

By: Representatives Currie, Hobgood-Wilkes,
Crawford

To: Conservation and Water
Resources

HOUSE BILL NO. 1094

1 AN ACT TO PROVIDE THAT UPON A FINDING BY THE MISSISSIPPI
2 DEPARTMENT OF ENVIRONMENTAL QUALITY THAT WASTEWATER AND/OR SEWAGE
3 HAS BEEN IMPROPERLY DISPOSED OF BY THE CITY OF JACKSON, AS
4 EVIDENCED BY THE CITY DEPOSITING SUCH WASTEWATER AND/OR SEWAGE
5 INTO THE PEARL RIVER, THE CITY SHALL BE FINED BY THE DEPARTMENT
6 FOR EACH INSTANCE OF IMPROPER DISPOSAL; TO PROVIDE THAT THE
7 DEPARTMENT SHALL DISTRIBUTE SUCH FUNDS EQUALLY AMONG CERTAIN
8 COUNTIES AND MUNICIPALITIES THAT THE DEPARTMENT FINDS WERE
9 AFFECTED BY SUCH IMPROPER DISPOSAL OF WASTEWATER AND/OR SEWAGE; TO
10 BRING FORWARD SECTIONS 41-67-3, 41-67-6, 41-67-7, 41-67-9,
11 41-67-21, 41-67-28, 49-2-7 AND 49-2-9, MISSISSIPPI CODE OF 1972,
12 FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** (1) Upon a finding by the Mississippi Department
15 of Environmental Quality that wastewater and/or sewage has been
16 improperly disposed of by the City of Jackson, as evidenced by the
17 city depositing such wastewater and/or sewage into the Pearl
18 River, the city shall be fined by the department in an amount not
19 to exceed One Million Dollars (\$1,000,000.00) for each instance of
20 improper disposal.

21 (2) The department shall distribute such funds equally among
22 certain counties and municipalities that the department finds were
23 affected by such improper disposal of wastewater and/or sewage.



24 **SECTION 2.** Section 41-67-3, Mississippi Code of 1972, is
25 brought forward as follows:

26 41-67-3. (1) The board and/or the department shall have the
27 following duties and responsibilities:

28 (a) To exercise general supervision over the design,
29 installation, operation and maintenance of individual on-site
30 wastewater disposal systems, decentralized wastewater treatment
31 systems and cluster systems;

32 (b) To adopt, modify, repeal and promulgate rules and
33 regulations, after due notice and hearing, and where not otherwise
34 prohibited by federal or state law, to make exceptions to, to
35 grant exemptions from and to enforce rules and regulations
36 implementing or effectuating the duties of the board under this
37 chapter to protect the public health. The board may grant
38 variances from rules and regulations adopted under this chapter,
39 including requirements for buffer zones, or from setbacks required
40 under Section 41-67-7 where the granting of a variance shall not
41 subject the public to unreasonable health risks or jeopardize
42 environmental resources;

43 (c) To provide or deny certification for persons
44 engaging in the business for hire of the installation, operation
45 or maintenance of individual on-site wastewater disposal systems
46 and persons engaging in the removal and disposal of the sludge and
47 liquid waste from those systems;



48 (d) To suspend or revoke certifications issued to
49 persons engaging in the business for hire of the installation,
50 operation or maintenance of individual on-site wastewater disposal
51 systems or persons engaging in the removal and disposal of the
52 sludge and liquid waste from those systems, when it is determined
53 the person has violated this chapter or applicable rules and
54 regulations;

55 (e) To require the submission of information deemed
56 necessary by the department to determine the suitability of
57 individual lots for individual on-site wastewater disposal systems
58 for the purpose of commercial or residential development; and

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

64 (2) To assure the effective and efficient administration of
65 this chapter, the board shall adopt rules governing the design,
66 construction or installation, operation and maintenance of
67 individual on-site wastewater disposal systems, including rules
68 concerning the:

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

71 (b) Certification of installers;

72 (c) Certification of pumpers;



73 (d) Certification of manufacturers;
74 (e) Certification of professional evaluators; and
75 (f) Creation of regulations that authorize the original
76 and any subsequent homeowner to be trained by certified installers
77 as defined in Section 41-67-25(2) or other factory representatives
78 in order to educate the homeowner with the necessary knowledge to
79 provide maintenance to the homeowner's system; no fees shall be
80 charged to the homeowner for such training, thus allowing the
81 homeowner to meet the requirements of Section 41-67-7(5).

