

By Senator Constantine

22-10A-05

1 A bill to be entitled
2 An act relating to environmental health;
3 creating s. 381.0069, F.S.; providing for the
4 regulation of portable restroom contracting;
5 providing definitions; requiring a portable
6 restroom contractor to apply for registration
7 with the Department of Health; providing
8 requirements for registration, including an
9 examination; providing for administration;
10 providing rulemaking authority; providing for
11 renewal of registration, including continuing
12 education; providing for authorization of
13 business entities providing portable restroom
14 contracting services under a fictitious name;
15 providing grounds for suspension or revocation
16 of registration or authorization; providing
17 fees; providing penalties and prohibitions;
18 amending s. 381.0061, F.S.; authorizing
19 imposition of an administrative fine for
20 violating portable restroom contracting
21 requirements; amending s. 381.0065, F.S.;
22 specifying the department's powers and duties
23 with respect to regulating portable restroom
24 facilities and the individuals or businesses
25 that provide and service such facilities;
26 authorizing the department to enter the
27 business premises of any portable restroom
28 contractor to determine compliance and for the
29 purpose of enforcement; authorizing issuance of
30 a citation for a violation of portable restroom
31 contracting requirements which may contain an

1 order of correction or a fine; providing an
2 effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 381.0069, Florida Statutes, is
7 created to read:

8 381.0069 Portable restroom contracting.--

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

10 (a) "Department" means the Department of Health.

11 (b) "Portable restroom" means any portable toilet,
12 mobile restroom trailer, mobile shower trailer, or portable
13 restroom facility intended for use on a permanent or
14 nonpermanent basis, including any holding tanks associated
15 with any such facility. The term includes, but is not limited
16 to, any such facility or holding tank placed at a construction
17 site when workers are present.

18 (c) "Portable restroom contractor" means a portable
19 restroom contractor who has knowledge of state law and the
20 experience, knowledge, and skills necessary to safely handle
21 the pick up, transportation, installation, and maintenance of
22 portable restrooms and portable sinks, including, but not
23 limited to, the safe management and disposal of associated
24 wastewater.

25 (2) REGISTRATION REQUIRED.--A person may not hold
26 himself or herself out as a portable restroom contractor in
27 this state unless he or she is registered by the department in
28 accordance with this section. However, this section does not
29 prohibit a licensed plumbing contractor as defined in s.
30 489.105(3)(m) or a person licensed under part III of chapter
31 489 from engaging in the profession for which he or she is

1 licensed. This section does not apply to a private company as
2 defined in s. 403.70605(4)(b).

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

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

8 (b) The department shall administer, coordinate, and
9 enforce this section; approve and administer the examination
10 for applicants; and grant certificates of registration to
11 qualified persons and certificates of authorization to
12 qualified business entities.

13 (c) The department shall adopt rules under ss.
14 120.536(1) and 120.54 to administer this section which
15 establish ethical standards of practice, requirements for
16 registering as a contractor, requirements for obtaining an
17 initial or renewal certificate of registration, disciplinary
18 guidelines, and requirements for the certification of business
19 entities. The department may amend or repeal the rules in
20 accordance with chapter 120.

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

23 1. Be of good moral character. In considering good
24 moral character, the department may consider any matter that
25 has a substantial connection between the good moral character
26 of the applicant and the professional responsibilities of a
27 registered contractor. This includes, but is not limited to,
28 the applicant's being convicted or found guilty of, or
29 entering a plea of nolo contendere to, regardless of
30 adjudication, a crime in any jurisdiction which is directly
31 related to the practice of contracting or the ability to

1 practice contracting, or any previous disciplinary action
2 against the applicant involving portable restroom contracting
3 for which all judicial reviews have been completed.

4 2. Pass an examination approved by the department
5 which tests knowledge of the fundamentals of state law
6 relating to portable restrooms and the safe handling of the
7 pick up, transportation, installation, and maintenance of
8 portable restrooms, including, but not limited to, the safe
9 management and disposal of associated wastewater. If an
10 applicant from a state having no certification program has
11 passed the Portable Sanitation Association International's
12 written examination, the applicant shall be required to take
13 and pass only that portion of this state's examination which
14 tests knowledge of law that is specific to Florida.

15 3. Be at least 18 years of age.

16 4. Have at least 3 years of active experience serving
17 an apprenticeship as a skilled worker under the supervision
18 and control of a portable restroom contractor who is
19 registered under this section. Related work experience or
20 educational experience may be substituted for no more than 2
21 years of active contracting experience as follows:

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

24 b. Out-of-state work experience may be substituted on
25 a year-for-year basis for any applicant who demonstrates that
26 he or she holds a current license issued by another state for
27 portable restroom contracting which was issued upon
28 satisfactory completion of an examination and continuing
29 education courses that are equivalent to those required in
30 this state. An examination is equivalent if it tests the
31 applicant's knowledge of state law relating to portable

1 restrooms and the safe handling of the pick up,
2 transportation, installation, and maintenance of portable
3 restrooms, including, but not limited to, the safe management
4 and disposal of associated wastewater.

