

By: Representative Franks

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

HOUSE BILL NO. 1184

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) "Subdivision" means any tract or combination of
144 adjacent tracts of land that is subdivided into two (2) or more
145 * * * tracts, sites or parcels for the purpose of commercial or
146 residential development.

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

149 41-67-3. (1) The State Board of Health shall have the
150 following duties and responsibilities:

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

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

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

170 (d) To suspend or revoke certifications issued to
171 persons engaging in the business of the design, construction or
172 installation of individual on-site wastewater disposal systems or
173 persons engaging in the removal and disposal of the sludge and

174 liquid waste from those systems, when it is determined the person
175 has violated this chapter or applicable rules and
176 regulations; * * *

177 (e) To require the submission of information deemed
178 necessary by the department to determine the suitability of
179 individual lots for individual on-site wastewater disposal
180 systems; and

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

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

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

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

214 (b) Certification of installers of individual on-site
215 wastewater disposal systems and persons engaging in the removal
216 and disposal of the sludge and liquid waste from those
217 systems; * * *

218 (c) Registration and requirements for testing and
219 listing of manufacturers of advanced treatment systems;

220 (d) Certification of certified maintenance providers;
221 and

222 (e) Certification of certified professional evaluators.

223 (4) In addition, the board shall adopt rules establishing
224 performance standards for individual on-site wastewater disposal
225 systems for single family residential generators and rules
226 concerning the operation and maintenance of individual on-site
227 wastewater disposal systems designed to meet those standards. The
228 performance standards shall be consistent with the federal Clean
229 Water Act, maintaining the wastes on the property of the generator
230 and protection of the public health. Rules for the operation and
231 maintenance of individual on-site wastewater disposal systems
232 designed to meet performance standards shall include rules
233 concerning the following:

234 (a) A standard application form and requirements for
235 supporting documentation;

236 (b) Application review;

237 (c) Approval or denial of authorization for proposed
238 systems;

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

241 (e) Enforcement of the requirements and conditions of
242 authorization; and

243 (f) Inspection, monitoring, sampling and reporting on
244 the performance of the system.

245 Any system proposed for authorization in accordance with
246 performance standards must be designed and certified by a
247 professional engineer registered in the State of Mississippi who
248 is a certified professional evaluator and must be authorized by
249 the board before installation. * * *

250 (5) To the extent practicable, all rules and regulations
251 adopted under this chapter shall give maximum flexibility to
252 persons installing individual on-site wastewater disposal systems
253 and a maximum number of options consistent with the federal Clean
254 Water Act, consistent with maintaining the wastes on the property
255 of the generator and consistent with protection of the public
256 health. In addition, all rules and regulations, to the extent
257 practicable, shall encourage the use of economically feasible
258 systems, including alternative techniques and technologies for
259 individual on-site wastewater disposal.

260 (6) All regulations shall be applied uniformly in all areas
261 of the state and shall take into consideration and make provision
262 for different types of soil in the state when performing soil and
263 site evaluations.

264 (7) No public utility supplying water shall make connection
265 to any dwelling house, mobile home or residence without the prior
266 written approval of the department certifying that the sewage
267 treatment and disposal system at the location of the property
268 complies with this chapter. Temporary connections of water
269 utilities may be made during construction if the department has
270 approved a plan for a sewage treatment and disposal system and the
271 owner of the property has agreed to have the system inspected and

272 approved by the department before the use or occupancy of the
273 property.

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

276 41-67-4. (1) The board shall determine the feasibility of
277 establishing community sewerage systems upon the submission by the
278 developer of a preliminary design and feasibility study prepared
279 by a professional engineer. The developer may request and obtain
280 a hearing before the board if the developer is dissatisfied with
281 the board's determination of feasibility. The determination that
282 a sewerage system must be established shall be made without regard
283 to whether the establishment of a sewerage system is authorized by
284 law or is subject to approval by one or more state or local
285 government or public bodies. Whenever a developer requests a
286 determination of feasibility, the board must make the
287 determination within forty-five (45) days after receipt of the
288 preliminary design and feasibility study from the developer. The
289 board shall state in writing the reasons for its determination.
290 If the board does not make a determination within forty-five (45)
291 days, all sites within the subdivision shall be approved, if a
292 certified installer attests that each site can be adequately
293 served by an individual on-site wastewater disposal system.

