

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

As Engrossed: H3/17/99

State of Arkansas

82nd General Assembly

Regular Session, 1999

A Bill

HOUSE BILL 1985

By: Representatives Buchanan, *Judy, Creekmore*

For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS SEWAGE DISPOSAL SYSTEMS ACT; TO PROVIDE ADDED PROTECTIONS TO PROPERTY OWNERS; AND FOR OTHER PURPOSES. "

Subtitle

"AN ACT TO AMEND THE ARKANSAS SEWAGE DISPOSAL SYSTEMS ACT; TO PROVIDE ADDED PROTECTIONS TO PROPERTY OWNERS; AND FOR OTHER PURPOSES. "

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This act shall be known and may be cited as the 'Arkansas Sewage Disposal Systems Act of 1999.'

SECTION 2. Arkansas Code 14-236-103 is amended to read as follows:

"14-236-103. Definitions.

(1) 'Community sewage system' means any system, whether publicly or privately owned, serving two (2) or more individual lots, for the collection and disposal of sewage or industrial wastes of a liquid nature, including various devices for the treatment of the sewage or industrial wastes;

(2) 'Department' means ~~the Division of Sanitarian Services of the~~ Department of Health;

(3) 'Homeowner' means a person who owns and occupies a building as his home;

(4) 'Industrial wastes' means liquid wastes resulting from the processes

1 employed in industrial and commercial establishments;

2 (5) 'Individual sewage disposal system' means a single system of
3 treatment tanks, disposal facilities, or both, used for the treatment of
4 domestic sewage, exclusive of industrial wastes, serving only a single
5 dwelling, office building, or industrial plant or institution;

6 (6) 'Installer' means any person, firm, corporation, association,
7 municipality, or governmental agency who for compensation constructs,
8 installs, alters, or repairs individual sewage disposal systems for others;

9 (7) 'Municipality' means a city, town, county, district, or other public
10 body created by or pursuant to state law, or any combination thereof acting
11 cooperatively or jointly;

12 (8) 'Person' means any institution, public or private corporation,
13 individual, partnership, or other entity;

14 (9) 'Potable water' means water free from impurities in an amount
15 sufficient to cause disease or harmful physiological effects, with the
16 bacteriological and chemical quality conforming to applicable standards of the
17 State Board of Health;

18 (10) 'Property owners association' means an association created by and
19 pursuant to state law and organized for the purpose of maintaining common
20 facilities, including sewage disposal facilities in unincorporated
21 subdivisions;

22 (11) 'Domestic sewage' means all wastes discharging from sanitary
23 conveniences and plumbing fixtures of a domestic nature, exclusive of
24 industrial and commercial wastes;

25 (12) 'Subdivision' means land divided or proposed to be divided for
26 predominantly residential purposes into such parcels as required by local
27 ordinances or, in the absence of local ordinances, the term 'subdivision'
28 means any land which is divided or proposed to be divided by a common owner or
29 owners for predominantly residential purposes into three (3) or more lots or
30 parcels, any of which contain less than three (3) acres, or into platted or
31 unplatted units any of which contain less than three (3) acres, as a part of a
32 uniform plan of development;

33 (13) 'Authorized agent' means the sanitarian assigned to the county or
34 local area by ~~the Division of Sanitarian Services of the Department~~ department
35 ~~of Health~~;

36 (14) 'Designated representative' means a person ~~designated by the~~

1 ~~authorized agent to make~~ licensed by the department to design individual
 2 sewage disposal and treatment systems. In order to be licensed to design
 3 systems based on percolation tests, a person must demonstrate to the
 4 satisfaction of the department, the ability to design individual sewage
 5 disposal and treatment systems; evaluate site suitability for performing a
 6 percolation test; and, if the person performs percolation tests, the ability
 7 to perform percolation tests ~~percolation tests, system designs, and inspection~~
 8 ~~subject to the authorized agent's final approval.~~ Designated representatives
 9 shall be registered professional engineers, registered land surveyors,
 10 licensed master plumbers, registered sanitarians, soil classifiers, registered
 11 geologists or other similarly qualified individuals holding current
 12 certificates from the State of Arkansas, and shall demonstrate to the
 13 satisfaction of the authorized agent prior to their designation as a
 14 designated representative their competency to make percolation tests, designs,
 15 and final inspections for individual sewage disposal systems in accordance
 16 with the rules and regulations promulgated pursuant to this chapter;

