

By: Representative Warren

To: Public Health and Human Services

HOUSE BILL NO. 287
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-29,
2 MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE INDIVIDUAL ON-SITE
3 WASTEWATER DISPOSAL SYSTEM LAW, PRESCRIBES THE DUTIES AND
4 RESPONSIBILITIES OF THE COMMISSION ON ENVIRONMENTAL QUALITY AND
5 THE BOARD OF HEALTH AND REGULATES THE PROCEDURE FOR APPROVAL OF
6 DISPOSAL SYSTEMS; TO AMEND SECTION 41-67-4, MISSISSIPPI CODE OF
7 1972, TO AUTHORIZE THAT THE BOARD OF HEALTH DETERMINE THE
8 FEASIBILITY OF COMMUNITY SEWERAGE SYSTEMS; TO AMEND SECTIONS
9 41-67-2, 41-67-3, 41-67-6, 41-67-7, 41-67-8 AND 41-67-9,
10 MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 41-67-31,
11 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON
12 THE SECTION OF LAW THAT REGULATES INDIVIDUAL ON-SITE WASTEWATER
13 DISPOSAL SYSTEMS; AND FOR RELATED PURPOSES.

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

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

17 41-67-1. This chapter shall be known and may be cited as the
18 "Mississippi Individual On-Site Wastewater Disposal System Law."

19 **SECTION 2.** Section 41-67-2, Mississippi Code of 1972, is
20 reenacted and amended as follows:

21 41-67-2. For purposes of this chapter, the following words
22 shall have the meanings ascribed herein unless the context clearly
23 indicates otherwise:

24 (a) "Board" means the Mississippi State Board of
25 Health.

26 * * *

27 (b) "Department" means the Mississippi State Department
28 of Health.

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

32 (d) "Individual on-site wastewater disposal system"
33 means a * * * sewage treatment and effluent disposal system that
34 does not discharge into waters of the state, that serves only one
35 (1) legal tract, that accepts only human sanitary waste and
36 similar waste streams maintained on the property of the generator,
37 and that is designed and installed in accordance with this law and
38 regulations of the board * * *.

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

47 (f) "Professional engineer" means any person who has
48 met the qualifications required under Section 73-13-23(1) and who
49 has been issued a certificate of registration as a professional
50 engineer.

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

53 (h) "Subdivision" means any land that is divided into
54 ten (10) or more lots, tracts, sites or parcels for the purpose of
55 residential development.

56 **SECTION 3.** Section 41-67-3, Mississippi Code of 1972, is
57 reenacted and amended as follows:

58 41-67-3. (1) The State Board of Health shall have the
59 following duties and responsibilities:

60 (a) To exercise general supervision over the design,
61 construction, operation and maintenance of individual on-site
62 wastewater disposal systems * * *;

63 (b) To adopt, modify, repeal and promulgate rules and
64 regulations, after due notice and hearing, and where not otherwise

65 prohibited by federal or state law, to make exceptions to, to
66 grant exemptions from and to enforce rules and regulations
67 implementing or effectuating the duties of the board under this
68 chapter to protect the public health. The board may grant
69 variances from rules and regulations adopted under this chapter,
70 including requirements for buffer zones, or from setbacks required
71 under Section 41-67-7 where the granting of a variance shall not
72 subject the public to unreasonable health risks or jeopardize
73 environmental resources;

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

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

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

89 (2) Nothing in this chapter shall preclude a professional
90 engineer from providing services relating to the design,
91 construction or installation of an individual on-site wastewater
92 disposal system to comply with this chapter. Except as otherwise
93 required by subsection (4) of this section * * *, a professional
94 engineer shall notify the department in writing of those services
95 being provided. If a professional engineer designs, constructs or
96 installs or directly supervises the construction or installation
97 of a design-based individual on-site wastewater disposal system

98 consistent with this chapter and stamps the appropriate
99 documentation with that professional engineer's seal, the
100 department shall approve the design, construction or installation
101 of the system, if requested. Professional engineers engaging in
102 the design, construction or installation of individual on-site
103 wastewater disposal systems shall not require certification under
104 this chapter.

