legislature through this
chapter to protect human health and the environment while
providing for reasonable use of individual on-site wastewater
disposal systems. The Legislature finds that continued
installation and operation of individual on-site wastewater
disposal systems in a faulty or improper manner, in a manner that
lacks essential maintenance for the system, or in areas where
unsuitable soil and population density adversely affect the
efficiency and functioning of these systems, has a detrimental
effect on the public health and welfare and the environment
through contamination of land, groundwater and surface waters.
The Legislature, therefore, expresses a general preference for the
installation and operation of centralized sewerage systems in
Mississippi, where feasible. The Legislature recognizes, however,
that individual on-site wastewater treatment and disposal systems
help meet the needs of the state's citizens, especially in rural
locations, and can be rendered ecologically safe and protective of
the public health if the systems are designed, installed,
constructed, maintained and operated properly. It is the intent
of the Legislature to allow the continued installation, use and
maintenance of individual on-site wastewater disposal systems in a
manner that will not jeopardize public health and welfare or the
environment.
SECTION 2. Section 41-67-2, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-2. For purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Alternative system" means any on-site sewage treatment and disposal system used in lieu of, including modifications to, a standard aggregate subsurface system.

(b) "Board" means the Mississippi State Board of Health.

(c) "Centralized sewerage system" means pipelines or conduits, pumping stations, force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal other than an individual on-site wastewater disposal system or cluster system.

(d) "Certified maintenance provider" means any person or business entity that holds a written certification issued by the department allowing the person to provide maintenance services associated with approved on-site wastewater treatment and disposal systems.

(e) "Cluster system" means an on-site sewage collection, treatment and disposal system designed to serve two (2) or more sewage-generating units on separate legal tracts.

(f) "Commission" means the Commission on Environmental Quality.

(g) "Conventional system" means an individual on-site wastewater disposal system consisting of a septic tank and gravity-fed subsurface aggregate disposal field.

(h) "Decentralized wastewater management" means a system whereby a public or private entity undertakes the centralized management and monitoring of that individual on-site wastewater disposal system or systems or cluster wastewater disposal system.
systems that service more than one (1) generator or individual
family housing unit, including, but not limited to, planning,
construction, operation, maintenance and financing programs
concerning those systems to be managed.

(i) "Department" means the Mississippi State Department
of Health.

(j) "Generator" means any person whose act or process
produces sewage or other material suitable for disposal in an
individual on-site wastewater disposal system.

(k) "Individual on-site wastewater disposal system"
means a sewage treatment and effluent disposal system, including,
but not limited to, a septic tank and underground absorption
system, that does not discharge into waters of the state, that
accepts only human sanitary waste and similar waste streams, and
that does not require a permit issued by the Mississippi
Environmental Quality Permit Board.

(l) "Installer" means any person engaging in the
practice of constructing, installing or repairing any portion of
an individual on-site wastewater disposal system.

(m) "Managed decentralized sewerage system" means an
individual on-site wastewater disposal system or cluster
wastewater system or systems, under management of a decentralized
management entity, that is or are used to treat and dispose of
relatively small volumes of wastewater, generally from dwellings
and businesses.

(n) "Performance-based system" means a system designed
to meet standards established to designate a level of treatment of
wastewater that an individual on-site wastewater disposal system
must meet, including, but not limited to, biochemical oxygen
demand, total suspended solids, nutrient reduction and fecal
coliform.

(o) "Person" means any individual, trust, firm,
joint-stock company, public or private corporation (including a
government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States, or any officer or employee thereof.

(p) "Professional engineer" means any person who has met the qualifications required under Section 73-13-23(1) and who has been issued a certificate of registration as a professional engineer in the State of Mississippi.

(q) "Property of the generator" means land owned by or under permanent legal easement or lease to the generator.

(r) "Registered system" means any alternative wastewater treatment and/or disposal system approved after July 1992.

(s) "Subdivision" means any tract or combination of adjacent tracts of land that is subdivided into five (5) or more tracts, sites or parcels for the purpose of commercial or residential development.