82 (3) In addition, the board shall adopt rules establishing
83 performance standards for individual on-site wastewater disposal
84 systems for single family residential generators and rules
85 concerning the operation and maintenance of individual on-site
86 wastewater disposal systems designed to meet those standards. The
87 performance standards shall be consistent with the federal Clean
88 Water Act, maintaining the wastes on the property of the generator
89 and protection of the public health. Rules for the operation and
90 maintenance of individual on-site wastewater disposal systems
91 designed to meet performance standards shall include rules
92 concerning the following:

- 93 (a) A standard application form and requirements for
94 supporting documentation;
95 (b) Application review;
96 (c) Approval or denial of authorization for proposed
97 systems;



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

100 (e) Enforcement of the requirements and conditions of
101 authorization; and

102 (f) Inspection, monitoring, sampling and reporting on
103 the performance of the system.

104 Any system proposed for authorization in accordance with
105 performance standards must be designed and certified by a licensed
106 professional engineer in the State of Mississippi and must be
107 authorized by the department before installation.

108 (4) To the extent practicable, all rules and regulations
109 adopted under this chapter shall give maximum flexibility to
110 persons installing individual on-site wastewater disposal systems
111 and all options consistent with the federal Clean Water Act,
112 consistent with maintaining the wastes on the property of the
113 generator and consistent with protection of the public health. In
114 addition, all rules and regulations, to the extent practicable,
115 shall encourage the use of economically feasible systems,
116 including all techniques and technologies for individual on-site
117 wastewater disposal.

118 (5) All regulations shall be applied uniformly in all areas
119 of the state and shall take into consideration and make provision
120 for different types of soil in the state when performing soil and
121 site evaluations.



122 **SECTION 3.** Section 41-67-6, Mississippi Code of 1972, is
123 brought forward as follows:

124 41-67-6. (1) Nothing in this chapter shall preclude a
125 certified professional evaluator or licensed professional engineer
126 from providing services relating to the design of an individual
127 on-site wastewater disposal system to comply with this chapter,
128 except for performance-based systems as specified in Section
129 41-67-3(3). A certified professional evaluator or licensed
130 professional engineer shall notify the department in writing of
131 those services being provided, including the type of treatment,
132 the type of disposal, and the property address for the treatment
133 and disposal system. Construction or installation shall not begin
134 before authorization by the department. The department shall
135 respond within ten (10) business days with authorization that the
136 certified professional evaluator or licensed professional engineer
137 fulfills the requirements of the law.

138 (2) Within five (5) working days following receipt of the
139 notice of intent and plot plan by an owner, lessee or developer of
140 any lot or tract of land, the department shall conduct a soil and
141 site evaluation, except in cases where a certified professional
142 evaluator or licensed professional engineer provides services
143 relating to the design, construction or installation of an
144 individual on-site wastewater disposal system to comply with this
145 chapter. All regulations shall be applied uniformly in all areas
146 of the state and shall take into consideration and make provision