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

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

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

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

118 (4) In addition, the board shall adopt rules establishing
119 performance standards for individual on-site wastewater disposal
120 systems for single family residential generators and rules
121 concerning the operation and maintenance of individual on-site
122 wastewater disposal systems designed to meet those standards. The
123 performance standards shall be consistent with the federal Clean
124 Water Act, maintaining the wastes on the property of the
125 generator * * * and protection of the public health. Rules for
126 the operation and maintenance of individual on-site wastewater
127 disposal systems designed to meet performance standards shall
128 include rules concerning the following:

129 (a) A standard application form and requirements for
130 supporting documentation;

- 131 (b) Application review;
- 132 (c) Approval or denial of authorization for proposed
- 133 systems;
- 134 (d) Requirements, as deemed appropriate by the board,
- 135 for annual renewal of authorization;
- 136 (e) Enforcement of the requirements and conditions of
- 137 authorization; and
- 138 (f) Inspection, monitoring, sampling and reporting on
- 139 the performance of the system.

140 Any system proposed for authorization in accordance with

141 performance standards must be designed and certified by a

142 professional engineer and must be authorized by the board before

143 installation. Appeals from a final decision of the board

144 regarding the authorization of an individual on-site wastewater

145 disposal system based upon performance standards shall be taken

146 using a procedure substantially equivalent to the procedure

147 specified for hospital licenses in Chapter 9 of Title 41.

148 (5) To the extent practicable, all rules and regulations

149 adopted under this chapter shall give maximum flexibility to

150 persons installing individual on-site wastewater disposal systems

151 and a maximum number of options consistent with the federal Clean

152 Water Act, consistent with maintaining the wastes on the property

153 of the generator * * * and consistent with protection of the

154 public health. In addition, all rules and regulations, to the

155 extent practicable, shall encourage the use of economically

156 feasible systems, including alternative techniques and

157 technologies for individual on-site wastewater disposal.

158 (6) All regulations shall be applied uniformly in all areas

159 of the state and shall take into consideration and make provision

160 for different types of soil in the state when performing soil and

161 site evaluations.

162 **SECTION 4.** Section 41-67-4, Mississippi Code of 1972, is

163 reenacted and amended as follows:

164 [Through August 31, 2005, this section shall read as

165 follows:]

166 41-67-4. (1) The Commission on Environmental Quality shall
167 determine the feasibility of establishing community sewerage
168 systems upon the submission by the developer of a preliminary
169 design and feasibility study prepared by a professional engineer.
170 The developer may request and obtain a hearing before the
171 commission if the developer is dissatisfied with the commission's
172 determination of feasibility. The determination that a sewerage
173 system must be established shall be made without regard to whether
174 the establishment of a sewerage system is authorized by law or is
175 subject to approval by one or more state or local government or
176 public bodies. Whenever a developer requests a determination of
177 feasibility, the commission must make the determination within
178 forty-five (45) days after receipt of the preliminary design and
179 feasibility study from the developer. The commission shall state
180 in writing the reasons for its determination. If the commission
181 does not make a determination within forty-five (45) days, all
182 sites within the subdivision shall be approved, if a certified
183 installer attests that each site can be adequately served by an
184 individual on-site wastewater disposal system.

185 (2) Where residential subdivisions are proposed which are
186 composed of fewer than thirty-five (35) building sites, and no
187 system of sanitary sewers is available to which collection sewers
188 may be feasibly connected, the board may waive the requirement for
189 a feasibility study. If the feasibility study is waived, all
190 sites within the subdivision shall be approved, if a certified
191 installer attests that each site can be adequately served by an
192 individual on-site wastewater disposal system.

193 (3) No feasibility study or community sewerage system shall
194 be required for subdivisions designed, laid out, platted or
195 partially constructed before July 1, 1988, or for any subdivision

196 that was platted and recorded during the period from July 1, 1995,
197 through June 30, 1996.

198 **[From and after September 1, 2005, this section shall read as**
199 **follows:]**

200 41-67-4. (1) The board shall determine the feasibility of
201 establishing community sewerage systems upon the submission by the
202 developer of a preliminary design and feasibility study prepared
203 by a professional engineer. The developer may request and obtain
204 a hearing before the board if the developer is dissatisfied with
205 the board's determination of feasibility. The determination that
206 a sewerage system must be established shall be made without regard
207 to whether the establishment of a sewerage system is authorized by
208 law or is subject to approval by one or more state or local
209 government or public bodies. Whenever a developer requests a
210 determination of feasibility, the board must make the
211 determination within forty-five (45) days after receipt of the
212 preliminary design and feasibility study from the developer. The
213 board shall state in writing the reasons for its determination.
214 If the board does not make a determination within forty-five (45)
215 days, all sites within the subdivision shall be approved, if a
216 certified installer attests that each site can be adequately
217 served by an individual on-site wastewater disposal system.

