

Bill No. CS for SB 2448

Amendment No. ____ Barcode 114110

CHAMBER ACTION

Senate

House

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Senator Saunders moved the following amendment:

Senate Amendment (with title amendment)

On page 9, line 11, through
page 13, line 7, delete those lines

and insert:

Section 6. Subsection (1) of section 381.0061, Florida Statutes, is amended to read:

381.0061 Administrative fines.--

(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which shall not exceed \$500 for each violation, for a violation of s. 381.006(16), s. 381.0065, s. 381.0066, s. 381.0069, s. 381.0072, or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of any of the provisions of chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 7. Paragraph (k) of subsection (2), paragraph

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1 (m) of subsection (3), paragraphs (d) and (e) of subsection
2 (4), and paragraphs (a) and (b) of subsection (5) of section
3 381.0065, Florida Statutes, are amended, and paragraph (v) is
4 added to subsection (4) of that section, to read:

5 381.0065 Onsite sewage treatment and disposal systems;
6 regulation.--

7 (2) DEFINITIONS.--As used in ss. 381.0065-381.0067,
8 the term:

9 (k) "Permanent nontidal surface water body" means a
10 perennial stream, a perennial river, an intermittent stream, a
11 perennial lake, a submerged marsh or swamp, a submerged wooded
12 marsh or swamp, a spring, or a seep, as identified on the most
13 recent quadrangle map, 7.5 minute series (topographic),
14 produced by the United States Geological Survey, or products
15 derived from that series. "Permanent nontidal surface water
16 body" shall also mean an artificial surface water body that
17 does not have an impermeable bottom and side and that is
18 designed to hold, or does hold, visible standing water for at
19 least 180 days of the year. However, a nontidal surface water
20 body that is drained, either naturally or artificially, where
21 the intent or the result is that such drainage be temporary,
22 shall be considered a permanent nontidal surface water body. A
23 nontidal surface water body that is drained of all visible
24 surface water, where the lawful intent or the result of such
25 drainage is that such drainage will be permanent, shall not be
26 considered a permanent nontidal surface water body. The
27 boundary of a permanent nontidal surface water body shall be
28 the mean annual flood line.

29 (3) DUTIES AND POWERS OF THE DEPARTMENT OF
30 HEALTH.--The department shall:

31 (m) Regulate the use of portable restrooms, mobile

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1 ~~restrooms, mobile shower trailers, and Permit and inspect~~
2 ~~portable or stationary temporary toilet services and holding~~
3 ~~tanks; regulate, permit, and inspect the companies that~~
4 ~~provide and service such facilities;.~~ The department shall
5 ~~review applications, perform site evaluations;,~~ and issue
6 permits for the temporary use of stationary holding tanks,
7 ~~privies, portable toilet services, or any other toilet~~
8 ~~facility that is intended for use on a permanent or~~
9 ~~nonpermanent basis, including facilities placed on~~
10 ~~construction sites when workers are present.~~ The department
11 may specify standards for the construction, maintenance, use,
12 and operation of any such facility ~~for temporary use.~~

13 (4) PERMITS; INSTALLATION; AND CONDITIONS.--A person
14 may not construct, repair, modify, abandon, or operate an
15 onsite sewage treatment and disposal system without first
16 obtaining a permit approved by the department. The department
17 may issue permits to carry out this section, but shall not
18 make the issuance of such permits contingent upon prior
19 approval by the Department of Environmental Protection. A
20 construction permit is valid for 18 months from the issuance
21 date and may be extended by the department for one 90-day
22 period under rules adopted by the department. A repair permit
23 is valid for 90 days from the date of issuance. An operating
24 permit must be obtained prior to the use of any aerobic
25 treatment unit or if the establishment generates commercial
26 waste. Buildings or establishments that use an aerobic
27 treatment unit or generate commercial waste shall be inspected
28 by the department at least annually to assure compliance with
29 the terms of the operating permit. The operating permit for a
30 commercial wastewater system is valid for 1 year from the date
31 of issuance and must be renewed annually. The operating permit

