

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

CHAMBER ACTION

Senate

House

1
2
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

7/WD/2R
04/28/2004 12:34 PM

.
. .
. .
. .
. .
. .

Senator Constantine 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. Section 381.0069, Florida Statutes, is
created to read:

381.0069 Portable restroom contracting.--

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

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

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

(c) "Portable restroom contractor" means a portable
restroom contractor who has knowledge of state health code law
and rules and has the experience, knowledge, and skills to
handle, deliver, and pick up sanitary portable restrooms, to

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 install, safely handle, and maintain portable holding tanks,
2 and to handle, transport, and dispose of domestic portable
3 restroom and portable holding tank wastewater.

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

12 (3) ADMINISTRATION OF SECTION; REGISTRATION
13 QUALIFICATIONS; EXAMINATION.--

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

17 (b) The department shall administer, coordinate, and
18 enforce the provisions of this section, administer the
19 examination for applicants, and be responsible for the
20 granting of certificates of registration to qualified persons.

21 (c) The department shall adopt rules pursuant to ss.
22 120.536(1) and 120.54 to administer this section that
23 establish ethical standards of practice, requirements for
24 registering as a contractor, requirements for obtaining an
25 initial or renewal certificate of registration, disciplinary
26 guidelines, and requirements for the certification of
27 partnerships and corporations. The department may amend or
28 repeal the rules in accordance with chapter 120.

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

31 1. Be of good moral character. In considering good

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

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

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

17 3. Be at least 18 years of age.

18 4. Have a total of at least 3 years of active
19 experience serving an apprenticeship as a skilled worker under
20 the supervision and control of a registered portable restroom
21 contractor. Related work experience or educational experience
22 may be substituted for no more than 2 years of active
23 contracting experience. Each 30 hours of coursework approved
24 by the department shall be substituted for 6 months of work
25 experience. Out-of-state work experience shall be accepted on
26 a year-for-year basis for any applicant who demonstrates that
27 he or she holds a current license issued by another state for
28 portable restroom contracting which was issued upon
29 satisfactory completion of an examination and continuing
30 education courses that are equivalent to the requirements in
31 this state. Individuals from a state with no state

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 certification who have successfully completed a written
2 examination provided by the Portable Sanitation Association
3 International shall only be required to take the written
4 portion of the examination that includes state health code law
5 and rules. For purposes of this section, an equivalent
6 examination must include the topics of state health code law
7 and rules applicable to portable restrooms and the knowledge
8 required to handle, deliver, and pick up sanitary portable
9 restrooms; to install, handle, and maintain portable holding
10 tanks; and to handle, transport, and dispose of domestic
11 portable restroom and portable holding tank wastewater. A
12 person employed by and under the supervision of such an
13 out-of-state licensed contractor shall be granted up to 2
14 years of related work experience.

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

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

23 (f) Any person who was employed 1 or more years in
24 this state by a portable restroom service holding a permit
25 issued by the department on or before October 1, 2004, has
26 until October 1, 2005, to be registered by the department in
27 accordance with this section and may continue to perform
28 portable restroom contracting services until that time. Such
29 persons are exempt until October 1, 2005, from the 3 years'
30 active work experience requirement of subparagraph (d)4.

31 (4) REGISTRATION RENEWAL.--

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

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

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

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

17 (a) The practice of or the offer to practice portable
18 restroom contracting services by registrants through a parent
19 corporation, corporation, subsidiary of a corporation, or
20 partnership offering portable restroom contracting services to
21 the public through registrants under this section as agents,
22 employers, officers, or partners is permitted if one or more
23 of the principal officers of the corporation or one or more
24 partners of the partnership and all personnel of the
25 corporation or partnership who act on its behalf as portable
26 restroom contractors in this state are registered as provided
27 by this section and if the corporation or partnership has been
28 issued a certificate of authorization by the department as
29 provided in this subsection. An agent of the corporation may
30 be a manager of the corporation only when no officers of the
31 corporation reside in the State of Florida. In this case, the

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

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

26 (b) For the purposes of this subsection, a certificate
27 of authorization shall be required for a corporation, a
28 partnership, an association, or a person practicing under a
29 fictitious name when offering portable restroom contracting
30 services to the public, except that when an individual is
31 practicing portable restroom contracting in his or her own

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 given name, he or she is not required to register under this
2 subsection.