17 (15) 'Alternate System' means a non-standard individual sewage disposal
 18 or treatment system, of an accepted design that may be approved where a
 19 standard system using subsurface disposal is not feasible;

20 ~~(15)(16)~~ 'Alternate and eExperimental system' means a nonstandard
 21 individual sewage disposal system or treatment system that which is classified
 22 as experimental in order to evaluate its potential effectiveness;

23 ~~(16)~~ (17) 'Septic tank manufacturer' means a person, firm, corporation,
 24 or association who manufactures septic tanks, package treatment plants, or
 25 other components for individual sewage disposal or treatment systems."
 26

27 SECTION 3. Arkansas Code 14-236-104 is amended to read as follows:

28 "14-236-104. Certain individual systems excepted from chapter.

29 (a)(1) No individual sewage disposal system in existence on July 1,
 30 1977, nor any individual sewage disposal system installed after July 1, 1977,
 31 in a subdivision, wherein individual lots have been developed or sold for use
 32 with individual sewage disposal systems, for which a plat has been filed of
 33 record prior to July 1, 1977, shall be required to conform to more stringent
 34 specifications and requirements as to design, construction, density of
 35 improvements, lot size, and installation than those standards contained in any
 36 applicable, duly adopted, and published regulation in effect at the time of

1 platting of record of the subdivision.

2 (2) No individual sewage disposal system to be installed on a
3 residential lot for which the Department or its authorized agent has issued a
4 construction permit on or before July 1, 1977, shall be required to conform to
5 the design, construction, and installation provisions of this chapter, or any
6 rules and regulations adopted pursuant thereto.

7 (3) In a subdivision for which a master plan has been approved by
8 the ~~Department~~ department of Health or the ~~Department of Pollution Control and~~
9 ~~Ecology~~ Arkansas Department of Environmental Quality prior to July 1, 1977, or
10 for which the ~~Department~~ department of Health or the ~~Department of Pollution~~
11 ~~Control and Ecology~~ Arkansas Department of Environmental Quality has otherwise
12 previously issued its written approval for the installation of individual
13 sewage disposal systems and where individual lots have been developed or sold
14 in reliance upon the prior written approval, individual sewage disposal
15 systems shall not be required to conform to more stringent specifications as
16 to design, construction, and installation than those standards in effect at
17 the time of, or referred to in, the prior written approval.

18 ~~(c)~~ (b) The requirements of this chapter shall not apply to an any
19 individual sewage disposal system ~~or alternate and experimental system which~~
20 that is situated on a ~~tract~~ contiguous parcel of land ten (10) acres or
21 larger, in which the field line or sewage disposal line is no closer than two
22 hundred feet (200') to the property line.

23 ~~(b)~~ (c) However, any individual sewage disposal system which is
24 determined by ~~the Division of Sanitarian Services of the Department~~ department
25 ~~of Health~~ to be a health hazard or which constitutes a nuisance due to odor or
26 unsightly appearance must conform with the provisions of this chapter and
27 applicable rules and regulations within a reasonable time after notification
28 that the determination has been made."

29
30 SECTION 4. Arkansas Code 14-236-107 is amended to read as follows:

31 "14-236-107. Division of Sanitarian Services - Powers and duties.

32 (a) The ~~Division of Sanitarian Services of the Department~~ department of
33 ~~Health~~ or its authorized agents shall have general supervision and authority
34 over the location, design, construction, installation, and operation of
35 individual sewage disposal systems, and shall be responsible for the
36 administration of this chapter and of the rules and regulations adopted

1 pursuant to this chapter.

