

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 333 CS Regulation of Portable Restroom Contracting
SPONSOR(S): Bowen
TIED BILLS: **IDEN./SIM. BILLS:** SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	11 Y, 0 N, w/CS	Hamrick	Mitchell
2) Health Care Appropriations Committee			
3) Health & Families Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The CS for HB 333 establishes the regulatory authority for DOH to register and license portable restroom contractors in a similar manner as septic tank contractors. The Department of Health (DOH) currently has the authority to permit and inspect portable restroom services, but does not have the authority to license portable restroom contractors and services as it does septic tank contractors and services. In 2001, the Legislature directed an independent panel called the Technical Review and Advisory Panel (TRAP) to study the issue of portable restroom contractors and offer advice on the need to regulate the portable restroom industry. The TRAP report recommends that ch. 381, F.S., be amended to require persons providing portable restroom services to be registered with the Department of Health.

As it stands, without regulation portable restroom contractors can dump waste products anywhere, including Florida's lakes and streams.

This bill includes the following provisions to implement the recommendations of the TRAP panel:

- Requires the registration of portable restroom contractors with the Department of Health (DOH);
- Authorizes DOH personnel to enter, at any reasonable time, the business premises of any registered or certified portable restroom contractor for compliance;
- Establishes fees for registration;
- Provides grounds for enforcement and sanctions;
- Provides rulemaking authority for DOH;
- Authorizes a registered entity to practice portable restroom contracting services through a partnership, or corporation;
- Authorizes DOH to regulate, permit and inspect the use of portable restrooms, mobile restrooms, mobile shower trailers, and associated waste water and the companies that provide and service such facilities;
- Provides that DOH shall perform site evaluations and issue permits for the temporary use of stationary holding tanks;
- Authorizes the deposit of collected fines into the county health department trust fund.

The bill provides an effective date of July 1, 2005.

This bill has a fiscal impact see "Fiscal Analysis."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Providing limited government-The bill provides DOH the authority by regulate and promulgate rules for portable restroom contractors and associated services

Ensure lower taxes- This bill imposes fees for submission of applications, registration, renewal and authorizations of a business entity. The department may have to hire additional FTE to support administration, enforcement, and monitoring of the portable restroom contractors. Registration fees are intended to support the additional workload and offset the additional cost.

B. EFFECT OF PROPOSED CHANGES:

EFFECTS OF THE BILL

This bill creates the regulatory authority for DOH to register and license portable restroom contractors in a similar manner as septic tank contractors. HB 333 includes the following provisions:

- Requires the registration of portable restroom contractors with the Department of Health (DOH);
- Provides definitions, exemptions and authorizes DOH to develop rules for registration, qualification, renewal, continuing education;
- Provides for administration and rulemaking authority for DOH;
- Authorizes a registered entity to practice portable restroom contracting services through a partnership, or corporation;
- Provides grounds for revocation or suspension of registration;
- Establishes fees for registration;
- Provides that DOH may impose fines, penalties and authorizes denial of registration, authorization, or renewal of registration if requirements are not met;
- Authorizes DOH to regulate, permit, and inspect the use of portable restrooms, mobile restrooms, mobile shower trailers, and associated waste water, and the companies that provide and service such facilities;
- Provides that DOH shall perform site evaluations and issue permits for the temporary use of stationary holding tanks;
- Authorizes DOH personnel to enter, at any reasonable time, the business premises of any registered or certified portable restroom contractor for compliance;
- Authorizes the deposit of collected fines into the county health department trust fund; and
- Provides an alternative means of enforcement, but stipulates that DOH must use a single method of enforcement for each violation.

PRESENT SITUATION

The Department of Health (DOH) currently has the authority to permit and inspect portable restroom services, but does not have the authority to license portable restroom contractors and services as it does septic tank contractors and services. The bill creates the regulatory authority for DOH to register and license portable restroom contractors in a similar manner as septic tank contractors.

THE SUNRISE ACT: REGULATION OF NEW PROFESSIONS

Section 11.62(3), F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following:

- That substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote;
- That the skills the profession requires are specialized and readily measurable;
- That the regulation will not have an unreasonable effect on job creation or job retention;
- That other forms of regulation do not or cannot adequately protect the public; and
- That the overall cost effectiveness and economic impact of the proposed regulation is favorable.

In addition, the act requires that, upon request, the proponents of regulation of a previously unregulated profession provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation.

REPORT ON THE PORTABLE RESTROOM INDUSTRY

In 2001, the Legislature directed an independent panel called the Technical Review and Advisory Panel (TRAP) to study the issue of portable restroom contractors. The primary purpose of the TRAP panel was to assist the Department of Health in rulemaking and decision-making issues related to onsite sewage treatment and disposal systems to include onsite sewage treatment and disposal systems. The panel was comprised of representatives from the home building industry, soil scientists, septic tank contractors, engineers, consumers, realtors, and public health professionals. In December of 2001, the panel reviewed and offered advice on the need to regulate the portable restroom industry to the Legislature.

