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Chapter No. 544

11/HR40/R21SG

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HOUSE BILL NO. 105

Originated in House Don Richardson Clerk

HOUSE BILL NO. 105

AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-29 AND 41-67-33 THROUGH 41-67-39, MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; TO AMEND REENACTED SECTION 41-67-2, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN DEFINITIONS AND ADD CERTAIN DEFINITIONS; TO AMEND REENACTED SECTION 41-67-3, MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN PROVISIONS OF LAW REGARDING CERTIFIED PROFESSIONAL EVALUATORS' DOCUMENTATION AND APPROVAL FROM THE DEPARTMENT OF HEALTH WHEN DESIGNING A DESIGN-BASED SYSTEM; TO PROVIDE THAT NO FEE SHALL BE CHARGED TO A HOMEOWNER FOR TRAINING TO ASSIST THE HOMEOWNER IN MAINTAINING THE HOMEOWNER'S SYSTEM; TO AMEND REENACTED SECTION 41-67-6, MISSISSIPPI CODE OF 1972, TO ALLOW HOMEOWNERS TO APPLY FOR A VARIANCE FROM THE DEPARTMENT OF HEALTH BY ISSUING A CERTAIN REPORT AND PROOF OF ERRORS AND OMISSIONS INSURANCE; TO REQUIRE THE INSTALLER OR CERTIFIED PROFESSIONAL EVALUATOR TO NOTIFY THE DEPARTMENT OF HEALTH AT LEAST TWENTY-FOUR HOURS BEFORE BEGINNING CONSTRUCTION OF A SYSTEM; TO ALLOW AN INSTALLER TO COVER HIS WORK WITH SOIL OR OTHER SURFACE MATERIAL IF A HEALTH INSPECTOR DOES NOT ARRIVE FOR INSPECTION AFTER TWENTY-FOUR HOURS FROM NOTIFICATION AND TO REQUIRE THE INSTALLER TO SUBMIT AN AFFIDAVIT OF PROPER INSTALLATION TO THE DEPARTMENT FOR FINAL APPROVAL IF SUCH OCCURS; TO REVISE THE PROVISIONS OF LAW REGARDING THE GRANDFATHERING OF SYSTEMS EXISTING ON JULY 1, 2008; TO EXEMPT LOTS OF A CERTAIN ACREAGE FROM THE REQUIREMENTS RELATING TO APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS BY THE DEPARTMENT, PROVIDED THAT CERTAIN CONDITIONS ARE MET; TO AMEND REENACTED SECTION 41-67-10, MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN PROVISIONS OF LAW REGARDING THE DEPARTMENT'S ON-SITE MAINTENANCE TRAINING PROGRAM; TO AMEND REENACTED SECTION 41-67-25, MISSISSIPPI CODE OF 1972, TO REQUIRE THE DEPARTMENT OF HEALTH TO PROVIDE FOR RENEWAL INSTALLER CERTIFICATIONS TO BE APPLIED FOR AT THE LOCAL DEPARTMENT OFFICES; TO PROVIDE THAT THE ANNUAL FEE FOR INSTALLER CERTIFICATIONS SHALL NOT BE MORE THAN FIFTY DOLLARS; TO AMEND REENACTED SECTION 41-67-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON MAY OPERATE AS A CERTIFIED MAINTENANCE PROVIDER IF HE IS A CERTIFIED INSTALLER; TO AMEND REENACTED SECTION 41-67-37, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON MAY OPERATE AS A CERTIFIED PROFESSIONAL EVALUATOR IF HE IS A REGISTERED PROFESSIONAL ENGINEER; TO AMEND REENACTED SECTION 41-67-39, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DEPARTMENT OF HEALTH MAY SUSPEND OR REVOKE A PUMPER'S CERTIFICATION IF THE PUMPER DUMPS OR DISPOSES OF SEPTAGE OR OTHER LIQUID WASTE IN AN UNPERMITTED OR UNAPPROVED SITE; TO ALLOW MUNICIPAL WASTEWATER TREATMENT FACILITIES TO MAKE A SITE AVAILABLE FOR CERTIFIED PUMPERS TO DISPOSE OF SEPTIC OR OTHER LIQUID WASTE; TO REQUIRE THE DEPARTMENT OF HEALTH TO PROVIDE FOR RENEWAL PUMPER CERTIFICATIONS