SECTION 3. Section 41-67-3, Mississippi Code of 1972, is reenacted and amended 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 waste stream characteristics similar to residential strength. 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 or registration for persons engaging in the business of the design, manufacture, 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 or registration issued to persons engaging in the business of the design, manufacture, 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; *

(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; and

(f) To approve or disapprove the construction of individual on-site wastewater disposal systems based on appropriate procedures specified in regulations to determine the suitability of individual lots for individual on-site wastewater disposal systems and to enforce violations of the board’s regulations.
(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. **Professional engineers** 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 **;**

(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; and

(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. **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 department before installation. The performance standards shall be consistent with the federal Clean Water Act, maintaining the wastes on the property of the generator 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.

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.

All regulations shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations.

SECTION 4. Section 41-67-5, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-5. (1) No individual on-site wastewater disposal system shall be constructed or installed unless the system is...
designed, installed or constructed, and will operate so as to keep
all wastewater produced by the system on the residential or
business property that the system serves. In order to demonstrate
compliance with this section, a system must be designed to:

(a) Maintain all treated wastewater on the property of
the generator or responsible entity to be served by the system;

(b) Be installed only in an area where the soil type,
design of the system, and location and concentration of any other
systems in the same area will allow adequate treatment of all
wastewater processed by the system;

(c) Not allow or cause the direct discharge of
wastewater to surface water or to underground sources of drinking
water or cause the leaching or seepage of wastewater into surface
water or into underground sources of drinking water in a manner,
speed or amount that would detrimentally affect the source of
surface water or groundwater; and

(d) Process only sanitary wastewater (whether
originating from residences or businesses). No individual on-site
wastewater disposal system shall be approved for the disposal of a
waste stream that includes waste other than sanitary wastewater.

(2) No individual on-site wastewater disposal system shall be installed in an area where a central sewerage system is
available for use and where connection to the central sewerage
system is feasible. In determining whether a central sewerage
system is available and feasible, the department shall consider,
at a minimum, the following:

(a) As to availability, whether the central system
includes the available capacity to accept the waste that would
otherwise be treated by an individual on-site wastewater disposal
system and will agree to accept that waste at a cost similar to
the cost borne by other users of the same central system;

(b) As to feasibility, whether a connection can be
established from the land where an individual on-site septic
system otherwise would be established to the appropriate point of
cconnection to an existing central system, or a new central system
can be built due to the location and concentration of the site or
sites in question, without requiring unreasonable costs to be
borne by the property owner in comparison to the cost of
installing and maintaining (including, when probable, the eventual
like-kind replacement of) an individual on-site wastewater
disposal system. For purposes of this subsection, "unreasonable
costs" shall mean costs that bear no reasonable relationship to
the pollution control benefits derived from the connection and to
any expected benefit to the current or future property value of
the property in question due to the connection (as compared to the
property’s value if an individual on-site wastewater disposal
system was installed).

(3) The following process is required before any
construction or placement of any mobile, modular or permanently
constructed residence, building or facility that may require the
installation of an individual on-site wastewater disposal system:

(a) Any person, prior to the onset of construction of a
mobile homesite or pad, a modular homesite, or a permanently
constructed residence, building or facility, that may require the
installation of an individual on-site wastewater disposal system,
shall obtain an individual on-site wastewater disposal system
construction permit or similar approval from the department. In
order to apply for a construction permit, an individual shall
provide the department with a legal description of the homesite, a
plot plan and any additional documentation required by the
department.

(b) Within five (5) working days following receipt of a
complete application for a construction permit, the department
shall make a site evaluation, except in cases where a professional
engineer provides services relating to the design, construction or
installation of an individual on-site wastewater disposal system
to comply with this chapter. Within ten (10) additional working
days, the department shall provide the applicant with complete
information on all individual on-site wastewater disposal systems
that the site can support, unless there are conditions requiring
further investigation that are revealed in the initial evaluation.

