

## REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 287: Individual On-Site Wastewater Disposal System Law; extend the date of repealer.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

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.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)  
Holland

X (SIGNED)  
Moffatt

X (SIGNED)  
Franks

X (SIGNED)  
Ross

X (SIGNED)  
Montgomery

X (SIGNED)  
Brown