294 (2) Where residential subdivisions are proposed which are
295 composed of fewer than thirty-five (35) building sites, and no
296 system of sanitary sewers is available to which collection sewers
297 may be feasibly connected, the board may waive the requirement for
298 a feasibility study. If the feasibility study is waived, all
299 sites within the subdivision shall be approved, if a certified
300 installer attests that each site can be adequately served by an
301 individual on-site wastewater disposal system.

302 (3) No feasibility study or community sewerage system shall
303 be required for subdivisions designed, laid out, platted or
304 partially constructed before July 1, 1988, or for any subdivision

305 that was platted and recorded during the period from July 1, 1995,
306 through June 30, 1996.

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

309 41-67-5. (1) No owner, lessee or developer shall construct
310 or place any mobile, modular or permanently constructed residence,
311 building or facility, which may require the installation of an
312 individual on-site wastewater disposal system, without having
313 first submitted a notice of intent to the department. Upon
314 receipt of a notice of intent, the department shall provide the
315 owner, lessee or developer with complete information on individual
316 on-site wastewater disposal systems, including, but not limited
317 to, applicable rules and regulations regarding the design,
318 construction, installation, operation and maintenance of
319 individual on-site wastewater disposal systems and known
320 requirements of lending institutions for approval of the systems.

321 (2) No temporary permanent water service connection shall be
322 provided to any mobile, modular or permanently constructed
323 residence, building or facility unless the owner, lessee or
324 developer shows proof of the submission of the notice of intent
325 required by this section.

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

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

333 41-67-6. (1) Within five (5) working days following receipt
334 of the notice of intent and plot plan by an owner, lessee or
335 developer of any lot or tract of land, the department shall
336 conduct a soil and site evaluation, except in cases where a
337 certified professional evaluator provides services relating to the

338 design, construction or installation of an individual on-site
339 wastewater disposal system to comply with this chapter. Within
340 ten (10) additional working days, the department shall make
341 recommendations to the owner, lessee or developer of the type or
342 types of individual on-site wastewater disposal systems suitable
343 for installation on the lot or tract, unless there are conditions
344 requiring further investigation that are revealed in the initial
345 evaluation. In making recommendations on the type or types of
346 individual on-site wastewater disposal systems suitable for
347 installation on a lot or tract, personnel of the department shall
348 use best professional judgment based on rules and regulations
349 adopted by the board, considering the type or types of systems
350 which are installed and functioning on lots or tracts near the
351 subject lot or tract. * * * To the extent practicable, the
352 recommendations shall give the owner, lessee or developer maximum
353 flexibility and a maximum number of options consistent with the
354 federal Clean Water Act, consistent with maintaining the wastes on
355 the property of the generator and consistent with protection of
356 the public health. The system or systems recommended shall be
357 environmentally sound and cost-effective. The department or a
358 certified professional evaluator shall provide complete
359 information, including all applicable requirements and regulations
360 on all systems recommended. The owner, lessee or developer shall
361 have the right to choose among systems. The department shall
362 provide the owner, lessee or developer with a form that specifies
363 all types of individual on-site wastewater disposal systems that
364 are suitable for installation on the lot or tract and lists all
365 installers of those systems that are certified by the department.
366 Approval of the design, construction or installation of an
367 individual on-site wastewater disposal system by the department
368 is * * * required. Upon completion of installation of the system,
369 the department shall approve the design, construction or
370 installation of that system, as requested, if the system is

371 designed, constructed and installed, as the case may be, in
372 accordance with the rules and regulations of the board. * * *
373 Whenever a person requests approval of an individual on-site
374 wastewater disposal system and has met the requirements in
375 subsection (7), the department must approve or disapprove the
376 request within five (5) working days. If the department
377 disapproves the request, the department shall state in writing the
378 reasons for the disapproval. If the department does not respond
379 to the request within ten (10) calendar days, the request for
380 approval of the individual on-site wastewater disposal system
381 shall be deemed approved.

382 (2) Within thirty (30) days of receipt of a request for
383 determination of suitability of individual on-site wastewater
384 disposal systems in a subdivision, the department shall advise the
385 developer in writing either that all necessary information needed
386 for determination of suitability has been received or state the
387 additional information needed by the department for determination
388 of suitability.

389 (3) Whenever a developer requests a determination of
390 suitability of individual on-site wastewater disposal systems in a
391 subdivision, the department must make the determination within
392 forty-five (45) days after receipt of all necessary information
393 needed for the determination of suitability from the developer.
394 The department shall state in writing the reasons for its
395 determination.