147 for different types of soil in the state when performing soil and
148 site evaluations. Within ten (10) additional working days, the
149 department shall make recommendations to the owner, lessee or
150 developer of the type or types of individual on-site wastewater
151 disposal systems suitable for installation on the lot or tract,
152 unless there are conditions requiring further investigation that
153 are revealed in the initial evaluation. In making recommendations
154 on the type or types of individual on-site wastewater disposal
155 systems suitable for installation on a lot or tract, personnel of
156 the department shall use best professional judgment based on rules
157 and regulations adopted by the board, considering the type or
158 types of systems which are installed and functioning on lots or
159 tracts near the subject lot or tract. To the extent practicable,
160 the recommendations shall give the owner, lessee or developer
161 maximum flexibility and all options consistent with the federal
162 Clean Water Act, consistent with maintaining the wastes on the
163 property of the generator and consistent with protection of the
164 public health. The system or systems recommended shall be
165 environmentally sound and cost-effective. The department, a
166 licensed professional engineer or a certified professional
167 evaluator shall provide complete information, including all
168 applicable requirements and regulations on all systems
169 recommended. The owner, lessee or developer shall have the right
170 to choose among systems. The department shall provide the owner,
171 lessee or developer with a permit/recommendation that specifies



172 all types of individual on-site wastewater disposal systems that
173 are suitable for installation on the lot or tract.

174 (3) Within thirty (30) days of receipt of a request for
175 determination of suitability of individual on-site wastewater
176 disposal systems in a subdivision, the department shall advise the
177 developer in writing either that all necessary information needed
178 for determination of suitability has been received or state the
179 additional information needed by the department for determination
180 of suitability.

181 (4) Whenever a developer requests a determination of
182 suitability of individual on-site wastewater disposal systems in a
183 subdivision, the department must make the determination within
184 thirty (30) days after receipt of all necessary information needed
185 for the determination of suitability from the developer. The
186 department shall state in writing the reasons for its
187 determination.

188 (5) (a) The certified installer shall notify the department
189 at least twenty-four (24) hours before beginning installation of
190 an individual on-site wastewater disposal system and, at that
191 time, schedule a time for inspection of the system with the
192 appropriate county department of health.

193 (b) A certified installer, or designated agent thereof,
194 shall not cover his work with soil or other surface material
195 unless the installer has received authorization to cover the
196 system after an inspection by a department environmentalist, or



197 unless a department environmentalist does not arrive for
198 inspection within thirty (30) minutes of the designated and agreed
199 upon time, in which case a certified installer, or designated
200 agent thereof, may submit an affidavit of proper installation to
201 the department for final approval.

202 (6) A person may not design, construct or install, or cause
203 to be designed, constructed or installed an individual on-site
204 wastewater disposal system that does not comply with this chapter
205 and rules and regulations of the board.

206 (7) Any lot or tract that is two (2) acres or larger shall
207 be exempt from the requirements of this chapter and regulations of
208 the department relating to approval of individual on-site
209 wastewater disposal systems by the department, and shall be exempt
210 from the provisions of Section 41-67-5(2), provided that:

211 (a) All wastewater is contained on the lot or tract;

212 (b) No watercourse, as defined in Section 51-3-3(h), of
213 Mississippi or the United States is impacted; and

214 (c) The person who installed the individual on-site
215 wastewater disposal system provides the department with a signed
216 affidavit attesting that the requirements of paragraphs (a) and
217 (b) are met.

218 **SECTION 4.** Section 41-67-7, Mississippi Code of 1972, is
219 brought forward as follows:

220 41-67-7. (1) Approval of the design, construction or
221 installation of an individual on-site wastewater disposal system



222 by the department is required, except as otherwise provided in
223 Section 41-67-6(7). Upon completion of installation of the
224 system, the department shall approve the design, construction or
225 installation of that system, as requested, if the system is
226 designed, constructed and installed, as the case may be, in
227 accordance with the rules and regulations of the board. Whenever
228 a person requests approval of an individual on-site wastewater
229 disposal system and has met the requirements in subsection (3) of
230 this section, the department must approve or disapprove the
231 request within five (5) working days. If the department
232 disapproves the request, the department shall state in writing the
233 reasons for the disapproval. If the department does not respond
234 to the request within ten (10) calendar days, the request for
235 approval of the individual on-site wastewater disposal system
236 shall be deemed approved.

