

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	12 Y, 0 N	Money	Massengale
3) Health & Families Council		Hamrick	Moore
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 333 CS establishes the regulatory authority for Department of Health (DOH) to register and license portable restroom contractors in a manner similar to septic tank contractors, based on recommendations from a technical review and advisory panel established by the 2001 Legislature.

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

The bill 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. It requires DOH to perform site evaluations and issue permits for the temporary use of stationary holding tanks.

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. According to the department, recurring costs would be fully supported by the fees.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Providing limited government—The bill provides the Department of Health the authority to 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.

B. EFFECT OF PROPOSED CHANGES:

House Bill 333 CS creates the regulatory authority for the Department of Health (DOH) to register and license portable restroom contractors in a manner similar to septic tank contractors. HB 333 CS also includes the following provisions:

- Requires the registration of portable restroom contractors with 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 and 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.
- 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 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 manner similar to septic tank contractors.

THE SUNRISE ACT: REGULATION OF NEW PROFESSIONS

Section 11.62(3), Florida Statutes, 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:

- Substantial risk of harm to the public is a risk of no regulation, which is recognizable and not remote.
- The skills the profession requires are specialized and readily measurable.
- The regulation will not have an unreasonable effect on job creation or job retention.
- Other forms of regulation do not or cannot adequately protect the public.
- 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 comprised 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:

1. Revenues:

Total Estimated Revenues	<u>2005-2006</u>	<u>2006-2007</u>
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

According to the department, revenues were based on the current number of portable toilet service providers regulated by DOH. Business authorizations are renewed every two years.

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

2. Expenditures:

Total 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 from the (County Health Department Trust Fund)	\$ 29,200	\$16,200

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. According to the Department of Health, recurring costs would be fully supported by the fees.

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 an estimated \$18,750 the first year of regulation. Each contractor would pay an examination and registration fee of at least \$75 and an authorization fee of \$100.

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, 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:

Although the Department of Health may limit expenditure to the amount of revenue collected, there is currently a sufficient cash balance in the County Health Department Trust Fund to support the estimated \$10,450 revenue shortfall in fiscal year 2005-2006.

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 five 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 section 489.553 (4) (d), Florida Statutes. The year-by-year substitution for out-of-state apprenticeship work experience requirement is replaced with a two 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 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.