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

401 (b) An installer shall not cover his work with soil or
402 other surface material unless the installer has received

403 authorization to cover the system after an inspection by a county
404 department of health inspector.

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

409 (6) * * * If any person or contractor fails to comply with
410 all requirements and regulations in the installation of the
411 system, the board, after due notice and hearing, may levy an
412 administrative fine not to exceed Ten Thousand Dollars
413 (\$10,000.00). Each wastewater system installed not in compliance
414 with this chapter or applicable rules and regulations of the board
415 shall be considered a separate offense.

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

420 (a) A signed affidavit from the installer or certified
421 professional evaluator and any additional required documentation
422 that the system was installed in compliance with all requirements,
423 regulations and permit conditions applicable to the system
424 installed; and

425 (b) For any alternative on-site wastewater disposal
426 system, an affidavit from the property owner agreeing to a
427 continuing maintenance agreement on the installed system at the
428 end of the required manufacturer's maintenance agreement.

429 (8) The property owner shall keep a continuing maintenance
430 agreement with a certified maintenance provider on all alternative
431 on-site wastewater disposal systems in perpetuity.

432 (a) All systems existing on July 1, 2006, shall be
433 grandfathered in until the system is reapproved, there is a change
434 in property ownership, a complaint is received by the department
435 on the system, or the system is replaced or repaired.

436 (b_ Any person violating this subsection shall be
437 subject to the penalties and damages as provided in Section
438 41-67-28(5).

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

441 41-67-7. Individual on-site wastewater disposal systems
442 shall be considered acceptable on lots in areas or subdivisions
443 where prior to the sale of the lots, the following requirements
444 are met:

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

448 (a) Sewers are not available or feasible;

449 (b) The existing disposal systems in the area are
450 functioning satisfactorily;

451 (c) Soil types, soil texture, seasonal water tables and
452 other limiting factors are satisfactory for underground
453 absorption; and

454 (d) Any private water supply is located at a higher
455 elevation or it must be properly protected and at least fifty (50)
456 feet from the individual on-site wastewater disposal system and at
457 least one hundred (100) feet from the disposal field of the
458 system.

459 (2) Except for systems utilizing underground absorption,
460 alternative individual on-site wastewater disposal systems shall
461 be considered acceptable, provided the following requirements are
462 met:

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

464 (b) The systems meet applicable water quality
465 requirements of the federal Clean Water Act and also requirements
466 of the board and department.

467 * * *

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

470 41-67-9. (1) Existing individual on-site wastewater
471 disposal systems shall be considered acceptable, provided the
472 following requirements are met:

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

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

480 (c) The system is functioning properly with no evidence
481 that any insufficiently treated effluent is or has been seeping to
482 the surface of the ground and any discharge of treated effluent is
483 confined within the boundaries of the property of the generator;
484 and

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

490 (2) If an existing residential individual on-site wastewater
491 disposal system is malfunctioning, the system should be replaced,
492 where possible, with a system meeting all requirements of this
493 chapter and rules and regulations of the board. If replacement of
494 the existing system is not possible, the existing system shall be
495 repaired to reduce the volume of effluent, to adequately treat the
496 effluent and to the greatest extent possible, to confine the
497 discharge to the property of the generator. If repairs are made
498 to significantly upgrade the existing individual on-site
499 wastewater disposal system, the department shall approve the
500 system, if requested.

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

503 41-67-10. (1) Advanced treatment systems may be installed
504 only if they have been tested and are listed by a third-party
505 certifying program at the time of installation. Advanced
506 treatment systems shall be in compliance with standards for a
507 Class I system as defined by the most current revision of American
508 National Standards Institute/National Sanitation Foundation
509 (ANSI/NSF) International Standard Number 40, which are
510 incorporated by reference. * * * An approved third-party
511 certifying program shall comply with the following provisions for
512 systems which it has certified to be installed in Mississippi:

513 (a) Be accredited by the American National Standards
514 Institute;

515 (b) Have established procedures which send
516 representatives to distributors in Mississippi on a recurring
517 basis to conduct evaluations to assure that distributors of
518 certified advanced treatment systems are providing proper
519 maintenance, have sufficient replacement parts available and are
520 maintaining service records;

521 (c) Notify the department of the results of monitoring
522 visits to manufacturers and distributors within sixty (60) days of
523 the conclusion of the monitoring; and

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

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

529 (b) All manufacturers of alternate disposal systems
530 certified in Mississippi shall provide technical training staff to
531 the department for utilization during the on-site maintenance
532 training program.