TO BE APPLIED FOR AND GRANTED AT THE LOCAL DEPARTMENT OFFICES; TO CREATE A NEW SECTION OF LAW TO CREATE THE WASTEWATER ADVISORY BOARD FOR THE PURPOSE OF ADVISING THE DEPARTMENT OF HEALTH REGARDING INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS; TO PROVIDE FOR THE COMPOSITION OF THE BOARD; TO AMEND SECTION 41-67-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-67-1, Mississippi Code of 1972, is reenacted as follows:

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

(2) It is the purpose of the Legislature through this chapter to protect human health and the environment while providing for reasonable use of individual on-site wastewater disposal systems. The Legislature finds that continued installation and operation of individual on-site wastewater disposal systems in a faulty or improper manner, in a manner that lacks essential maintenance for the system, or in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and welfare and the environment through contamination of land, groundwater and surface waters. The Legislature, therefore, expresses a general preference for the installation and operation of centralized sewerage systems in Mississippi, where feasible. The Legislature recognizes, however, that individual on-site wastewater treatment and disposal systems help meet the needs of the state's citizens, especially in rural locations, and can be rendered ecologically safe and protective of the public health if the systems are designed, installed, constructed, maintained and operated properly. It is the intent of the Legislature to allow the continued installation, use and maintenance of individual on-site wastewater disposal systems in a

manner that will not jeopardize public health and welfare or the environment.

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

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

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

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

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

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

(e) "Certified installer" means any person who has met the requirements of Section 41-67-25.

(f) "Certified manufacturer" means any person registered with the department who holds a written certification issued by the department allowing the manufacturer to sell on-site wastewater products in the state.

(g) "Certified professional evaluator" means any person who has met the requirements of Section 41-67-37 or a registered professional engineer.

(h) "Certified pumper" means any person registered with the department who holds a written certification issued by the

department allowing the person to engage in the removal and disposal of sludge, grease and waste.

(i) "Conventional system" means an individual on-site wastewater disposal system consisting of a septic tank and * * * subsurface disposal field.

(j) "Department" means the Mississippi State Department of Health.

(k) "Final approval" means a determination by the department that the system being inspected by the department fulfills all requirements under this act.

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

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

(n) "Notice of intent" means notification by an applicant to the department prior to construction and submission of all required information, which is used by the department to design an individual on-site wastewater disposal system.

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

(p) "Person" means any individual, trust, firm, joint-stock company, public or private corporation (including a government corporation), partnership, association, state, or any

agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee thereof.

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

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

(s) "Registered professional engineer" means any person who has met the requirements under Section 73-13-23(1) and who has been issued a certificate of registration as a professional engineer.

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

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

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

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

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

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

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

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

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

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

(2) Nothing in this chapter shall preclude a certified professional evaluator or registered professional engineer from providing services relating to the design of an individual on-site wastewater disposal system to comply with this chapter, except for performance-based systems as specified in subsection (4) of this section. A certified professional evaluator or registered professional engineer shall notify the department in writing of those services being provided, including the type of treatment, the type of disposal, and the property address for the treatment

and disposal system. Construction or installation shall not begin prior to authorization by the department. The department shall respond within ten (10) business days with authorization that the certified professional engineer or registered professional engineer fulfills the requirements of the law.

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

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

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

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

* * *

(d) Certification of certified professional evaluators;
and

(e) Creation of regulations that authorize the original and any subsequent homeowner to be trained by factory installers or other factory representatives in order to educate the homeowner with the necessary knowledge to provide maintenance to the homeowner's system; no fees shall be charged to the homeowner for such training, thus allowing the homeowner to meet the requirements of Section 41-67-6(8).

