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A bill to be entitled

An act relating to environmental health; creating s. 381.0069, F.S.; providing for the regulation of portable restroom contracting; providing definitions; requiring a portable restroom contractor to apply for registration with the Department of Health; providing requirements for registration, including an examination; providing exemptions; providing for administration; providing rulemaking authority; providing for renewal of registration, including continuing education; providing for certification of partnerships and corporations; providing grounds for suspension or revocation of registration; providing fees; providing penalties and prohibitions; amending s. 381.0061, F.S.; authorizing imposition of an administrative fine for violation of portable restroom contracting requirements; amending s. 381.0065, F.S.; specifying the department's powers and duties with respect to the regulation of portable restroom facilities and the companies that provide and service them; authorizing the department to enter the business premises of any portable restroom contractor for compliance determination and enforcement; authorizing issuance of a citation for violation of portable restroom contracting requirements which may contain an order of correction or a fine; amending s. 381.0066, F.S.; authorizing the continuation of permit fees for system construction permits for onsite sewage treatment and disposal systems; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:

31

32 Section 1. Section 381.0069, Florida Statutes, is created
33 to read:

34 381.0069 Portable restroom contracting.--

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

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

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

42 (c) "Portable restroom contractor" means a portable
43 restroom contractor who has knowledge of state health code law
44 and rules and has the experience, knowledge, and skills to
45 handle, deliver, and pick up sanitary portable restrooms, to
46 install, safely handle, and maintain portable holding tanks, and
47 to handle, transport, and dispose of domestic portable restroom
48 and portable holding tank wastewater.

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

57 (3) ADMINISTRATION OF SECTION; REGISTRATION QUALIFICATIONS;
58 EXAMINATION.--

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

62 (b) The department shall administer, coordinate, and
 63 enforce the provisions of this section, administer the
 64 examination for applicants, and be responsible for the granting
 65 of certificates of registration to qualified persons.

66 (c) The department shall adopt rules pursuant to ss.
 67 120.536(1) and 120.54 to administer this section that establish
 68 ethical standards of practice, requirements for registering as a
 69 contractor, requirements for obtaining an initial or renewal
 70 certificate of registration, disciplinary guidelines, and
 71 requirements for the certification of partnerships and
 72 corporations. The department may amend or repeal the rules in
 73 accordance with chapter 120.

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

76 1. Be of good moral character. In considering good moral
 77 character, the department may consider any matter that has a
 78 substantial connection between the good moral character of the
 79 applicant and the professional responsibilities of a registered
 80 contractor, including, but not limited to, the applicant's being
 81 convicted or found guilty of, or entering a plea of nolo
 82 contendere to, regardless of adjudication, a crime in any
 83 jurisdiction that directly relates to the practice of contracting
 84 or the ability to practice contracting and previous disciplinary
 85 action involving portable restroom contracting for which all
 86 judicial reviews have been completed.

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87 2. Pass an examination approved by the department which
 88 demonstrates that the applicant has a fundamental knowledge of
 89 the state laws relating to the installation, maintenance, and
 90 wastewater disposal of portable restrooms, portable sinks, and
 91 portable holding tanks.

92 3. Be at least 18 years of age.

93 4. Have a total of at least 3 years of active experience
 94 servicing an apprenticeship as a skilled worker under the
 95 supervision and control of a registered portable restroom
 96 contractor. Related work experience or educational experience may
 97 be substituted for no more than 2 years of active contracting
 98 experience. Each 30 hours of coursework approved by the
 99 department shall be substituted for 6 months of work experience.
 100 Out-of-state work experience shall be accepted on a year-for-year
 101 basis for any applicant who demonstrates that he or she holds a
 102 current license issued by another state for portable restroom
 103 contracting which was issued upon satisfactory completion of an
 104 examination and continuing education courses that are equivalent
 105 to the requirements in this state. Individuals from a state with
 106 no state certification who have successfully completed a written
 107 examination provided by the Portable Sanitation Association
 108 International shall only be required to take the written portion
 109 of the examination that includes state health code law and rules.
 110 For purposes of this section, an equivalent examination must
 111 include the topics of state health code law and rules applicable
 112 to portable restrooms and the knowledge required to handle,
 113 deliver, and pick up sanitary portable restrooms; to install,
 114 handle, and maintain portable holding tanks; and to handle,
 115 transport, and dispose of domestic portable restroom and portable

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116 holding tank wastewater. A person employed by and under the
117 supervision of such an out-of-state licensed contractor shall be
118 granted up to 2 years of related work experience.

