

CHAMBER ACTION

1 The Committee on Health Care recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to environmental health; creating s.
7 381.0069, F.S.; providing for the regulation of portable
8 restroom contracting; providing definitions; requiring a
9 portable restroom contractor to apply for registration
10 with the Department of Health; providing requirements for
11 registration, including an examination; providing
12 exemptions; providing for administration; providing
13 rulemaking authority; providing for renewal of
14 registration, including continuing education; providing
15 for certification of partnerships and corporations;
16 providing grounds for suspension or revocation of
17 registration; providing fees; providing penalties and
18 prohibitions; amending s. 381.0061, F.S.; authorizing
19 imposition of an administrative fine for violation of
20 portable restroom contracting requirements; amending s.
21 381.0065, F.S.; specifying the department's powers and
22 duties with respect to the regulation of portable restroom
23 facilities and the companies that provide and service

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24 | them; authorizing the department to enter the business
25 | premises of any portable restroom contractor for
26 | compliance determination and enforcement; authorizing
27 | issuance of a citation for violation of portable restroom
28 | contracting requirements which may contain an order of
29 | correction or a fine; amending s. 381.0066, F.S.;
30 | authorizing the continuation of permit fees for system
31 | construction permits for onsite sewage treatment and
32 | disposal systems; providing an effective date.

33

34 | Be It Enacted by the Legislature of the State of Florida:

35

36 | Section 1. Section 381.0069, Florida Statutes, is created
37 | to read:

38 | 381.0069 Portable restroom contracting.--

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

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

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

46 | (c) "Portable restroom contractor" means a portable
47 | restroom contractor who has knowledge of state health code law
48 | and rules and has the experience, knowledge, and skills to
49 | handle, deliver, and pick up sanitary portable restrooms, to
50 | install, safely handle, and maintain portable holding tanks, and

51 to handle, transport, and dispose of domestic portable restroom
 52 and portable holding tank wastewater.

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

61 (3) ADMINISTRATION OF SECTION; REGISTRATION
 62 QUALIFICATIONS; EXAMINATION.--

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

66 (b) The department shall administer, coordinate, and
 67 enforce the provisions of this section, administer the
 68 examination for applicants, and be responsible for the granting
 69 of certificates of registration to qualified persons.

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

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

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

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

96 3. Be at least 18 years of age.

97 4. Have a total of at least 3 years of active experience
 98 serving an apprenticeship as a skilled worker under the
 99 supervision and control of a registered portable restroom
 100 contractor. Related work experience or educational experience
 101 may be substituted for no more than 2 years of active
 102 contracting experience. Each 30 hours of coursework approved by
 103 the department shall be substituted for 6 months of work
 104 experience. Out-of-state work experience shall be accepted on a
 105 year-for-year basis for any applicant who demonstrates that he

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106 or she holds a current license issued by another state for
107 portable restroom contracting which was issued upon satisfactory
108 completion of an examination and continuing education courses
109 that are equivalent to the requirements in this state.

110 Individuals from a state with no state certification who have
111 successfully completed a written examination provided by the
112 Portable Sanitation Association International shall only be
113 required to take the written portion of the examination that
114 includes state health code law and rules. For purposes of this
115 section, an equivalent examination must include the topics of
116 state health code law and rules applicable to portable restrooms
117 and the knowledge required to handle, deliver, and pick up
118 sanitary portable restrooms; to install, handle, and maintain
119 portable holding tanks; and to handle, transport, and dispose of
120 domestic portable restroom and portable holding tank wastewater.
121 A person employed by and under the supervision of such an out-
122 of-state licensed contractor shall be granted up to 2 years of
123 related work experience.

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

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

132 (f) Any person who was employed 1 or more years in this
133 state by a portable restroom service holding a permit issued by

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134 the department on or before October 1, 2004, has until October
135 1, 2005, to be registered by the department in accordance with
136 this section and may continue to perform portable restroom
137 contracting services until that time. Such persons are exempt
138 until October 1, 2005, from the 3 years' active work experience
139 requirement of subparagraph (d)4.

140 (4) REGISTRATION RENEWAL.--

141 (a) The department shall prescribe by rule the method for
142 approval of continuing education courses and for renewal of
143 annual registration, for reverting to inactive status for late
144 filing of renewal applications, for allowing contractors to hold
145 their registration in inactive status for a specified period,
146 and for reactivating registrations. At a minimum, annual renewal
147 shall include continuing education requirements of not less than
148 6 classroom hours annually for portable restroom contractors.