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

8 (d) Disciplinary action against a corporation or
9 partnership shall be administered in the same manner and on
10 the same grounds as disciplinary action against a registered
11 portable restroom contractor.

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

18 (6) SUSPENSION OR REVOCATION OF REGISTRATION.--A
19 certificate of registration may be suspended or revoked upon a
20 showing that the registrant has committed any of the
21 following:

22 (a) Violated any provision of this part;

23 (b) Violated any lawful order or rule rendered or
24 adopted by the department;

25 (c) Obtained his or her registration or any other
26 order, ruling, or authorization by means of fraud,
27 misrepresentation, or concealment of material facts; or

28 (d) Been found guilty of one or more violations of
29 this part, s. 381.0065, s. 386.041, or any rule adopted
30 pursuant to those laws.

31 (7) FEES; ESTABLISHMENT.--

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 (a) The department shall, by rule, establish fees as
2 follows:

3 1. For registration as a portable restroom contractor:

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

6 b. Initial registration fee: not less than \$50 nor
7 more than \$100.

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

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

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

16 (8) PENALTIES AND PROHIBITIONS.--

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

20 (b) The department may deny a registration,
21 authorization, or registration renewal if it determines that
22 an applicant does not meet all requirements of this section or
23 has violated any provision of this section or if there is any
24 outstanding administrative penalty with the department in
25 which the penalty is final agency action and all judicial
26 reviews are exhausted. Any applicant aggrieved by such denial
27 is entitled to a hearing, after reasonable notice thereof,
28 upon filing a written request for such hearing in accordance
29 with chapter 120.

30 Section 7. Subsection (1) of section 381.0061, Florida
31 Statutes, is amended to read:

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 381.0061 Administrative fines.--

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

12 Section 8. Paragraph (k) of subsection (2), paragraph
 13 (m) of subsection (3), paragraphs (d) and (e) of subsection
 14 (4), and subsection (5) of section 381.0065, Florida Statutes,
 15 are amended, and paragraph (v) is added to subsection (4) of
 16 that section, to read:

17 381.0065 Onsite sewage treatment and disposal systems;
 18 regulation.--

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

21 (k) "Permanent nontidal surface water body" means a
 22 perennial stream, a perennial river, an intermittent stream, a
 23 perennial lake, a submerged marsh or swamp, a submerged wooded
 24 marsh or swamp, a spring, or a seep, as identified on the most
 25 recent quadrangle map, 7.5 minute series (topographic),
 26 produced by the United States Geological Survey, or products
 27 derived from that series. "Permanent nontidal surface water
 28 body" shall also mean an artificial surface water body that
 29 does not have an impermeable bottom and side and that is
 30 designed to hold, or does hold, visible standing water for at
 31 least 180 days of the year. However, a nontidal surface water

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 body that is drained, either naturally or artificially, where
2 the intent or the result is that such drainage be temporary,
3 shall be considered a permanent nontidal surface water body. A
4 nontidal surface water body that is drained of all visible
5 surface water, where the lawful intent or the result of such
6 drainage is that such drainage will be permanent, shall not be
7 considered a permanent nontidal surface water body. The
8 boundary of a permanent nontidal surface water body shall be
9 the mean annual flood line.

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

12 (m) Regulate the use of portable restrooms, mobile
13 restrooms, mobile shower trailers, and Permit and inspect
14 portable or stationary temporary toilet services and holding
15 tanks; regulate, permit, and inspect the companies that
16 provide and service such facilities;. ~~The department shall~~
17 ~~review applications, perform site evaluations; and issue~~
18 ~~permits for the temporary use of stationary holding tanks,~~
19 ~~privies, portable toilet services, or any other toilet~~
20 ~~facility that is intended for use on a permanent or~~
21 ~~nonpermanent basis, including facilities placed on~~
22 ~~construction sites when workers are present. The department~~
23 ~~may specify standards for the construction, maintenance, use,~~
24 ~~and operation of any such facility for temporary use.~~

25 (4) PERMITS; INSTALLATION; AND CONDITIONS.--A person
26 may not construct, repair, modify, abandon, or operate an
27 onsite sewage treatment and disposal system without first
28 obtaining a permit approved by the department. The department
29 may issue permits to carry out this section, but shall not
30 make the issuance of such permits contingent upon prior
31 approval by the Department of Environmental Protection. A

