

By: Representative Franks

To: Conservation and Water
Resources; Public Health and
Human ServicesCOMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1226

1 AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-15 AND
2 41-67-19 THROUGH 41-67-29, MISSISSIPPI CODE OF 1972, WHICH ARE THE
3 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; TO
4 AMEND REENACTED SECTION 41-67-1, MISSISSIPPI CODE OF 1972, TO
5 STATE PUBLIC POLICY REGARDING INDIVIDUAL ON-SITE WASTEWATER
6 DISPOSAL SYSTEMS; TO AMEND REENACTED SECTION 41-67-2, MISSISSIPPI
7 CODE OF 1972, TO DEFINE CERTAIN TERMS IN THE INDIVIDUAL ON-SITE
8 WASTEWATER DISPOSAL SYSTEM LAW; TO AMEND REENACTED SECTION
9 41-67-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE BOARD OF
10 HEALTH SHALL DETERMINE THE SUITABILITY OF INDIVIDUAL ON-SITE
11 WASTEWATER DISPOSAL SYSTEMS IN SUBDIVISIONS; TO REQUIRE THE STATE
12 BOARD OF HEALTH TO ADOPT RULES REGARDING CERTIFICATION OF
13 CERTIFIED MAINTENANCE PROVIDERS AND CERTIFIED PROFESSIONAL
14 EVALUATORS; TO REQUIRE BOARD OF HEALTH APPROVAL OF SYSTEMS BEFORE
15 PUBLIC WATER SOURCES MAY BE CONNECTED TO RESIDENCES; TO AMEND
16 REENACTED SECTION 41-67-6, MISSISSIPPI CODE OF 1972, TO REVISE
17 SYSTEM INSTALLATION DEADLINES AND PROCEDURES; TO INCREASE THE
18 ADMINISTRATIVE PENALTY FOR INSTALLATION OF SYSTEMS IN VIOLATION OF
19 LAW OR REGULATIONS; TO AMEND SECTION 41-67-11, MISSISSIPPI CODE OF
20 1972, TO PROVIDE REQUIREMENTS FOR THE USE OF TEMPORARY SYSTEMS; TO
21 AMEND REENACTED SECTION 41-67-15, MISSISSIPPI CODE OF 1972, TO
22 PROVIDE THAT THE DEPARTMENT OF HEALTH SHALL NOT ENFORCE LOCAL
23 ORDINANCES REGARDING SYSTEMS; TO AMEND REENACTED SECTION 41-67-25,
24 MISSISSIPPI CODE OF 1972, TO PROVIDE A PENALTY FOR INSTALLERS WHO
25 OPERATE WITHOUT CERTIFICATION FROM THE BOARD OF HEALTH; TO AMEND
26 REENACTED SECTION 41-67-27, MISSISSIPPI CODE OF 1972, TO CLARIFY
27 REGISTRATION REQUIREMENTS FOR MANUFACTURERS OF SYSTEMS; TO AMEND
28 REENACTED SECTION 41-67-28, MISSISSIPPI CODE OF 1972, TO PROVIDE
29 FOR AN ADMINISTRATIVE FINE FOR THE FAILURE OF PROPERTY OWNERS TO
30 KEEP A CONTINUING MAINTENANCE AGREEMENT FOR AN ALTERNATIVE SYSTEM;
31 TO AMEND REENACTED SECTIONS 41-67-5, 41-67-7, 41-67-9 AND
32 41-67-10, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE OTHER
33 PROVISIONS OF THIS ACT; TO AUTHORIZE A HEARING FOR PERSONS
34 AGGRIEVED BY DISAPPROVAL OR REQUIREMENTS FOR A SYSTEM; TO PROVIDE
35 FOR THE CERTIFICATION OF CERTIFIED MAINTENANCE PROVIDERS; TO
36 PROVIDE FOR THE LICENSING OF PERSONS REMOVING AND DISPOSING OF
37 SLUDGE FROM SYSTEMS; TO PROVIDE FOR THE CERTIFICATION OF CERTIFIED
38 PROFESSIONAL EVALUATORS; TO REPEAL SECTION 41-67-16, MISSISSIPPI
39 CODE OF 1972, WHICH REQUIRED A STUDY OF ALL INDIVIDUAL ON-SITE
40 WASTEWATER DISPOSAL SYSTEMS; TO REPEAL SECTION 41-67-31,
41 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE REPEAL OF THE
42 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; AND
43 FOR RELATED PURPOSES.

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

45 **SECTION 1.** Section 41-67-1, Mississippi Code of 1972, is
46 reenacted and amended as follows:

47 41-67-1. (1) This chapter shall be known and may be cited
48 as the "Mississippi Individual On-Site Wastewater Disposal System
49 Law."