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

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

156 (a) The practice of or the offer to practice portable
157 restroom contracting services by registrants through a parent
158 corporation, corporation, subsidiary of a corporation, or
159 partnership offering portable restroom contracting services to
160 the public through registrants under this section as agents,
161 employers, officers, or partners is permitted if one or more of

162 the principal officers of the corporation or one or more
 163 partners of the partnership and all personnel of the corporation
 164 or partnership who act on its behalf as portable restroom
 165 contractors in this state are registered as provided by this
 166 section and if the corporation or partnership has been issued a
 167 certificate of authorization by the department as provided in
 168 this subsection. An agent of the corporation may be a manager of
 169 the corporation only when no officers of the corporation reside
 170 in the State of Florida. In this case, the corporation must
 171 provide a notarized letter of authorization for one or more
 172 managers to act as the agent and registered contractor on behalf
 173 of all matters of the corporation. This authorization must
 174 provide the list of names and addresses of all officers and
 175 include a statement that it in no way removes any responsibility
 176 from the officers of the corporation. A registered contractor
 177 may not be the sole qualifying contractor for more than one
 178 business that requests a certificate of authorization. A
 179 business organization that loses its qualifying contractor has
 180 60 days following the date the qualifier terminates his or her
 181 affiliation within which to obtain another qualifying
 182 contractor. During this period, the business organization may
 183 complete any existing contract or continuing contract but may
 184 not undertake any new contract. This period may be extended once
 185 by the department for an additional 60 days upon a showing of
 186 good cause. This subsection may not be construed to mean that a
 187 certificate of registration to practice portable restroom
 188 contracting must be held by a corporation. A corporation or
 189 partnership is not relieved of responsibility for the conduct or

190 acts of its agents, employees, or officers by reason of its
 191 compliance with this subsection, and an individual practicing
 192 portable restroom contracting is not relieved of responsibility
 193 for professional services performed by reason of his or her
 194 employment or relationship with a corporation or partnership.

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

203 (c) Each certification of authorization shall be renewed
 204 every 2 years. Each partnership and corporation certified under
 205 this subsection shall notify the department within 1 month after
 206 any change in the information contained in the application upon
 207 which the certification is based.

208 (d) Disciplinary action against a corporation or
 209 partnership shall be administered in the same manner and on the
 210 same grounds as disciplinary action against a registered
 211 portable restroom contractor.

212 (e) When a certificate of authorization has been revoked,
 213 any person authorized by law to provide portable restroom
 214 contracting services may not use the name or fictitious name of
 215 the entity whose certificate was revoked or any other
 216 identifiers for the entity, including telephone numbers,
 217 advertisements, or logos.

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218 (6) SUSPENSION OR REVOCATION OF REGISTRATION.--A
 219 certificate of registration may be suspended or revoked upon a
 220 showing that the registrant has committed any of the following:
 221 (a) Violated any provision of this section.
 222 (b) Violated any lawful order or rule rendered or adopted
 223 by the department.
 224 (c) Obtained his or her registration or any other order,
 225 ruling, or authorization by means of fraud, misrepresentation,
 226 or concealment of material facts.
 227 (d) Been found guilty of one or more violations of this
 228 section, s. 381.0065, s. 386.041, or any rule adopted pursuant
 229 to those sections.
 230 (7) FEES; ESTABLISHMENT.--
 231 (a) The department shall, by rule, establish fees as
 232 follows:
 233 1. For registration as a portable restroom contractor:
 234 a. Application and examination fee: not less than \$25 nor
 235 more than \$75.
 236 b. Initial registration fee: not less than \$50 nor more
 237 than \$100.
 238 c. Renewal of registration fee: not less than \$50 nor more
 239 than \$100.
 240 2. For certification of a partnership or corporation: not
 241 less than \$100 nor more than \$250.
 242 (b) Fees established pursuant to paragraph (a) shall be
 243 based on the actual costs incurred by the department in carrying
 244 out its registration and other related responsibilities under
 245 this section.

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246 (8) PENALTIES AND PROHIBITIONS.--

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

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

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

261 381.0061 Administrative fines.--

262 (1) In addition to any administrative action authorized by
 263 chapter 120 or by other law, the department may impose a fine,
 264 which shall not exceed \$500 for each violation, for a violation
 265 of s. 381.006(16), s. 381.0065, s. 381.0066, s. 381.0069, s.
 266 381.0072, or part III of chapter 489, for a violation of any
 267 rule adopted under this chapter, or for a violation of any of
 268 the provisions of chapter 386. Notice of intent to impose such
 269 fine shall be given by the department to the alleged violator.
 270 Each day that a violation continues may constitute a separate
 271 violation.