2 (b) In order to assure the effective and efficient administration of the
3 provisions and purposes of this chapter, ~~the Division of Sanitarian Services~~
4 ~~of the Department~~ department of Health is authorized to:

5 (1) After review by the House and Senate Interim Committees on
6 Public Health, Welfare, and Labor or appropriate subcommittees thereof adopt,
7 and from time to time amend, rules and regulations governing the review and
8 approval of subdivisions proposing to utilize individual sewage disposal
9 systems as the means of sewage disposal for part or all of the lots in the
10 subdivision and the location, design, construction, installation, and
11 operation of individual sewage disposal systems proposed for or located in
12 subdivisions or in platted or unplatted lots or tracts of land pursuant to the
13 procedures provided in the Arkansas Administrative Procedure Act, § 25-15-201
14 et seq., in order that the wastes from the systems will not pollute any
15 potable water supply, or source of water used for public or domestic supply
16 purposes, or for recreational purposes, or other waters of this state, and
17 will not give rise to a public health hazard by being accessible to insects,
18 rodents, or other possible carriers which may come into contact with food or
19 potable water, or by being accessible to human beings, and will not constitute
20 a nuisance due to odor or unsightly appearance;

21 (2) Include a provision in all rules and regulations adopted or
22 amended under this chapter to encourage studies and alternate submissions by
23 engineers, sanitarians, institutions, agencies, designated representatives,
24 and other persons of economically feasible alternate systems for underground
25 and above ground individual sewage disposal systems for use in soils not
26 suitable for normal underground sewage disposal;

27 (3) Include in rules and regulations adopted pursuant to this
28 chapter, definitions and detailed descriptions of good management practices
29 and procedures which, when utilized in the construction of septic systems,
30 will:

31 (A) Justify variation in field size or in other standard
32 requirements;

33 (B) Promote the use of good management practices or
34 procedures in the construction of septic systems by adopting under the rules
35 and regulations promulgated under this chapter standard permissible reductions
36 in field size which may be applied when the management practices or procedures

1 are utilized in the construction of a septic system;

2 (C) Require the utilization of one (1) or more specific
3 management practices or procedures as a condition of approval of standard
4 septic systems where, in the opinion of the authorized agent, unusual site
5 conditions or problems require the additional management practices or
6 procedures to insure the proper operation of an otherwise standard septic
7 system;

8 (4) Enforce the provisions of this chapter and any rules and
9 regulations adopted pursuant thereto;

10 (5) Delegate, at its discretion, to any municipality or, in the
11 case of an unincorporated subdivision, the property owners association, any of
12 its authority under this chapter in the administration of the rules and
13 regulations adopted pursuant to this chapter;

14 (6) Issue permits, and other documents, including the
15 establishment and collection of permit fees and of procedures and forms for
16 the submission, review, approval, and rejection of application for permits
17 required under this chapter.

18 (c) Test, evaluate the competence of, and license designated
19 representatives to insure their ability to design systems that meet regulatory
20 requirements. The department may add levels of designated representative
21 licensure to insure the licensee's knowledge of designs more complicated than
22 a standard sewage system. Test, evaluate the competence of, and license
23 sewage system installers to insure their ability to install systems that meet
24 regulatory requirements. The department may add levels of sewage system
25 installer licensure to insure the licensee's ability to install systems whose
26 designs are more complicated than those of standard sewage systems."

27
28 SECTION 5. Arkansas Code 14-236-109 is repealed:

29 ~~14-236-109. Property owners' associations - Powers and duties.~~

30 ~~Property owners' associations that construct and maintain or have~~
31 ~~constructed and maintained sewage disposal facilities in accordance with~~
32 ~~standards and regulations established by the Division of Sanitarian Services~~
33 ~~of the Department of Health or the Department of Pollution Control and Ecology~~
34 ~~shall have jurisdiction over the disposal of sewage within and for the~~
35 ~~subdivided area over which their authority extends, and shall have general~~
36 ~~supervision and authority over the location, design, construction,~~

1 ~~installation, and operation of individual and community sewage disposal~~
2 ~~systems to the extent that the general supervision and authority is consistent~~
3 ~~with this chapter and the rules and regulations promulgated thereunder.~~

4
5 SECTION 6. Arkansas Code 14-236-111 is amended to read as follows:

6 "14-236-111. Review of proposals and inspections.