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1 for an aerobic treatment unit is valid for 2 years from the
2 date of issuance and must be renewed every 2 years. If all
3 information pertaining to the siting, location, and
4 installation conditions or repair of an onsite sewage
5 treatment and disposal system remains the same, a construction
6 or repair permit for the onsite sewage treatment and disposal
7 system may be transferred to another person, if the transferee
8 files, within 60 days after the transfer of ownership, an
9 amended application providing all corrected information and
10 proof of ownership of the property. There is no fee
11 associated with the processing of this supplemental
12 information. A person may not contract to construct, modify,
13 alter, repair, service, abandon, or maintain any portion of an
14 onsite sewage treatment and disposal system without being
15 registered under part III of chapter 489. A property owner
16 who personally performs construction, maintenance, or repairs
17 to a system serving his or her own owner-occupied
18 single-family residence is exempt from registration
19 requirements for performing such construction, maintenance, or
20 repairs on that residence, but is subject to all permitting
21 requirements. A municipality or political subdivision of the
22 state may not issue a building or plumbing permit for any
23 building that requires the use of an onsite sewage treatment
24 and disposal system unless the owner or builder has received a
25 construction permit for such system from the department. A
26 building or structure may not be occupied and a municipality,
27 political subdivision, or any state or federal agency may not
28 authorize occupancy until the department approves the final
29 installation of the onsite sewage treatment and disposal
30 system. A municipality or political subdivision of the state
31 may not approve any change in occupancy or tenancy of a

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1 building that uses an onsite sewage treatment and disposal
2 system until the department has reviewed the use of the system
3 with the proposed change, approved the change, and amended the
4 operating permit.

5 (d) Paragraphs (a) and (b) do not apply to any
6 proposed residential subdivision with more than 50 lots or to
7 any proposed commercial subdivision with more than 5 lots
8 where a publicly owned or investor-owned sewerage system is
9 available. It is the intent of this paragraph not to allow
10 development of additional proposed subdivisions in order to
11 evade the requirements of this paragraph. ~~The department~~
12 ~~shall report to the Legislature by February 1 of each~~
13 ~~odd-numbered year concerning the success in meeting this~~
14 ~~intent.~~

15 (e) Onsite sewage treatment and disposal systems must
16 not be placed closer than:

- 17 1. Seventy-five feet from a private potable well.
- 18 2. Two hundred feet from a public potable well serving
19 a residential or nonresidential establishment having a total
20 sewage flow of greater than 2,000 gallons per day.
- 21 3. One hundred feet from a public potable well serving
22 a residential or nonresidential establishment having a total
23 sewage flow of less than or equal to 2,000 gallons per day.
- 24 4. Fifty feet from any nonpotable well.
- 25 5. Ten feet from any storm sewer pipe, to the maximum
26 extent possible, but in no instance shall the setback be less
27 than 5 feet.
- 28 6. Seventy-five feet from the mean high-water line of
29 a tidally influenced surface water body.
- 30 7. Seventy-five feet from the mean ~~normal~~ annual flood
31 line of a permanent nontidal surface water body.

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1 8. Fifteen feet from the design high-water line of
2 retention areas, detention areas, or swales designed to
3 contain standing or flowing water for less than 72 hours after
4 a rainfall or the design high-water level of normally dry
5 drainage ditches or normally dry individual lot stormwater
6 retention areas.

7 (v) The department may require the submission of
8 detailed system construction plans that are prepared by a
9 professional engineer registered in this state. The department
10 shall establish by rule criteria for determining when such a
11 submission is required.