50 (2) It is the purpose of the Legislature through this
51 chapter to protect human health and the environment while
52 providing for reasonable use of individual on-site wastewater
53 disposal systems. The Legislature finds that continued
54 installation and operation of individual on-site wastewater
55 disposal systems in a faulty or improper manner, in a manner that
56 lacks essential maintenance for the system, or in areas where
57 unsuitable soil and population density adversely affect the
58 efficiency and functioning of these systems, has a detrimental
59 effect on the public health and welfare and the environment
60 through contamination of land, groundwater and surface waters.
61 The Legislature, therefore, expresses a general preference for the
62 installation and operation of centralized sewerage systems in
63 Mississippi, where feasible. The Legislature recognizes, however,
64 that individual on-site wastewater treatment and disposal systems
65 help meet the needs of the state's citizens, especially in rural
66 locations, and can be rendered ecologically safe and protective of
67 the public health if the systems are designed, installed,
68 constructed, maintained and operated properly. It is the intent
69 of the Legislature to allow the continued installation, use and
70 maintenance of individual on-site wastewater disposal systems in a
71 manner that will not jeopardize public health and welfare or the
72 environment.

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

75 41-67-2. For purposes of this chapter, the following words
76 shall have the meanings ascribed herein unless the context clearly
77 indicates otherwise:

78 (a) "Advanced treatment system" means individual
79 on-site wastewater treatment systems that comply with Section
80 47-67-10.

81 (b) "Alternative system" means any on-site sewage
82 treatment and disposal system used in lieu of a conventional
83 system.

84 (c) "Board" means the Mississippi State Board of
85 Health.

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

92 (e) "Certified maintenance provider" means any person
93 who holds a written certification issued by the department
94 allowing the person to provide maintenance services associated
95 with approved on-site wastewater treatment and disposal systems.

96 (f) "Certified professional evaluator" means any person
97 who has met the requirements of Section 23 of this act.

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

101 (h) "Decentralized wastewater management entity" means
102 an entity certificated through the Public Service Commission that
103 undertakes the centralized management and monitoring of individual
104 on-site wastewater disposal system or systems, including, but not
105 limited to, planning, construction, operation, maintenance and
106 financing programs concerning those systems to be managed.

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

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

112 (k) "Individual on-site wastewater disposal system"
113 means a sewage treatment and effluent disposal system that does
114 not discharge into waters of the state, that serves only one (1)
115 legal tract, that accepts only residential waste and similar waste
116 streams maintained on the property of the generator, and that is
117 designed and installed in accordance with this law and regulations
118 of the board.

119 (l) "Installer" means any person who has met the
120 requirements of Section 41-67-25.

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

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

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

140 * * *

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

143 (q) "Qualified homeowner" means the current owner of a
144 specific residence where that homeowner resides and where the
145 homeowner has met the requirements of the Department of Health
146 regulations.

147 (r) "Subdivision" means any tract or combination of
148 adjacent tracts of land that is subdivided into ten (10) or
149 more * * * tracts, sites or parcels for the purpose of commercial
150 or residential development.

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

153 41-67-3. (1) The State Board of Health shall have the
154 following duties and responsibilities:

155 (a) To exercise general supervision over the design,
156 construction, operation and maintenance of individual on-site
157 wastewater disposal systems;

158 (b) To adopt, modify, repeal and promulgate rules and
159 regulations, after due notice and hearing, and where not otherwise
160 prohibited by federal or state law, to make exceptions to, to
161 grant exemptions from and to enforce rules and regulations
162 implementing or effectuating the duties of the board under this
163 chapter to protect the public health. The board may grant
164 variances from rules and regulations adopted under this chapter,
165 including requirements for buffer zones, or from setbacks required
166 under Section 41-67-7 where the granting of a variance shall not
167 subject the public to unreasonable health risks or jeopardize
168 environmental resources;

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

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

181 (e) To require the submission of information deemed
182 necessary by the department to determine the suitability of
183 individual lots for individual on-site wastewater disposal
184 systems; and

185 (f) To adopt, modify, repeal and promulgate rules and
186 regulations, after due notice and hearing, and where not otherwise
187 prohibited by federal or state law, as necessary to determine the
188 suitability of individual on-site wastewater disposal systems in
189 subdivisions.

190 (2) Nothing in this chapter shall preclude a certified
191 professional evaluator from providing services relating to the
192 design * * * of an individual on-site wastewater disposal system
193 to comply with this chapter, except for performance-based systems
194 as specified in subsection (4) of this section. A certified
195 engineer evaluator shall notify the department in writing of those
196 services being provided before construction or installation. If a
197 certified professional evaluator designs * * * a design-based
198 individual on-site wastewater disposal system consistent with this
199 chapter, the certified professional evaluator shall stamp the
200 appropriate documentation with that certified professional
201 evaluator licensure number, if applicable, and the department's
202 certification number and submit the stamped, appropriate
203 documentation to the department for review. Once the department
204 has concurred that the recommended system will adequately treat
205 and dispose of all waste, will maintain the waste on the property
206 of the generator, will not discharge to waters of the state and be

207 in compliance with this law and the corresponding regulations, the
208 department shall approve the design * * * of the
209 system * * *. * * * Construction or installation before
210 department approval is prohibited.