In providing available options concerning individual on-site
wastewater disposal systems suitable for installation on a lot or
tract, personnel of the department shall use best professional
judgment based on rules and regulations adopted by the board.

These time requirements do not apply to subdivision developments.

(c) (i) The installer shall notify the department at
least forty-eight (48) hours prior to beginning construction of an
individual on-site wastewater disposal system and, at that time,
schedule a time for inspection of the system with the appropriate
county department of health.

(ii) An installer shall not cover his work with
soil or other surface material unless one (1) of the following has
occurred:

1. The installer has received authorization
to cover the system after an inspection by a county department of
health inspector; or

2. The county department of health inspector
has not rescheduled the appointment and is unable to keep the
system inspection appointment, and the installer has waited at
least thirty (30) minutes after the scheduled inspection time. In
this case, an installer that has obtained prior department
authorization may cover his work, and the department shall issue
its final approval based on the information provided pursuant to
paragraph (e).

(d) For lots, tracts, sites or parcels where the
department does not recommend a system due to physical limitations
of the site and the provisions of this chapter, a person may
retain a registered professional engineer for design, construction
or installation of a system. 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, the professional engineer shall notify the department in writing of those services being provided and provide to the department appropriate documentation relating to that particular installation with that professional engineer's seal. If such system is contemplated, the engineer shall submit the necessary documentation to the department in order to apply for a construction permit. This information shall be stamped with that professional engineer's seal. The department shall review the application information and either issue or deny the construction permit. No individual on-site wastewater disposal system shall be installed at a site where the department does not initially recommend the installation of an individual on-site wastewater disposal system until and unless a construction permit based on the application and engineering plans is issued by the department.

(e) After construction or installation of the individual on-site wastewater disposal system, the property owner or his agent shall provide a Final Approval Request containing the following to the department:

(i) A signed affidavit from the installer or engineer and any additional required documentation that the system was installed in compliance with all requirements, regulations and permit conditions applicable to the system installed; and

(ii) For any system that contains an electric operational component, a continuing maintenance contract signed by the property owner and a certified maintenance provider.

(f) Upon receipt and approval of the Final Approval Request, the department shall supply to the applicant a document demonstrating the department’s final approval of the installation of the system.
(4) No new permanent utility connection shall be provided to any mobile, modular or permanently constructed residence, building or facility connected to or intending to use an individual on-site wastewater disposal system unless the applicant for a connection shows proof of the department’s final approval of installation as required by this section.

(5) (a) A centralized sewerage system must be provided for any subdivision development. No individual on-site wastewater disposal system shall be approved for installation at a site that is within or part of a subdivision unless specifically authorized under subsection (5)(b).

(b) The installation of an individual on-site wastewater disposal system may be approved for a site that is within or part of a subdivision if the department determines that:

(i) The individual on-site wastewater disposal system proposed can meet all requirements of subsections (1) and (2) of this section; and

(ii) The developer certifies to the department that it has committed to the installation and operation of a decentralized management system. The department may waive this requirement (ii) if all sites or tracts within the subdivision are no smaller than five (5) acres.

This finding may be made in consultation with the commission and any relevant local planning authorities. Any subdivision designed, laid out, platted or partially constructed before July 1, 1988, or for any subdivision that was platted and recorded during the period from July 1, 1995, through June 30, 1996, is exempt from this subsection (5).

(6) No person shall alter an individual on-site wastewater disposal system from the design and installation approved by the department, or in any way that decreases the effectiveness of wastewater treatment afforded by the system, without first obtaining the approval of the department.
SECTION 5. Section 41-67-9, Mississippi Code of 1972, is reenacted and amended 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) At the time of inspection the system exhibits 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 ***; and

(d) If a private water supply well is present, the well is *** protected from surface contamination and has 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) (a) If an existing *** individual on-site wastewater disposal system is malfunctioning, the property owner must repair the system so that it meets all requirements of this chapter and of the regulations of the board concerning the installation and construction of an individual on-site wastewater disposal system. The department shall provide the property owner a list of recommendations for repair of the malfunctioning system. Repairs must be made in consultation with the department to ensure that the resulting system complies with this chapter and its implementing regulations. Alternatively, the owner may replace the system with a system that meets the requirements of this chapter and the regulations of the board. If repair of the
existing system to meet the standards of this chapter and the regulations of the board 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 or responsible entity. If repairs are made to significantly upgrade the existing individual on-site wastewater disposal system, the department may approve the system, if requested, if the system is repaired in a manner deemed adequate by the department to protect public health.