The TRAP report recommended that portable restroom contractors be licensed by DOH in the same manner as septic tank contractors. The report includes the following findings:

- The qualifications for persons operating portable restroom service companies should be similar to the qualifications for septic tank contractors as they both handle onsite wastewater systems.
- The educational background of persons operating portable restroom service companies should be the same as the educational background for septic tank contractors.
- The work experience, while of similar duration, includes experience in the placement, maintenance and removal of portable restrooms and the handling, transport, treatment, and disposal of portable restroom waste.
- Continuing education for persons providing portable restroom services should be specifically focused on the applicable state rules, public health, personal hygiene, and environmental requirements of the location, permitting, and service of portable restrooms and the proper handling, transport, treatment, and disposal of portable restroom waste.
- The waste from portable restrooms differs from the waste from septic tanks in that it has not undergone anaerobic digestion and has had chemical preservatives added. These differences require different treatment and disposal procedures.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.0069, F.S., providing definitions, registration, rules, and enforcement authority to DOH to regulate portable restroom contractors.

Section 2. Amends s. 381.0061(1), F.S., relating to administrative fines for violation of portable restroom contracting requirements.

Section 3. Amends s. 381.0065(3), F.S., relating to onsite treatment and disposal systems and duties and powers of DOH.

Section 4. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

The first year DOH expenses will relate to rule promulgation, training, examination development, and administration. Recurring DOH expenses will be administrative costs related to registration, application review, mailing, examination, enforcement, and travel expenses. The bill provides fee ranges for registration with authority to establish the fee by rule. Fiscal impact estimates are based on the minimum fee of each range. Recurring costs would be fully supported by the fees.

1. Revenues:

Total Estimated Revenues	<u>2005-2006</u>	<u>2006-2007</u> (Annualized and Recurring)
150 exams @ \$25	\$3,750	0
150 registrations @ \$50	7,500	0
18 exams @ \$25	0	450
15 registrations @ \$50	0	750
75 authorizations @ \$100*	7,500	7,500
150 renewals @ \$50	<u>0</u>	<u>7,500</u>
Total Estimated Revenues	\$18,750	\$16,200

2. Expenditures:

Estimated Expenditures	<u>2005-2006</u>	<u>2006-2007</u>
Rule promulgation	\$10,000	0
Examination development	2,000	0
Travel	8,000	7,000
Printing	5,000	5,000
Mailing	1,200	1,200
Examination administration	2,000	2,000
Office supplies	<u>1,000</u>	<u>1,000</u>
Total Estimated Expenditures	\$ 29,200	\$16,200

Revenues were based on the current number of portable toilet service providers regulated by DOH. Business authorizations are renewed every 2 years.

*The revenue shown for authorizations has been pro-rated to reflect an annual amount.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The portable toilet companies will bear the direct costs of this proposal. Based on the revenue estimates from DOH the contractors of portable restrooms will pay approximately \$19,000 dollars the first year of regulation. Each contractor would pay an examination and registration fee of at least \$75.00 and an authorization fee of \$100.00.

The consumers they serve are those private citizens, companies, and organizations that use portable toilets and holding tanks. Expenses for compliance will be traveling expenses to attend training, training course fees to course providers, and registration and examination fees to DOH.

According to the Department of Health, there may be an increase in litigation. In a new area of regulatory activity the likelihood of litigation in the form of petitions for rulemaking, rule challenges, administrative litigation by disappointed license applicants and administrative disciplinary actions against licenses may occur.

D. FISCAL COMMENTS:

Improved education and compliance may help to 'level the field' for service providers seeking to compete fairly in the marketplace. The improved training may result in a reduction in liability for environmental clean-up and fines for non-compliance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides rulemaking authority to DOH to implement and enforce its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2004, the Health Care Regulation Committee adopted 5 amendments sponsored by Representative Bowen. The Committee Substitute differs from the original bill as filed in that the Committee Substitute:

Amendment 1-Provides language that is consistent with the work requirements for septic tank contractors in s. 489.553 (4) (d), F.S. The year-by-year substitution for out-of-state apprenticeship work experience requirement is replaced with a 2-year related work experience limit.

Amendment 2-Adds “and course providers” to the language to provide DOH the authority to approve continuing education course providers.

Amendment 3-Adds language that provides that corporations as business entities must have a valid certificate of authorization issued by DOH in order to offer services to the public.

Amendment 4-Adds language to clarify that business entities, such as a partnership or corporation, are not issued certificates of authorization by DOH. Certificates are issued to individual contractors.

Amendment 5-Preserves current law and reinstates DOH’s authority to review applications for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems.

This analysis is drafted to the committee substitute.