12 (5) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.--

13 (a) Department personnel who have reason to believe
14 noncompliance exists, may, at any reasonable time, enter the
15 premises permitted under ss. 381.0065-381.0066, ~~or~~ the
16 business premises of any septic tank contractor or master
17 septic tank contractor registered under part III of chapter
18 489, the business premises of any portable restroom contractor
19 registered under s. 381.0069, or any premises that the
20 department has reason to believe is being operated or
21 maintained not in compliance, to determine compliance with the
22 provisions of this section, part I of chapter 386, or part III
23 of chapter 489 or rules or standards adopted under ss.
24 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
25 III of chapter 489. As used in this paragraph, the term
26 "premises" does not include a residence or private building.
27 To gain entry to a residence or private building, the
28 department must obtain permission from the owner or occupant
29 or secure an inspection warrant from a court of competent
30 jurisdiction.

31 (b)1. The department may issue citations that may

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1 contain an order of correction or an order to pay a fine, or
2 both, for violations of ss. 381.0065-381.0067, s. 381.0069,
3 part I of chapter 386, or part III of chapter 489 or the rules
4 adopted by the department, when a violation of these sections
5 or rules is enforceable by an administrative or civil remedy,
6 or when a violation of these sections or rules is a
7 misdemeanor of the second degree. A citation issued under ss.
8 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
9 III of chapter 489 constitutes a notice of proposed agency
10 action.

11 2. A citation must be in writing and must describe the
12 particular nature of the violation, including specific
13 reference to the provisions of law or rule allegedly violated.

14 3. The fines imposed by a citation issued by the
15 department may not exceed \$500 for each violation. Each day
16 the violation exists constitutes a separate violation for
17 which a citation may be issued.

18 4. The department shall inform the recipient, by
19 written notice pursuant to ss. 120.569 and 120.57, of the
20 right to an administrative hearing to contest the citation
21 within 21 days after the date the citation is received. The
22 citation must contain a conspicuous statement that if the
23 recipient fails to pay the fine within the time allowed, or
24 fails to appear to contest the citation after having requested
25 a hearing, the recipient has waived the recipient's right to
26 contest the citation and must pay an amount up to the maximum
27 fine.

28 5. The department may reduce or waive the fine imposed
29 by the citation. In determining whether to reduce or waive the
30 fine, the department must consider the gravity of the
31 violation, the person's attempts at correcting the violation,

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1 and the person's history of previous violations including
 2 violations for which enforcement actions were taken under ss.
 3 381.0065-381.0067, s. 381.0069, part I of chapter 386, part
 4 III of chapter 489, or other provisions of law or rule.

5 6. Any person who willfully refuses to sign and accept
 6 a citation issued by the department commits a misdemeanor of
 7 the second degree, punishable as provided in s. 775.082 or s.
 8 775.083.

9 7. The department, pursuant to ss. 381.0065-381.0067,
 10 s. 381.0069, part I of chapter 386, or part III of chapter
 11 489, shall deposit any fines it collects in the county health
 12 department trust fund for use in providing services specified
 13 in those sections.

14 8. This section provides an alternative means of
 15 enforcing ss. 381.0065-381.0067, s. 381.0069, part I of
 16 chapter 386, and part III of chapter 489. This section does
 17 not prohibit the department from enforcing ss.
 18 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
 19 III of chapter 489, or its rules, by any other means. However,
 20 the department must elect to use only a single method of
 21 enforcement for each violation.

22 Section 8. Section 381.0069, Florida Statutes, is
 23 created to read:

24 381.0069 Portable restroom contracting.--

25 (1) DEFINITIONS.--As used in this section, the term:

26 (a) "Department" means the Department of Health.

27 (b) "Portable restroom" means any holding tank,
 28 portable toilet, mobile restroom trailer, mobile shower
 29 trailer, or portable restroom facility intended for use on a
 30 permanent or nonpermanent basis, including any such facility
 31 placed at a construction site when workers are present.