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

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

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

222 (c) Registration and requirements for testing and
223 listing of manufacturers of advanced treatment systems;

224 (d) Certification of certified maintenance providers;

225 (e) Certification of certified professional evaluators;

226 (f) Create regulations that authorize homeowners to be
227 trained by factory installers or other factory representatives in
228 order to educate the homeowner with the necessary knowledge to
229 provide maintenance to the homeowner's system, thus allowing the
230 homeowner to meet the requirements of Section 41-67-6(8).

231 (4) In addition, the board shall adopt rules establishing
232 performance standards for individual on-site wastewater disposal
233 systems for single family residential generators and rules
234 concerning the operation and maintenance of individual on-site
235 wastewater disposal systems designed to meet those standards. The
236 performance standards shall be consistent with the federal Clean
237 Water Act, maintaining the wastes on the property of the generator
238 and protection of the public health. Rules for the operation and
239 maintenance of individual on-site wastewater disposal systems

240 designed to meet performance standards shall include rules
241 concerning the following:

242 (a) A standard application form and requirements for
243 supporting documentation;

244 (b) Application review;

245 (c) Approval or denial of authorization for proposed
246 systems;

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

249 (e) Enforcement of the requirements and conditions of
250 authorization; and

251 (f) Inspection, monitoring, sampling and reporting on
252 the performance of the system.

253 Any system proposed for authorization in accordance with
254 performance standards must be designed and certified by a
255 professional engineer registered in the State of Mississippi who
256 is a certified professional evaluator and must be authorized by
257 the board before installation. * * *

258 (5) To the extent practicable, all rules and regulations
259 adopted under this chapter shall give maximum flexibility to
260 persons installing individual on-site wastewater disposal systems
261 and a maximum number of options consistent with the federal Clean
262 Water Act, consistent with maintaining the wastes on the property
263 of the generator and consistent with protection of the public
264 health. In addition, all rules and regulations, to the extent
265 practicable, shall encourage the use of economically feasible
266 systems, including alternative techniques and technologies for
267 individual on-site wastewater disposal.

268 (6) All regulations shall be applied uniformly in all areas
269 of the state and shall take into consideration and make provision
270 for different types of soil in the state when performing soil and
271 site evaluations.

272 (7) No public utility supplying water shall make connection
273 to any dwelling house, mobile home or residence without the prior
274 written approval of the department certifying that the sewage
275 treatment and disposal system at the location of the property
276 complies with this chapter. Temporary connections of water
277 utilities may be made during construction if the department has
278 approved a plan for a sewage treatment and disposal system and the
279 owner of the property has agreed to have the system inspected and
280 approved by the department before the use or occupancy of the
281 property.

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

284 41-67-4. (1) The board shall determine the feasibility of
285 establishing community sewerage systems upon the submission by the
286 developer of a preliminary design and feasibility study prepared
287 by a professional engineer. The developer may request and obtain
288 a hearing before the board if the developer is dissatisfied with
289 the board's determination of feasibility. The determination that
290 a sewerage system must be established shall be made without regard
291 to whether the establishment of a sewerage system is authorized by
292 law or is subject to approval by one or more state or local
293 government or public bodies. Whenever a developer requests a
294 determination of feasibility, the board must make the
295 determination within forty-five (45) days after receipt of the
296 preliminary design and feasibility study from the developer. The
297 board shall state in writing the reasons for its determination.
298 If the board does not make a determination within forty-five (45)
299 days, all sites within the subdivision shall be approved, if a
300 certified installer attests that each site can be adequately
301 served by an individual on-site wastewater disposal system.

302 (2) Where residential subdivisions are proposed which are
303 composed of fewer than thirty-five (35) building sites, and no
304 system of sanitary sewers is available to which collection sewers

305 may be feasibly connected, the board may waive the requirement for
306 a feasibility study. If the feasibility study is waived, all
307 sites within the subdivision shall be approved, if a certified
308 installer attests that each site can be adequately served by an
309 individual on-site wastewater disposal system.

310 (3) No feasibility study or community sewerage system shall
311 be required for subdivisions designed, laid out, platted or
312 partially constructed before July 1, 1988, or for any subdivision
313 that was platted and recorded during the period from July 1, 1995,
314 through June 30, 1996.

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

317 41-67-5. (1) No owner, lessee or developer shall construct
318 or place any mobile, modular or permanently constructed residence,
319 building or facility, which may require the installation of an
320 individual on-site wastewater disposal system, without having
321 first submitted a notice of intent to the department. Upon
322 receipt of a notice of intent, the department shall provide the
323 owner, lessee or developer with complete information on individual
324 on-site wastewater disposal systems, including, but not limited
325 to, applicable rules and regulations regarding the design,
326 construction, installation, operation and maintenance of
327 individual on-site wastewater disposal systems and known
328 requirements of lending institutions for approval of the systems.