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 construction permit is valid for 18 months from the issuance
2 date and may be extended by the department for one 90-day
3 period under rules adopted by the department. A repair permit
4 is valid for 90 days from the date of issuance. An operating
5 permit must be obtained prior to the use of any aerobic
6 treatment unit or if the establishment generates commercial
7 waste. Buildings or establishments that use an aerobic
8 treatment unit or generate commercial waste shall be inspected
9 by the department at least annually to assure compliance with
10 the terms of the operating permit. The operating permit for a
11 commercial wastewater system is valid for 1 year from the date
12 of issuance and must be renewed annually. The operating permit
13 for an aerobic treatment unit is valid for 2 years from the
14 date of issuance and must be renewed every 2 years. If all
15 information pertaining to the siting, location, and
16 installation conditions or repair of an onsite sewage
17 treatment and disposal system remains the same, a construction
18 or repair permit for the onsite sewage treatment and disposal
19 system may be transferred to another person, if the transferee
20 files, within 60 days after the transfer of ownership, an
21 amended application providing all corrected information and
22 proof of ownership of the property. There is no fee
23 associated with the processing of this supplemental
24 information. A person may not contract to construct, modify,
25 alter, repair, service, abandon, or maintain any portion of an
26 onsite sewage treatment and disposal system without being
27 registered under part III of chapter 489. A property owner
28 who personally performs construction, maintenance, or repairs
29 to a system serving his or her own owner-occupied
30 single-family residence is exempt from registration
31 requirements for performing such construction, maintenance, or

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 repairs on that residence, but is subject to all permitting
2 requirements. A municipality or political subdivision of the
3 state may not issue a building or plumbing permit for any
4 building that requires the use of an onsite sewage treatment
5 and disposal system unless the owner or builder has received a
6 construction permit for such system from the department. A
7 building or structure may not be occupied and a municipality,
8 political subdivision, or any state or federal agency may not
9 authorize occupancy until the department approves the final
10 installation of the onsite sewage treatment and disposal
11 system. A municipality or political subdivision of the state
12 may not approve any change in occupancy or tenancy of a
13 building that uses an onsite sewage treatment and disposal
14 system until the department has reviewed the use of the system
15 with the proposed change, approved the change, and amended the
16 operating permit.

17 (d) Paragraphs (a) and (b) do not apply to any
18 proposed residential subdivision with more than 50 lots or to
19 any proposed commercial subdivision with more than 5 lots
20 where a publicly owned or investor-owned sewerage system is
21 available. It is the intent of this paragraph not to allow
22 development of additional proposed subdivisions in order to
23 evade the requirements of this paragraph. ~~The department~~
24 ~~shall report to the Legislature by February 1 of each~~
25 ~~odd-numbered year concerning the success in meeting this~~
26 ~~intent.~~

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

- 29 1. Seventy-five feet from a private potable well.
- 30 2. Two hundred feet from a public potable well serving
- 31 a residential or nonresidential establishment having a total

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 sewage flow of greater than 2,000 gallons per day.

2 3. One hundred feet from a public potable well serving
3 a residential or nonresidential establishment having a total
4 sewage flow of less than or equal to 2,000 gallons per day.

5 4. Fifty feet from any nonpotable well.

6 5. Ten feet from any storm sewer pipe, to the maximum
7 extent possible, but in no instance shall the setback be less
8 than 5 feet.

9 6. Seventy-five feet from the mean high-water line of
10 a tidally influenced surface water body.

11 7. Seventy-five feet from the mean ~~normal~~ annual flood
12 line of a permanent nontidal surface water body.

13 8. Fifteen feet from the design high-water line of
14 retention areas, detention areas, or swales designed to
15 contain standing or flowing water for less than 72 hours after
16 a rainfall or the design high-water level of normally dry
17 drainage ditches or normally dry individual lot stormwater
18 retention areas.

19 (v) The department may require the submission of
20 detailed system construction plans that are prepared by a
21 professional engineer registered in this state. The department
22 shall establish by rule criteria for determining when such a
23 submission is required.

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

25 (a) Department personnel who have reason to believe
26 noncompliance exists, may, at any reasonable time, enter the
27 premises permitted under ss. 381.0065-381.0066, ~~or~~ the
28 business premises of any septic tank contractor or master
29 septic tank contractor registered under part III of chapter
30 489, the business premises of any portable restroom contractor
31 registered under s. 381.0069, or any premises that the

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 department has reason to believe is being operated or
2 maintained not in compliance, to determine compliance with the
3 provisions of this section, part I of chapter 386, or part III
4 of chapter 489 or rules or standards adopted under ss.
5 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
6 III of chapter 489. As used in this paragraph, the term
7 "premises" does not include a residence or private building.
8 To gain entry to a residence or private building, the
9 department must obtain permission from the owner or occupant
10 or secure an inspection warrant from a court of competent
11 jurisdiction.