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

121 (e) The department shall provide each applicant for
122 registration pursuant to this section with a copy of this section
123 and any rules adopted under this section. The department may also
124 prepare and disseminate such other material and questionnaires as
125 it deems necessary to effectuate the registration provisions of
126 this section.

127 (f) Any person who was employed 1 or more years in this
128 state by a portable restroom service holding a permit issued by
129 the department on or before October 1, 2004, has until October 1,
130 2005, to be registered by the department in accordance with this
131 section and may continue to perform portable restroom contracting
132 services until that time. Such persons are exempt until October
133 1, 2005, from the 3 years' active work experience requirement of
134 subparagraph (d)4.

135 (4) REGISTRATION RENEWAL.--

136 (a) The department shall prescribe by rule the method for
137 approval of continuing education courses and for renewal of
138 annual registration, for reverting to inactive status for late
139 filing of renewal applications, for allowing contractors to hold
140 their registration in inactive status for a specified period, and
141 for reactivating registrations. At a minimum, annual renewal
142 shall include continuing education requirements of not less than
143 6 classroom hours annually for portable restroom contractors.

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144 (b) Certificates of registration shall become inactive when
 145 a renewal application is not filed in a timely manner. A
 146 certificate that has become inactive may be reactivated under
 147 this section by application to the department. A registered
 148 contractor may apply to the department for voluntary inactive
 149 status at any time during the period of registration.

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

151 (a) The practice of or the offer to practice portable
 152 restroom contracting services by registrants through a parent
 153 corporation, corporation, subsidiary of a corporation, or
 154 partnership offering portable restroom contracting services to
 155 the public through registrants under this section as agents,
 156 employers, officers, or partners is permitted if one or more of
 157 the principal officers of the corporation or one or more partners
 158 of the partnership and all personnel of the corporation or
 159 partnership who act on its behalf as portable restroom
 160 contractors in this state are registered as provided by this
 161 section and if the corporation or partnership has been issued a
 162 certificate of authorization by the department as provided in
 163 this subsection. An agent of the corporation may be a manager of
 164 the corporation only when no officers of the corporation reside
 165 in the State of Florida. In this case, the corporation must
 166 provide a notarized letter of authorization for one or more
 167 managers to act as the agent and registered contractor on behalf
 168 of all matters of the corporation. This authorization must
 169 provide the list of names and addresses of all officers and
 170 include a statement that it in no way removes any responsibility
 171 from the officers of the corporation. A registered contractor may
 172 not be the sole qualifying contractor for more than one business

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173 that requests a certificate of authorization. A business
174 organization that loses its qualifying contractor has 60 days
175 following the date the qualifier terminates his or her
176 affiliation within which to obtain another qualifying contractor.
177 During this period, the business organization may complete any
178 existing contract or continuing contract but may not undertake
179 any new contract. This period may be extended once by the
180 department for an additional 60 days upon a showing of good
181 cause. This subsection may not be construed to mean that a
182 certificate of registration to practice portable restroom
183 contracting must be held by a corporation. A corporation or
184 partnership is not relieved of responsibility for the conduct or
185 acts of its agents, employees, or officers by reason of its
186 compliance with this subsection, and an individual practicing
187 portable restroom contracting is not relieved of responsibility
188 for professional services performed by reason of his or her
189 employment or relationship with a corporation or partnership.

190 (b) For the purposes of this subsection, a certificate of
191 authorization shall be required for a corporation, a partnership,
192 an association, or a person practicing under a fictitious name
193 when offering portable restroom contracting services to the
194 public, except that when an individual is practicing portable
195 restroom contracting in his or her own given name, he or she is
196 not required to register under this subsection.