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

334 (3) The department shall furnish to the county tax assessor
335 or collector, upon request, the name and address of the person
336 submitting a notice of intent and the section, township and range

337 of the lot or tract of land on which the individual on-site
338 wastewater disposal system will be installed.

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

341 41-67-6. (1) Within five (5) working days following receipt
342 of the notice of intent and plot plan by an owner, lessee or
343 developer of any lot or tract of land, the department shall
344 conduct a soil and site evaluation, except in cases where a
345 certified professional evaluator provides services relating to the
346 design, construction or installation of an individual on-site
347 wastewater disposal system to comply with this chapter. Within
348 ten (10) additional working days, the department shall make
349 recommendations to the owner, lessee or developer of the type or
350 types of individual on-site wastewater disposal systems suitable
351 for installation on the lot or tract, unless there are conditions
352 requiring further investigation that are revealed in the initial
353 evaluation. In making recommendations on the type or types of
354 individual on-site wastewater disposal systems suitable for
355 installation on a lot or tract, personnel of the department shall
356 use best professional judgment based on rules and regulations
357 adopted by the board, considering the type or types of systems
358 which are installed and functioning on lots or tracts near the
359 subject lot or tract. * * * To the extent practicable, the
360 recommendations shall give the owner, lessee or developer maximum
361 flexibility and a maximum number of options consistent with the
362 federal Clean Water Act, consistent with maintaining the wastes on
363 the property of the generator and consistent with protection of
364 the public health. The system or systems recommended shall be
365 environmentally sound and cost-effective. The department or a
366 certified professional evaluator shall provide complete
367 information, including all applicable requirements and regulations
368 on all systems recommended. The owner, lessee or developer shall
369 have the right to choose among systems. The department shall

370 provide the owner, lessee or developer with a form that specifies
371 all types of individual on-site wastewater disposal systems that
372 are suitable for installation on the lot or tract and lists all
373 installers of those systems that are certified by the department.
374 Approval of the design, construction or installation of an
375 individual on-site wastewater disposal system by the department
376 is * * * required. Upon completion of installation of the system,
377 the department shall approve the design, construction or
378 installation of that system, as requested, if the system is
379 designed, constructed and installed, as the case may be, in
380 accordance with the rules and regulations of the board. * * *
381 Whenever a person requests approval of an individual on-site
382 wastewater disposal system and has met the requirements in
383 subsection (7), the department must approve or disapprove the
384 request within five (5) working days. If the department
385 disapproves the request, the department shall state in writing the
386 reasons for the disapproval. If the department does not respond
387 to the request within ten (10) calendar days, the request for
388 approval of the individual on-site wastewater disposal system
389 shall be deemed approved.

390 * * *

391 (2) Within thirty (30) days of receipt of a request for
392 determination of suitability of individual on-site wastewater
393 disposal systems in a subdivision, the department shall advise the
394 developer in writing either that all necessary information needed
395 for determination of suitability has been received or state the
396 additional information needed by the department for determination
397 of suitability.

398 (3) Whenever a developer requests a determination of
399 suitability of individual on-site wastewater disposal systems in a
400 subdivision, the department must make the determination within
401 forty-five (45) days after receipt of all necessary information
402 needed for the determination of suitability from the developer.

403 The department shall state in writing the reasons for its
404 determination.

405 (4) (a) The installer or certified professional evaluator
406 shall notify the department at least forty-eight (48) hours before
407 beginning construction of an individual on-site wastewater
408 disposal system and, at that time, schedule a time for inspection
409 of the system with the appropriate county department of health.

410 (b) An installer shall not cover his work with soil or
411 other surface material unless the installer has received
412 authorization to cover the system after an inspection by a county
413 department of health inspector.

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

418 (6) * * * If any person or contractor fails to comply with
419 all requirements and regulations in the installation of the
420 system, the board, after due notice and hearing, may levy an
421 administrative fine not to exceed Ten Thousand Dollars
422 (\$10,000.00). Each wastewater system installed not in compliance
423 with this chapter or applicable rules and regulations of the board
424 shall be considered a separate offense.

425 (7) After construction or installation of the individual
426 on-site wastewater disposal system, the property owner or his
427 agent shall provide a final approval request containing the
428 following to the department:

429 (a) A signed affidavit from the installer or certified
430 professional evaluator and any additional required documentation
431 that the system was installed in compliance with all requirements,
432 regulations and permit conditions applicable to the system
433 installed; and

434 (b) For any alternative on-site wastewater disposal
435 system, an affidavit from the property owner agreeing to a

436 continuing maintenance agreement on the installed system at the
437 end of the required manufacturer's maintenance agreement.