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1 (c) "Portable restroom contractor" means a portable
2 restroom contractor who has knowledge of state health code law
3 and rules and has the experience, knowledge, and skills to
4 handle, deliver, and pick up sanitary portable restrooms, to
5 install, safely handle, and maintain portable holding tanks,
6 and to handle, transport, and dispose of domestic portable
7 restroom and portable holding tank wastewater.

8 (2) REGISTRATION REQUIRED.--A person may not hold
9 himself or herself out as a portable restroom contractor in
10 this state unless he or she is registered by the department in
11 accordance with this section. However, this section does not
12 prohibit any person licensed pursuant to s. 489.105(3)(m) or
13 part III of chapter 489 from engaging in the profession for
14 which he or she is licensed. This section does not apply to an
15 entity defined in s. 403.70605(4)(b).

16 (3) ADMINISTRATION OF SECTION; REGISTRATION
17 QUALIFICATIONS; EXAMINATION.--

18 (a) Each person desiring to be registered pursuant to
19 this section shall apply to the department in writing upon
20 forms prepared and furnished by the department.

21 (b) The department shall administer, coordinate, and
22 enforce the provisions of this section, administer the
23 examination for applicants, and be responsible for the
24 granting of certificates of registration to qualified persons.

25 (c) The department shall adopt rules pursuant to ss.
26 120.536(1) and 120.54 to administer this section that
27 establish ethical standards of practice, requirements for
28 registering as a contractor, requirements for obtaining an
29 initial or renewal certificate of registration, disciplinary
30 guidelines, and requirements for the certification of
31 partnerships and corporations. The department may amend or

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1 repeal the rules in accordance with chapter 120.

2 (d) To be eligible for registration by the department
3 as a portable restroom contractor, the applicant shall:

4 1. Be of good moral character. In considering good
5 moral character, the department may consider any matter that
6 has a substantial connection between the good moral character
7 of the applicant and the professional responsibilities of a
8 registered contractor, including, but not limited to, the
9 applicant's being convicted or found guilty of, or entering a
10 plea of nolo contendere to, regardless of adjudication, a
11 crime in any jurisdiction that directly relates to the
12 practice of contracting or the ability to practice contracting
13 and previous disciplinary action involving portable restroom
14 contracting for which all judicial reviews have been
15 completed.

16 2. Pass an examination approved by the department
17 which demonstrates that the applicant has a fundamental
18 knowledge of the state laws relating to the installation,
19 maintenance, and wastewater disposal of portable restrooms,
20 portable sinks, and portable holding tanks.

21 3. Be at least 18 years of age.

22 4. Have a total of at least 3 years of active
23 experience serving an apprenticeship as a skilled worker under
24 the supervision and control of a registered portable restroom
25 contractor. Related work experience or educational experience
26 may be substituted for no more than 2 years of active
27 contracting experience. Each 30 hours of coursework approved
28 by the department shall be substituted for 6 months of work
29 experience. Out-of-state work experience shall be accepted on
30 a year-for-year basis for any applicant who demonstrates that
31 he or she holds a current license issued by another state for

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1 portable restroom contracting which was issued upon
2 satisfactory completion of an examination and continuing
3 education courses that are equivalent to the requirements in
4 this state. Individuals from a state with no state
5 certification who have successfully completed a written
6 examination provided by the Portable Sanitation Association
7 International shall only be required to take the written
8 portion of the examination that includes state health code law
9 and rules. For purposes of this section, an equivalent
10 examination must include the topics of state health code law
11 and rules applicable to portable restrooms and the knowledge
12 required to handle, deliver, and pick up sanitary portable
13 restrooms; to install, handle, and maintain portable holding
14 tanks; and to handle, transport, and dispose of domestic
15 portable restroom and portable holding tank wastewater. A
16 person employed by and under the supervision of such an
17 out-of-state licensed contractor shall be granted up to 2
18 years of related work experience.

19 5. Have not had a registration revoked the effective
20 date of which was less than 5 years before the application.