197 (c) Each certification of authorization shall be renewed
198 every 2 years. Each partnership and corporation certified under
199 this subsection shall notify the department within 1 month after
200 any change in the information contained in the application upon
201 which the certification is based.

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202 (d) Disciplinary action against a corporation or
 203 partnership shall be administered in the same manner and on the
 204 same grounds as disciplinary action against a registered portable
 205 restroom contractor.

206 (e) When a certificate of authorization has been revoked,
 207 any person authorized by law to provide portable restroom
 208 contracting services may not use the name or fictitious name of
 209 the entity whose certificate was revoked or any other identifiers
 210 for the entity, including telephone numbers, advertisements, or
 211 logos.

212 (6) SUSPENSION OR REVOCATION OF REGISTRATION.--A
 213 certificate of registration may be suspended or revoked upon a
 214 showing that the registrant has:

215 (a) Violated any provision of this section.

216 (b) Violated any lawful order or rule rendered or adopted
 217 by the department.

218 (c) Obtained his or her registration or any other order,
 219 ruling, or authorization by means of fraud, misrepresentation, or
 220 concealment of material facts.

221 (d) Been found guilty of gross misconduct in the pursuit of
 222 his or her profession.

223 (7) FEES; ESTABLISHMENT.--

224 (a) The department shall, by rule, establish fees as
 225 follows:

226 1. For registration as a portable restroom contractor:

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

229 b. Initial registration fee: not less than \$50 nor more
 230 than \$100.

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

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

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

239 (8) PENALTIES AND PROHIBITIONS.--

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

243 (b) The department may deny a registration, authorization,
 244 or registration renewal if it determines that an applicant does
 245 not meet all requirements of this section or has violated any
 246 provision of this section or if there is any outstanding
 247 administrative penalty with the department in which the penalty
 248 is final agency action and all judicial reviews are exhausted.
 249 Any applicant aggrieved by such denial is entitled to a hearing,
 250 after reasonable notice thereof, upon filing a written request
 251 for such hearing in accordance with chapter 120.

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

254 381.0061 Administrative fines.--

255 (1) In addition to any administrative action authorized by
 256 chapter 120 or by other law, the department may impose a fine,
 257 which shall not exceed \$500 for each violation, for a violation
 258 of s. 381.006(16), s. 381.0065, s. 381.0066, s. 381.0069, s.
 259 381.0072, or part III of chapter 489, for a violation of any

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260 rule adopted under this chapter, or for a violation of any of
 261 the provisions of chapter 386. Notice of intent to impose such
 262 fine shall be given by the department to the alleged violator.
 263 Each day that a violation continues may constitute a separate
 264 violation.

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

267 381.0065 Onsite sewage treatment and disposal systems;
 268 regulation.--

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

271 (m) Regulate the use of portable restrooms, mobile
 272 restrooms, mobile shower trailers, and Permit and inspect
 273 portable or stationary temporary toilet services and holding
 274 tanks; regulate, permit, and inspect the companies that provide
 275 and service such facilities;. ~~The department shall review~~
 276 ~~applications, perform site evaluations;~~ and issue permits for
 277 the ~~temporary~~ use of stationary holding tanks, ~~privies, portable~~
 278 ~~toilet services, or any other toilet facility that is intended~~
 279 ~~for use on a permanent or nonpermanent basis, including~~
 280 ~~facilities placed on construction sites when workers are~~
 281 ~~present.~~ The department may specify standards for the
 282 construction, maintenance, use, and operation of any such
 283 facility ~~for temporary use.~~

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

285 (a) Department personnel who have reason to believe
 286 noncompliance exists, may, at any reasonable time, enter the
 287 premises permitted under ss. 381.0065-381.0066, ~~or~~ the business
 288 premises of any septic tank contractor or master septic tank

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289 contractor registered under part III of chapter 489, the
 290 business premises of any portable restroom contractor registered
 291 under s. 381.0069, or any premises that the department has
 292 reason to believe is being operated or maintained not in
 293 compliance~~,~~ to determine compliance with the provisions of this
 294 section, part I of chapter 386, or part III of chapter 489 or
 295 rules or standards adopted under ss. 381.0065-381.0067, s.
 296 381.0069, part I of chapter 386, or part III of chapter 489. As
 297 used in this paragraph, the term "premises" does not include a
 298 residence or private building. To gain entry to a residence or
 299 private building, the department must obtain permission from the
 300 owner or occupant or secure an inspection warrant from a court
 301 of competent jurisdiction.