438 (8) The property owner shall keep a continuing maintenance
439 agreement with a certified maintenance provider or qualified
440 homeowner on all alternative on-site wastewater disposal systems
441 in perpetuity.

442 (a) All systems existing on July 1, 2007, shall be
443 grandfathered in until the system is reapproved, there is a change
444 in property ownership, a complaint is received by the department
445 on the system, or the system is replaced or repaired.

446 (b) Any person violating this subsection shall be
447 subject to the penalties and damages as provided in Section
448 41-67-28(5).

449 * * *

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

452 41-67-7. Individual on-site wastewater disposal systems
453 shall be considered acceptable on lots in areas or subdivisions
454 where prior to the sale of the lots, the following requirements
455 are met:

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

459 (a) Sewers are not available or feasible;

460 (b) The existing disposal systems in the area are
461 functioning satisfactorily;

462 (c) Soil types, soil texture, seasonal water tables and
463 other limiting factors are satisfactory for underground
464 absorption; and

465 (d) Any private water supply is located at a higher
466 elevation or it must be properly protected and at least fifty (50)
467 feet from the individual on-site wastewater disposal system and at

468 least one hundred (100) feet from the disposal field of the
469 system.

470 (2) Except for systems utilizing underground absorption,
471 alternative individual on-site wastewater disposal systems shall
472 be considered acceptable, provided the following requirements are
473 met:

474 (a) Sewers are not available or feasible; and

475 (b) The systems meet applicable water quality
476 requirements of the federal Clean Water Act and also requirements
477 of the board and department.

478 * * *

479 **SECTION 8.** Section 41-67-9, Mississippi Code of 1972, is
480 reenacted and amended as follows:

481 41-67-9. (1) Existing individual on-site wastewater
482 disposal systems shall be considered acceptable, provided the
483 following requirements are met:

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

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

491 (c) The system is functioning properly with no evidence
492 that any insufficiently treated effluent is or has been seeping to
493 the surface of the ground and any discharge of treated effluent is
494 confined within the boundaries of the property of the generator;
495 and

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

501 (2) If an existing residential individual on-site wastewater
502 disposal system is malfunctioning, the system should be replaced,
503 where possible, with a system meeting all requirements of this
504 chapter and rules and regulations of the board. If replacement of
505 the existing system is not possible, the existing system shall be
506 repaired to reduce the volume of effluent, to adequately treat the
507 effluent and to the greatest extent possible, to confine the
508 discharge to the property of the generator. If repairs are made
509 to significantly upgrade the existing individual on-site
510 wastewater disposal system, the department shall approve the
511 system, if requested.

512 **SECTION 9.** Section 41-67-10, Mississippi Code of 1972, is
513 reenacted and amended as follows:

514 41-67-10. (1) Advanced aerobic treatment systems may be
515 installed only if they have been tested and are listed by a
516 third-party certifying program at the time of installation.
517 Advanced aerobic treatment systems shall be in compliance with
518 standards for a Class I system as defined by the most current
519 revision of American National Standards Institute/National
520 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
521 which are incorporated by reference. * * * An approved
522 third-party certifying program shall comply with the following
523 provisions for systems which it has certified to be installed in
524 Mississippi:

525 (a) Be accredited by the American National Standards
526 Institute;

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

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

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

538 (2) (a) The department shall implement an on-site
539 maintenance training program inclusive of all systems authorized
540 to do business and certified in the State of Mississippi.

541 (b) All manufacturers of alternate disposal systems
542 certified in Mississippi shall provide technical training staff to
543 the department for utilization during the on-site maintenance
544 training program.

545 (c) All persons successfully completing the
546 department's on-site maintenance training program will be issued a
547 Department of Health on-site wastewater maintenance certification,
548 which shall be valid for two (2) years.

549 (d) All wastewater maintenance staff certified by
550 manufacturers whose alternate disposal systems are certified for
551 sale in Mississippi shall be certified by the department to
552 perform on-site wastewater maintenance on that manufacturer's
553 alternate disposal systems.

554 **SECTION 10.** Section 41-67-11, Mississippi Code of 1972, is
555 reenacted and amended as follows:

556 41-67-11. (1) Temporary individual on-site wastewater
557 disposal systems may be approved in an area where individual
558 on-site wastewater disposal systems otherwise would not be
559 approved because of the availability or feasibility of connection
560 to a centralized sewerage system only after a contract has been
561 awarded or other definite commitments as are deemed sufficient to
562 the department are formalized for the construction of municipal or
563 community sewers that upon completion will adequately serve the
564 property. Temporary individual on-site wastewater disposal
565 systems shall only be approved when the municipal or community

566 sewers will be completed and available for use within thirty-six
567 (36) months. The department may approve the installation of a
568 temporary system under these circumstances only if the system will
569 comply with the requirements of Section 41-67-5(1) and comply with
570 all construction requirements of the board. The temporary system
571 may be installed only after the developer has signed a written
572 agreement with the centralized sewer provider stating that the
573 developer will connect to the centralized sewer system when it
574 becomes available, and the provider of the centralized sewer
575 system being constructed certifies that the centralized sewer
576 system will have adequate capacity to accept the sewage to be
577 produced by the temporary systems. The developer shall install an
578 internal sewage collection system from each lot to the connection
579 point to the central sewer system as he develops the streets of
580 the subdivision. Upon completion of the sewer construction, all
581 systems shall be abandoned and all residences, buildings or
582 facilities connected to the sewer.