(4) In addition, the board shall adopt rules establishing performance standards for individual on-site wastewater disposal systems for single family residential generators and rules concerning the operation and maintenance of individual on-site wastewater disposal systems designed to meet those standards. The performance standards shall be consistent with the federal Clean

Water Act, maintaining the wastes on the property of the generator and protection of the public health. Rules for the operation and maintenance of individual on-site wastewater disposal systems designed to meet performance standards shall include rules concerning the following:

- (a) A standard application form and requirements for supporting documentation;
- (b) Application review;
- (c) Approval or denial of authorization for proposed systems;
- (d) Requirements, as deemed appropriate by the board, for annual renewal of authorization;
- (e) Enforcement of the requirements and conditions of authorization; and
- (f) Inspection, monitoring, sampling and reporting on the performance of the system.

Any system proposed for authorization in accordance with performance standards must be designed and certified by a professional engineer registered in the State of Mississippi * * * and must be authorized by the board before installation.

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

(6) All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision

for different types of soil in the state when performing soil and site evaluations.

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

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

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

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

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

SECTION 5. Section 41-67-5, Mississippi Code of 1972, is reenacted as follows:

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

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

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

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

41-67-6. (1) Within five (5) working days following receipt of the notice of intent and plot plan by an owner, lessee or developer of any lot or tract of land, the department shall conduct a soil and site evaluation, except in cases where a certified professional evaluator or registered professional engineer provides services relating to the design, construction or installation of an individual on-site wastewater disposal system to comply with this chapter. Within ten (10) additional working days, the department shall make recommendations to the owner, lessee or developer of the type or types of individual on-site wastewater disposal systems suitable for installation on the lot or tract, unless there are conditions requiring further investigation that are revealed in the initial evaluation. In making recommendations on the type or types of individual on-site wastewater disposal systems suitable for installation on a lot or tract, personnel of the department shall use best professional judgment based on rules and regulations adopted by the board, considering the type or types of systems which are installed and functioning on lots or tracts near the subject lot or tract. To the extent practicable, the recommendations shall give the owner, lessee or developer maximum flexibility and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. The system or systems recommended shall be environmentally sound and cost-effective. The department or a certified professional

evaluator shall provide complete information, including all applicable requirements and regulations on all systems recommended. The owner, lessee or developer shall have the right to choose among systems. The department shall provide the owner, lessee or developer with a form that specifies all types of individual on-site wastewater disposal systems that are suitable for installation on the lot or tract and lists all installers of those systems that are certified by the department. Approval of the design, construction or installation of an individual on-site wastewater disposal system by the department is required, except as otherwise provided in subsection (9) of this section. Upon completion of installation of the system, the department shall approve the design, construction or installation of that system, as requested, if the system is designed, constructed and installed, as the case may be, in accordance with the rules and regulations of the board. Whenever a person requests approval of an individual on-site wastewater disposal system and has met the requirements in subsection (7), the department must approve or disapprove the request within five (5) working days. If the department disapproves the request, the department shall state in writing the reasons for the disapproval. Homeowners may apply for a variance from the department by submitting a report for a proposed system to the department from a certified professional evaluator or registered professional engineer that the proposed wastewater treatment system will properly treat and maintain wastewater on the property and proof of errors and omissions insurance. The department shall grant the variance but still have authority for final approval to inspect that the system is installed as designed. All forms from the department relating to allowed wastewater systems shall include the variance option as an alternative. If the department does not respond to the request within ten (10) calendar days, the request for approval of the

individual on-site wastewater disposal system shall be deemed approved.

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

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

(4) (a) The installer or certified professional evaluator shall notify the department at least twenty-four (24) hours before beginning construction of an individual on-site wastewater disposal system and, at that time, schedule a time for inspection of the system with the appropriate county department of health.

(b) An installer shall not cover his work with soil or other surface material unless the installer has received authorization to cover the system after an inspection by a county department of health inspector, or unless a health inspector does not arrive for inspection after twenty-four (24) hours from the notification to the department beginning construction, in which case, an installer may submit an affidavit of proper installation to the department for final approval.

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

(6) If any person or contractor fails to obtain final approval or submit an affidavit of proper installation to the department in the installation of the system, the board, after due notice and hearing, may levy an administrative fine not to exceed Ten Thousand Dollars (\$10,000.00). Each wastewater system installed not in compliance with this chapter or applicable rules and regulations of the board may be considered a separate offense.