218 (2) Where residential subdivisions are proposed which are
219 composed of fewer than thirty-five (35) building sites, and no
220 system of sanitary sewers is available to which collection sewers
221 may be feasibly connected, the board may waive the requirement for
222 a feasibility study. If the feasibility study is waived, all
223 sites within the subdivision shall be approved, if a certified
224 installer attests that each site can be adequately served by an
225 individual on-site wastewater disposal system.

226 (3) No feasibility study or community sewerage system shall
227 be required for subdivisions designed, laid out, platted or
228 partially constructed before July 1, 1988, or for any subdivision

229 that was platted and recorded during the period from July 1, 1995,
230 through June 30, 1996.

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

233 41-67-5. (1) No owner, lessee or developer shall construct
234 or place any mobile, modular or permanently constructed residence,
235 building or facility, which may require the installation of an
236 individual on-site wastewater disposal system, without having
237 first submitted a notice of intent to the department. Upon
238 receipt of a notice of intent, the department shall provide the
239 owner, lessee or developer with complete information on individual
240 on-site wastewater disposal systems, including, but not limited
241 to, applicable rules and regulations regarding the design,
242 construction, installation, operation and maintenance of
243 individual on-site wastewater disposal systems and known
244 requirements of lending institutions for approval of the systems.

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

250 (3) The department shall furnish to the county tax assessor
251 or collector, upon request, the name and address of the person
252 submitting a notice of intent and the section, township and range
253 of the lot or tract of land on which the individual on-site
254 wastewater disposal system will be installed.

255 **SECTION 6.** Section 41-67-6, Mississippi Code of 1972, is
256 reenacted and amended as follows:

257 41-67-6. (1) Within five (5) working days following receipt
258 of the notice of intent and plot plan by an owner, lessee or
259 developer of any lot or tract of land, the department shall
260 conduct a soil and site evaluation, except in cases where a
261 professional engineer provides services relating to the design,

262 construction or installation of an individual on-site wastewater
263 disposal system to comply with this chapter. Within ten (10)
264 additional working days, the department shall make recommendations
265 to the owner, lessee or developer of the type or types of
266 individual on-site wastewater disposal systems suitable for
267 installation on the lot or tract, unless there are conditions
268 requiring further investigation that are revealed in the initial
269 evaluation. In making recommendations on the type or types of
270 individual on-site wastewater disposal systems suitable for
271 installation on a lot or tract, personnel of the department shall
272 use best professional judgment based on rules and regulations
273 adopted by the board, considering the type or types of systems
274 which are installed and functioning on lots or tracts near the
275 subject lot or tract. If existing systems in the surrounding area
276 function properly, systems of that same type shall be approved.
277 To the extent practicable, the recommendations shall give the
278 owner, lessee or developer maximum flexibility and a maximum
279 number of options consistent with the federal Clean Water Act,
280 consistent with maintaining the wastes on the property of the
281 generator * * * and consistent with protection of the public
282 health. The system or systems recommended shall be
283 environmentally sound and cost-effective. The department or a
284 professional engineer shall provide complete information,
285 including all applicable requirements and regulations on all
286 systems recommended. The owner, lessee or developer shall have
287 the right to choose among systems. The department shall provide
288 the owner, lessee or developer with a form that specifies all
289 types of individual on-site wastewater disposal systems that are
290 suitable for installation on the lot or tract and lists all
291 installers of those systems that are certified by the department.
292 Approval of the design, construction or installation of an
293 individual on-site wastewater disposal system by the department is
294 not required. If any property owner, lessee or the owner's or

295 lessee's lending institution requests the department to approve
296 the design, construction or installation of any system on the
297 owner's or lessee's property, the department shall approve the
298 design, construction or installation of that system, as requested,
299 if the system is designed, constructed and installed, as the case
300 may be, in accordance with the rules and regulations of the board.
301 The department shall not approve any individual on-site wastewater
302 disposal system that has a direct or point source discharge * * *.
303 Whenever a person requests approval of an individual on-site
304 wastewater disposal system, the department must approve or
305 disapprove the request within fifteen (15) working days. If the
306 department disapproves the request, the department shall state in
307 writing the reasons for the disapproval. If the department does
308 not respond to the request within fifteen (15) working days, the
309 request for approval of the individual on-site wastewater disposal
310 system shall be deemed approved.

