

1 A bill to be entitled

2 An act relating to the regulation of portable restroom
3 contracting; creating s. 381.0069, F.S.; providing
4 definitions; requiring a portable restroom contractor to
5 apply for registration with the Department of Health;
6 providing requirements for registration, including an
7 examination; providing for administration; providing
8 rulemaking authority; providing for renewal of
9 registration, including continuing education; providing
10 for authorization of business entities providing portable
11 restroom contracting services under a fictitious name;
12 providing grounds for suspension or revocation of
13 registration or authorization; providing fees; providing
14 penalties and prohibitions; amending s. 381.0061, F.S.;
15 authorizing imposition of an administrative fine for
16 violating portable restroom contracting requirements;
17 amending s. 381.0065, F.S.; specifying the department's
18 powers and duties with respect to regulating portable
19 restroom facilities and the individuals or businesses that
20 provide and service such facilities; authorizing the
21 department to enter the business premises of any portable
22 restroom contractor; authorizing issuance of citations;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 381.0069, Florida Statutes, is created
28 to read:

29 381.0069 Portable restroom contracting.--
 30 (1) DEFINITIONS.--As used in this section, the term:
 31 (a) "Department" means the Department of Health.
 32 (b) "Portable restroom" means any portable toilet, mobile
 33 restroom trailer, mobile shower trailer, or portable restroom
 34 facility intended for use on a permanent or nonpermanent basis,
 35 including any holding tanks associated with any such facility.
 36 The term includes, but is not limited to, any such facility or
 37 holding tank placed at a construction site when workers are
 38 present.
 39 (c) "Portable restroom contractor" means a portable
 40 restroom contractor who has knowledge of state law and the
 41 experience, knowledge, and skills necessary to safely handle the
 42 pickup, transportation, installation, and maintenance of
 43 portable restrooms and portable sinks, including, but not
 44 limited to, the safe management and disposal of associated
 45 wastewater.
 46 (2) REGISTRATION REQUIRED.--A person may not hold himself
 47 or herself out as a portable restroom contractor in this state
 48 unless he or she is registered by the department in accordance
 49 with this section. However, this section does not prohibit a
 50 licensed plumbing contractor as defined in s. 489.105(3)(m) or a
 51 person licensed under part III of chapter 489 from engaging in
 52 the profession for which he or she is licensed. This section
 53 does not apply to a private company as defined in s.
 54 403.70605(4)(b).
 55 (3) ADMINISTRATION OF SECTION; REGISTRATION
 56 QUALIFICATIONS; EXAMINATION.--

57 (a) Each person desiring to be registered under this
58 section must apply to the department in writing upon forms
59 prepared and furnished by the department.

60 (b) The department shall administer, coordinate, and
61 enforce this section; approve and administer the examination for
62 applicants; and grant certificates of registration to qualified
63 persons and certificates of authorization to qualified business
64 entities.

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

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

75 1. Be of good moral character. In considering good moral
76 character, the department may consider any matter that has a
77 substantial connection between the good moral character of the
78 applicant and the professional responsibilities of a registered
79 contractor. This includes, but is not limited to, the
80 applicant's being convicted or found guilty of, or entering a
81 plea of nolo contendere to, regardless of adjudication, a crime
82 in any jurisdiction which is directly related to the practice of
83 contracting or the ability to practice contracting, or any
84 previous disciplinary action against the applicant involving

85 portable restroom contracting for which all judicial reviews
86 have been completed.

87 2. Pass an examination approved by the department which
88 tests knowledge of the fundamentals of state law relating to
89 portable restrooms and the safe handling of the pickup,
90 transportation, installation, and maintenance of portable
91 restrooms, including, but not limited to, the safe management
92 and disposal of associated wastewater. If an applicant from a
93 state having no certification program has passed the Portable
94 Sanitation Association International's written examination, the
95 applicant shall be required to take and pass only that portion
96 of this state's examination which tests knowledge of law that is
97 specific to Florida.

98 3. Be at least 18 years of age.

