

By the Committees on Finance and Taxation; Health, Aging, and Long-Term Care; and Senator Constantine

314-1688-04

1 A bill to be entitled
2 An act relating to environmental health;
3 creating s. 381.0069, F.S.; providing for the
4 regulation of portable restroom contracting;
5 providing definitions; requiring a portable
6 restroom contractor to apply for registration
7 with the Department of Health; providing
8 requirements for registration, including an
9 examination; providing for administration;
10 providing rulemaking authority; providing for
11 renewal of registration, including continuing
12 education; providing for certification of
13 partnerships and corporations; providing
14 grounds for suspension or revocation of
15 registration; providing fees; providing
16 penalties and prohibitions; amending s.
17 381.0061, F.S.; authorizing imposition of an
18 administrative fine for violation of portable
19 restroom contracting requirements; amending s.
20 381.0065, F.S.; specifying the department's
21 powers and duties with respect to the
22 regulation of portable restroom facilities and
23 the companies that provide and service them;
24 authorizing the department to enter the
25 business premises of any portable restroom
26 contractor for compliance determination and
27 enforcement; authorizing issuance of a citation
28 for violation of portable restroom contracting
29 requirements which may contain an order of
30 correction or a fine; amending s. 381.0066,
31 F.S.; authorizing the continuation of permit

1 fees for system construction permits for onsite
2 sewage treatment and disposal systems;
3 providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Section 381.0069, Florida Statutes, is
8 created to read:

9 381.0069 Portable restroom contracting.--

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

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

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

17 (c) "Portable restroom contractor" means a portable
18 restroom contractor who has knowledge of state health code law
19 and rules and has the experience, knowledge, and skills to
20 handle, deliver, and pick up sanitary portable restrooms, to
21 install, safely handle, and maintain portable holding tanks,
22 and to handle, transport, and dispose of domestic portable
23 restroom and portable holding tank wastewater.

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

1 (3) ADMINISTRATION OF SECTION; REGISTRATION
2 QUALIFICATIONS; EXAMINATION.--

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

6 (b) The department shall administer, coordinate, and
7 enforce the provisions of this section, administer the
8 examination for applicants, and be responsible for the
9 granting of certificates of registration to qualified persons.

10 (c) The department shall adopt rules pursuant to ss.
11 120.536(1) and 120.54 to administer this section that
12 establish ethical standards of practice, requirements for
13 registering as a contractor, requirements for obtaining an
14 initial or renewal certificate of registration, disciplinary
15 guidelines, and requirements for the certification of
16 partnerships and corporations. The department may amend or
17 repeal the rules in accordance with chapter 120.

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

20 1. Be of good moral character. In considering good
21 moral character, the department may consider any matter that
22 has a substantial connection between the good moral character
23 of the applicant and the professional responsibilities of a
24 registered contractor, including, but not limited to, the
25 applicant's being convicted or found guilty of, or entering a
26 plea of nolo contendere to, regardless of adjudication, a
27 crime in any jurisdiction that directly relates to the
28 practice of contracting or the ability to practice contracting
29 and previous disciplinary action involving portable restroom
30 contracting for which all judicial reviews have been
31 completed.

1 2. Pass an examination approved by the department
2 which demonstrates that the applicant has a fundamental
3 knowledge of the state laws relating to the installation,
4 maintenance, and wastewater disposal of portable restrooms,
5 portable sinks, and portable holding tanks.

6 3. Be at least 18 years of age.

7 4. Have a total of at least 3 years of active
8 experience serving an apprenticeship as a skilled worker under
9 the supervision and control of a registered portable restroom
10 contractor. Related work experience or educational experience
11 may be substituted for no more than 2 years of active
12 contracting experience. Each 30 hours of coursework approved
13 by the department shall be substituted for 6 months of work
14 experience. Out-of-state work experience shall be accepted on
15 a year-for-year basis for any applicant who demonstrates that
16 he or she holds a current license issued by another state for
17 portable restroom contracting which was issued upon
18 satisfactory completion of an examination and continuing
19 education courses that are equivalent to the requirements in
20 this state. Individuals from a state with no state
21 certification who have successfully completed a written
22 examination provided by the Portable Sanitation Association
23 International shall only be required to take the written
24 portion of the examination that includes state health code law
25 and rules. For purposes of this section, an equivalent
26 examination must include the topics of state health code law
27 and rules applicable to portable restrooms and the knowledge
28 required to handle, deliver, and pick up sanitary portable
29 restrooms; to install, handle, and maintain portable holding
30 tanks; and to handle, transport, and dispose of domestic
31 portable restroom and portable holding tank wastewater. A

1 person employed by and under the supervision of such an
2 out-of-state licensed contractor shall be granted up to 2
3 years of related work experience.