311 (2) Evaluations and recommendations for a subdivision shall
312 not be subject to the time constraints in this section.

313 (3) If the department has been requested to approve the
314 design, construction or installation of an individual on-site
315 wastewater disposal system, an installer may not begin the design,
316 construction or installation of the individual on-site wastewater
317 disposal system, unless the installer notifies the department of
318 the date on which the installer plans to begin work on the system.

319 (4) A person may not design, construct or install, or cause
320 to be designed, constructed or installed an individual on-site
321 wastewater disposal system that does not comply with this chapter
322 and rules and regulations of the board.

323 (5) Any person who installs an individual on-site wastewater
324 disposal system shall sign and file with the department an
325 affidavit that the system was installed in compliance with all
326 requirements and regulations applicable to that type of system.
327 If any person or contractor fails to comply with all requirements

328 and regulations in the installation of the system, the board,
329 after due notice and hearing, may levy an administrative fine not
330 to exceed One Thousand Dollars (\$1,000.00).

331 (6) Any provisions of this chapter regarding the
332 department's approval of the design, construction and installation
333 of an individual on-site wastewater disposal system shall not
334 apply to a residence, building or facility that is located on a
335 land tract that is two (2) acres or larger.

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

338 41-67-7. Individual on-site wastewater disposal systems
339 shall be considered acceptable on lots in areas or subdivisions
340 where prior to the sale of the lots, the following requirements
341 are met:

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

345 (a) Sewers are not available or feasible;

346 (b) The existing disposal systems in the area are
347 functioning satisfactorily;

348 (c) Soil types, soil texture, seasonal water tables and
349 other limiting factors are satisfactory for underground
350 absorption; and

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

355 (2) Except for systems utilizing underground absorption,
356 alternative individual on-site wastewater disposal systems shall
357 be considered acceptable, provided the following requirements are
358 met:

359 (a) Sewers are not available or feasible;

360 (b) The systems meet applicable water quality
361 requirements of the federal Clean Water Act and also requirements
362 of the board and department; and

363 (c) Any discharge is confined within the boundaries of
364 the property of the generator * * *.

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

367 41-67-8. (1) This section shall be applicable only after
368 the department has determined that there is no type of individual
369 on-site wastewater disposal system authorized under subsection (3)
370 or (4) of Section 41-67-3 or rules or regulations of the board
371 that can maintain the wastes on the property of the generator.

372 (2) The owner of any individual on-site wastewater disposal
373 system from which effluent is discharged off the property of the
374 generator shall obtain a permit for that discharge, if required
375 under Section 49-17-29, from the Permit Board created under
376 Section 49-17-28.

377 (3) The Permit Board may issue general permits for
378 individual on-site wastewater disposal systems as provided in
379 Section 49-17-29.

380 (4) Any violation of this section shall be punished as
381 provided in Section 49-17-43.

382 (5) This section shall repeal September 1, 2005.

383 **SECTION 9.** Section 41-67-9, Mississippi Code of 1972, is
384 reenacted and amended as follows:

385 41-67-9. (1) Existing individual on-site wastewater
386 disposal systems shall be considered acceptable, provided the
387 following requirements are met:

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

391 (b) The residence, building or facility has previously
392 been occupied for a period of time deemed by the department

393 necessary to determine the functioning capability of the
394 individual on-site wastewater disposal system;

395 (c) The system is functioning properly with no evidence
396 that any insufficiently treated effluent is or has been seeping to
397 the surface of the ground and any discharge of treated effluent is
398 confined within the boundaries of the property of the
399 generator * * *; and

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

405 (2) If an existing residential individual on-site wastewater
406 disposal system is malfunctioning, the system should be replaced,
407 where possible, with a system meeting all requirements of this
408 chapter and rules and regulations of the board. If replacement of
409 the existing system is not possible, the existing system shall be
410 repaired to reduce the volume of effluent, to adequately treat the
411 effluent and to the greatest extent possible, to confine the
412 discharge to the property of the generator * * *. If repairs are
413 made to significantly upgrade the existing individual on-site
414 wastewater disposal system, the department shall approve the
415 system, if requested.

