

By: Representative Mims (By Request)

To: Public Health and Human Services; Conservation and Water Resources

HOUSE BILL NO. 708

1 AN ACT TO AMEND SECTION 41-67-6, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE STATE DEPARTMENT OF HEALTH TO INSPECT THE DESIGN,
3 CONSTRUCTION AND INSTALLATION OF INDIVIDUAL ON-SITE WASTEWATER
4 DISPOSAL SYSTEMS AND GIVE WRITTEN APPROVAL BEFORE THE SYSTEMS MAY
5 BE OPERATED; TO AMEND SECTIONS 41-67-3, 41-67-5, 41-67-7, 41-67-9,
6 41-67-12, 41-67-19 AND 41-67-23, MISSISSIPPI CODE OF 1972, TO
7 CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 41-67-6, Mississippi Code of 1972, is
10 amended as follows:

11 41-67-6. (1) Within five (5) working days following receipt
12 of the notice of intent and plot plan by an owner, lessee or
13 developer of any lot or tract of land, the department shall
14 conduct a soil and site evaluation, except in cases where a
15 professional engineer provides services relating to the design,
16 construction or installation of an individual on-site wastewater
17 disposal system to comply with this chapter. Within ten (10)
18 additional working days, the department shall make recommendations
19 to the owner, lessee or developer of the type or types of
20 individual on-site wastewater disposal systems suitable for
21 installation on the lot or tract, unless there are conditions
22 requiring further investigation that are revealed in the initial
23 evaluation. In making recommendations on the type or types of
24 individual on-site wastewater disposal systems suitable for
25 installation on a lot or tract, personnel of the department shall
26 use best professional judgment based on rules and regulations
27 adopted by the board, considering the type or types of systems
28 that are installed and functioning on lots or tracts near the
29 subject lot or tract. If existing systems in the surrounding area

30 function properly, systems of that same type shall be approved.
31 To the extent practicable, the recommendations shall give the
32 owner, lessee or developer maximum flexibility and a maximum
33 number of options consistent with the federal Clean Water Act,
34 consistent with maintaining the wastes on the property of the
35 generator and consistent with protection of the public health.
36 The system or systems recommended shall be environmentally sound
37 and cost-effective. The department or a professional engineer
38 shall provide complete information, including all applicable
39 requirements and regulations on all systems recommended. The
40 owner, lessee or developer shall have the right to choose among
41 systems. The department shall provide the owner, lessee or
42 developer with a form that specifies all types of individual
43 on-site wastewater disposal systems that are suitable for
44 installation on the lot or tract and lists all installers of those
45 systems that are certified by the department.

46 (2) The department must inspect the design, construction
47 and installation of an individual on-site wastewater disposal
48 system and give written approval before the system may be
49 operated. * * * The department shall approve the design,
50 construction and installation of an individual on-site wastewater
51 disposal system * * * if the system is designed, constructed and
52 installed * * * in accordance with the rules and regulations of
53 the board. The department shall not approve any individual
54 on-site wastewater disposal system that has a direct or point
55 source discharge. * * * The department must approve or disapprove
56 a request for the approval of an individual on-site wastewater
57 disposal system within fifteen (15) working days. If the
58 department disapproves the request, the department shall state in
59 writing the reasons for the disapproval. If the department does
60 not respond to the request within fifteen (15) working days, the
61 request for approval of the individual on-site wastewater disposal
62 system shall be deemed approved.

63 (3) Evaluations and recommendations for a subdivision shall
64 not be subject to the time constraints in this section.

65 (4) * * * An installer may not begin the design,
66 construction or installation of an individual on-site wastewater
67 disposal system until the installer notifies the department of the
68 date on which the installer plans to begin work on the system.

69 (5) A person may not design, construct or install, or cause
70 to be designed, constructed or installed an individual on-site
71 wastewater disposal system that does not comply with this chapter
72 and rules and regulations of the board.