583 (2) The board may approve the installation of sewage holding
584 tanks in districts created under Sections 19-5-151 through
585 19-5-207 for the purpose of providing sewage services. The
586 district shall be required to maintain or provide for the
587 maintenance of those holding tanks. The board shall require that
588 residences be connected to a municipal or community sewage system
589 when that system is available * * *.

590 **SECTION 11.** Section 41-67-12, Mississippi Code of 1972, is
591 reenacted as follows:

592 41-67-12. (1) The department shall assess fees in the
593 following amounts for the following purposes:

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

597 (b) A fee of Fifty Dollars (\$50.00) shall be levied
598 annually for the certification of installers and persons engaging

599 in the removal and disposal of the sludge and liquid wastes from
600 individual on-site wastewater disposal systems.

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

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

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

616 **SECTION 12.** Section 41-67-15, Mississippi Code of 1972, is
617 reenacted and amended as follows:

618 41-67-15. Nothing in this chapter shall limit the authority
619 of a municipality or board of supervisors to adopt similar
620 ordinances which may be, in whole or in part, more restrictive
621 than this chapter, and in those cases the more restrictive
622 ordinances will govern. The department shall not enforce any
623 ordinance adopted by a municipality or board of supervisors.

624 **SECTION 13.** Section 41-67-19, Mississippi Code of 1972, is
625 reenacted as follows:

626 41-67-19. Each authorized agent of the department
627 implementing this chapter shall demonstrate to the department's
628 satisfaction that the person:

629 (a) Is competent to review and provide any requested
630 approval of design, construction and installation of individual
631 on-site wastewater disposal systems, as well as the operation,

632 repair or maintenance of those systems, to make soil permeability
633 tests or soil and site evaluations, and to conduct inspections of
634 individual on-site wastewater disposal systems in accordance with
635 this chapter and rules and regulations adopted under this chapter;
636 and

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

639 **SECTION 14.** Section 41-67-21, Mississippi Code of 1972, is
640 reenacted as follows:

641 41-67-21. (1) The board or the department may require a
642 property owner or lessee to repair a malfunctioning individual
643 on-site wastewater disposal system on the owner's or lessee's
644 property before the thirtieth day after the date on which the
645 owner or lessee is notified by the department of the
646 malfunctioning system.

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

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

655 (4) The board may assess the property owner or lessee of an
656 individual on-site wastewater disposal system authorized pursuant
657 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
658 (\$50.00) for each day the system fails to meet the performance
659 standards of that system after the thirty-day period specified in
660 subsection (1) of this section.

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

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

665 **SECTION 15.** Section 41-67-23, Mississippi Code of 1972, is
666 reenacted as follows:

667 41-67-23. The department or its authorized representative
668 may enter onto property and make inspections of any individual
669 on-site wastewater disposal system as necessary to ensure that the
670 system is in compliance with this chapter and the rules adopted
671 under this chapter. The department shall give reasonable notice
672 to any property owner, lessee or occupant prior to entry onto the
673 property. The owner, lessee, owner's representative, or occupant
674 of the property on which the system is located shall give the
675 department or its authorized representative reasonable access to
676 the property at reasonable times to make necessary inspections.

677 **SECTION 16.** Section 41-67-25, Mississippi Code of 1972, is
678 reenacted and amended as follows:

679 41-67-25. (1) A person may not operate as an installer of
680 individual on-site wastewater disposal systems unless that person
681 is currently certified by the department. A person who installs
682 an individual on-site wastewater disposal system on his own
683 property for his primary residence is not considered an installer
684 for purposes of this subsection.

685 (2) An installer of alternative systems or products must be
686 a factory-trained and authorized representative. The manufacturer
687 must furnish documentation to the department certifying the
688 satisfactory completion of factory training and the establishment
689 of the installer as an authorized manufacturer's representative.

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

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

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

696 (c) Pays the annual certification fee; and

697 (d) Provides proof of having a valid general business
698 liability insurance policy in effect with liability limits of at
699 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
700 least One Hundred Thousand Dollars (\$100,000.00) in total
701 aggregate amount.

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

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

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

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

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

719 (8) If any person is operating in the state as an installer
720 without certification by the board, the board, after due notice
721 and opportunity for a hearing, may impose a monetary penalty not
722 to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

723 **SECTION 17.** Section 41-67-27, Mississippi Code of 1972, is
724 reenacted and amended as follows:

725 41-67-27. It is unlawful for a manufacturer of an individual
726 on-site wastewater disposal system or alternative treatment or
727 disposal components to operate a business in or to do business in
728 the State of Mississippi without holding a valid manufacturer's
729 registration issued by the department.