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

6 (e) The department shall provide each applicant for
7 registration pursuant to this section with a copy of this
8 section and any rules adopted under this section. The
9 department may also prepare and disseminate such other
10 material and questionnaires as it deems necessary to
11 effectuate the registration provisions of this section.

12 (f) Any person who was employed 1 or more years in
13 this state by a portable restroom service holding a permit
14 issued by the department on or before October 1, 2004, has
15 until October 1, 2005, to be registered by the department in
16 accordance with this section and may continue to perform
17 portable restroom contracting services until that time. Such
18 persons are exempt until October 1, 2005, from the 3 years'
19 active work experience requirement of subparagraph (d)4.

20 (4) REGISTRATION RENEWAL.--

21 (a) The department shall prescribe by rule the method
22 for approval of continuing education courses and for renewal
23 of annual registration, for reverting to inactive status for
24 late filing of renewal applications, for allowing contractors
25 to hold their registration in inactive status for a specified
26 period, and for reactivating registrations. At a minimum,
27 annual renewal shall include continuing education requirements
28 of not less than 6 classroom hours annually for portable
29 restroom contractors.

30 (b) Certificates of registration shall become inactive
31 when a renewal application is not filed in a timely manner. A

1 certificate that has become inactive may be reactivated under
2 this section by application to the department. A registered
3 contractor may apply to the department for voluntary inactive
4 status at any time during the period of registration.

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

6 (a) The practice of or the offer to practice portable
7 restroom contracting services by registrants through a parent
8 corporation, corporation, subsidiary of a corporation, or
9 partnership offering portable restroom contracting services to
10 the public through registrants under this section as agents,
11 employers, officers, or partners is permitted if one or more
12 of the principal officers of the corporation or one or more
13 partners of the partnership and all personnel of the
14 corporation or partnership who act on its behalf as portable
15 restroom contractors in this state are registered as provided
16 by this section and if the corporation or partnership has been
17 issued a certificate of authorization by the department as
18 provided in this subsection. An agent of the corporation may
19 be a manager of the corporation only when no officers of the
20 corporation reside in the State of Florida. In this case, the
21 corporation must provide a notarized letter of authorization
22 for one or more managers to act as the agent and registered
23 contractor on behalf of all matters of the corporation. This
24 authorization must provide the list of names and addresses of
25 all officers and include a statement that it in no way removes
26 any responsibility from the officers of the corporation. A
27 registered contractor may not be the sole qualifying
28 contractor for more than one business that requests a
29 certificate of authorization. A business organization that
30 loses its qualifying contractor has 60 days following the date
31 the qualifier terminates his or her affiliation within which

1 to obtain another qualifying contractor. During this period,
2 the business organization may complete any existing contract
3 or continuing contract but may not undertake any new contract.
4 This period may be extended once by the department for an
5 additional 60 days upon a showing of good cause. This
6 subsection may not be construed to mean that a certificate of
7 registration to practice portable restroom contracting must be
8 held by a corporation. A corporation or partnership is not
9 relieved of responsibility for the conduct or acts of its
10 agents, employees, or officers by reason of its compliance
11 with this subsection, and an individual practicing portable
12 restroom contracting is not relieved of responsibility for
13 professional services performed by reason of his or her
14 employment or relationship with a corporation or partnership.

15 (b) For the purposes of this subsection, a certificate
16 of authorization shall be required for a corporation, a
17 partnership, an association, or a person practicing under a
18 fictitious name when offering portable restroom contracting
19 services to the public, except that when an individual is
20 practicing portable restroom contracting in his or her own
21 given name, he or she is not required to register under this
22 subsection.

23 (c) Each certification of authorization shall be
24 renewed every 2 years. Each partnership and corporation
25 certified under this subsection shall notify the department
26 within 1 month after any change in the information contained
27 in the application upon which the certification is based.

28 (d) Disciplinary action against a corporation or
29 partnership shall be administered in the same manner and on
30 the same grounds as disciplinary action against a registered
31 portable restroom contractor.

1 (e) When a certificate of authorization has been
2 revoked, any person authorized by law to provide portable
3 restroom contracting services may not use the name or
4 fictitious name of the entity whose certificate was revoked or
5 any other identifiers for the entity, including telephone
6 numbers, advertisements, or logos.