5 c. An applicant who has actively served an
6 apprenticeship as a skilled worker under the control and
7 supervision of a contractor who is not registered under this
8 section may, if that supervising contractor's own work
9 experience would qualify for substitution on a year-for-year
10 basis under sub-subparagraph b., substitute up to 2 years of
11 active service.

12 5. Have not had a registration revoked within 5 years
13 before applying for registration.

14 (e) The department shall provide to each applicant for
15 registration a copy of this section and any rules adopted
16 under this section. The department may also prepare and
17 disseminate other material and questionnaires it finds
18 necessary to carry out the registration provisions of this
19 section.

20 (f) A person who, on October 1, 2005, has been
21 employed at least 1 year in this state by a portable restroom
22 service provider holding a permit issued by the department
23 pursuant to s. 381.065(3)(m) has until October 1, 2006, to be
24 registered by the department in accordance with this section
25 and may continue to perform portable restroom contracting
26 services without registration until that time. Such persons
27 are exempt until October 1, 2006, from the requirement of
28 subparagraph (d)4. for 3 years of active work experience.

29 (4) REGISTRATION RENEWAL.--

30 (a) The department shall prescribe by rule methods for
31 approving continuing education courses, for renewing annual

1 registration, for approving the reversion of a registration to
2 inactive status when the renewal application is late filed,
3 for allowing a contractor to hold a registration in inactive
4 status for a specified period, and for reactivating an
5 inactive registration. The department shall require at least 6
6 classroom hours annually of continuing education courses for
7 annual registration renewal or to reactivate an inactive
8 registration.

9 (b) A certificate of registration becomes inactive
10 when a renewal application is not timely filed. A registration
11 that has become inactive may be reactivated by application to
12 the department. A registered contractor may apply to the
13 department for voluntary inactive status at any time during
14 the period of registration.

15 (5) AUTHORIZATION OF BUSINESS ENTITIES.--

16 (a) A partnership, association, or person practicing
17 under a fictitious name may not offer or provide portable
18 restroom contracting services to the public without a valid
19 certificate of authorization issued by the department. A
20 contractor registered under this section may not offer or
21 provide portable restroom contracting services on behalf of
22 such a business entity unless that entity holds a valid
23 certificate of authorization. A certificate of authorization
24 is not required when a contractor registered under this
25 section offers or provides portable restroom contracting
26 service in his or her own given name.

27 (b) The department shall issue a certificate of
28 authorization upon demonstration by the applying business
29 entity that each person who is authorized to act on the
30 applicant entity's behalf as a portable restroom contractor is
31 registered under this section and also that, if a corporation,

1 at least one of its principal officers, or if a partnership,
2 at least one partner, is registered under this section. The
3 department may not issue a certificate of authorization to a
4 corporation whose agent is a manager unless no officers of the
5 corporation reside in the state and the corporation provides a
6 notarized letter to the department authorizing one or more
7 managers to act as the corporate agent and registered
8 contractor. The notarized letter must list the names and
9 addresses of each officer of the corporation and state that
10 the letter does not remove responsibility from the
11 corporation's officers. The department may not issue a
12 certificate whereby the same registered contractor would
13 become the sole qualifying contractor for more than one
14 business entity. This subsection may not be construed to mean
15 that only a corporation or a partnership may hold a
16 certificate of registration to practice portable restroom
17 contracting. Compliance with this subsection does not relieve
18 a business entity of responsibility for the conduct or acts of
19 its agents, employees, or officers. Employment by or a
20 relationship with a business entity does not relieve an
21 individual who is engaged in portable restroom contracting
22 from responsibility for his or her conduct.

23 (c) Unless renewed or revoked, each certification of
24 authorization is valid for 2 years. A business entity
25 certified under this subsection must notify the department
26 within 1 month after any change in the information contained
27 in the application upon which the certification is based. A
28 business entity that terminates affiliation with a qualifying
29 registered contractor has 60 days following the date of
30 termination in which to obtain another qualifying contractor.
31 During the 60-day period, the business entity may complete an

1 existing contract or continuing contract but may not undertake
2 a new contract. The department may extend the period for an
3 additional 60 days upon a showing of good cause.

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

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

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

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

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

17 (c) Obtained a certificate of registration or other
18 order, ruling, or authorization by means of fraud,
19 misrepresentation, or concealment of material fact.

20 (7) FEES.--

21 (a) The department shall, by rule, establish fees as
22 follows:

23 1. For registration as a portable restroom contractor:

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

26 b. Initial registration fee: not less than \$50 or more
27 than \$100.

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

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

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

5 (8) PENALTIES AND PROHIBITIONS.--

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

9 (b) The department may deny a registration,
10 authorization, or renewal of a registration or authorization
11 if an applicant does not meet the requirements of this section
12 or has violated any provision of this section or if there is
13 any outstanding administrative penalty with the department in
14 which the penalty is final agency action and all judicial
15 reviews are exhausted. Any applicant aggrieved by such denial
16 is entitled to a hearing, after reasonable notice thereof,
17 upon filing a written request in accordance with chapter 120.