73 (6) Any person who installs an individual on-site wastewater
74 disposal system shall sign and file with the department an
75 affidavit that the system was installed in compliance with all
76 requirements and regulations applicable to that type of system.
77 If any person or contractor fails to comply with all requirements
78 and regulations in the installation of the system, the board,
79 after due notice and hearing, may levy an administrative fine not
80 to exceed One Thousand Dollars (\$1,000.00).

81 * * *

82 **SECTION 2.** Section 41-67-3, Mississippi Code of 1972, is
83 amended as follows:

84 41-67-3. (1) The State Board of Health shall have the
85 following duties and responsibilities:

86 (a) To exercise general supervision over the design,
87 construction, installation, operation and maintenance of
88 individual on-site wastewater disposal systems;

89 (b) To adopt, modify, repeal and promulgate rules and
90 regulations, after due notice and hearing, and where not otherwise
91 prohibited by federal or state law, to make exceptions to, to
92 grant exemptions from and to enforce rules and regulations
93 implementing or effectuating the duties of the board under this
94 chapter to protect the public health. The board may grant
95 variances from rules and regulations adopted under this chapter,

96 including requirements for buffer zones, or from setbacks required
97 under Section 41-67-7 where the granting of a variance shall not
98 subject the public to unreasonable health risks or jeopardize
99 environmental resources;

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

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

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

115 (2) Nothing in this chapter shall preclude a professional
116 engineer from providing services relating to the design,
117 construction or installation of an individual on-site wastewater
118 disposal system to comply with this chapter. Except as otherwise
119 required by subsection (4) of this section, a professional
120 engineer shall notify the department in writing of those services
121 being provided. If a professional engineer designs, constructs or
122 installs or directly supervises the construction or installation
123 of a design-based individual on-site wastewater disposal system
124 consistent with this chapter and stamps the appropriate
125 documentation with that professional engineer's seal, the
126 department shall approve the design, construction or installation
127 of the system * * *. Professional engineers engaging in the
128 design, construction or installation of individual on-site

129 wastewater disposal systems shall not require certification under
130 this chapter.

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

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

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

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

144 (4) In addition, the board shall adopt rules establishing
145 performance standards for individual on-site wastewater disposal
146 systems for single family residential generators and rules
147 concerning the operation and maintenance of individual on-site
148 wastewater disposal systems designed to meet those standards. The
149 performance standards shall be consistent with the federal Clean
150 Water Act, maintaining the wastes on the property of the generator
151 and protection of the public health. Rules for the operation and
152 maintenance of individual on-site wastewater disposal systems
153 designed to meet performance standards shall include rules
154 concerning the following:

155 (a) A standard application form and requirements for
156 supporting documentation;

157 (b) Application review;

158 (c) Approval or denial of authorization for proposed
159 systems;

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

162 (e) Enforcement of the requirements and conditions of
163 authorization; and

164 (f) Inspection, monitoring, sampling and reporting on
165 the performance of the system.

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

174 (5) To the extent practicable, all rules and regulations
175 adopted under this chapter shall give maximum flexibility to
176 persons installing individual on-site wastewater disposal systems
177 and a maximum number of options consistent with the federal Clean
178 Water Act, consistent with maintaining the wastes on the property
179 of the generator and consistent with protection of the public
180 health. In addition, all rules and regulations, to the extent
181 practicable, shall encourage the use of economically feasible
182 systems, including alternative techniques and technologies for
183 individual on-site wastewater disposal.

184 (6) All regulations shall be applied uniformly in all areas
185 of the state and shall take into consideration and make provision
186 for different types of soil in the state when performing soil and
187 site evaluations.

188 **SECTION 3.** Section 41-67-5, Mississippi Code of 1972, is
189 amended as follows:

190 41-67-5. (1) No owner, lessee or developer shall construct
191 or place any mobile, modular or permanently constructed residence,
192 building or facility, which may require the installation of an
193 individual on-site wastewater disposal system, without having
194 first submitted a notice of intent to the department. Upon

195 receipt of a notice of intent, the department shall provide the
196 owner, lessee or developer with complete information on individual
197 on-site wastewater disposal systems, including, but not limited
198 to, applicable rules and regulations regarding the design,
199 construction, installation, operation and maintenance of
200 individual on-site wastewater disposal systems and the
201 requirements * * * for approval of the systems by the department.