302 (b)1. The department may issue citations that may contain
 303 an order of correction or an order to pay a fine, or both, for
 304 violations of ss. 381.0065-381.0067, s. 381.0069, part I of
 305 chapter 386, or part III of chapter 489 or the rules adopted by
 306 the department, when a violation of these sections or rules is
 307 enforceable by an administrative or civil remedy, or when a
 308 violation of these sections or rules is a misdemeanor of the
 309 second degree. A citation issued under ss. 381.0065-381.0067, s.
 310 381.0069, part I of chapter 386, or part III of chapter 489
 311 constitutes a notice of proposed agency action.

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

315 3. The fines imposed by a citation issued by the
 316 department may not exceed \$500 for each violation. Each day the

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317 violation exists constitutes a separate violation for which a
318 citation may be issued.

319 4. The department shall inform the recipient, by written
320 notice pursuant to ss. 120.569 and 120.57, of the right to an
321 administrative hearing to contest the citation within 21 days
322 after the date the citation is received. The citation must
323 contain a conspicuous statement that if the recipient fails to
324 pay the fine within the time allowed, or fails to appear to
325 contest the citation after having requested a hearing, the
326 recipient has waived the recipient's right to contest the
327 citation and must pay an amount up to the maximum fine.

328 5. The department may reduce or waive the fine imposed by
329 the citation. In determining whether to reduce or waive the
330 fine, the department must consider the gravity of the violation,
331 the person's attempts at correcting the violation, and the
332 person's history of previous violations including violations for
333 which enforcement actions were taken under ss. 381.0065-
334 381.0067, s. 381.0069, part I of chapter 386, part III of
335 chapter 489, or other provisions of law or rule.

336 6. Any person who willfully refuses to sign and accept a
337 citation issued by the department commits a misdemeanor of the
338 second degree, punishable as provided in s. 775.082 or s.
339 775.083.

340 7. The department, pursuant to ss. 381.0065-381.0067, s.
341 381.0069, part I of chapter 386, or part III of chapter 489,
342 shall deposit any fines it collects in the county health
343 department trust fund for use in providing services specified in
344 those sections.

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345 8. This section provides an alternative means of enforcing
 346 ss. 381.0065-381.0067, s. 381.0069, part I of chapter 386, and
 347 part III of chapter 489. This section does not prohibit the
 348 department from enforcing ss. 381.0065-381.0067, s. 381.0069,
 349 part I of chapter 386, or part III of chapter 489, or its rules,
 350 by any other means. However, the department must elect to use
 351 only a single method of enforcement for each violation.

352 Section 4. Paragraph (k) of subsection (2) of section
 353 381.0066, Florida Statutes, is amended to read:

354 381.0066 Onsite sewage treatment and disposal systems;
 355 fees.--

356 (2) The minimum fees in the following fee schedule apply
 357 until changed by rule by the department within the following
 358 limits:

359 (k) Research: An additional \$5 fee shall be added to each
 360 new system construction permit issued ~~during fiscal years 1996-~~
 361 ~~2004~~ to be used for onsite sewage treatment and disposal system
 362 research, demonstration, and training projects. Five dollars
 363 from any repair permit fee collected under this section shall be
 364 used for funding the hands-on training centers described in s.
 365 381.0065(3)(j).

366
 367 The funds collected pursuant to this subsection must be
 368 deposited in a trust fund administered by the department, to be
 369 used for the purposes stated in this section and ss. 381.0065
 370 and 381.00655.

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