237 (2) Individual on-site wastewater disposal systems shall be
238 considered acceptable, provided the following requirements are
239 met:

240 (a) Centralized wastewater treatment systems are not
241 available or feasible;

242 (b) The existing disposal systems in the area are
243 functioning satisfactorily;

244 (c) Soil types, soil texture, seasonal water tables and
245 other limiting factors are satisfactory for underground
246 absorption;



247 (d) Any private water supply is located at a higher
248 elevation or it must be properly protected, and at least fifty
249 (50) feet from the individual on-site wastewater disposal system
250 and at least one hundred (100) feet from the disposal field of the
251 system; and

252 (e) The systems meet applicable water quality
253 requirements of Section 41-67-10.

254 (3) After construction or installation of the individual
255 on-site wastewater disposal system, the property owner or his
256 agent shall provide a final approval request containing the
257 following to the department:

258 (a) A signed affidavit from the installer that the
259 system was installed in compliance with all requirements,
260 regulations and permit conditions applicable to the system
261 installed; and

262 (b) For any advanced treatment system, an affidavit
263 from the property owner agreeing to a continuing maintenance
264 agreement on the installed system at the end of the required
265 manufacturer's maintenance agreement.

266 (4) If any person or certified installer fails to obtain
267 final approval or submit an affidavit of proper installation to
268 the department in the installation of the system, the board, after
269 due notice and hearing, may levy an administrative fine not to
270 exceed Ten Thousand Dollars (\$10,000.00). Each wastewater system



271 installed not in compliance with this chapter or applicable rules
272 and regulations of the board may be considered a separate offense.

273 (5) The property owner, if not a qualified homeowner
274 maintenance provider, shall keep a continuing maintenance
275 agreement with a certified installer on all advanced treatment
276 systems in perpetuity. Any person violating this subsection shall
277 be subject to the penalties and damages as provided in Section
278 41-67-28(5).

279 **SECTION 5.** Section 41-67-9, Mississippi Code of 1972, is
280 brought forward as follows:

281 41-67-9. (1) All existing individual on-site wastewater
282 disposal systems on July 1, 2014, shall be grandfathered in until
283 a valid complaint is registered with a county department of health
284 or until a property owner requests an inspection by the
285 department.

286 (2) All existing individual on-site wastewater disposal
287 systems shall be considered acceptable provided the following
288 requirements are met:

289 (a) The existing individual on-site wastewater disposal
290 system and all treated effluent is contained on the property of
291 the generator;

292 (b) No evidence that any insufficiently treated
293 effluent is leaving the property of the generator or has been
294 seeping to the surface of the ground;



295 (c) Centralized wastewater treatment systems are not
296 available;

297 (d) If a private water supply well is present, the well
298 should be located at a higher elevation than the disposal system
299 and is protected from surface contamination by a concrete slab of
300 a thickness of at least four (4) inches extending at least two (2)
301 feet in all directions from the well casing; and

302 (e) If an advanced treatment system is used, the
303 property owner shall be required to contact an authorized
304 representative of a certified manufacturer of the specific
305 advanced treatment system to provide a continuous maintenance
306 agreement or provide the property owner training to become a
307 qualified homeowner maintenance provider.

308 (3) Owners of property on which an existing individual
309 on-site wastewater disposal system does not meet the requirements
310 of subsection (2) of this section shall be required by the
311 department to meet Section 41-67-6 or Section 41-67-21.

312 **SECTION 6.** Section 41-67-21, Mississippi Code of 1972, is
313 brought forward as follows:

314 41-67-21. (1) The department shall require a property owner
315 and/or lessee to repair a malfunctioning individual on-site
316 wastewater disposal system on the owner's or lessee's property
317 before the thirtieth day after the date on which the owner or
318 lessee is notified by the department of the malfunctioning system.



319 (2) The property owner and/or lessee shall take adequate
320 measures as soon as practicable to abate an immediate health
321 hazard.

322 (3) If an existing residential individual on-site wastewater
323 disposal system is malfunctioning, the system shall be repaired to
324 reduce the volume of effluent, to adequately treat the effluent
325 and to the greatest extent possible, to confine the discharge to
326 the property of the generator. If repairs are made to
327 significantly upgrade the existing individual on-site wastewater
328 disposal system, the department shall approve the system, if
329 requested.

