

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 476

SPONSOR: Senator Constantine

SUBJECT: Portable Restroom Contracting

DATE: March 3, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>                    </u>	<u>                    </u>	<u>RI</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>FT</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AHS</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

Senate Bill 476 creates a registration requirement and regulatory system for portable restroom contracting within the Department of Health. The bill provides for registration, application and examination, eligibility requirements, registration renewal, continuing education requirements, potable restroom contracting by corporations, discipline of registrants, fees, and criminal penalties. The bill allows for continuation of a surcharge on new onsite sewage treatment and disposal system permits to fund research, demonstration, and training projects.

The bill creates part IV of ch. 489, F.S., consisting of ss. 489.661, 489.662, 489.663, 489.664, 489.665, 489.666, 489.667, and 489.668, F.S.

## II. Present Situation:

The Department of Health (DOH) currently has authority to permit and inspect portable restroom services but does not have authority to license the portable restroom contractors and services as it does septic tank contractors and services. In the 2001 Session, the Legislature requested the Department of Health (DOH) Technical Review and Advisory Panel (TRAP) to review and advise on the need for licensing the portable restroom industry. The TRAP was created by the 1996 Legislature to enhance DOH decision-making by drawing on the expertise of representatives from several groups that have an interest in onsite sewage treatment and disposal. The group consists of a soil scientist, a professional engineer, two representatives from the home-building industry, one representative from the county health departments, one representative from the real estate industry, a consumer with a science background, two representatives from the septic tank industry, and one representative from the environmental health profession. The TRAP submitted a report to the 2002 Legislature recommending that the portable restroom industry be licensed by DOH in the same manner as septic tank contractors.

Paragraph (k) of subsection (2) of s. 381.0066, F.S., requires an additional fee of \$5 to be added to each new onsite sewage treatment and disposal system permit issued during fiscal years 1996 – 2003. The fee is to be used for onsite sewage research, demonstration, and training projects. The research fee surcharge has been utilized by DOH to fund research on onsite systems in Florida. Most recently it supported the evaluation of advanced treatment options for onsite systems in the Florida Keys. The fee provides DOH with the ability to seek federal grants for research requiring matching funds.

The Sunrise Act, codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following: (1) that substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote; (2) that the skills the profession requires are specialized and readily measurable; (3) that other forms of regulation do not or cannot adequately protect the public; and (4) that the overall cost-effectiveness and economic impact of the proposed regulation is favorable. The act requires that, upon request, the proponents of regulation of a previously unregulated profession provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation to initially regulate a previously unregulated profession on the agency's resources to implement and enforce the regulation. The Department of Health has not requested this information.

### III. **Effect of Proposed Changes:**

**Section 1.** Creates part IV of ch. 489, F. S., consisting of the following sections.

*Section 489.661, F.S.*, defines the term “department” as the Department of Health and the term “portable restroom contractor” as a contractor:

- Whose services are unlimited in the portable restroom trade;
- Who has had at least three years' experience as a Florida-registered portable restroom contractor;
- Who has knowledge of the state health code law and rules; and
- Who has the experience, knowledge and skills to handle, deliver, and pick up sanitary portable restrooms, to install, safely handle, and maintain portable holding tanks, and to handle, transport and dispose of portable restroom and holding tank wastewater.

*Section 489.662, F.S.*, requires persons holding themselves out as portable restroom contractors to be registered with the Department of Health, and clarifies that this part does not prohibit plumbing contractors and septic tank contractors from engaging in the profession for which they are licensed.

*Section 489.663, F.S.*, requires application for registration to be made to DOH on forms prepared and furnished by the department and requires the department to:

- Administer coordinate and enforce the provisions of this part;
- Provide qualifications for applicants, administer the examination, and issue certificates of registration to qualified persons; and

- Adopt reasonable rules regarding ethical standards of practice, requirements for obtaining initial and renewal certificates of registration, disciplinary guidelines, and requirements for certification of partnerships and corporations.

The section permits the department to amend or repeal rules in accordance with ch. 120, F.S. It also provides eligibility standards for registration, including that:

- Registrants be of good moral character and factors which the department may consider in determining good moral character;
- An applicant pass an examination approved by the department which demonstrates a fundamental knowledge of the laws relating to installation, maintenance and wastewater disposal of portable restrooms, sinks and holding tanks;
- The applicant be at least 18 years of age;
- The applicant have a total of at least three years' active experience serving an apprenticeship under the control of a registered portable restroom contractor, but allowing substitution of related work experience or education for no more than two years of active contracting experience; allowing substitution of 30 hours of department-approved coursework for six months of work experience; requiring that out-of-state work experience be accepted on a year-for-year basis for any applicant who demonstrates that he or she holds a current license from another state which was issued upon completion of an examination and continuing education courses equivalent to those in this state (the equivalent examination must include the topics of state health code law and rules applicable to portable restrooms and the knowledge required to handle, deliver, and pick up sanitary portable restrooms; to install, handle, and maintain portable holding tanks; and to handle, transport, and dispose of domestic portable restroom and portable holding tank wastewater);
- Individuals from a state with no state certification who have successfully completed a written examination provided by the Portable Sanitation Association International are required to take the written portion of the examination that includes state health code law and rules;
- A person employed by and under the supervision of a licensed contractor be granted up to two years of related work experience; and
- The applicant not have a registration revoked in the past five years.

This section requires DOH to provide each applicant a copy of this part and applicable rules, and DOH is authorized to prepare and disseminate other materials and questionnaires necessary to effectuate the registration provisions of this part.