(b) The board or department may order a property owner or lessee to repair a malfunctioning individual on-site wastewater disposal system on the owner’s or lessees’ property within thirty (30) days. If the malfunctioning system presents an immediate health hazard, the board or the department may order the system to be repaired or shut down in less than thirty (30) days. The department shall provide the property owner a list of recommendations for repair or replacement of the malfunctioning system.

(3) The department may file an affidavit with the justice court, or take administrative enforcement action as described in this chapter, to require the replacement or repair of a system after providing thirty (30) days' notice to the property owner of the requirement of replacement or repair. The property owner shall take adequate measures as soon as practicable to abate an immediate health hazard, regardless of whether the department initiates enforcement action.

(4) If central sewerage becomes available to a site using an individual on-site wastewater disposal system and connection to the system is feasible, under the standards of Section 41-67-5(2), the property owner must properly abandon the system, as provided in department regulations, and connect to the central sewerage system.
SECTION 6. Section 41-67-10, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-10. Aerobic treatment systems may be installed only if they have been tested and listed by a third-party certifying program. Aerobic treatment systems shall be in compliance with standards for a Class I system as defined by the most current revision of American National Standards Institute/National Sanitation Foundation (ANSI/NSF) International Standard Number 40, hereby incorporated by reference. An approved third-party certifying program shall accomplish the following for systems which it has certified to be installed in Mississippi:

(a) Demonstrate accreditation by the American National Standards Institute;

(b) Have established procedures which send representatives to distributors in Mississippi on a recurring basis to conduct evaluations to assure that distributors of certified aerobic treatment systems are providing proper maintenance, have sufficient replacement parts available and are maintaining service records;

(c) Notify the department of the results of monitoring visits to manufacturers and distributors within sixty (60) days of the conclusion of the monitoring; and

(d) Submit completion reports on testing and any other information as the department may require for its review.

SECTION 7. Section 41-67-11, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-11. (1) Temporary individual on-site wastewater disposal systems may be approved in an area where individual on-site wastewater disposal systems otherwise would not be approved because of the availability and/or feasibility of connection to a centralized sewerage system only after a contract has been awarded or other definite commitments as are deemed sufficient to the department are formalized for the construction of the system.
of municipal or community sewers that upon completion will adequately serve the property. Temporary individual on-site wastewater disposal systems shall only be approved when the municipal or community sewers shall be completed and available for use within thirty-six (36) months. The department may approve the installation of a temporary system under these circumstances only if the system shall comply with the requirements of Section 41-67-5(1) and comply with all construction requirements of the board. The temporary system may be installed only after the developer has signed a written agreement with the centralized sewer provider stating that the developer will connect to the centralized sewer system when it becomes available and the provider of the centralized sewer system being constructed certifies that the centralized sewer system will have adequate capacity to accept the sewage to be produced by the temporary systems. The developer shall install an internal sewage collection system from each lot to the connection point to the central sewer system as he develops the curbs, gutters and streets of the subdivision. Upon completion of the sewer construction all systems shall be abandoned and all residences, buildings or facilities connected to the sewer.

(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.

SECTION 8. Section 41-67-12, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-12. (1) The department shall assess fees in the following amounts for the following purposes:
(a) A fee of Seventy-five Dollars ($75.00) shall be levied for a construction permit or inspection of an existing individual on-site wastewater disposal system. This fee may be waived by the department of the inspection of an existing system for which a continuing maintenance contract exists.