330 (4) The property owner or lessee may be assessed a civil
331 penalty not to exceed Five Dollars (\$5.00) for each day the
332 individual on-site wastewater disposal system remains unrepaired
333 after the thirty-day period specified in subsection (1) of this
334 section.

335 (5) The board may assess the property owner or lessee of an
336 individual on-site wastewater disposal system authorized under
337 Section 41-67-3(3) a civil penalty not to exceed Five Dollars
338 (\$5.00) for each day the system fails to meet the performance
339 standards of that system after the thirty-day period specified in
340 subsection (1) of this section.

341 (6) All penalties collected by the board under this section
342 shall be deposited in the State General Fund.



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

345 **SECTION 7.** Section 41-67-28, Mississippi Code of 1972, is
346 brought forward as follows:

347 41-67-28. (1) Except as otherwise provided in this chapter,
348 any person who shall knowingly violate this chapter or any rule or
349 regulation or written order of the board in pursuance thereof is,
350 upon conviction, guilty of a misdemeanor and shall be punished as
351 provided in Section 41-3-59.

352 (2) Each day of a continuing violation is a separate
353 violation.

354 (3) (a) In addition to all other statutory and common law
355 rights, remedies and defenses, any person who purchases an
356 individual on-site wastewater disposal system and suffers any
357 ascertainable loss of money or property, real or personal, may
358 bring an action at law in the court having jurisdiction in the
359 county in which the installer or manufacturer has the principal
360 place of business, where the act allegedly occurred, to recover
361 any loss of money or damages for the loss of any property
362 resulting from any of the following:

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

365 (ii) Failure of an individual on-site wastewater
366 disposal system to operate properly due to failure to install the



367 system in accordance with any requirements of the manufacturer or
368 in compliance with any rules and regulations of the board; or

369 (iii) Failure of an individual on-site wastewater
370 disposal system to operate properly due to installation.

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

375 (4) A person who violates this chapter thereby causing a
376 discharge off the property of the generator shall be liable to the
377 party aggrieved or damaged by that violation for the actual
378 damages and additional punitive damages equal to a maximum of
379 twenty-five percent (25%) of the actual damages proven by the
380 aggrieved party, to be taxed by the court where the suit is heard
381 on an original action, by appeal or otherwise and recovered by a
382 suit at law in any court of competent jurisdiction. In addition,
383 the court may award the prevailing party reasonable attorney's
384 fees and court costs. Before filing suit, the party aggrieved or
385 damaged must give thirty (30) days' written notice of its intent
386 to file suit to the alleged violator.

387 (5) (a) Any person who violates Section 41-67-7(5) or
388 41-67-11(2) may be assessed an administrative fine in the amount
389 of Five Hundred Dollars (\$500.00) and the public water system may
390 discontinue service to that property owner until the failure to
391 comply with Section 41-67-7(5) or 41-67-11(2) has been corrected.



392 (b) All violators shall be given thirty (30) days'
393 notice before any adverse action.

394 (c) Any violator shall have the right to appeal an
395 adverse determination through the procedures set out in Section
396 41-67-29.

397 **SECTION 8.** Section 49-2-7, Mississippi Code of 1972, is
398 brought forward as follows:

399 49-2-7. The Department of Environmental Quality shall be the
400 Mississippi Department of Natural Resources with the exception of
401 the Office of Parks and Recreation, and shall retain all powers
402 and duties granted by law to the Mississippi Department of Natural
403 Resources with the exception of the Office of Parks and
404 Recreation, and wherever the term "Mississippi Department of
405 Natural Resources" appears in any law the same shall mean the
406 Department of Environmental Quality. The Executive Director of
407 the Department of Environmental Quality may assign to the
408 appropriate offices any powers and duties deemed appropriate to
409 carry out the lawful duties of the department.

410 The department shall be composed of the following offices:

- 411 (a) Office of Geology and Energy Resources;
- 412 (b) Office of Land and Water Resources; and
- 413 (c) Office of Pollution Control.

