

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 537 w/CS Environmental Health/Portable Restroom Contracting
SPONSOR(S): Bowen
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 476 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)	7 Y, 0 N	Chavis	Collins
2) Health Care	18 Y, 0 N w/CS	Chavis	Collins
3) Finance & Tax	23 Y, 0 N w/CS	Levin	Diez-Arguelles
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 537 creates s. 381.0069, F.S., providing for the regulation of portable restroom contractions, as follows:

- Provides definitions and requires registration of portable restroom contractors, requirements for registration, including: an examination, renewal, continuing education, and an exemption for specified entities from the provisions of this act;
- Provides a temporary exemption from the three year registration requirement subject to specified criteria with such exemption to expire on October 1, 2004;
- Provides for administration and rulemaking authority for the Department of Health (department);
- Provides for certification of partnerships and corporations;
- Provides grounds for suspension or revocation of registration; and
- Provides for fees, penalties, and prohibitions.

In addition, the bill provides for the continuation of the \$5 new system construction permit fee to be used for onsite sewage treatment and disposal system research, demonstration, and training projects. The department estimates that continuation of the fee *will generate approximately \$200,000 annually*, in fees and matching funds, to support onsite sewage program research. In FY 2001-2002, the department collected \$218,674 in fees and obtained \$130,436 in federal matching funds.

The bill takes effect on July 1, 2003.

The 2001 Legislature requested the department's Technical Review and Advisory Panel (panel) to review and advise on the need for licensing the portable restroom industry (industry). The panel submitted a report to the 2002 Legislature recommending that the industry be licensed by the department in the same manner as septic tank contractors due to environmental concerns.

Section 11.62, F.S., the Sunrise Act, requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation based on a showing of the following:

- That substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote;
- That the skills the profession requires are specialized and readily measurable;
- That the regulation will not have an unreasonable effect on job creation or job retention;

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- That other forms of regulation do not or cannot adequately protect the public; and
- That the overall cost-effectiveness and economic impact of the proposed regulation is favorable.

Subsections (4) and (5) of s. 11.62, F.S., also require the proponents of the legislation that provides for the regulation of an unregulated profession or occupation to provide to the state agency of jurisdiction, upon request of the agency, certain specified information, in writing, to the agency and to the legislative committees where the bill is referred. The Department of Health has not requested such information. In addition, such information has not been provided to the Subcommittee on Health Standards for review and consideration.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

1. The bill creates a licensing process for portable restroom contractors and services which parallels the existing registration language for septic tank contractors. This licensing process is based on the recommendations of the Department of Health’s (department) Technical Review and Advisory Panel.
2. The bill provides for the continuation of a \$5 new system construction permit fee. The fee is currently statutorily authorized to be collected on each new system construction permit issued during fiscal year 1996 to fiscal year 2003. The funds from the fee have been used for federal matching funds for onsite sewage treatment and disposal system research, demonstration, and training projects.
3. The bill provides minimum standards and licensing requirements in order to be classified as a “portable restroom contractor.”

B. EFFECT OF PROPOSED CHANGES:

HB 537 creates s. 381.0069, F.S., relating to portable restroom contracting. The bill:

- Provides definitions and requires registration of portable restroom contractors, requirements for registration, including: examination, renewal, continuing education, and an exemption for specified entities from the provisions of this act;
- Provides a temporary exemption from the three year registration requirement subject to specified criteria with such exemption to expire on October 1, 2004;
- Provides for administration and rulemaking authority for the Department of Health (department);
- Provides for certification of partnerships and corporations;
- Provides grounds for suspension or revocation of registration; and
- Provides for fees, penalties, and prohibitions.

In addition, the bill provides for the continuation of the \$5 new system construction permit fee to be used for onsite sewage treatment and disposal system research, demonstration, and training projects. This fee is currently set to expire at the end of fiscal year 2003.

The bill takes effect on July 1, 2003.

Onsite sewage treatment and Disposal Fees

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 has been used by the department for onsite sewage treatment and disposal system research,

demonstration, and training projects, including an evaluation of the advanced treatment options for onsite systems in the Florida Keys.