The section grants a person who was employed one or more years in this state by a portable restroom service holding a permit issued by the department on or before October 1, 2003, until October 1, 2004, to be registered by the department in accordance with this part and authorizes the person to continue to perform portable restroom contracting services until that time. Such persons are exempt until October 1, 2004, from the 3 years' experience requirement of s. 489.663(4)(d), F.S.

*Section 489.664, F.S.*, requires DOH to prescribe by rule the method for approval of continuing education courses and for renewal of annual registration which, at a minimum, shall include

continuing education requirements of not less than six classroom hours annually for portable restroom contractors.

*Section 489.665, F.S.*, permits the practice of or the offer to practice portable restroom contracting services by registrants through a parent corporation, corporation, subsidiary of a corporation, or partnership offering portable restroom contracting services to the public through registrants under this chapter as agents, employers, officers, or partners, under the following standards:

- One or more of the principal officers of the corporation or one or more partners of the partnership and all personnel of the corporation or partnership who act on its behalf as portable restroom contractors in this state are registered as provided by this part and if the corporation or partnership has been issued a certificate of authorization by the department as provided in this section;
- A registered contractor is the sole qualifying contractor for no more than one business that requests a certificate of authorization;
- A business organization that loses its qualifying contractor has 60 days following the date the qualifier terminates his or her affiliation within which to obtain another qualifying contractor. During this period, the business organization may complete any existing contract or continuing contract, but may not undertake any new contract. This period may be extended once by the department for an additional 60 days upon a showing of good cause;
- The section may not be construed to mean that a certificate of registration to practice portable restroom contracting must be held by a corporation;
- A corporation or partnership is not relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, and an individual practicing portable restroom contracting is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a corporation or partnership;
- A certificate of authorization is required for a corporation, a partnership, an association, or a person practicing under a fictitious name when offering portable restroom contracting services to the public, except that when an individual is practicing portable restroom contracting in his or her own given name, he or she is not required to register under this section;
- Each certification of authorization shall be renewed every two years;
- Each partnership and corporation certified under this section shall notify the department within one month after any change in the information contained in the application upon which the certification is based;
- Disciplinary action against a corporation or partnership is to be administered in the same manner and on the same grounds as disciplinary action against a registered portable restroom contractor; and
- When a certificate of authorization has been revoked, any person authorized by law to provide portable restroom contracting services may not use the name or fictitious name of the entity whose certificate was revoked or any other identifiers for the entity, including telephone numbers, advertisements, or logos.

*Section 489.666, F.S.*, provides for suspension or revocation of registration upon a showing that the registrant has:

- Violated any provision of this part;
- Violated any lawful order or rule rendered or adopted by the department;
- Obtained his or her registration or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts;
- Been found guilty of gross misconduct in the pursuit of his or her profession.

*Section 489.667, F.S.*, requires DOH to establish by rule fees for registration as a portable restroom contractor as follows:

- Application and examination fee: not less than \$25 nor more than \$75;
- Initial registration fee: not less than \$50 nor more than \$100;
- Renewal of registration fee: not less than \$50 nor more than \$100; and
- For certification of a partnership or corporation: not less than \$100 nor more than \$250.

Fees established are to be based on the actual costs incurred by the department in carrying out its registration and other related responsibilities under this part.

*Section 489.668, F.S.*, provides penalties which specify that:

- Any person who violates any provision of this part commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.;
- The department may deny a registration if it determines that an applicant does not meet all requirements of this part or has violated any provision of this part; and
- Any applicant aggrieved by such denial is entitled to a hearing, after reasonable notice thereof, upon filing a written request for such hearing in accordance with ch. 120, F.S.

**Section 2.** Amends paragraph (k) of subsection (2) of section 381.0066, F.S., to remove the limitation to fiscal years 1996-2003 on a \$5 research fee added to each new system permit issued for onsite sewage treatment and disposal system.

**Section 3.** Provides an effective date of October 1, 2003.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

**D. Other Constitutional Issues:**

The bill creates s. 489.663, F.S. In subsection (3) of this section, the bill requires the Department of Health to promulgate rules to administer the regulatory system created. The grant of rule-making authority is made open-ended by use of the phrase "including but not limited to." The rulemaking authority may therefore place the department in the position of promulgating rules which are an invalid exercise of delegated legislative authority, in violation of Article II, Section 3 of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The bill reinstates a fee that was set to expire at the end of fiscal year 2003.

**B. Private Sector Impact:**

Expenses to the industry will include travel and training fees paid to the private sector, and registration and examination fees paid to DOH.

**C. Government Sector Impact:**

The first year DOH expenses will relate to rule promulgation, training, examination development, and administration. Recurring DOH expenses will be related to registration application review, mailing, examination, enforcement, and travel expenses. The department estimated the first and second year expenses as \$34,785 and \$14,585, respectively. Revenues for these years are expected to be \$18,750 and \$16,125, respectively.

**VI. Technical Deficiencies:**

The bill creates s. 489.663, F.S., which describes qualifications which must be met in order for a person or corporation to be registered. In subsection (2) of this section, the bill requires DOH to provide qualifications for applicants, however, in subsection (4), the bill provides qualifications for applicants. The direction to DOH to provide qualifications is therefore redundant.

The Department of Business and Professional Regulation suggested that the provisions of this bill would be more appropriately located in ch. 381, F.S., which pertains to the public health responsibilities of the Department of Health, rather than in ch. 489, F.S., which pertains to regulation of construction, electrical, and septic tank contracting by the Department of Business and Professional Regulation.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---