

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/SB 626

SPONSOR: Health Care Committee and Senator Constantine

SUBJECT: Portable Restroom Contracting

DATE: March 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Keating</u>	<u>Johansen</u>	<u>GE</u>	<u>Favorable</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for the regulation of portable restroom contracting. Specifically, the bill does the following:

- Requires portable restroom contractors to be registered by the Department of Health (DOH). The language parallels the existing registration language for septic tank contractors;
- Authorizes DOH to develop rules for ethical standards of practice, registration, obtaining an initial or renewal certification of registration, disciplinary guidelines, and certification of business entities;
- Permits the practice of or the offer to practice portable restroom contracting services by registrants through a corporation, partnership, association, or person practicing under a fictitious name offering portable restroom contracting services to the public based on certain standards;
- Provides for suspension or revocation of registration;
- Requires DOH to establish fees for registration as a portable restroom contractor and authorization of a business entity;
- Provides that DOH may impose a fine for violations under the portable restroom contracting section and deny a registration, authorization, or renewal of a registration or authorization if an applicant does not meet the requirements of this bill or has violated a provision of this bill;
- Gives DOH the authority to regulate, permit, and inspect the use of portable restrooms, mobile restrooms, mobile shower trailers and associated wastewater holding tanks. The bill also gives DOH the authority to regulate the entities that provide these services;
- Gives DOH personnel who have reason to believe noncompliance exists the authority to enter, at any reasonable time, the business premises of any portable restroom contractor to determine compliance;

- Gives DOH the authority to issue citations and gives DOH the authority to reduce or waive the fine imposed by the citation; and
- Requires DOH to deposit any fines it collects in the county health department trust fund for use in providing portable restroom contracting services.

The bill amends ss. 381.0061 and 381.0065, Florida Statutes.

The bill creates s. 381.0069, Florida Statutes.

II. Present Situation:

Portable Restroom Services

DOH currently has authority to permit and inspect portable restroom services (s. 381.0065(3)(m), F.S.), but does not have authority to license the portable restroom contractors as it does septic tank contractors (part III, ch. 489, F.S.).

The Sunrise Act: Regulation of New Professions

Prior to the 1970s, occupational regulation in Florida was administered through several autonomous, independent boards appointed by the Governor. In the late 1970s, all occupational regulation was centralized in Florida's Department of Professional Regulation (DPR). However, substantial departmental reorganization moved oversight of health professions from DPR to AHCA, and then to DOH.

The Sunrise Act, s. 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 all legislation proposing regulation of a previously unregulated profession or occupation to 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.

The act requires that, upon request, the proponents of regulation of a previously unregulated profession must 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 to initially regulate a previously unregulated profession on the agency's resources to implement and enforce the regulation.

Department of Health Report on the Portable Restroom Industry

In the 2001 Session, the Legislature requested DOH's Technical Review and Advisory Panel (TRAP) to review and advise on the need for licensing the portable restroom industry. TRAP was established in July 1996, to assist DOH in rule making and decision making by drawing on the expertise of representatives from several groups that are affected by onsite sewage treatment and disposal systems. The panel consists of a soil scientist, a professional engineer, two representatives from the home-building industry, one representative from the county health departments, one representative from the real estate industry, a consumer with a science background, two representatives from the septic tank industry, and one representative from the environmental health profession.

TRAP submitted a report to the 2002 Legislature recommending that portable restroom contractors be licensed by DOH in the same manner as septic tank contractors. The report included 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 and these differences require different treatment and disposal procedures.

This bill implements the portable restroom contracting recommendations of the TRAP report.

III. Effect of Proposed Changes:

Section 1. Creates s. 381.0069, F.S., relating to portable restroom contracting, consisting of the following subsections.

Subsection (1) provides definitions. The term "department" means the Department of Health. The term "portable restroom" means any portable toilet, mobile restroom trailer, mobile shower trailer, or portable restroom facility that is intended for use on a permanent or nonpermanent basis, including any holding tanks associated with such facility. The term also includes a facility or holding tank placed on a construction site when workers are present. The term "portable restroom contractor" means a contractor who:

- Has knowledge of state law; and

- Has the experience, knowledge, and skills to safely handle the pick up, transportation, installation, and maintenance of portable restrooms and portable sinks, including, but not limited to, the safe management and disposal of associated wastewater.

Subsection (2) requires a portable restroom contractor in Florida to be registered with DOH and clarifies that this subsection does not prohibit licensed plumbing contractors and septic tank contractors from engaging in the profession for which they are licensed. This subsection also does not apply to private companies that provide solid waste collection services.