(b) A fee of One Hundred Dollars ($100.00) 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 Two Hundred Dollars ($200.00) for each product registered shall be levied annually for the registration of manufacturers.

(d) A fee of Fifty Dollars ($50.00) shall be levied annually for the certification of maintenance providers engaging in providing continuing maintenance of individual on-site wastewater disposal systems; however, persons holding a certified installer's certification or a pumper's license will be exempt from this fee.

(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, or for any system with a documented continuing maintenance agreement.
SECTION 9. Section 41-67-15, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-15. Nothing in this chapter shall limit the authority of a municipality, board of supervisors, or decentralized wastewater management utility district 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 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 41-67-23, 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 12. 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 of
individual on-site wastewater disposal systems in this state
unless that person is currently certified by the department. A
person who installs an individual on-site wastewater disposal
system on his own property as his primary residence is not
considered an installer for purposes of this subsection. The
requirements of this subsection shall not apply to professional
engineers registered in the state.

(2) An installer of registered systems or products 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 department 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 having a performance bond or
surety in effect with liability limits of at least Fifty Thousand
Dollars ($50,000.00) per occurrence and at least One Hundred
Thousand Dollars ($100,000.00) in total aggregate amount.

(4) Each installer shall furnish proof of certification to
the property owner and to the department, if requested,
prior to the installation or repair of an individual on-site
wastewater disposal system.
(5) The department shall provide for annual renewal of certifications.

(6) (a) An installer's certification may be suspended or revoked by the department 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 13. The following provision shall be codified as Section 41-67-26, Mississippi Code of 1972:

41-67-26. (1) A person may not operate as a maintenance provider in this state unless that person is currently certified by the department.

(2) A maintenance provider for mechanical or proprietary 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 maintenance provider as an authorized manufacturer's representative.

(3) The department shall issue a certification to a maintenance provider if the maintenance provider:

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

(b) Satisfactorily completes the maintenance provider training program provided by the department or currently holds a certified installer's certificate; and

(c) Pays the annual certification fee.

(4) Provides proof of having a performance bond or surety in effect with liability limits of at least Fifty Thousand Dollars
($50,000.00) per occurrence and at least One Hundred Thousand Dollars ($100,000.00) in total aggregate amount.

(5) Each maintenance provider shall furnish proof of certification to an individual prior to entering a contract with that individual for the continuing maintenance of an individual on-site wastewater disposal system.

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

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

(8) A person may not be engaged in the business of removing and disposing of the sludge and liquid waste (septage) from individual on-site wastewater disposal systems in this state unless that person has a valid license issued by the department.

(9) The department shall issue a license to a pumper if the pumper:

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

(b) Satisfactorily complies with the requirements of his/her pumping and hauling equipment;

(c) Provides documentation of a disposal site approved by the Department of Environmental Quality, Office of Pollution Control;

(d) Pays the annual license fee; and

(e) Provides proof of having a performance bond or surety in effect with liability limits of at least Fifty Thousand Dollars ($50,000.00) per occurrence and at least One Hundred Thousand Dollars ($100,000.00) in total aggregate amount.

(10) Each pumper shall furnish proof of licensure to an individual prior to entering a contract with that individual for the removing and disposing of the sludge and liquid waste (septage) from an individual on-site wastewater disposal system.
(11) A septage pumper who shall show proof that he/she was in the septage business in Mississippi prior to July 1, 1987, shall be exempt from the license fee required by this section.

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

41-67-27. It is unlawful for a manufacturer of an individual on-site wastewater disposal system or alternative treatment or disposal components 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 and amended as follows:


   (a) Any person who has knowingly violated this chapter shall be subject to administrative enforcement action by the department. Except for administrative action against a certified installer, maintenance provider or licensed pumper, the department shall provide the alleged violator thirty (30) days' notice of the violation and the appropriate action to be taken to come into compliance with this chapter or department regulations, rules or orders. If, after the thirty-day notification period, the alleged violator has not taken appropriate measures to come into compliance, the department may take administrative enforcement action against that person.