21 (e) The department shall provide each applicant for
22 registration pursuant to this section with a copy of this
23 section and any rules adopted under this section. The
24 department may also prepare and disseminate such other
25 material and questionnaires as it deems necessary to
26 effectuate the registration provisions of this section.

27 (f) Any person who was employed 1 or more years in
28 this state by a portable restroom service holding a permit
29 issued by the department on or before October 1, 2004, has
30 until October 1, 2005, to be registered by the department in
31 accordance with this section and may continue to perform

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1 portable restroom contracting services until that time. Such
2 persons are exempt until October 1, 2005, from the 3 years'
3 active work experience requirement of subparagraph (d)4.

4 (4) REGISTRATION RENEWAL.--

5 (a) The department shall prescribe by rule the method
6 for approval of continuing education courses and for renewal
7 of annual registration, for reverting to inactive status for
8 late filing of renewal applications, for allowing contractors
9 to hold their registration in inactive status for a specified
10 period, and for reactivating registrations. At a minimum,
11 annual renewal shall include continuing education requirements
12 of not less than 6 classroom hours annually for portable
13 restroom contractors.

14 (b) Certificates of registration shall become inactive
15 when a renewal application is not filed in a timely manner. A
16 certificate that has become inactive may be reactivated under
17 this section by application to the department. A registered
18 contractor may apply to the department for voluntary inactive
19 status at any time during the period of registration.

20 (5) CERTIFICATION OF PARTNERSHIPS AND CORPORATIONS.--

21 (a) The practice of or the offer to practice portable
22 restroom contracting services by registrants through a parent
23 corporation, corporation, subsidiary of a corporation, or
24 partnership offering portable restroom contracting services to
25 the public through registrants under this section as agents,
26 employers, officers, or partners is permitted if one or more
27 of the principal officers of the corporation or one or more
28 partners of the partnership and all personnel of the
29 corporation or partnership who act on its behalf as portable
30 restroom contractors in this state are registered as provided
31 by this section and if the corporation or partnership has been

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1 issued a certificate of authorization by the department as
2 provided in this subsection. An agent of the corporation may
3 be a manager of the corporation only when no officers of the
4 corporation reside in the State of Florida. In this case, the
5 corporation must provide a notarized letter of authorization
6 for one or more managers to act as the agent and registered
7 contractor on behalf of all matters of the corporation. This
8 authorization must provide the list of names and addresses of
9 all officers and include a statement that it in no way removes
10 any responsibility from the officers of the corporation. A
11 registered contractor may not be the sole qualifying
12 contractor for more than one business that requests a
13 certificate of authorization. A business organization that
14 loses its qualifying contractor has 60 days following the date
15 the qualifier terminates his or her affiliation within which
16 to obtain another qualifying contractor. During this period,
17 the business organization may complete any existing contract
18 or continuing contract but may not undertake any new contract.
19 This period may be extended once by the department for an
20 additional 60 days upon a showing of good cause. This
21 subsection may not be construed to mean that a certificate of
22 registration to practice portable restroom contracting must be
23 held by a corporation. A corporation or partnership is not
24 relieved of responsibility for the conduct or acts of its
25 agents, employees, or officers by reason of its compliance
26 with this subsection, and an individual practicing portable
27 restroom contracting is not relieved of responsibility for
28 professional services performed by reason of his or her
29 employment or relationship with a corporation or partnership.

30 (b) For the purposes of this subsection, a certificate
31 of authorization shall be required for a corporation, a

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1 partnership, an association, or a person practicing under a
2 fictitious name when offering portable restroom contracting
3 services to the public, except that when an individual is
4 practicing portable restroom contracting in his or her own
5 given name, he or she is not required to register under this
6 subsection.

7 (c) Each certification of authorization shall be
8 renewed every 2 years. Each partnership and corporation
9 certified under this subsection shall notify the department
10 within 1 month after any change in the information contained
11 in the application upon which the certification is based.