Subsection (3) provides registration requirements. The application for registration is to be made in writing to DOH on forms prepared and furnished by DOH. This subsection also requires the department to:

- Administer, coordinate, and enforce the provisions of this section;
- Approve and administer the examination for applicants;
- Grant certificates of registration to qualified persons and certificates of authorization to qualified business entities; and
- Adopt rules regarding ethical standards of practice, registration requirements, requirements for obtaining initial and renewal certificates of registration, disciplinary guidelines, and requirements for certification of business entities. The department may amend or repeal the rules in accordance with ch. 120, F.S.

This subsection also requires an applicant, in order to be eligible for registration, to:

- Be of good moral character. DOH may consider any matter that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to, an applicant being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the practice of contracting or the ability to practice contracting and previous disciplinary action involving portable restroom contracting for which all judicial reviews have been completed.
- Pass an examination approved by DOH which demonstrates a fundamental knowledge of the state laws relating to portable restrooms and the safe handling of the pick up, transportation, installation, and maintenance of portable restrooms, including, but not limited to, the safe management and disposal of associated wastewater. An applicant who has passed the Portable Sanitation Association International's written examination must only pass that portion of the state examination which tests the knowledge of law that is specific to Florida;
- Be at least 18 years of age;
- Have a total of at least three years' active experience serving an apprenticeship as a skilled worker under the supervision and control of a registered portable restroom contractor (related work experience or education may be substituted for no more than two years of active contracting experience; each 30 hours of department-approved coursework shall be substituted for six months of work experience; out-of-state work experience shall be accepted on a year-for-year basis for any applicant who demonstrates that he or she holds a current license from another state for portable restroom contracting which was issued upon satisfactory completion of an examination and continuing education courses equivalent to

those in this state; and an applicant who is employed by and under the supervision of a licensed portable restroom contractor shall be granted up to two years of related work experience). For the purposes of this section, an examination is equivalent if it tests the applicant's knowledge of state law relating to portable restrooms and the safe handling of the pick up, transportation, installation, and maintenance of portable restrooms, including, but not limited to, the safe management and disposal of associated wastewater.

- Not have had a registration revoked within five years immediately preceding the application date.

This subsection requires DOH to provide each applicant a copy of this section of law and applicable rules, and DOH is authorized to prepare and disseminate other materials and questionnaires it deems necessary for registration.

The subsection grants a person who was employed one or more years in this state by a portable restroom service holding a permit issued by the department on or before October 1, 2005, until October 1, 2006, to be registered by the department and authorizes the person to continue to perform portable restroom contracting services until that time. Such persons are exempt until October 1, 2006, from the 3 years' active work experience requirement.

Subsection (4) requires DOH to prescribe by rule the method for approval of continuing education courses and course providers, renewing annual registrations, reverting to inactive status for late filing of renewal applications, allowing contractors to hold their registration in inactive status for a specified period, and reactivating inactive registrations. At a minimum, the requirements for the annual renewal of registration or to reactivate an inactive registration must include continuing education requirements of not less than six classroom hours annually for portable restroom contractors. A certificate of registration becomes inactive when a renewal application is not filed in a timely manner. An inactive certificate may be reactivated by submitting an application to DOH and a registered contractor may apply to DOH for voluntary inactive status during the registration period.

Subsection (5) prohibits a parent corporation, corporation, subsidiary of a corporation, or a partnership, association, or person practicing under a fictitious name from offering or providing portable restroom contracting services to the public without a valid certification of authorization from DOH. A contractor registered under this section is also prohibited from offering or providing portable restroom contracting services on behalf of such a business entity unless that entity holds a valid certificate of authorization. A certificate of authorization is not required when a contractor registered under this section offers or provides portable restroom contracting services in his or her own given name.

The department must issue a certificate of authorization upon demonstration by the applying business entity that each person who is authorized to act on the applicant entity's behalf as a portable restroom contractor is registered under this section and also that, if a corporation, at least one of the principal officers of the corporation or one of the partners of the partnership is registered under this section. The department may not issue a certificate of authorization to a corporation whose agent is a manager unless no officers of the corporation reside in Florida and the corporation provides a notarized letter to the department authorizing one or more managers to act as the corporate agent and registered contractor. This letter must list names and addresses of

each officer of the corporation and state that the letter does not remove responsibility from the corporation's officers. A registered contractor may not be the sole qualifying contractor for more than one business that requests a certificate of authorization, and compliance with this section does not relieve a business entity of responsibility for the conduct or acts of its agents, employees, or officers.

Unless renewed or revoked, each certification of authorization is valid for 2 years. A business entity certified under this section must notify the department within 1 month after any change in the information contained in the application upon which the certification is based. An entity that terminates affiliation with a qualifying registered contractor has 60 days following the date the qualifier terminates his or her affiliation within which to obtain another qualifying contractor. During this period, the business entity may complete an existing contract or continuing contract, but may not undertake any new contract. This period may be extended once by the department for an additional 60 days upon a showing of good cause.