7 (a) ~~The Division of Sanitarian Services of the~~ department of Health or
8 its authorized agent is authorized and directed to review proposals for
9 individual sewage disposal systems and to make inspections of individual
10 sewage disposal systems as may be necessary to determine substantial
11 compliance with this chapter and regulations adopted hereunder. The systems
12 shall not be used unless approved by ~~the Division of Sanitarian Services of~~
13 ~~the Department of Health~~ department or its authorized agent.

14 (1) ~~In the event that an authorized agent has not been designated~~
15 ~~for a county or municipality or locality, applications for individual sewage~~
16 ~~disposal systems shall be made to the Division of Sanitarian Services of the~~
17 ~~Department~~ department of Health. The department shall perform a pre-site
18 inspection and approve or disapprove an application for a permit for an
19 individual sewage disposal system within ten (10) working days after receiving
20 the permit application unless the department determines in writing that
21 additional information is required to properly evaluate the application. The
22 application, along with any additional information required, must be
23 resubmitted to the department within five (5) working days. All applications
24 for individual sewage disposal systems shall be either approved or disapproved
25 by the department or its authorized agent within thirty (30) days of its
26 initial submission to the department.

27 (2) The department shall conduct a pre-application pre-site
28 inspection within five (5) working days after receiving an official request.

29 ~~(2) (3) Upon the basis of inspections, the Division of Sanitarian~~
30 ~~Services of the Department~~ department of Health or its authorized agent shall
31 either approve or disapprove the individual sewage disposal system, and, if
32 disapproved, the system shall not be used until all deficiencies are corrected
33 and the system reinspected and approved by ~~the Division of Sanitarian Services~~
34 ~~of the Department~~ department of Health or its authorized agent.

35 (b) It shall be the duty of the holder of a permit issued pursuant to
36 this section to notify ~~the Division of Sanitarian Services of the Department~~

~~department of Health, or its authorized agent, or his designated representative when the installation is ready for inspection, and it shall be the duty of the owner or occupant of the property to give the Division of Sanitarian Services of the Department of Health, its authorized agent, or his designated representative free access to the property at reasonable times for the purpose of making such inspections as are necessary.~~

(c) In the event an inspection is not made within two (2) working days from the date of notification to ~~the Division of Sanitarian Services of the Department~~ department of Health, or its authorized agent, or his designated representative that the installation is completed and ready for inspection, the system shall be deemed approved.

(d) The department or its authorized agent shall have free access to properties where an individual sewage disposal permit has been applied for or issued for the purpose of inspections, surveys, or determining compliance with regulations.

~~(d)~~ (e) Any person aggrieved by the disapproval of an individual sewage disposal installation shall be afforded review as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

SECTION 7. Arkansas Code 14-236-113 is amended to read as follows:

"14-236-113. Applications for permits, etc. - Refusal.

(a) All applications for permits, licenses, or review certificates shall be made on a form which includes such information as may be required by ~~the Division of Sanitarian Services of the Department~~ department of Health or its authorized agent to establish compliance with the provisions of this chapter, and any regulations adopted hereunder.

(b) Except as provided in § 14-236-104(a) and (b), a permit for the construction, alteration, repair, extension, or operation of an individual sewage disposal system or alternate and experimental system shall be refused where community sewerage systems are reasonably available or economically feasible, or in instances where the issuance of such permit is in conflict with other applicable laws and regulations, or where the issuance of the permit is in conflict with the public policy declared by this chapter.

(c) Applications for individual sewage disposal system permits shall be submitted and approved before the start of construction of any residential or commercial building on property where a community sewage system is not

1 available; unless the applicant waves the requirement in writing.