99 4. Have at least 3 years of active experience serving as a
100 skilled worker under the supervision and control of a portable
101 restroom contractor who is registered under this section.
102 Related work experience or educational experience may be
103 substituted for no more than 2 years of active contracting
104 experience as follows:

105 a. Each 30 hours of coursework approved by the department
106 may be substituted for 6 months of work experience.

107 b. Out-of-state work experience may be substituted on a
108 year-for-year basis for any applicant who demonstrates that he
109 or she holds a current license issued by another state for
110 portable restroom contracting which was issued upon satisfactory
111 completion of an examination and continuing education courses
112 that are equivalent to those required in this state. An

113 examination is equivalent if it tests the applicant's knowledge
114 of state law relating to portable restrooms and the safe
115 handling of the pickup, transportation, installation, and
116 maintenance of portable restrooms, including, but not limited
117 to, the safe management and disposal of associated wastewater.

118 c. A person employed by and under the supervision of a
119 licensed portable restroom contractor shall be granted up to 2
120 years of related work experience.

121 5. Have not had a portable restroom contractor
122 registration revoked within 5 years before applying for
123 registration.

124 (e) The department shall provide to each applicant for
125 registration a copy of this section and any rules adopted under
126 this section. The department may also prepare and disseminate
127 other material and questionnaires it finds necessary to carry
128 out the registration provisions of this section.

129 (f) A person who, on October 1, 2005, has been employed at
130 least 1 year in this state by a portable restroom service
131 provider holding a permit issued by the department pursuant to
132 s. 381.0065(3)(m) has until October 1, 2006, to be registered by
133 the department in accordance with this section and may continue
134 to perform portable restroom contracting services without
135 registration until that time. Such persons are exempt until
136 October 1, 2006, from the requirement of subparagraph (d)4. for
137 3 years of active work experience.

138 (4) REGISTRATION RENEWAL.--

139 (a) The department shall prescribe by rule methods for
140 approving continuing education courses and course providers, for

141 renewing annual registration, for approving the reversion of a
142 registration to inactive status when the renewal application is
143 late filed, for allowing a contractor to hold a registration in
144 inactive status for a specified period, and for reactivating an
145 inactive registration. The department shall require at least 6
146 classroom hours annually of continuing education courses for
147 annual registration renewal or to reactivate an inactive
148 registration.

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

155 (5) AUTHORIZATION OF BUSINESS ENTITIES.--

156 (a) A parent corporation, corporation, subsidiary of a
157 corporation, or a partnership, association, or person practicing
158 under a fictitious name may not offer or provide portable
159 restroom contracting services to the public without a valid
160 certificate of authorization issued by the department. A
161 contractor registered under this section may not offer or
162 provide portable restroom contracting services on behalf of such
163 a business entity unless that entity holds a valid certificate
164 of authorization. A certificate of authorization is not required
165 when a contractor registered under this section offers or
166 provides portable restroom contracting service in his or her own
167 given name.

168 (b) The department shall issue a certificate of
169 authorization upon demonstration by the applying business entity
170 that each person who is authorized to act on the applicant
171 entity's behalf as a portable restroom contractor is registered
172 under this section and also that, if a corporation, at least one
173 of its principal officers or, if a partnership, at least one
174 partner is registered under this section. The department may not
175 issue a certificate of authorization to a corporation whose
176 agent is a manager unless no officers of the corporation reside
177 in the state and the corporation provides a notarized letter to
178 the department authorizing one or more managers to act as the
179 corporate agent and registered contractor. The notarized letter
180 must list the names and addresses of each officer of the
181 corporation and state that the letter does not remove
182 responsibility from the corporation's officers. The department
183 may not issue a certificate whereby the same registered
184 contractor would become the sole qualifying contractor for more
185 than one business entity. This subsection may not be construed
186 to mean that a certificate of registration to practice portable
187 restroom contracting shall be held by a business entity.
188 Compliance with this subsection does not relieve a business
189 entity of responsibility for the conduct or acts of its agents,
190 employees, or officers. Employment by or a relationship with a
191 business entity does not relieve an individual who is engaged in
192 portable restroom contracting from responsibility for his or her
193 conduct.