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

418 41-67-10. Aerobic treatment systems may be installed only if
419 they have been tested and listed by a third-party certifying
420 program. Aerobic treatment systems shall be in compliance with
421 standards for a Class I system as defined by the most current
422 revision of American National Standards Institute/National
423 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
424 hereby incorporated by reference. Beginning on October 1, 1996,
425 an approved third-party certifying program shall comply with the

426 following provisions for systems which it has certified to be
427 installed in Mississippi:

428 (a) Be accredited by the American National Standards
429 Institute;

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

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

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

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

443 41-67-11. (1) Temporary individual on-site wastewater
444 disposal systems may be approved in otherwise unapprovable areas
445 only after a contract has been awarded for the construction of
446 municipal or community sewers that upon completion will adequately
447 serve the property. Temporary individual on-site wastewater
448 disposal systems shall only be approved under the following
449 conditions:

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

456 (b) When the public sewers shall be available and ready
457 for use within a period not to exceed six (6) months, or where a
458 minor extension is to be made to a municipal system by the

459 municipality and no contract is to be awarded, an individual
460 on-site wastewater disposal system with a minimum capacity of
461 three hundred (300) gallons and at least sixty percent (60%) of
462 the required disposal field may be installed. The board shall not
463 approve a temporary system under this subsection unless the
464 professional engineer designing the sewer system has certified to
465 the board in writing that the public sewer or extension shall be
466 completed within six (6) months, and the owner of the temporary
467 system has certified in writing that connection to the public
468 sewer shall be made as soon as it becomes available.

469 (2) The board may approve the installation of sewage holding
470 tanks in districts created under Sections 19-5-151 through
471 19-5-207 for the purpose of providing sewage services. The
472 district shall be required to maintain or provide for the
473 maintenance of those holding tanks. The board shall require that
474 residences be connected to a municipal or community sewage system
475 when that system is available and ready to use.

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

478 41-67-12. (1) The department shall assess fees in the
479 following amounts for the following purposes:

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

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

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

489 (2) In the discretion of the board, a person shall be liable
490 for a penalty equal to one and one-half (1-1/2) times the amount
491 of the fee due and payable for failure to pay the fee on or before

492 the date due, plus any amount necessary to reimburse the cost of
493 collection.

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

502 **SECTION 13.** Section 41-67-15, Mississippi Code of 1972, is
503 reenacted as follows:

504 41-67-15. Nothing in this chapter shall limit the authority
505 of a municipality or board of supervisors to adopt similar
506 ordinances which may be, in whole or in part, more restrictive
507 than this chapter, and in those cases the more restrictive
508 ordinances will govern.

509 **SECTION 14.** Section 41-67-16, Mississippi Code of 1972, is
510 reenacted as follows:

511 41-67-16. (1) Before January 1, 1997, the department shall
512 conduct a study of all individual on-site wastewater disposal
513 systems currently being recommended for use in the state to
514 determine the suitability of using those systems on lots or tracts
515 in areas of the state given the various soil types and
516 classifications. In conducting the study, the department shall
517 consider the type of system, lot size, effluent quality and other
518 recommended limitations which should be placed on the use of each
519 system.

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

522 **SECTION 15.** Section 41-67-19, Mississippi Code of 1972, is
523 reenacted as follows:

524 41-67-19. Each authorized agent of the department
525 implementing this chapter shall demonstrate to the department's
526 satisfaction that the person:

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

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

537 **SECTION 16.** Section 41-67-21, Mississippi Code of 1972, is
538 reenacted as follows:

539 41-67-21. (1) The board or the department may require a
540 property owner or lessee to repair a malfunctioning individual
541 on-site wastewater disposal system on the owner's or lessee's
542 property before the thirtieth day after the date on which the
543 owner or lessee is notified by the department of the
544 malfunctioning system.

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

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

553 (4) The board may assess the property owner or lessee of an
554 individual on-site wastewater disposal system authorized pursuant
555 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
556 (\$50.00) for each day the system fails to meet the performance

557 standards of that system after the thirty-day period specified in
558 subsection (1) of this section.