730 **SECTION 18.** Section 41-67-28, Mississippi Code of 1972, is
731 reenacted and amended as follows:

732 41-67-28. (1) Except as otherwise provided in this chapter,
733 any person who shall knowingly violate this chapter or any rule or
734 regulation or written order of the board in pursuance thereof is,
735 upon conviction, guilty of a misdemeanor and shall be punished as
736 provided in Section 41-3-59.

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

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

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

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

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

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

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

763 party aggrieved or damaged by that violation for the actual
764 damages and additional punitive damages equal to a maximum of
765 twenty-five percent (25%) of the actual damages proven by the
766 aggrieved party, to be taxed by the court where the suit is heard
767 on an original action, by appeal or otherwise and recovered by a
768 suit at law in any court of competent jurisdiction. In addition,
769 the court may award the prevailing party reasonable attorney's
770 fees and court costs. Before filing suit, the party aggrieved or
771 damaged must give thirty (30) days' written notice of its intent
772 to file suit to the alleged violator.

773 (5) (a) Any person who violates Section 41-67-6(8) may be
774 assessed a fine in the amount of Five Hundred Dollars (\$500.00)
775 and the public water system may discontinue service to that
776 property owner until the failure to comply with Section 41-67-6(8)
777 has been corrected.

778 (b) All violators shall be given thirty (30) days
779 notice before any adverse action.

780 (c) Any violator shall have the right to appeal an
781 adverse determination through the procedures set out in Section
782 41-67-29.

783 **SECTION 19.** Section 41-67-29, Mississippi Code of 1972, is
784 reenacted as follows:

785 41-67-29. Any person who is aggrieved by any final decision
786 of the board may appeal that final decision to the chancery court
787 of the county of the situs in whole or in part of the subject
788 matter. The appellant shall give a cost bond with sufficient
789 sureties, payable to the state in a sum to be fixed by the board
790 or the court and to be filed with and approved by the clerk of the
791 court. The aggrieved party may, within thirty (30) days following
792 a final decision of the board, petition the chancery court for an
793 appeal with supersedeas and the chancellor shall grant a hearing
794 on the petition. Upon good cause shown the chancellor may grant
795 the appeal with supersedeas. The appellant shall be required to

796 post a bond with sufficient sureties according to law in an amount
797 to be determined by the chancellor. The chancery court shall
798 always be deemed open for hearing of appeals and the chancellor
799 may hear the appeal in termtime or in vacation at any place in his
800 district. The appeal shall have precedence over all civil cases,
801 except election contests. The chancery court shall review all
802 questions of law and of fact and may enter a final order or remand
803 the matter to the board for appropriate action as may be indicated
804 or necessary under the circumstances. Appeals may be taken from
805 the chancery court to the Supreme Court in the manner as now
806 required by law, but if a supersedeas is desired by the party
807 appealing to the chancery court, that party may apply therefor to
808 the chancellor, who shall award a writ of supersedeas, without
809 additional bond, if in the chancellor's judgment material damage
810 is not likely to result. If material damage is likely to result,
811 the chancellor shall require a supersedeas bond as deemed proper,
812 which shall be liable to the state for any damage.

813 **SECTION 20.** (1) The department shall adopt and use
814 procedures for conducting reviews requested by any person
815 aggrieved by the disapproval or requirements for an on-site
816 wastewater disposal system as provided by the department in
817 written form under Section 41-67-6. The procedures shall include
818 that the person may request review by submitting a written request
819 of review to the Director of the Office of Environmental Health.
820 The request for review shall identify the matter contested and
821 state the person's name, mailing address and home and daytime
822 phone numbers. Within ten (10) business days of the receipt of
823 the request for review, the department shall issue in writing a
824 ruling and determination to the person and if any corrections are
825 necessary to any form previously issued by the department, then
826 new forms shall be submitted to the person.

827 (2) Any person aggrieved by the ruling issued by the
828 Director of the Office of Environmental Health may apply for a

829 hearing. Any hearing shall be conducted by a hearing officer
830 designated by the department. At the hearing, the hearing officer
831 may conduct reasonable questioning of persons who make relevant
832 factual allegations concerning the proposal. The hearing officer
833 shall require that all persons be sworn before they may offer any
834 testimony at the hearing, and the hearing officer is authorized to
835 administer oaths. Any person so choosing may be represented by
836 counsel at the hearing. A record of the hearing shall be made,
837 which shall consist of a transcript of all testimony received, all
838 documents and other material introduced, the staff report and
839 recommendation, and any other material as the hearing officer
840 considers relevant. He shall make a recommendation within a
841 reasonable period of time after the hearing is closed and after he
842 has had an opportunity to review, study and analyze the evidence
843 presented during the hearing. The completed record shall be
844 certified to the State Health Officer, who shall consider only the
845 record in making his decision, and shall not consider any evidence
846 or material that is not included. All final decisions regarding
847 the disapproval or requirements for an on-site wastewater disposal
848 system shall be made by the State Health Officer. The State
849 Health Officer shall make his written findings and issue his order
850 after reviewing the record, not to exceed thirty (30) days
851 following his receipt of the record.