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

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

212 **SECTION 4.** Section 41-67-7, Mississippi Code of 1972, is
213 amended as follows:

214 41-67-7. Individual on-site wastewater disposal systems may
215 be approved on lots in areas or subdivisions where before the sale
216 of the lots, the following requirements are met:

217 (1) Individual on-site wastewater disposal systems with
218 underground absorption fields may be approved, provided the
219 following requirements are met:

220 (a) Sewers are not available or feasible;

221 (b) The existing disposal systems in the area are
222 functioning satisfactorily;

223 (c) Soil types, soil texture, seasonal water tables and
224 other limiting factors are satisfactory for underground
225 absorption; and

226 (d) Any private water supply is located at a higher
227 elevation and at least fifty (50) feet from the individual on-site

228 wastewater disposal system and at least one hundred (100) feet
229 from the disposal field of the system.

230 (2) Except for systems utilizing underground absorption,
231 alternative individual on-site wastewater disposal systems may be
232 approved, provided the following requirements are met:

233 (a) Sewers are not available or feasible;

234 (b) The systems meet applicable water quality
235 requirements of the federal Clean Water Act and also requirements
236 of the board and department; and

237 (c) Any discharge is confined within the boundaries of
238 the property of the generator.

239 **SECTION 5.** Section 41-67-9, Mississippi Code of 1972, is
240 amended as follows:

241 41-67-9. (1) Existing individual on-site wastewater
242 disposal systems may be approved, provided the following
243 requirements are met:

244 (a) The lot is located in an area or subdivision where
245 individual on-site wastewater disposal systems may be approved
246 under this chapter;

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

251 (c) The system is functioning properly with no evidence
252 that any insufficiently treated effluent is or has been seeping to
253 the surface of the ground and any discharge of treated effluent is
254 confined within the boundaries of the property of the generator;
255 and

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

261 (2) If an existing residential individual on-site wastewater
262 disposal system is malfunctioning, the system should be replaced,
263 where possible, with a system meeting all requirements of this
264 chapter and rules and regulations of the board. If replacement of
265 the existing system is not possible, the existing system shall be
266 repaired to reduce the volume of effluent, to adequately treat the
267 effluent and to the greatest extent possible, to confine the
268 discharge to the property of the generator. If repairs are made
269 to significantly upgrade the existing individual on-site
270 wastewater disposal system, the department shall approve the
271 system * * *.

272 **SECTION 6.** Section 41-67-12, Mississippi Code of 1972, is
273 amended as follows:

274 41-67-12. (1) The department shall assess fees in the
275 following amounts for the following purposes:

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

279 (b) A fee of Fifty Dollars (\$50.00) shall be levied for
280 inspection and approval of individual on-site wastewater disposal
281 systems.

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

286 (d) A fee of One Hundred Dollars (\$100.00) shall be
287 levied annually for the registration of manufacturers.

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

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

301 **SECTION 7.** Section 41-67-19, Mississippi Code of 1972, is
302 amended as follows:

303 41-67-19. Each authorized agent of the department
304 implementing this chapter shall demonstrate to the department's
305 satisfaction that the person:

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

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

316 **SECTION 8.** Section 41-67-23, Mississippi Code of 1972, is
317 amended as follows:

318 41-67-23. The department or its authorized representative
319 may enter onto property and make inspections of any individual
320 on-site wastewater disposal system as necessary to ensure that the
321 system is in compliance with this chapter and the rules adopted
322 under this chapter, and to approve an individual on-site
323 wastewater disposal system before the system may be operated. The
324 department shall give reasonable notice to any property owner,
325 lessee or occupant prior to entry onto the property. The owner,

326 lessee, owner's representative, or occupant of the property on
327 which the system is located shall give the department or its
328 authorized representative reasonable access to the property at
329 reasonable times to make necessary inspections.

330 **SECTION 9.** This act shall take effect and be in force from
331 and after July 1, 2006.