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

537 (d) All wastewater maintenance staff certified by
538 manufacturers whose alternate disposal systems are certified for
539 sale in Mississippi shall be certified by the department to
540 perform on-site wastewater maintenance on that manufacturer's
541 alternate disposal systems.

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

544 41-67-11. (1) Temporary individual on-site wastewater
545 disposal systems may be approved in an area where individual
546 on-site wastewater disposal systems otherwise would not be
547 approved because of the availability or feasibility of connection
548 to a centralized sewerage system only after a contract has been
549 awarded or other definite commitments as are deemed sufficient to
550 the department are formalized for the construction of municipal or
551 community sewers that upon completion will adequately serve the
552 property. Temporary individual on-site wastewater disposal
553 systems shall only be approved * * * when the municipal or
554 community sewers will be completed and available for use within
555 thirty-six (36) months. The department may approve the
556 installation of a temporary system under these circumstances only
557 if the system will comply with the requirements of Section
558 41-67-5(1) and comply with all construction requirements of the
559 board. The temporary system may be installed only after the
560 developer has signed a written agreement with the centralized
561 sewer provider stating that the developer will connect to the
562 centralized sewer system when it becomes available, and the
563 provider of the centralized sewer system being constructed
564 certifies that the centralized sewer system will have adequate
565 capacity to accept the sewage to be produced by the temporary

566 systems. The developer shall install an internal sewage
567 collection system from each lot to the connection point to the
568 central sewer system as he develops the streets of the
569 subdivision. Upon completion of the sewer construction, all
570 systems shall be abandoned and all residences, buildings or
571 facilities connected to the sewer.

572 (2) The board may approve the installation of sewage holding
573 tanks in districts created under Sections 19-5-151 through
574 19-5-207 for the purpose of providing sewage services. The
575 district shall be required to maintain or provide for the
576 maintenance of those holding tanks. The board shall require that
577 residences be connected to a municipal or community sewage system
578 when that system is available * * *.

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

581 41-67-12. (1) The department shall assess fees in the
582 following amounts for the following purposes:

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

586 (b) A fee of Fifty Dollars (\$50.00) shall be levied
587 annually for the certification of installers and persons engaging
588 in the removal and disposal of the sludge and liquid wastes from
589 individual on-site wastewater disposal systems.

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

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

597 (3) The fee authorized under this section shall not be
598 assessed for any system operated by state agencies or

599 institutions, including, without limitation, foster homes licensed
600 by the State Department of Human Services. The fee authorized
601 under this section shall not be charged again after payment of the
602 initial fee for any system that has been installed in accordance
603 with this chapter, within a period of twenty-four (24) months
604 following the date that the system was originally installed.

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

607 41-67-15. Nothing in this chapter shall limit the authority
608 of a municipality or board of supervisors to adopt similar
609 ordinances which may be, in whole or in part, more restrictive
610 than this chapter, and in those cases the more restrictive
611 ordinances will govern. The department shall not enforce any
612 ordinance adopted by a municipality or board of supervisors.

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

615 41-67-19. Each authorized agent of the department
616 implementing this chapter shall demonstrate to the department's
617 satisfaction that the person:

618 (a) Is competent to review and provide any requested
619 approval of design, construction and installation of individual
620 on-site wastewater disposal systems, as well as the operation,
621 repair or maintenance of those systems, to make soil permeability
622 tests or soil and site evaluations, and to conduct inspections of
623 individual on-site wastewater disposal systems in accordance with
624 this chapter and rules and regulations adopted under this chapter;
625 and

626 (b) Has successfully completed the installer
627 certification training program provided by the department.

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

630 41-67-21. (1) The board or the department may require a
631 property owner or lessee to repair a malfunctioning individual

632 on-site wastewater disposal system on the owner's or lessee's
633 property before the thirtieth day after the date on which the
634 owner or lessee is notified by the department of the
635 malfunctioning system.

636 (2) The property owner or lessee shall take adequate
637 measures as soon as practicable to abate an immediate health
638 hazard.

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

644 (4) The board may assess the property owner or lessee of an
645 individual on-site wastewater disposal system authorized pursuant
646 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
647 (\$50.00) for each day the system fails to meet the performance
648 standards of that system after the thirty-day period specified in
649 subsection (1) of this section.