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

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

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

(8) The property owner shall keep a continuing maintenance agreement with a certified installer or qualified homeowner on all advanced treatment systems in perpetuity.

(a) All systems existing on July 1, 2008, shall be grandfathered in until the system is reapproved * * * or the system is replaced * * *.

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

(9) Any lot or tract that is two (2) acres or larger shall be exempt from the requirements of this chapter and regulations of the department relating to approval of individual on-site wastewater disposal systems by the department, provided that:

- (a) All wastewater is contained on the lot or tract;
- (b) No water course, as defined in Section 51-3-3(h), of Mississippi or the United States is impacted; and
- (c) A certified installer provides the department with a signed affidavit attesting that the requirements of paragraphs (a) and (b) are met.

SECTION 7. Section 41-67-7, Mississippi Code of 1972, is reenacted as follows:

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

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

- (a) Sewers are not available or feasible;
- (b) The existing disposal systems in the area are functioning satisfactorily;
- (c) Soil types, soil texture, seasonal water tables and other limiting factors are satisfactory for underground absorption; and
- (d) Any private water supply is located at a higher elevation or it must be properly protected and at least fifty (50) feet from the individual on-site wastewater disposal system and at least one hundred (100) feet from the disposal field of the system.

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

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

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

SECTION 8. Section 41-67-9, Mississippi Code of 1972, is reenacted as follows:

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

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

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

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

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

(2) If an existing residential individual on-site wastewater disposal system is malfunctioning, the system should be replaced, where possible, with a system meeting all requirements of this chapter and rules and regulations of the board. If replacement of the existing system is not possible, the existing system shall be repaired to reduce the volume of effluent, to adequately treat the effluent and to the greatest extent possible, to confine the discharge to the property of the generator. If repairs are made

to significantly upgrade the existing individual on-site wastewater disposal system, the department shall approve the system, if requested.

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

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

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

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

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

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

(2) * * * All manufacturers of advanced treatment systems certified in Mississippi shall provide technical training staff to the department as needed.

* * *

SECTION 10. Section 41-67-11, Mississippi Code of 1972, is reenacted as follows:

41-67-11. (1) Temporary individual on-site wastewater disposal systems may be approved in an area where individual on-site wastewater disposal systems otherwise would not be approved because of the availability or feasibility of connection to a centralized sewerage system only after a contract has been awarded or other definite commitments as are deemed sufficient to the department are formalized for the construction of municipal or community sewers that upon completion will adequately serve the property. Temporary individual on-site wastewater disposal systems shall only be approved when the municipal or community sewers will be completed and available for use within thirty-six (36) months. The department may approve the installation of a temporary system under these circumstances only if the system will comply with the requirements of Section 41-67-5(1) and comply with all construction requirements of the board. The temporary system may be installed only after the developer has signed a written agreement with the centralized sewer provider stating that the developer will connect to the centralized sewer system when it becomes available, and the provider of the centralized sewer system being constructed certifies that the centralized sewer system will have adequate capacity to accept the sewage to be produced by the temporary systems. The developer shall install an internal sewage collection system from each lot to the connection point to the central sewer system as he develops the streets of the subdivision. Upon completion of the sewer construction, all systems shall be abandoned and all residences, buildings or facilities connected to the sewer.

(2) The board may approve the installation of sewage holding tanks in districts created under Sections 19-5-151 through 19-5-207 for the purpose of providing sewage services. The district shall be required to maintain or provide for the

maintenance of those holding tanks. The board shall require that residences be connected to a municipal or community sewage system when that system is available.

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

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

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

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

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

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

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

SECTION 12. Section 41-67-15, Mississippi Code of 1972, is reenacted as follows:

41-67-15. Nothing in this chapter shall limit the authority of a municipality or board of supervisors to adopt similar

ordinances which may be, in whole or in part, more restrictive than this chapter, and in those cases the more restrictive ordinances will govern. The department shall not approve any system that does not comply with an ordinance adopted by a municipality or board of supervisors under the authority of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41-67-25. (1) A person may not operate as an installer of individual on-site wastewater disposal systems unless that person is currently certified by the department. A person who installs an individual on-site wastewater disposal system on his own

property for his primary residence is not considered an installer for purposes of this subsection.