12 (b)1. The department may issue citations that may
13 contain an order of correction or an order to pay a fine, or
14 both, for violations of ss. 381.0065-381.0067, s. 381.0069,
15 part I of chapter 386, or part III of chapter 489 or the rules
16 adopted by the department, when a violation of these sections
17 or rules is enforceable by an administrative or civil remedy,
18 or when a violation of these sections or rules is a
19 misdemeanor of the second degree. A citation issued under ss.
20 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
21 III of chapter 489 constitutes a notice of proposed agency
22 action.

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

26 3. The fines imposed by a citation issued by the
27 department may not exceed \$500 for each violation. Each day
28 the violation exists constitutes a separate violation for
29 which a citation may be issued.

30 4. The department shall inform the recipient, by
31 written notice pursuant to ss. 120.569 and 120.57, of the

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 right to an administrative hearing to contest the citation
2 within 21 days after the date the citation is received. The
3 citation must contain a conspicuous statement that if the
4 recipient fails to pay the fine within the time allowed, or
5 fails to appear to contest the citation after having requested
6 a hearing, the recipient has waived the recipient's right to
7 contest the citation and must pay an amount up to the maximum
8 fine.

9 5. The department may reduce or waive the fine imposed
10 by the citation. In determining whether to reduce or waive the
11 fine, the department must consider the gravity of the
12 violation, the person's attempts at correcting the violation,
13 and the person's history of previous violations including
14 violations for which enforcement actions were taken under ss.
15 381.0065-381.0067, s. 381.0069, part I of chapter 386, part
16 III of chapter 489, or other provisions of law or rule.

17 6. Any person who willfully refuses to sign and accept
18 a citation issued by the department commits a misdemeanor of
19 the second degree, punishable as provided in s. 775.082 or s.
20 775.083.

21 7. The department, pursuant to ss. 381.0065-381.0067,
22 s. 381.0069, part I of chapter 386, or part III of chapter
23 489, shall deposit any fines it collects in the county health
24 department trust fund for use in providing services specified
25 in those sections.

26 8. This section provides an alternative means of
27 enforcing ss. 381.0065-381.0067, s. 381.0069, part I of
28 chapter 386, and part III of chapter 489. This section does
29 not prohibit the department from enforcing ss.
30 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
31 III of chapter 489, or its rules, by any other means. However,

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 the department must elect to use only a single method of
2 enforcement for each violation.

3

4 (Redesignate subsequent sections.)

5

6

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

8 And the title is amended as follows:

9

On page 1, line 26, through

10

page 2, line 2, delete those lines

11

12 and insert:

13

lead in blood; creating s. 381.0069, F.S.;

14

providing for the regulation of portable

15

restroom contracting; providing definitions;

16

requiring a portable restroom contractor to

17

apply for registration with the Department of

18

Health; providing requirements for

19

registration, including an examination;

20

providing for administration; providing

21

rulemaking authority; providing for renewal of

22

registration, including continuing education;

23

providing for certification of partnerships and

24

corporations; providing grounds for suspension

25

or revocation of registration; providing fees;

26

providing penalties and prohibitions; amending

27

s. 381.0061, F.S.; authorizing imposition of an

28

administrative fine for violation of portable

29

restroom contracting requirements; amending s.

30

381.0065, F.S., relating to onsite sewage

31

treatment and disposal systems; revising a

Bill No. CS for SB 2448

Amendment No. ____ Barcode 841188

1 definition; specifying the department's powers
2 and duties with respect to the regulation of
3 portable restroom facilities and the companies
4 that provide and service them; deleting a
5 requirement that the department make certain
6 biennial reports to the Legislature;
7 authorizing the department to require the
8 submission of certain construction plans
9 pursuant to adopted rule; authorizing the
10 department to enter the business premises of
11 any portable restroom contractor for compliance
12 determination and enforcement; authorizing
13 issuance of a citation for violation of
14 portable restroom contracting requirements
15 which may contain an order of correction or a
16 fine; amending s. 381.0066,

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31