The funds generated by the fee have given the department the ability to seek federal grants for research requiring matching funds. In FY 2000-2001, the department collected \$195,069 in fees and obtained \$610,436 in matching funds.¹ In FY 2001-2002, the department collected \$218,674 in fees and obtained \$130,436 in matching funds.² In addition, over the years other research projects have included:

- Impact of Onsite Sewage Disposal Systems on Surface and Ground Water Quality;
- The Impact of Florida's Growth on the Use of Onsite Sewage Disposal Systems;
- Risk Assessment of Onsite Sewage Disposal Systems for Selected Florida Hydrologic Regions;
- Unsaturated Zone Monitoring Below Subsurface Wastewater Systems Serving Individual Homes in Florida;
- Performance monitoring and Ground Water Quality Impacts of Onsite Sewage Disposal Systems Subdivision Developments;
- Viral Study Summary;
- Onsite Sewage Disposal System Research on the Northern Periphery of Lake Okeechobee;
- An investigation of the Surface Water Contamination Potential from Onsite Sewage Disposal Systems in Turkey Creek Sub-basin of the Indian River Lagoon Basin; and
- The capability of Fine Sandy Soil for Septic Tank Effluent Treatment.

The department estimates that the continuation of the fee will generate approximately \$200,000 annually (in fees and matching funds) to support onsite sewage program research.

Technical Review and Advisory Panel

The Department of Health (department) 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's Technical Review and Advisory Panel (panel) to review and advise on the need for licensing the portable restroom industry. The panel was established in July, 1996, to assist the department in rulemaking and decision making by drawing on the expertise of representatives from several groups that are affected by onsite sewage treatment and disposal systems. The panel 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 panel submitted a report to the 2002 Legislature recommending that the portable restroom industry be licensed by the department in the same manner as septic tank contractors.

The Need For Licensing the Portable Restroom Industry In Florida 2002. Report to the Legislature - Findings

The Technical Review and Advisory Panel submitted a report to the Legislature on January 2002. The report included the following findings:

- The qualifications for persons operating portable restroom service companies should be similar to the qualifications for septic tank contractors as they both handle "onsite wastewater systems."

¹ Onsite Wastewater Management to Protect Suwannee Sound – EPA - \$50,436
FL Keys Nutrient Feasibility Study – EPA - \$560,000

² Onsite Wastewater Management to Protect Suwannee Sound – EPA - \$50,436
Costal Community Coliform & Nutrient Control Study – EPA - \$80,000

- The educational background of persons operating portable restroom service companies should be the same as the educational background for septic tank contractors.
- The work experience, while of similar duration, includes experience in the placement, maintenance and removal of portable restrooms and the handling, transport, treatment and disposal of portable restroom waste.
- Continuing education for persons providing portable restroom services should be specifically focused on the applicable state rules, public health, personal hygiene and environmental requirements of the location, permitting and service of portable restrooms and the proper handling, transport, treatment and disposal of portable restroom waste.
- The waste from portable restrooms differs from the waste from septic tanks in that it has not undergone anaerobic digestion and has had chemical preservatives added and these differences require different treatment and disposal procedures.

The Sunrise Act

Prior to the 1970s, occupational regulation in Florida was administered through several autonomous, independent boards appointed by the Governor. In the late 1970s, all occupational regulation was centralized in Florida's Department of Professional Regulation (DPR). However, substantial departmental reorganization moved oversight of health professions from DPR to the Agency for Health Care Administration to the Department of Health.

The Sunrise Act, s. 11.62(3), 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:

- That substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote;
- That the skills the profession requires are specialized and readily measurable;
- That the regulation will not have an unreasonable effect on job creation or job retention;
- That other forms of regulation do not or cannot adequately protect the public; and
- That the overall cost effectiveness and economic impact of the proposed regulation is favorable.

In addition, 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. The Department of Health has not requested this information.

Section 11.62(4), F.S., requires the proponents of the legislation to provide, in writing, to the agency with proposed jurisdiction, and to the legislative committees to which the legislation is referred to, the following information:

- The number of individuals or businesses that would be subject to the regulation;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A copy of any federal legislation mandating regulation;

- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.0069, F.S., F.S., relating to portable restroom contracting, providing definitions; registration, exemption of specified entities from the provisions of this act; temporary exemption from regulation requirements for specified individuals, examination, administration, rulemaking authority, renewal of registration, certification of partnerships and corporations; grounds for suspension or revocation of registration; fees; penalties and prohibitions.