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

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

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

(b) Satisfactorily completes the training program for installation and maintenance provided by the department;

(c) Pays the annual certification fee which shall be an amount not greater than Fifty Dollars (\$50.00); and

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

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

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

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

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

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

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

(9) The department must provide for renewal installer certifications to be applied for at the local department offices.

SECTION 17. Section 41-67-27, Mississippi Code of 1972, is reenacted as follows:

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

SECTION 18. Section 41-67-28, Mississippi Code of 1972, is reenacted as follows:

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

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

(3) (a) In addition to all other statutory and common law rights, remedies and defenses, any person who purchases an individual on-site wastewater disposal system and suffers any ascertainable loss of money or property, real or personal, may bring an action at law in the court having jurisdiction in the county in which the installer or manufacturer has the principal

place of business, where the act allegedly occurred, to recover any loss of money or damages for the loss of any property resulting from any of the following:

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

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

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

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

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

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

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

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

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

41-67-29. Any person who is aggrieved by any final decision of the board may appeal that final decision to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in a sum to be fixed by the board or the court and to be filed with and approved by the clerk of the court. The aggrieved party may, within thirty (30) days following a final decision of the board, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition. Upon good cause shown the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in his district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact and may enter a final order or remand the matter to the board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply therefor to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material damage is likely to result,

the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

SECTION 20. Section 41-67-33, Mississippi Code of 1972, is reenacted as follows:

41-67-33. (1) The department shall adopt and use procedures for conducting reviews requested by any person aggrieved by the disapproval or requirements for an on-site wastewater disposal system as provided by the department in written form under Section 41-67-6. The procedures shall include that the person may request review by submitting a written request of review to the Director of the Office of Environmental Health. The request for review shall identify the matter contested and state the person's name, mailing address and home and daytime phone numbers. Within ten (10) business days of the receipt of the request for review, the department shall issue in writing a ruling and determination to the person and if any corrections are necessary to any form previously issued by the department, then new forms shall be submitted to the person.

(2) Any person aggrieved by the ruling issued by the Director of the Office of Environmental Health may apply for a hearing. Any hearing shall be conducted by a hearing officer designated by the department. At the hearing, the hearing officer may conduct reasonable questioning of persons who make relevant factual allegations concerning the proposal. The hearing officer shall require that all persons be sworn before they may offer any testimony at the hearing, and the hearing officer is authorized to administer oaths. Any person so choosing may be represented by counsel at the hearing. A record of the hearing shall be made, which shall consist of a transcript of all testimony received, all documents and other material introduced, the staff report and recommendation, and any other material as the hearing officer considers relevant. He shall make a recommendation within a reasonable period of time after the hearing is closed and after he

has had an opportunity to review, study and analyze the evidence presented during the hearing. The completed record shall be certified to the State Health Officer, who shall consider only the record in making his decision, and shall not consider any evidence or material that is not included. All final decisions regarding the disapproval or requirements for an on-site wastewater disposal system shall be made by the State Health Officer. The State Health Officer shall make his written findings and issue his order after reviewing the record, not to exceed thirty (30) days following his receipt of the record.

SECTION 21. Section 41-67-35, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-35. * * * A person may not operate as a * * * maintenance provider in this state unless that person is a maintenance provider certified by the department on the effective date of this act or is a certified installer.

* * *

SECTION 22. Section 41-67-37, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-37. (1) A person may not operate as a certified professional evaluator in this state unless that person is currently certified by the department or is a registered professional engineer.

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

* * *

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

(b) Be a professional soil classifier licensed in the State of Mississippi; or

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

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

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

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

(c) Pays the annual certification fee; and

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

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

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

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

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

SECTION 23. Section 41-67-39, Mississippi Code of 1972, is reenacted and amended as follows:

41-67-39. (1) A person may not be engaged in the business of removing and disposing of the sludge and liquid waste (septage) from individual on-site wastewater disposal systems in this state unless that person has a valid license issued by the department.