852 **SECTION 21.** (1) A person may not operate as a certified
853 maintenance provider in this state unless that person is currently
854 certified by the department.

855 (2) The department shall issue a certification to a
856 maintenance provider if the maintenance provider:

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

859 (b) Satisfactorily completes the certified maintenance
860 provider training program provided by the department;

861 (c) Pays the annual certification fee; and

862 (d) Provides proof of having a valid general business
863 liability insurance policy in effect with liability limits of at
864 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
865 least One Hundred Thousand Dollars (\$100,000.00) in total
866 aggregate amount.

867 (3) Each certified maintenance provider shall furnish proof
868 of certification to an individual before entering a contract with
869 that individual for the continuing maintenance of an individual
870 on-site wastewater disposal system.

871 (4) The department shall provide for annual renewal of
872 certifications.

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

876 (6) If any person operates in the state as a certified
877 maintenance provider without certification by the board, the
878 board, after due notice and opportunity for a hearing, may impose
879 a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00)
880 for each violation.

881 **SECTION 22.** (1) A person may not be engaged in the business
882 of removing and disposing of the sludge and liquid waste (septage)
883 from individual on-site wastewater disposal systems in this state
884 unless that person has a valid license issued by the department.

885 (2) The department shall issue a license to a pumper if the
886 pumper:

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

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

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

894 (d) Pays the annual license fee; and

895 (e) Provides proof of having a valid general business
896 liability insurance policy in effect with liability limits of at
897 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
898 least One Hundred Thousand Dollars (\$100,000.00) in total
899 aggregate amount.

900 (3) Each pumper shall furnish proof of licensure to an
901 individual before entering a contract with that individual for the
902 removing and disposing of the sludge and liquid waste (septage)
903 from an individual on-site wastewater disposal system.

904 (4) The department semiannually shall disseminate to the
905 public an official list of licensed pumpers and provide to county
906 health departments a monthly update of the list.

907 (5) If any person operates in the state as a licensed pumper
908 without a license by the board, the board, after due notice and
909 opportunity for a hearing, may impose a monetary penalty not to
910 exceed Ten Thousand Dollars (\$10,000.00) for each violation.

911 **SECTION 23.** (1) A person may not operate as a certified
912 professional evaluator in this state unless that person is
913 currently certified by the department.

914 (2) A person must meet one (1) of the following
915 requirements, in addition to the additional requirements set forth
916 in other sections of this chapter and rules and regulations of the
917 board, in order to be eligible to become a certified professional
918 evaluator:

919 (a) Be a professional engineer registered in the State
920 of Mississippi;

921 (b) Be a professional geologist registered in the State
922 of Mississippi;

923 (c) Be a professional soil classifier licensed in the
924 State of Mississippi; or

925 (d) Be a person who possesses a demonstrable, adequate
926 and appropriate record of professional experience and/or training
927 as determined by the department.

928 (3) The department shall issue a certification to a
929 certified professional evaluator if the certified professional
930 evaluator:

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

933 (b) Satisfactorily completes the certified professional
934 evaluator training program provided by the department;

935 (c) Pays the annual certification fee; and

936 (d) Provides proof of having an errors and omissions
937 policy or surety in effect with liability limits of at least Fifty
938 Thousand Dollars (\$50,000.00) per occurrence and at least One
939 Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

940 (4) Each certified professional evaluator shall furnish
941 proof of certification to a property owner or the owner's
942 representative of the property before performing a site evaluation
943 of the property on which an individual on-site wastewater disposal
944 system is to be designed, constructed, repaired or installed by
945 the certified professional evaluator and to the department or its
946 authorized representative, if requested.

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

949 (6) The department semiannually shall disseminate to the
950 public an official list of certified professional evaluators and
951 provide to county health departments a monthly update of the list.

952 (7) If any person operates in the state as a certified
953 professional evaluator without certification by the board, the
954 board, after due notice and opportunity for a hearing, may impose
955 a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00)
956 for each violation.

957 **SECTION 24.** Section 41-67-16, Mississippi Code of 1972,
958 which required a study of all individual on-site wastewater
959 disposal systems, is repealed.

960 **SECTION 25.** Section 41-67-31, Mississippi Code of 1972,
961 which is the automatic repealer on the Mississippi Individual
962 On-Site Wastewater System Law, is repealed.

963 **SECTION 26.** This act shall take effect and be in force from
964 and after June 30, 2007.