

By: Representatives Currie, Hobgood-Wilkes,
Crawford

To: Conservation and Water
Resources

HOUSE BILL NO. 1094
(As Passed the House)

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 ANY MUNICIPALITY OR COUNTY,
4 SUCH MUNICIPALITY OR COUNTY, THE CITY SHALL BE FINED BY THE
5 DEPARTMENT FOR EACH INSTANCE OF IMPROPER DISPOSAL; TO PROVIDE THAT
6 THE DEPARTMENT SHALL DISTRIBUTE SUCH FUNDS EQUALLY AMONG CERTAIN
7 COUNTIES AND MUNICIPALITIES THAT THE DEPARTMENT FINDS WERE
8 AFFECTED BY SUCH IMPROPER DISPOSAL OF WASTEWATER AND/OR SEWAGE; TO
9 BRING FORWARD SECTIONS 41-67-3, 41-67-6, 41-67-7, 41-67-9,
10 41-67-21, 41-67-28, 49-2-7 AND 49-2-9, MISSISSIPPI CODE OF 1972,
11 FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) Upon a finding by the Mississippi Department
14 of Environmental Quality that wastewater and/or sewage has been
15 improperly disposed of by any municipality or county, the city or
16 county shall be fined by the department in an amount not to exceed
17 One Million Dollars (\$1,000,000.00) for each instance of improper
18 disposal.

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



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

24 41-67-3. (1) The board and/or the department shall have the
25 following duties and responsibilities:

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

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

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



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

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

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

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

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

69 (b) Certification of installers;

70 (c) Certification of pumpers;



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

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

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



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

98 (e) Enforcement of the requirements and conditions of
99 authorization; and

100 (f) Inspection, monitoring, sampling and reporting on
101 the performance of the system.

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

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

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



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

122 41-67-6. (1) Nothing in this chapter shall preclude a
123 certified professional evaluator or licensed professional engineer
124 from providing services relating to the design of an individual
125 on-site wastewater disposal system to comply with this chapter,
126 except for performance-based systems as specified in Section
127 41-67-3(3). A certified professional evaluator or licensed
128 professional engineer shall notify the department in writing of
129 those services being provided, including the type of treatment,
130 the type of disposal, and the property address for the treatment
131 and disposal system. Construction or installation shall not begin
132 before authorization by the department. The department shall
133 respond within ten (10) business days with authorization that the
134 certified professional evaluator or licensed professional engineer
135 fulfills the requirements of the law.

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



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



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

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

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

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

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



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

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

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

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

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

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

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

218 41-67-7. (1) Approval of the design, construction or
219 installation of an individual on-site wastewater disposal system



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

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

238 (a) Centralized wastewater treatment systems are not
239 available or feasible;

240 (b) The existing disposal systems in the area are
241 functioning satisfactorily;

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



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

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

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

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

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

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



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

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

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

279 41-67-9. (1) All existing individual on-site wastewater
280 disposal systems on July 1, 2014, shall be grandfathered in until
281 a valid complaint is registered with a county department of health
282 or until a property owner requests an inspection by the
283 department.

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

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

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



293 (c) Centralized wastewater treatment systems are not
294 available;

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

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

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

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

312 41-67-21. (1) The department shall require a property owner
313 and/or lessee to repair a malfunctioning individual on-site
314 wastewater disposal system on the owner's or lessee's property
315 before the thirtieth day after the date on which the owner or
316 lessee is notified by the department of the malfunctioning system.



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

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

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

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

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



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

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

345 41-67-28. (1) Except as otherwise provided in this chapter,
346 any person who shall knowingly violate this chapter or any rule or
347 regulation or written order of the board in pursuance thereof is,
348 upon conviction, guilty of a misdemeanor and shall be punished as
349 provided in Section 41-3-59.

350 (2) Each day of a continuing violation is a separate
351 violation.

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

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

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



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

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

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

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

385 (5) (a) Any person who violates Section 41-67-7(5) or
386 41-67-11(2) may be assessed an administrative fine in the amount
387 of Five Hundred Dollars (\$500.00) and the public water system may
388 discontinue service to that property owner until the failure to
389 comply with Section 41-67-7(5) or 41-67-11(2) has been corrected.



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

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

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

397 49-2-7. The Department of Environmental Quality shall be the
398 Mississippi Department of Natural Resources with the exception of
399 the Office of Parks and Recreation, and shall retain all powers
400 and duties granted by law to the Mississippi Department of Natural
401 Resources with the exception of the Office of Parks and
402 Recreation, and wherever the term "Mississippi Department of
403 Natural Resources" appears in any law the same shall mean the
404 Department of Environmental Quality. The Executive Director of
405 the Department of Environmental Quality may assign to the
406 appropriate offices any powers and duties deemed appropriate to
407 carry out the lawful duties of the department.

408 The department shall be composed of the following offices:

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

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



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

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

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

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

433 49-2-9. (1) Effective July 1, 1979, the commission shall
434 have the following powers and duties:

435 (a) To formulate the policy of the department regarding
436 natural resources within the jurisdiction of the department;

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



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

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

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

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



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

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

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

476 (a) Geodetic control;

477 (b) Elevation and bathymetry;

478 (c) Orthoimagery;

479 (d) Hydrography;

480 (e) Transportation;

481 (f) Government boundaries; and

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

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



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

493 **SECTION 10.** This act shall take effect and be in force from
494 and after July 1, 2023, and shall stand repealed on June 30, 2023.