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

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

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

656 41-67-23. The department or its authorized representative
657 may enter onto property and make inspections of any individual
658 on-site wastewater disposal system as necessary to ensure that the
659 system is in compliance with this chapter and the rules adopted
660 under this chapter. The department shall give reasonable notice
661 to any property owner, lessee or occupant prior to entry onto the
662 property. The owner, lessee, owner's representative, or occupant
663 of the property on which the system is located shall give the

664 department or its authorized representative reasonable access to
665 the property at reasonable times to make necessary inspections.

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

668 41-67-25. (1) A person may not operate as an installer of
669 individual on-site wastewater disposal systems unless that person
670 is currently certified by the department. A person who installs
671 an individual on-site wastewater disposal system on his own
672 property for his primary residence is not considered an installer
673 for purposes of this subsection.

674 (2) An installer of alternative systems or products must be
675 a factory-trained and authorized representative. The manufacturer
676 must furnish documentation to the department certifying the
677 satisfactory completion of factory training and the establishment
678 of the installer as an authorized manufacturer's representative.

679 (3) The board shall issue a certification to an installer if
680 the installer:

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

683 (b) Satisfactorily completes the training program
684 provided by the department;

685 (c) Pays the annual certification fee; and

686 (d) Provides proof of having a valid general business
687 liability insurance policy in effect with liability limits of at
688 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
689 least One Hundred Thousand Dollars (\$100,000.00) in total
690 aggregate amount.

691 (4) Each installer shall furnish proof of certification to a
692 property owner, lessee, the owner's representative or occupant of
693 the property on which an individual on-site wastewater disposal
694 system is to be designed, constructed, repaired or installed by
695 that installer and to the department or its authorized
696 representative, if requested.

697 (5) The department shall provide for annual renewal of
698 certifications.

699 (6) (a) An installer's certification may be suspended or
700 revoked by the board after notice and hearing if the installer
701 violates this chapter or any rule or regulation adopted under this
702 chapter.

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

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

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

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

714 41-67-27. It is unlawful for a manufacturer of an individual
715 on-site wastewater disposal system or alternative treatment or
716 disposal components to operate a business in or to do business in
717 the State of Mississippi without holding a valid manufacturer's
718 registration issued by the department.

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

721 41-67-28. (1) Except as otherwise provided in this chapter,
722 any person who shall knowingly violate this chapter or any rule or
723 regulation or written order of the board in pursuance thereof is,
724 upon conviction, guilty of a misdemeanor and shall be punished as
725 provided in Section 41-3-59.

726 (2) Each day of a continuing violation is a separate
727 violation.

728 (3) (a) In addition to all other statutory and common law
729 rights, remedies and defenses, any person who purchases an

730 individual on-site wastewater disposal system and suffers any
731 ascertainable loss of money or property, real or personal, may
732 bring an action at law in the court having jurisdiction in the
733 county in which the installer or manufacturer has the principal
734 place of business, where the act allegedly occurred, to recover
735 any loss of money or damages for the loss of any property
736 resulting from any of the following:

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

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

743 (iii) Failure of an individual on-site wastewater
744 disposal system to operate properly due to defective design or
745 construction.

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

750 (4) A person who violates this chapter thereby causing a
751 discharge off the property of the generator shall be liable to the
752 party aggrieved or damaged by that violation for the actual
753 damages and additional punitive damages equal to a maximum of
754 twenty-five percent (25%) of the actual damages proven by the
755 aggrieved party, to be taxed by the court where the suit is heard
756 on an original action, by appeal or otherwise and recovered by a
757 suit at law in any court of competent jurisdiction. In addition,
758 the court may award the prevailing party reasonable attorney's
759 fees and court costs. Before filing suit, the party aggrieved or
760 damaged must give thirty (30) days' written notice of its intent
761 to file suit to the alleged violator.

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

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

769 (c) Any violator shall have the right to appeal an
770 adverse determination through the procedures set out in Section
771 41-67-29.

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

774 41-67-29. Any person who is aggrieved by any final decision
775 of the board may appeal that final decision to the chancery court
776 of the county of the situs in whole or in part of the subject
777 matter. The appellant shall give a cost bond with sufficient
778 sureties, payable to the state in a sum to be fixed by the board
779 or the court and to be filed with and approved by the clerk of the
780 court. The aggrieved party may, within thirty (30) days following
781 a final decision of the board, petition the chancery court for an
782 appeal with supersedeas and the chancellor shall grant a hearing
783 on the petition. Upon good cause shown the chancellor may grant
784 the appeal with supersedeas. The appellant shall be required to
785 post a bond with sufficient sureties according to law in an amount
786 to be determined by the chancellor. The chancery court shall
787 always be deemed open for hearing of appeals and the chancellor
788 may hear the appeal in termtime or in vacation at any place in his
789 district. The appeal shall have precedence over all civil cases,
790 except election contests. The chancery court shall review all
791 questions of law and of fact and may enter a final order or remand
792 the matter to the board for appropriate action as may be indicated
793 or necessary under the circumstances. Appeals may be taken from
794 the chancery court to the Supreme Court in the manner as now