12 (d) Disciplinary action against a corporation or
13 partnership shall be administered in the same manner and on
14 the same grounds as disciplinary action against a registered
15 portable restroom contractor.

16 (e) When a certificate of authorization has been
17 revoked, any person authorized by law to provide portable
18 restroom contracting services may not use the name or
19 fictitious name of the entity whose certificate was revoked or
20 any other identifiers for the entity, including telephone
21 numbers, advertisements, or logos.

22 (6) SUSPENSION OR REVOCATION OF REGISTRATION.--A
23 certificate of registration may be suspended or revoked upon a
24 showing that the registrant has committed any of the
25 following:

26 (a) Violated any provision of this section.

27 (b) Violated any lawful order or rule rendered or
28 adopted by the department.

29 (c) Obtained his or her registration or any other
30 order, ruling, or authorization by means of fraud,
31 misrepresentation, or concealment of material facts.

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1 (d) Been found guilty of one or more violations of
2 this section, s. 381.0065, s. 386.041, or any rule adopted
3 pursuant to those sections.

4 (7) FEES; ESTABLISHMENT.--

5 (a) The department shall, by rule, establish fees as
6 follows:

7 1. For registration as a portable restroom contractor:

8 a. Application and examination fee: not less than \$25
9 nor more than \$75.

10 b. Initial registration fee: not less than \$50 nor
11 more than \$100.

12 c. Renewal of registration fee: not less than \$50 nor
13 more than \$100.

14 2. For certification of a partnership or corporation:
15 not less than \$100 nor more than \$250.

16 (b) Fees established pursuant to paragraph (a) shall
17 be based on the actual costs incurred by the department in
18 carrying out its registration and other related
19 responsibilities under this section.

20 (8) PENALTIES AND PROHIBITIONS.--

21 (a) A person who violates any provision of this
22 section commits a misdemeanor of the first degree, punishable
23 as provided in s. 775.082 or s. 775.083.

24 (b) The department may deny a registration,
25 authorization, or registration renewal if it determines that
26 an applicant does not meet all requirements of this section or
27 has violated any provision of this section or if there is any
28 outstanding administrative penalty with the department in
29 which the penalty is final agency action and all judicial
30 reviews are exhausted. Any applicant aggrieved by such denial
31 is entitled to a hearing, after reasonable notice thereof,

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1 upon filing a written request for such hearing in accordance
2 with chapter 120.

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5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 On page 1, line 26, through
8 page 2, line 2, delete those lines

9

10 and insert:

11 lead in blood; amending s. 381.0061, F.S.;

12 authorizing imposition of an administrative

13 fine for violation of portable restroom

14 contracting requirements; amending s. 381.0065,

15 F.S.; relating to onsite sewage treatment and

16 disposal systems; revising a definition;

17 specifying the department's powers and duties

18 with respect to the regulation of portable

19 restroom facilities and the companies that

20 provide and service them; deleting a

21 requirement that the department make certain

22 biennial reports to the Legislature;

23 authorizing the department to require the

24 submission of certain construction plans

25 pursuant to adopted rule; authorizing the

26 department to enter the business premises of

27 any portable restroom contractor for compliance

28 determination and enforcement; authorizing

29 issuance of a citation for violation of

30 portable restroom contracting requirements

31 which may contain an order of correction or a

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1 fine; creating s. 381.0069, F.S.; providing for
2 the regulation of portable restroom
3 contracting; providing definitions; requiring a
4 portable restroom contractor to apply for
5 registration with the Department of Health;
6 providing requirements for registration,
7 including an examination; providing exemptions;
8 providing for administration; providing
9 rulemaking authority; providing for renewal of
10 registration, including continuing education;
11 providing for certification of partnerships and
12 corporations; providing grounds for suspension
13 or revocation of registration; providing fees;
14 providing penalties and prohibitions;

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