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

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274 381.0065 Onsite sewage treatment and disposal systems;
275 regulation.--

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

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

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

292 (a) Department personnel who have reason to believe
293 noncompliance exists, may, at any reasonable time, enter the
294 premises permitted under ss. 381.0065-381.0066, ~~or~~ the business
295 premises of any septic tank contractor or master septic tank
296 contractor registered under part III of chapter 489, the
297 business premises of any portable restroom contractor registered
298 under s. 381.0069, or any premises that the department has
299 reason to believe is being operated or maintained not in
300 compliance, to determine compliance with the provisions of this
301 section, part I of chapter 386, or part III of chapter 489 or

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302 rules or standards adopted under ss. 381.0065-381.0067, s.
 303 381.0069, part I of chapter 386, or part III of chapter 489. As
 304 used in this paragraph, the term "premises" does not include a
 305 residence or private building. To gain entry to a residence or
 306 private building, the department must obtain permission from the
 307 owner or occupant or secure an inspection warrant from a court
 308 of competent jurisdiction.

309 (b)1. The department may issue citations that may contain
 310 an order of correction or an order to pay a fine, or both, for
 311 violations of ss. 381.0065-381.0067, s. 381.0069, part I of
 312 chapter 386, or part III of chapter 489 or the rules adopted by
 313 the department, when a violation of these sections or rules is
 314 enforceable by an administrative or civil remedy, or when a
 315 violation of these sections or rules is a misdemeanor of the
 316 second degree. A citation issued under ss. 381.0065-381.0067, s.
 317 381.0069, part I of chapter 386, or part III of chapter 489
 318 constitutes a notice of proposed agency action.

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

322 3. The fines imposed by a citation issued by the
 323 department may not exceed \$500 for each violation. Each day the
 324 violation exists constitutes a separate violation for which a
 325 citation may be issued.

326 4. The department shall inform the recipient, by written
 327 notice pursuant to ss. 120.569 and 120.57, of the right to an
 328 administrative hearing to contest the citation within 21 days
 329 after the date the citation is received. The citation must

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330 contain a conspicuous statement that if the recipient fails to
331 pay the fine within the time allowed, or fails to appear to
332 contest the citation after having requested a hearing, the
333 recipient has waived the recipient's right to contest the
334 citation and must pay an amount up to the maximum fine.

335 5. The department may reduce or waive the fine imposed by
336 the citation. In determining whether to reduce or waive the
337 fine, the department must consider the gravity of the violation,
338 the person's attempts at correcting the violation, and the
339 person's history of previous violations including violations for
340 which enforcement actions were taken under ss. 381.0065-
341 381.0067, s. 381.0069, part I of chapter 386, part III of
342 chapter 489, or other provisions of law or rule.

343 6. Any person who willfully refuses to sign and accept a
344 citation issued by the department commits a misdemeanor of the
345 second degree, punishable as provided in s. 775.082 or s.
346 775.083.

347 7. The department, pursuant to ss. 381.0065-381.0067, s.
348 381.0069, part I of chapter 386, or part III of chapter 489,
349 shall deposit any fines it collects in the county health
350 department trust fund for use in providing services specified in
351 those sections.

352 8. This section provides an alternative means of enforcing
353 ss. 381.0065-381.0067, s. 381.0069, part I of chapter 386, and
354 part III of chapter 489. This section does not prohibit the
355 department from enforcing ss. 381.0065-381.0067, s. 381.0069,
356 part I of chapter 386, or part III of chapter 489, or its rules,

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357 | by any other means. However, the department must elect to use
358 | only a single method of enforcement for each violation.

359 | Section 4. Paragraph (k) of subsection (2) of section
360 | 381.0066, Florida Statutes, is amended to read:

361 | 381.0066 Onsite sewage treatment and disposal systems;
362 | fees.--

363 | (2) The minimum fees in the following fee schedule apply
364 | until changed by rule by the department within the following
365 | limits:

366 | (k) Research: An additional \$5 fee shall be added to each
367 | new system construction permit issued ~~during fiscal years 1996-~~
368 | ~~2004~~ to be used for onsite sewage treatment and disposal system
369 | research, demonstration, and training projects. Five dollars
370 | from any repair permit fee collected under this section shall be
371 | used for funding the hands-on training centers described in s.
372 | 381.0065(3)(j).

373 |
374 | The funds collected pursuant to this subsection must be
375 | deposited in a trust fund administered by the department, to be
376 | used for the purposes stated in this section and ss. 381.0065
377 | and 381.00655.

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