The department must take disciplinary action against a business entity in the same manner and on the same grounds as against an individual portable restroom contractor. When a certificate of authorization has been revoked or otherwise invalidated, any person authorized by law to provide portable restroom contracting services may not use the name or fictitious name of the entity whose certificate was revoked or any other identifiers for the entity, including telephone numbers, advertisements, or logos.

Subsection (6) provides for suspension or revocation of registration upon a showing that the registrant has:

- Violated any provision of this section, s. 381.0065, F.S., relating to onsite sewage treatment and disposal system regulation, or s. 386.041, F.S., relating to public health nuisances;
- Violated a departmental order or rule; or
- Obtained a certificate of authorization or other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

Subsection (7) requires DOH to establish by rule fees for registration as a portable restroom contractor or authorization of a business entity as follows:

- Application and examination fee: not less than \$25 or more than \$75;
- Initial registration fee: not less than \$50 or more than \$100;
- Renewal of registration fee: not less than \$50 or more than \$100; and
- For authorization of a business entity: not less than \$100 or more than \$250.

Fees established by the department are to be based on the actual costs incurred by the department in carrying out its registration, authorization, and other related responsibilities under this section.

Subsection (8) provides penalties which specify that any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The department may deny a registration, authorization, or registration renewal if it determines that an applicant does not meet all requirements of this section, has violated any

provision of this section, or has been assessed an administrative penalty that remains outstanding if the penalty is the final agency action and all judicial review has been exhausted.

Any applicant aggrieved by such denial is entitled to a hearing, after reasonable notice thereof, upon filing a written request for such hearing in accordance with ch. 120, F.S.

Section 2. Amends s. 381.0061, F.S., authorizing DOH to impose a fine not to exceed \$500 for each violation for a violation of the newly created portable restroom contracting statute (s. 381.0069, F.S). Notice of intent to impose a fine must be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 3. Amends s. 381.0065, F.S., giving DOH the authority to regulate, permit, and inspect the use of portable restrooms, mobile restrooms, mobile shower trailers, and associated wastewater holding tanks. The department is also given the authority to regulate, permit, and inspect an individual or business that provides or services such facilities. The department shall also review applications, perform site evaluations, and issue permits for the temporary use of stationary holding tanks.

This section gives DOH personnel who have reason to believe noncompliance exists the authority to enter, at any reasonable time, the business premises of any portable restroom contractor registered or certified under s. 381.0069, F.S., to determine compliance with that section.

This section gives DOH the authority to issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of s. 381.0069, F.S., when a violation of this section or rule is enforceable by an administrative or civil remedy, or when a violation of this section or rule is a misdemeanor of the second degree. A citation issued under s. 381.0069, F.S., constitutes a notice of proposed agency action.

This section gives DOH the authority to reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, DOH must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under s. 381.0069, F.S.

The department, pursuant to s. 381.0069, F.S., must deposit any fines it collects in the county health department trust fund for use in providing services specified in that section.

This section provides an alternative means of enforcing s. 381.0069, F.S. The department is not prohibited from enforcing s. 381.0069, F.S., or its rules, by any other means. However, DOH must elect to use only a single method of enforcement for each violation.

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The bill requires the DOH to establish fees for registration as a portable restroom contractor. The bill requires that the fees be based on the actual costs incurred by the department in carrying out its registration and authorization of portable restroom contractors. The department anticipates charging the following fees for registration:

- \$25 application and examination fee
- \$50 initial registration fee
- \$50 renewal fee
- \$100 authorization fee of a business entity

The department estimates revenues to be between \$16,000 and \$18,000 annually.

B. Private Sector Impact:

The portable restroom contractors and companies will bear the direct costs of this proposal. 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 fees and examination fees to DOH.

Improved training resulting in reduced liability for environmental clean-up and fines for non-compliance should lower costs to the industry. Improved regulatory compliance will provide a more competitive market.

C. Government Sector Impact:

The first year DOH expenses will relate to rule promulgation, training, examination development, and administration. Recurring DOH expenses will be for staff and records storage related to registration application review, mailings, examinations, enforcement, and travel expenses. The statute 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.

	Amount	Amount
	<u>Year 1</u>	<u>Year 2</u>
1. Expenses		
Rule promulgation	\$10,000	
Examination development	2,000	
Travel	8,000	\$7,000
Printing	5,000	5,000
Mailing	1,200	1,200
Examination administration	2,000	2,000
Office supplies	1,000	1,000
Total Estimated Expenses	\$29,200	\$16,200
2. Estimated Revenues		
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 ¹	7,500	7,500
150 renewals \$50	0	7,500
Total Estimated Revenues	\$18,750	\$16,200

¹The revenue shown for authorizations has been pro-rated to reflect an annual amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