   (b) If any certified installer or engineer files an affidavit with the department containing false or incorrect information that the installer or engineer knows to be false or incorrect, the board, after due notice and hearing, shall levy an administrative fine of up to Two Thousand Dollars ($2,000.00).

   (c) In circumstances where an alleged violation involves a malfunctioning system that could result or has resulted in a substantial endangerment to human health or the environment, including, but not limited to, a discharge of pollutants into the

H. B. No. 1046
03/HR40/R1533
PAGE 23 (TB\BD)
waters of the state, the department may institute an administrative proceeding as a complainant before the commission.

Any action taken by the commission, and appeals thereof, shall proceed pursuant to Sections 49-17-31 through 49-17-43 and shall be either in addition to or in lieu of other remedies provided for the department in this chapter.

(d) The department may assess a penalty not to exceed One Hundred Dollars ($100.00) for a violation of this chapter or its implementing regulations, rules, orders or permits. Each day that a violation continues shall be considered a separate violation. All penalties collected by the board under this section shall be deposited in the State General Fund.

(e) In circumstances where the State Health Officer has determined that a health threat may be imminent, the department may require a water utility to discontinue service until the imminent health threat may be abated.

(2) **Criminal enforcement of regulations and orders.**

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. The department may file an affidavit in any court of appropriate jurisdiction to prosecute violations of this chapter or its implementing regulations. In the event that a malfunctioning system presents an immediate health hazard, an action for abatement may be filed in the circuit court for the county in which the property lies.

(3) **Civil suits.**

(a) In addition to the penalties provided in this section and any other available remedies, the department may seek mandatory or prohibitory injunctive relief to enforce this chapter, any regulation, or any order issued pursuant to this chapter.
chapter in the chancery court for the county in which the property lies.

* * *

(b) 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 where the installer or the manufacturer has the principal place of business, or where the act allegedly occurred, to recover any loss of money or damages for the loss of any property resulting from: improper installation of a system due to faulty workmanship; failure of a system to operate properly due to noncompliance with manufacturer requirements or board regulations; and failure of a system to operate properly due to defective design or construction.

(c) A person who is aggrieved or damaged by a discharge caused by a violation of this chapter or its implementing regulations may sue the violator 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 attorney's 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 41-67-31, Mississippi Code of 1972, is amended as follows:

SECTION 17. Section 41-26-103, Mississippi Code of 1972, is amended as follows:

41-26-103. (1) The department shall develop annually a list of community public water systems that the department, after consultation with the Public Utilities Staff created in Section 77-2-1, considers to be potentially nonviable or experiencing other problems that may make the system potentially nonviable. The list shall state the areas of concern and shall be prioritized based upon viability considerations. The department shall notify at a minimum those systems shown in top ten (10) places on the list and shall offer to provide each of those systems with technical assistance pertaining to the areas of concern for the system at no cost to the system. If the notified community public water system refuses the offer of technical assistance at no cost to the system or fails to respond within sixty (60) days of the written offer, the department shall notify the Public Utilities Staff in writing.

(2) Following receipt of notification from the department that a community public water system has refused to accept technical assistance or failed to respond, the Public Utilities Staff may conduct a financial or managerial review, or both, of the system and shall submit a copy of any report to the department. The Public Utilities Staff may assess and collect the cost of any financial or management review, or both, from the community public water system on which the review or reviews are conducted.

(3) This section shall be repealed on July 1, 2006.

SECTION 18. Sections 41-67-4, 41-67-6, 41-67-7, 41-67-8, 41-67-16 and 41-67-21, Mississippi Code of 1972, which prescribe certain duties of the Department of Health relative to individual on-site wastewater system regulations, provide certain penalties for noncompliance, provide the determination of applicability of this act, require a study of on-site wastewater systems and
provide for owner repair of malfunctioning systems, are hereby
repealed.

SECTION 19. This act shall take effect and be in force from