7 (6) SUSPENSION OR REVOCATION OF REGISTRATION.--A
8 certificate of registration may be suspended or revoked upon a
9 showing that the registrant has committed any of the
10 following:

11 (a) Violated any provision of this part;

12 (b) Violated any lawful order or rule rendered or
13 adopted by the department;

14 (c) Obtained his or her registration or any other
15 order, ruling, or authorization by means of fraud,
16 misrepresentation, or concealment of material facts; or

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

20 (7) FEES; ESTABLISHMENT.--

21 (a) The department shall, by rule, establish fees as
22 follows:

23 1. For registration as a portable restroom contractor:

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

26 b. Initial registration fee: not less than \$50 nor
27 more than \$100.

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

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

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

5 (8) PENALTIES AND PROHIBITIONS.--

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

9 (b) The department may deny a registration,
10 authorization, or registration renewal if it determines that
11 an applicant does not meet all requirements of this section or
12 has violated any provision of this section or if there is any
13 outstanding administrative penalty with the department in
14 which the penalty is final agency action and all judicial
15 reviews are exhausted. Any applicant aggrieved by such denial
16 is entitled to a hearing, after reasonable notice thereof,
17 upon filing a written request for such hearing in accordance
18 with chapter 120.

19 Section 2. Subsection (1) of section 381.0061, Florida
20 Statutes, is amended to read:

21 381.0061 Administrative fines.--

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

1 Section 3. Paragraph (m) of subsection (3) and
2 subsection (5) of section 381.0065, Florida Statutes, are
3 amended to read:

4 381.0065 Onsite sewage treatment and disposal systems;
5 regulation.--

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

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

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

22 (a) Department personnel who have reason to believe
23 noncompliance exists, may, at any reasonable time, enter the
24 premises permitted under ss. 381.0065-381.0066, ~~or~~ the
25 business premises of any septic tank contractor or master
26 septic tank contractor registered under part III of chapter
27 489, the business premises of any portable restroom contractor
28 registered under s. 381.0069, or any premises that the
29 department has reason to believe is being operated or
30 maintained not in compliance, to determine compliance with the
31 provisions of this section, part I of chapter 386, or part III

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

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

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

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

27 4. The department shall inform the recipient, by
28 written notice pursuant to ss. 120.569 and 120.57, of the
29 right to an administrative hearing to contest the citation
30 within 21 days after the date the citation is received. The
31 citation must contain a conspicuous statement that if the

1 recipient fails to pay the fine within the time allowed, or
2 fails to appear to contest the citation after having requested
3 a hearing, the recipient has waived the recipient's right to
4 contest the citation and must pay an amount up to the maximum
5 fine.

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

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

18 7. The department, pursuant to ss. 381.0065-381.0067,
19 s. 381.0069, part I of chapter 386, or part III of chapter
20 489, shall deposit any fines it collects in the county health
21 department trust fund for use in providing services specified
22 in those sections.

23 8. This section provides an alternative means of
24 enforcing ss. 381.0065-381.0067, s. 381.0069, part I of
25 chapter 386, and part III of chapter 489. This section does
26 not prohibit the department from enforcing ss.
27 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
28 III of chapter 489, or its rules, by any other means. However,
29 the department must elect to use only a single method of
30 enforcement for each violation.

31

1 Section 4. Paragraph (k) of subsection (2) of section
2 381.0066, Florida Statutes, is amended to read:

3 381.0066 Onsite sewage treatment and disposal systems;
4 fees.--

5 (2) The minimum fees in the following fee schedule
6 apply until changed by rule by the department within the
7 following limits:

8 (k) Research: An additional \$5 fee shall be added to
9 each new system construction permit issued ~~during fiscal years~~
10 ~~1996-2004~~ to be used for onsite sewage treatment and disposal
11 system research, demonstration, and training projects. Five
12 dollars from any repair permit fee collected under this
13 section shall be used for funding the hands-on training
14 centers described in s. 381.0065(3)(j).

15
16 The funds collected pursuant to this subsection must be
17 deposited in a trust fund administered by the department, to
18 be used for the purposes stated in this section and ss.
19 381.0065 and 381.00655.

20 Section 5. This act shall take effect July 1, 2004.

21
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 CS/SB 368

25 The committee substitute clarifies that in order for a
26 certificate of registration to be suspended or revoked, the
27 portable restroom contractor must be in violation of just one
28 of four violations, instead of all four.
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31