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

20 381.0061 Administrative fines.--

21 (1) In addition to any administrative action
22 authorized by chapter 120 or by other law, the department may
23 impose a fine, which shall not exceed \$500 for each violation,
24 for a violation of s. 381.006(16), s. 381.0065, s. 381.0066,
25 s. 381.0069, s. 381.0072, or part III of chapter 489, for a
26 violation of any rule adopted under this chapter, or for a
27 violation of any of the provisions of chapter 386. Notice of
28 intent to impose such fine shall be given by the department to
29 the alleged violator. Each day that a violation continues may
30 constitute a separate violation.

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

4 381.0065 Onsite sewage treatment and disposal systems;
5 regulation.--

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

8 (m) Regulate, permit, and inspect the use of portable
9 restrooms, mobile restrooms, mobile show trailers, and
10 associated wastewater ~~Permit and inspect portable or temporary~~
11 ~~toilet services and holding tanks; regulate, permit, and~~
12 inspect an individual or business that provides or services
13 such facilities; and. ~~The department shall review~~
14 ~~applications,~~ perform site evaluations, and issue permits for
15 the temporary use of stationary holding tanks, ~~privies,~~
16 ~~portable toilet services, or any other toilet facility that is~~
17 ~~intended for use on a permanent or nonpermanent basis,~~
18 ~~including facilities placed on construction sites when workers~~
19 ~~are present.~~ The department may specify standards for the
20 construction, maintenance, use, and operation of any such
21 facility for temporary use.

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

23 (a) Department personnel who have reason to believe
24 noncompliance exists, may, at any reasonable time, enter the
25 premises permitted under ss. 381.0065-381.0066, ~~or~~ the
26 business premises of any septic tank contractor or master
27 septic tank contractor registered under part III of chapter
28 489, the business premises of any portable restroom contractor
29 registered or certified under s. 381.0069, or any premises
30 that the department has reason to believe is being operated or
31 maintained not in compliance, to determine compliance with the

1 provisions of this section, part I of chapter 386, or part III
2 of chapter 489 or rules or standards adopted under ss.
3 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
4 III of chapter 489. As used in this paragraph, the term
5 "premises" does not include a residence or private building.
6 To gain entry to a residence or private building, the
7 department must obtain permission from the owner or occupant
8 or secure an inspection warrant from a court of competent
9 jurisdiction.

10 (b)1. The department may issue citations that may
11 contain an order of correction or an order to pay a fine, or
12 both, for violations of ss. 381.0065-381.0067, s. 381.0069,
13 part I of chapter 386, or part III of chapter 489 or the rules
14 adopted by the department, when a violation of these sections
15 or rules is enforceable by an administrative or civil remedy,
16 or when a violation of these sections or rules is a
17 misdemeanor of the second degree. A citation issued under ss.
18 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
19 III of chapter 489 constitutes a notice of proposed agency
20 action.

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

24 3. The fines imposed by a citation issued by the
25 department may not exceed \$500 for each violation. Each day
26 the violation exists constitutes a separate violation for
27 which a citation may be issued.

28 4. The department shall inform the recipient, by
29 written notice pursuant to ss. 120.569 and 120.57, of the
30 right to an administrative hearing to contest the citation
31 within 21 days after the date the citation is received. The

1 citation must contain a conspicuous statement that if the
2 recipient fails to pay the fine within the time allowed, or
3 fails to appear to contest the citation after having requested
4 a hearing, the recipient has waived the recipient's right to
5 contest the citation and must pay an amount up to the maximum
6 fine.

7 5. The department may reduce or waive the fine imposed
8 by the citation. In determining whether to reduce or waive the
9 fine, the department must consider the gravity of the
10 violation, the person's attempts at correcting the violation,
11 and the person's history of previous violations including
12 violations for which enforcement actions were taken under ss.
13 381.0065-381.0067, s. 381.0069, part I of chapter 386, part
14 III of chapter 489, or other provisions of law or rule.

15 6. Any person who willfully refuses to sign and accept
16 a citation issued by the department commits a misdemeanor of
17 the second degree, punishable as provided in s. 775.082 or s.
18 775.083.

19 7. The department, pursuant to ss. 381.0065-381.0067,
20 s. 381.0069, part I of chapter 386, or part III of chapter
21 489, shall deposit any fines it collects in the county health
22 department trust fund for use in providing services specified
23 in those sections.

24 8. This section provides an alternative means of
25 enforcing ss. 381.0065-381.0067, s. 381.0069, part I of
26 chapter 386, and part III of chapter 489. This section does
27 not prohibit the department from enforcing ss.
28 381.0065-381.0067, s. 381.0069, part I of chapter 386, or part
29 III of chapter 489, or its rules, by any other means.
30 However, the department must elect to use only a single method
31 of enforcement for each violation.

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Section 4. This act shall take effect July 1, 2005.

SENATE SUMMARY

Authorizes regulation of portable restroom contractors by the Department of Health. Requires registration of portable restroom contractors and authorization of business entities that offer or provide portable restroom contracting services. Provides requirements for registration, including an examination and work experience. Authorizes the Department of Health to adopt rules. Provides requirements for certification. Provides fees and penalties. (See bill for details.)