795 required by law, but if a supersedeas is desired by the party
796 appealing to the chancery court, that party may apply therefor to
797 the chancellor, who shall award a writ of supersedeas, without
798 additional bond, if in the chancellor's judgment material damage
799 is not likely to result. If material damage is likely to result,
800 the chancellor shall require a supersedeas bond as deemed proper,
801 which shall be liable to the state for any damage.

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

816 (2) Any person aggrieved by the ruling issued by the
817 Director of the Office of Environmental Health may apply for a
818 hearing. Any hearing shall be conducted by a hearing officer
819 designated by the department. At the hearing, the hearing officer
820 may conduct reasonable questioning of persons who make relevant
821 factual allegations concerning the proposal. The hearing officer
822 shall require that all persons be sworn before they may offer any
823 testimony at the hearing, and the hearing officer is authorized to
824 administer oaths. Any person so choosing may be represented by
825 counsel at the hearing. A record of the hearing shall be made,
826 which shall consist of a transcript of all testimony received, all
827 documents and other material introduced, the staff report and

828 recommendation, and any other material as the hearing officer
829 considers relevant. He shall make a recommendation within a
830 reasonable period of time after the hearing is closed and after he
831 has had an opportunity to review, study and analyze the evidence
832 presented during the hearing. The completed record shall be
833 certified to the State Health Officer, who shall consider only the
834 record in making his decision, and shall not consider any evidence
835 or material that is not included. All final decisions regarding
836 the disapproval or requirements for an on-site wastewater disposal
837 system shall be made by the State Health Officer. The State
838 Health Officer shall make his written findings and issue his order
839 after reviewing the record, not to exceed thirty (30) days
840 following his receipt of the record.

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

844 (2) The department shall issue a certification to a
845 maintenance provider if the maintenance provider:

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

848 (b) Satisfactorily completes the certified maintenance
849 provider training program provided by the department;

850 (c) Pays the annual certification fee; and

851 (d) Provides proof of having a valid general business
852 liability insurance policy in effect with liability limits of at
853 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
854 least One Hundred Thousand Dollars (\$100,000.00) in total
855 aggregate amount.

856 (3) Each certified maintenance provider shall furnish proof
857 of certification to an individual before entering a contract with
858 that individual for the continuing maintenance of an individual
859 on-site wastewater disposal system.

860 (4) The department shall provide for annual renewal of
861 certifications.

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

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

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

874 (2) The department shall issue a license to a pumper if the
875 pumper:

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

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

880 (c) Provides documentation of a disposal site approved
881 by the Department of Environmental Quality, Office of Pollution
882 Control;

883 (d) Pays the annual license fee; and

884 (e) Provides proof of having a valid general business
885 liability insurance policy in effect with liability limits of at
886 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
887 least One Hundred Thousand Dollars (\$100,000.00) in total
888 aggregate amount.

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

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

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

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

903 (2) A person must meet one (1) of the following
904 requirements, in addition to the additional requirements set forth
905 in other sections of this chapter and rules and regulations of the
906 board, in order to be eligible to become a certified professional
907 evaluator:

908 (a) Be a professional engineer registered in the State
909 of Mississippi;

910 (b) Be a professional geologist registered in the State
911 of Mississippi;

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

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

917 (3) The department shall issue a certification to a
918 certified professional evaluator if the certified professional
919 evaluator:

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

922 (b) Satisfactorily completes the certified professional
923 evaluator training program provided by the department;

924 (c) Pays the annual certification fee; and

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

929 (4) Each certified professional evaluator shall furnish
930 proof of certification to a property owner or the owner's
931 representative of the property before performing a site evaluation
932 of the property on which an individual on-site wastewater disposal
933 system is to be designed, constructed, repaired or installed by
934 the certified professional evaluator and to the department or its
935 authorized representative, if requested.

936 (5) The department shall provide for annual renewal of
937 certifications.

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

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

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

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

952 **SECTION 26.** This act shall take effect and be in force from
953 and after June 30, 2006.