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

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

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

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

(d) Pays the annual license fee; and

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

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

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

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

(6) The department may suspend or revoke a pumper certification if the pumper dumps or disposes of septage or other liquid waste in an unpermitted or unapproved site.

(7) A municipal wastewater treatment facility may make a site available for certified pumpers to dispose of septic or other liquid waste.

(8) The department must provide for renewal pumper certifications to be applied for at the local department offices.

SECTION 24. (1) There is created the Wastewater Advisory Board for the purpose of advising the Department of Health regarding individual on-site wastewater disposal systems. The advisory board shall be composed of the following:

(a) One (1) appointee of the Executive Director of the American Council of Engineering;

(b) One (1) appointee of the Executive Director of the Office of Pollution Control;

(c) One (1) appointee of the State Health Officer;

(d) One (1) appointee of the Executive Director of the Home Builders Association of Mississippi;

(e) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a Mississippi ATU manufacturer;

(f) One (1) appointee of the Executive Director of the Mississippi Engineering Society;

(g) One (1) appointee of the Executive Director of the Mississippi Manufactured Housing Association;

(h) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a certified installer;

(i) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a septic tank or aggregate disposal manufacturer;

(j) One (1) appointee of the Executive Director of the Mississippi Rural Water Association;

(k) One (1) appointee of the Executive Director of the Mississippi Association of Supervisors;

(l) One (1) appointee of the President of the Mississippi Pumpers Association;

(m) One (1) appointee of the Executive Director of the Mississippi Soil and Water Conservation Commission;

(n) One (1) appointee of the President of the Mississippi Water and Pollution Control Operators Association, Inc.;

(o) The federally appointed Mississippi State Soil Scientist, or his designee;

(p) One (1) appointee of the Director of the Mississippi State Board of Registered Professional Geologists;

(q) One (1) appointee of the Executive Director of the Mississippi Department of Environmental Quality;

(r) One (1) appointee of the Chairman of the Mississippi State Board of Health; * * *

(s) One (1) appointee of the Executive Director of the Mississippi Association of Realtors;

(t) One (1) appointee of the Executive Director of the Mississippi Municipal League; and

(u) One (1) appointee of the Chairman of the Department of the Mississippi State University School of Civil and Environmental Engineering.

(2) The members of the advisory committee shall elect a chairman and vice chairman from its membership.

(3) The terms of appointments for each member shall be for a period of two (2) years.

(4) The advisory committee shall have quarterly meetings, with at least one (1) of those meetings taking place between

forty-five (45) and sixty (60) days before the meeting of the Mississippi State Board of Health.

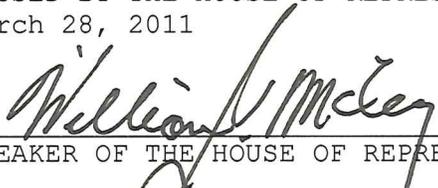
(5) The Mississippi Department of Health shall staff all advisory committee meetings and record minutes of those meetings.

SECTION 25. Section 41-67-31, Mississippi Code of 1972, is amended as follows:

41-67-31. Sections 41-67-1 through 41-67-29 and Sections 41-67-33 through 41-67-39 shall stand repealed on July 1, 2013.

SECTION 26. This act shall take effect and be in force from and after its passage.

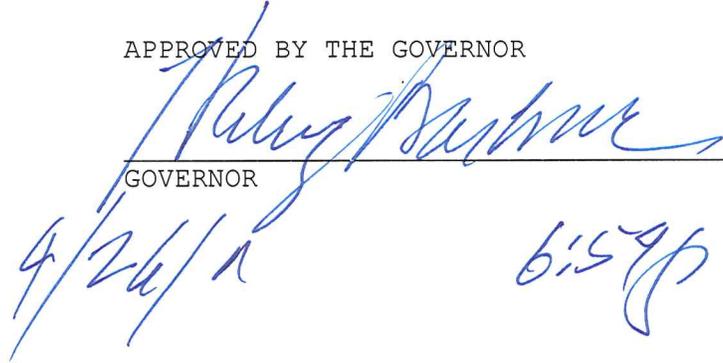
PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 27, 2011


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

4/26/11

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