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

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

563 **SECTION 17.** Section 41-67-23, Mississippi Code of 1972, is
564 reenacted as follows:

565 41-67-23. The department or its authorized representative
566 may enter onto property and make inspections of any individual
567 on-site wastewater disposal system as necessary to ensure that the
568 system is in compliance with this chapter and the rules adopted
569 under this chapter. The department shall give reasonable notice
570 to any property owner, lessee or occupant prior to entry onto the
571 property. The owner, lessee, owner's representative, or occupant
572 of the property on which the system is located shall give the
573 department or its authorized representative reasonable access to
574 the property at reasonable times to make necessary inspections.

575 **SECTION 18.** Section 41-67-25, Mississippi Code of 1972, is
576 reenacted as follows:

577 41-67-25. (1) A person may not operate as an installer in
578 this state unless that person is certified by the board except any
579 individual who installs an individual on-site wastewater disposal
580 system on his own property or a professional engineer.

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

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

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

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

593 (c) Pays the annual certification fee; and

594 (d) Provides proof of having a valid public liability
595 insurance policy in effect with liability limits of at least Fifty
596 Thousand Dollars (\$50,000.00) per occurrence and at least One
597 Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

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

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

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

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

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

615 **SECTION 19.** Section 41-67-27, Mississippi Code of 1972, is
616 reenacted as follows:

617 41-67-27. It is unlawful for a manufacturer of an individual
618 on-site wastewater disposal system to operate a business in or to
619 do business in the State of Mississippi without holding a valid
620 registration issued by the department.

621 **SECTION 20.** Section 41-67-28, Mississippi Code of 1972, is
622 reenacted as follows:

623 41-67-28. (1) Except as otherwise provided in this chapter,
624 any person who shall knowingly violate this chapter or any rule or
625 regulation or written order of the board in pursuance thereof is,
626 upon conviction, guilty of a misdemeanor and shall be punished as
627 provided in Section 41-3-59.

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

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

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

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

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

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

652 (4) A person who violates this chapter thereby causing a
653 discharge off the property of the generator shall be liable to the

654 party aggrieved or damaged by that violation for the actual
655 damages and additional punitive damages equal to a maximum of
656 twenty-five percent (25%) of the actual damages proven by the
657 aggrieved party, to be taxed by the court where the suit is heard
658 on an original action, by appeal or otherwise and recovered by a
659 suit at law in any court of competent jurisdiction. In addition,
660 the court may award the prevailing party reasonable attorney's
661 fees and court costs. Before filing suit, the party aggrieved or
662 damaged must give thirty (30) days' written notice of its intent
663 to file suit to the alleged violator.

664 **SECTION 21.** Section 41-67-29, Mississippi Code of 1972, is
665 reenacted as follows:

666 41-67-29. Any person who is aggrieved by any final decision
667 of the board may appeal that final decision to the chancery court
668 of the county of the situs in whole or in part of the subject
669 matter. The appellant shall give a cost bond with sufficient
670 sureties, payable to the state in a sum to be fixed by the board
671 or the court and to be filed with and approved by the clerk of the
672 court. The aggrieved party may, within thirty (30) days following
673 a final decision of the board, petition the chancery court for an
674 appeal with supersedeas and the chancellor shall grant a hearing
675 on the petition. Upon good cause shown the chancellor may grant
676 the appeal with supersedeas. The appellant shall be required to
677 post a bond with sufficient sureties according to law in an amount
678 to be determined by the chancellor. The chancery court shall
679 always be deemed open for hearing of appeals and the chancellor
680 may hear the appeal in termtime or in vacation at any place in his
681 district. The appeal shall have precedence over all civil cases,
682 except election contests. The chancery court shall review all
683 questions of law and of fact and may enter a final order or remand
684 the matter to the board for appropriate action as may be indicated
685 or necessary under the circumstances. Appeals may be taken from
686 the chancery court to the Supreme Court in the manner as now

687 required by law, but if a supersedeas is desired by the party
688 appealing to the chancery court, that party may apply therefor to
689 the chancellor, who shall award a writ of supersedeas, without
690 additional bond, if in the chancellor's judgment material damage
691 is not likely to result. If material damage is likely to result,
692 the chancellor shall require a supersedeas bond as deemed proper,
693 which shall be liable to the state for any damage.

694 **SECTION 22.** Section 41-67-31, Mississippi Code of 1972, is
695 amended as follows:

696 41-67-31. Sections 41-67-1 through 41-67-29 shall stand
697 repealed on July 1, 2006.

698 **SECTION 23.** This act shall take effect and be in force from
699 and after July 1, 2005.