2 (d) Applications for individual sewage disposal system permits may be
3 submitted and approved before the sale of property for residential or
4 commercial use where a community sewage system is not available.

5 (e) A permit for an individual sewage disposal system shall be valid for
6 an unlimited period of time as long as there is no significant change in the
7 information provided by the applicant.

8 (f) A permit for an individual sewage disposal system shall be
9 transferable."

10
11 SECTION 8. Arkansas Code 14-236-116 is amended to read as follows:

12 "14-236-116. Permits and registration fees - Annual training course -
13 Transferability - Renewal.

14 (a) A fee of thirty dollars (\$30.00) shall be levied for the review of
15 individual sewage disposal permit applications. However, it shall not be
16 necessary to pay an additional fee to obtain a permit to repair an individual
17 sewage disposal system or alternate and experimental system installed under a
18 permit for which a fee has been paid under the provisions of this chapter.

19 (b) Every licensed installer must attend at least one (1) annual
20 training course provided by the department and pay a fifty dollar (\$50.00) fee
21 annually to maintain certification. A fee of fifty dollars (\$50.00) shall be
22 levied annually for the registration of installers.

23 (c) A fee of one hundred dollars (\$100) shall be levied annually for the
24 registration of septic tank manufacturers.

25 (d) A designated Representative must attend at least one (1) annual
26 training course provided by the ~~Department~~ department of Health and pay a
27 fifty dollar (\$50.00) fee annually to maintain certification.

28 (e) The fee for the issuance of a review certificate under the
29 provisions of this chapter to the person developing a subdivision shall be a
30 minimum of thirty dollars (\$30.00) for one (1) lot and five dollars (\$5.00)
31 for each following lot, with a maximum of five hundred dollars (\$500).

32 (f) Permit and regulation fees collected under this chapter shall be
33 deposited in the State Treasury as follows:

34 (1) Five dollars (\$5.00) of each permit fee collected for permits
35 issued under subsection (a) of this section shall be credited to a special
36 fund to be known as the "Individual Sewage Disposal Systems Improvement Fund"

1 which is established on the books of the State Treasurer, with such moneys to
2 be used by ~~the Division of Sanitarian Services of the Department~~ department of
3 ~~Health~~, and in the manner recommended by the Advisory Committee on Individual
4 Sewage Disposal Systems, for the implementation of the utilization and
5 application of alternate and experimental individual sewage disposal systems,
6 as set forth in this chapter.

7 (2) The remainder of the fees collected for permits issued under
8 the provisions of subsection (a) of this section, and all of the net fees
9 collected under the provisions of § 14-236-112(c) and subsections (b) and (e)
10 of this section shall be credited to the Public Health Fund, and the moneys
11 shall be used only for the operation of the Division of Environmental Health
12 Protection ~~Sanitarian Services of the Department~~ department of Health; and

13 (3) Subject to such rules and regulations as may be implemented by
14 the Chief Fiscal Officer of the State, the disbursing officer for the
15 ~~Department~~ department of Health is hereby authorized to transfer all
16 unexpended funds relative to the funds outlined in subdivision (f)(2) of this
17 section that pertain to fees collected, as certified by the Chief Fiscal
18 Officer of the State, to be carried forward and made available for
19 expenditures for the same purpose for any following fiscal year; and

20 (g)(1) Permits issued under subsections (b), (c), and (d) of this
21 section shall be nontransferable and shall be renewed annually.

22 (2) A late fee equal to one-half (1/2) of the renewal fee for any
23 type of registration or certification shall be charged to renew a permit sixty
24 (60) days after the annual expiration date."

25
26 SECTION 9. All provisions of this Act of a general and permanent nature
27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
28 Revision Commission shall incorporate the same in the Code.

29
30 SECTION 10. If any provision of this Act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the Act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 Act are declared to be severable.

35
36 SECTION 11. All laws and parts of laws in conflict with this Act are

1 hereby repealed.

2 /s/ Buchanan, et al

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36