Section 2. Amends s. 381.0066, F.S., to authorize the continuation of an additional permit fee to be used for research, demonstration, and training projects and for specified hands-on training centers.

Section 3. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 381.0066(2)(k), F.S., is amended to provide for the continuation of the \$5 fee to be added to each new system construction permit issued and requires the fee to be used for onsite sewage treatment and disposal system research, demonstration, and training projects. The department estimates that the research fee will generate approximately \$200,000 annually, in fees and matching funds, to support onsite sewage program research.

Part IV of chapter 489, F.S., is created to provide for the licensing and registration of portable restroom contracting. Estimated revenues, as provided by the Department of Health, are provided below:

<u>Estimated Revenues</u>	<u>Amount Year 1</u>	<u>Amount Year 2</u>
150 Exams @ \$25	\$ 3,750	
150 registrations @ \$50	\$ 7,500	
15 exams @ \$25		\$ 375
15 registrations @ \$50		\$ 750
75 authorizations @ \$100*	\$ 7,500	\$ 7,500
150 renewals @ \$50	_____	<u>\$ 7,500</u>
Total Estimated Revenues	\$18,750	\$16,125

Note: Revenues were based on current number of portable toilet service providers regulated by the department. Business authorizations are renewed every 2 years.

*The revenue shown for authorizations has been pro-rated to reflect an annual amount.

2. Expenditures:

Part IV of chapter 489, F.S. is created to provide for the licensing and registration of portable restroom contracting. Estimated expenditures, as provided by the Department of Health, are provided below:

<u>Non-recurring or First-Year Start-Up Effects</u>	<u>Amount</u> <u>Year 1</u>	<u>Amount</u> <u>Year 2</u>
Rule promulgation	\$10,000	
Examination development	\$ 2,000	
Travel for Training	\$ 5,000	
Examination administration	\$ 2,000	
File cabinets 2 @ \$600	<u>\$ 1,200</u>	
Total Non-Recurring	\$20,200	
<u>Recurring or Annualized Continuation Effects</u>	<u>Amount</u> <u>Year 1</u>	<u>Amount</u> <u>Year 2</u>
Printing	\$ 5,000	\$ 5,000
Mailing	\$ 1,200	\$ 1,200
Travel for training	\$ 3,000	\$ 3,000
Examination administration	\$ 2,000	\$ 2,000
Office supplies	\$ 385	\$ 385
Travel for enforcement	<u>\$ 3,000</u>	<u>\$ 3,000</u>
Total Recurring Costs	\$14,585	\$14,585

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of Health, the portable toilet companies will bear the direct costs of this proposal. Expenses for compliance will be traveling expenses to attend training, training course fees to course providers, and registration fees and examination fees to the department. Fees to the department will be about \$150 and \$350 per year/per provider. Continuing education courses cost about \$100 for 6 hours in the current market. The direct private sector benefit will come from the improved training resulting in reduced liability for environmental clean-up and fines for non-compliance.

Section 11.62, F.S., relating to Legislative review of proposed regulation of unregulated functions, requires certain specified information be provided by proponents of the legislation to the agency of jurisdiction, upon request of the agency. The Department of Health has not requested such information from the proponents. In addition, the section requires this information to be provided to the legislative committee for review. At the time of publication of this analysis, no such information has been provided to the Health Standards Subcommittee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the department to adopt "reasonable" rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer this part.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2003, the Health Standards Subcommittee adopted a "strike-everything" amendment which:

- More specifically defines "portable restrooms;"
- Clarifies the department's rulemaking authority;
- Specifies the timely renewal of registration and the inactive status of a license;
- Provides an exemption for specified entities from the provisions of this act;
- Provides a temporary exemption from registration requirements for individuals with specified experience within the state and provides an expiration for the exemption; and
- Authorizes the department to deny a registration, authorization, or registration renewal.

On April 2, 2003, the Health Care Committee adopted the amendment recommended by the subcommittee and reported the bill favorably with a CS.

The Committee on Finance and Tax adopted 2 amendments, which define a portable restroom contractor and permit the Department of Health to enter upon the business premises of any portable restroom contractor registered with the Department. The CS which resulted is the subject of this analysis.