414 Each office shall be composed of the administrative units set
415 forth in the consolidation plan adopted by the commission, subject



416 to changes by the executive director, with approval of the
417 commission, as hereinafter set forth.

418 The department is designated as the single state department
419 to receive and expend any federal funds being received or expended
420 by any agency transferred to the department by Chapter 484, Laws
421 of 1978, and to receive and expend any federal funds made
422 available for matters within the jurisdiction of the department.

423 The department shall be responsible for conserving, managing,
424 developing and protecting the natural resources of the State of
425 Mississippi within the jurisdiction of the department, with the
426 exception of functions of the Office of Recreation and Parks. The
427 department shall coordinate all functions of state government
428 related to natural resources within the jurisdiction of the
429 department. The department shall not exercise any of its
430 authority or powers granted under the provisions of this section
431 in a manner which would be inconsistent with the provisions of
432 Section 29-1-1.

433 **SECTION 9.** Section 49-2-9, Mississippi Code of 1972, is
434 brought forward as follows:

435 49-2-9. (1) Effective July 1, 1979, the commission shall
436 have the following powers and duties:

437 (a) To formulate the policy of the department regarding
438 natural resources within the jurisdiction of the department;

439 (b) To adopt, modify, repeal, and promulgate, after due
440 notice and hearing, and where not otherwise prohibited by federal



441 or state law, to make exceptions to and grant exemptions and
442 variances from, and to enforce rules and regulations implementing
443 or effectuating the powers and duties of the commission under any
444 and all statutes within the commission's jurisdiction, and as the
445 commission may deem necessary to prevent, control and abate
446 existing or potential pollution;

447 (c) To apply for, receive and expend any federal or
448 state funds or contributions, gifts, devises, bequests or funds
449 from any other source;

450 (d) To commission or conduct studies designed to
451 determine alternative methods of managing or using the natural
452 resources of this state, in a manner to insure efficiency and
453 maximum productivity;

454 (e) To enter into, and to authorize the executive
455 director to execute with the approval of the commission,
456 contracts, grants and cooperative agreements with any federal or
457 state agency or subdivision thereof, or any public or private
458 institution located inside or outside the State of Mississippi, or
459 any person, corporation or association in connection with carrying
460 out the provisions of this chapter; but this authority under this
461 chapter and under any and all statutes within the commission's
462 jurisdiction, except those statutes relating to the Bureau of
463 Recreation and Parks, shall not include contracts, grants or
464 cooperative agreements which do not develop data or information
465 usable by the commission, or which provide goods, services or



466 facilities to the commission or any of its bureaus, and shall
467 exclude any monies for special interest groups for purposes of
468 lobbying or otherwise promoting their special interests; and

469 (f) To discharge such other duties, responsibilities
470 and powers as are necessary to implement the provisions of this
471 chapter.

472 (2) The Mississippi Department of Environmental Quality,
473 Office of Geology and Energy Resources shall be responsible for
474 program management, procurement, development and maintenance of
475 the Mississippi Digital Earth Model, which should include the
476 following seven (7) core data layers of a digital land base
477 computer model of the State of Mississippi:

478 (a) Geodetic control;

479 (b) Elevation and bathymetry;

480 (c) Orthoimagery;

481 (d) Hydrography;

482 (e) Transportation;

483 (f) Government boundaries; and

484 (g) Cadastral. With respect to the cadastral layer,
485 the authority and responsibility of the Mississippi Department of
486 Environmental Quality, Office of Geology and Energy Resources
487 shall be limited to compiling information submitted by counties.

488 For all seven (7) framework layers, the Mississippi
489 Department of Environmental Quality, Office of Geology and Energy
490 Resources shall be the integrator of data from all sources and the



491 guarantor of data completeness and consistency and shall
492 administer the council's policies and standards for the
493 procurement of remote sensing and geographic information system
494 data by state and local governmental entities.

495 **SECTION 10.** This act shall take effect and be in force from
496 and after July 1, 2023.