194 (c) Unless renewed or revoked, each certification of
195 authorization is valid for 2 years. A business entity certified

196 under this subsection must notify the department within 1 month
 197 after any change in the information contained in the application
 198 upon which the certification is based. A business entity that
 199 terminates affiliation with a qualifying registered contractor
 200 has 60 days following the date of termination in which to obtain
 201 another qualifying contractor. During the 60-day period, the
 202 business entity may complete an existing contract or continuing
 203 contract but may not undertake a new contract. The department
 204 may extend the period for an additional 60 days upon a showing
 205 of good cause.

206 (d) The department shall take disciplinary action against
 207 a business entity in the same manner and on the same grounds as
 208 against an individual portable restroom contractor.

209 (e) A person who is otherwise authorized by law to provide
 210 portable restroom contracting services may not use the name,
 211 telephone number, advertisement, logo, or other identifiers of a
 212 business entity whose certificate of authorization has been
 213 revoked or otherwise invalidated.

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

217 (a) Violated this section, s. 381.0065, or s. 386.041;

218 (b) Violated an order or a rule of the department; or

219 (c) Obtained a certificate of registration or other order,
 220 ruling, or authorization by means of fraud, misrepresentation,
 221 or concealment of material fact.

222 (7) FEES.--

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

225 1. For registration as a portable restroom contractor:

226 a. Application and examination fee: not less than \$25 or
 227 more than \$75.

228 b. Initial registration fee: not less than \$50 or more
 229 than \$100.

230 c. Renewal of registration fee: not less than \$50 or more
 231 than \$100.

232 2. For authorization of a business entity: not less than
 233 \$100 or more than \$250.

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

238 (8) PENALTIES AND PROHIBITIONS.--

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

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

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

253 381.0061 Administrative fines.--

254 (1) In addition to any administrative action authorized by
 255 chapter 120 or by other law, the department may impose a fine,
 256 which shall not exceed \$500 for each violation, for a violation
 257 of s. 381.006(16), s. 381.0065, s. 381.0066, s. 381.0069, s.
 258 381.0072, or part III of chapter 489, for a violation of any
 259 rule adopted under this chapter, or for a violation of any of
 260 the provisions of chapter 386. Notice of intent to impose such
 261 fine shall be given by the department to the alleged violator.
 262 Each day that a violation continues may constitute a separate
 263 violation.

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

266 381.0065 Onsite sewage treatment and disposal systems;
 267 regulation.--

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

270 (m) Regulate, permit, and inspect the use of portable
 271 restrooms, mobile restrooms, mobile shower trailers, and
 272 associated wastewater ~~Permit and inspect portable or temporary~~
 273 ~~toilet services and holding tanks; regulate, permit, and inspect~~
 274 an individual or business that provides or services such
 275 facilities; and. ~~The department shall review applications,~~
 276 perform site evaluations, and issue permits for the temporary
 277 use of stationary holding tanks, ~~privies, portable toilet~~
 278 ~~services, or any other toilet facility that is intended for use~~

279 ~~on a permanent or nonpermanent basis, including facilities~~
 280 ~~placed on construction sites when workers are present.~~ The
 281 department may specify standards for the construction,
 282 maintenance, use, and operation of any such facility for
 283 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
 289 contractor registered under part III of chapter 489, the
 290 business premises of any portable restroom contractor registered
 291 or certified under s. 381.0069, or any premises that the
 292 department has reason to believe is being operated or maintained
 293 not in compliance, to determine compliance with the provisions
 294 of this section, part I of chapter 386, or part III of chapter
 295 489 or rules or standards adopted under ss. 381.0065-381.0067,
 296 s. 381.0069, part I of chapter 386, or part III of chapter 489.
 297 As used in this paragraph, the term "premises" does not include
 298 a 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
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.

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. This act shall take effect July 1, 2005.