

# 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.)

BILL: CS/SB 368

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Constantine

SUBJECT: Environmental Health

DATE: January 21, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parham</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
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 registration, continuing education, and ethical standards for portable restroom contractors;
- Permits the practice of or the offer to practice portable restroom contracting services by registrants through a parent corporation, corporation, subsidiary of a corporation, or partnership 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;
- Provides that DOH may impose a fine for violations under the portable restroom contracting section;
- Gives DOH the authority to regulate the use of portable restrooms, mobile restrooms, mobile shower trailers, and to permit and inspect portable or stationary temporary toilet services and 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 authority to reduce or waive the fine imposed by the citation;

- Requires DOH to deposit any fines it collects in the county health department trust fund for use in providing portable restroom contracting services; and
- Continues the research surcharge on new onsite sewage treatment and disposal system construction permits originally authorized by the Legislature in 1983.

The bill amends ss. 381.0061, 381.0065, and 381.0066, F.S.

The bill creates s. 381.0069, F.S.

## **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 (s. 489.552, 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 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.

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 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.

## **Research Fee for Onsite Sewage Treatment and Disposal Systems**

Paragraph (k) of subsection (2) of s. 381.0066, F.S., requires an additional fee of \$5 to be added to each new onsite sewage treatment and disposal system permit issued during fiscal years 1996–2004. The fee is to be used for onsite sewage research, demonstration, and training projects. Most recently, the fee supported the evaluation of advanced treatment options for onsite systems in the Florida Keys. In addition, over the years, other research projects funded by the fee have included:

- Impact of Onsite Sewage Disposal Systems on Surface and Ground Water Quality;
- The Impact of Florida's Growth on the Use of Onsite Sewage Disposal Systems;
- Risk Assessment of Onsite Sewage Disposal Systems for Selected Florida Hydrologic Regions;
- Unsaturated Zone Monitoring Below Subsurface Wastewater Systems Serving Individual Homes in Florida;

- Performance Monitoring and Ground Water Quality Impacts of Onsite Sewage Disposal Systems Subdivision Developments;
- Viral Study Summary;
- Onsite Sewage Disposal System Research on the Northern Periphery of Lake Okeechobee;
- An Investigation of the Surface Water Contamination Potential from Onsite Sewage Disposal Systems in Turkey Creek Sub-basin of the Indian River Lagoon Basin; and
- The Capability of Fine Sandy Soil for Septic Tank Effluent Treatment.

The fee enables DOH to seek federal grants for research requiring matching funds. The fee is currently set to expire June 30, 2004.

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 381.0069, F.S., consisting of the following subsections.

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

- Has knowledge of the state health code law and rules; and
- Has the experience, knowledge, and skills to handle, deliver, and pick up sanitary portable restrooms; to install, safely handle, and maintain portable holding tanks; and to handle, transport and dispose of domestic portable restroom and portable holding tank wastewater.

*Subsection (2)* requires a portable restroom contractor in Florida to be registered with DOH and clarifies that this subsection does not prohibit 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;
- Administer the examination for applicants;
- Grant certificates of registration to qualified persons; 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 partnerships and corporations. 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 installation, maintenance, and wastewater disposal of portable restrooms, sinks, and holding tanks;
- 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; individuals from a state with no state certification who have successfully completed a written examination provided by the Portable Sanitation Association International are required to take only the written portion of the examination that includes state health code law and rules; and a person employed by and under the supervision of a licensed out-of-state contractor must be granted up to two years of related work experience). For the purposes of this section, an equivalent examination must include the topics of state health code law and rules applicable to portable restrooms and the knowledge required to handle, deliver, and pick up sanitary portable restrooms; to install, handle, and maintain portable holding tanks; and to handle, transport, and dispose of domestic portable restroom and portable holding tank 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.

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, 2004, until October 1, 2005, 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, 2005, from the 3 years' active work experience requirement.

*Subsection (4)* requires DOH to prescribe by rule the method for approval of continuing education courses, 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 shall 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 the department and a registered contractor may apply to the department for voluntary inactive status during the registration period.

*Subsection (5)* permits the practice of or the offer to practice portable restroom contracting services by registrants through a parent corporation, corporation, subsidiary of a corporation, or partnership offering portable restroom contracting services to the public through registrants under this chapter as agents, employers, officers, or partners, under the following standards:

- One or more of the principal officers of the corporation or one or more partners of the partnership and all personnel of the corporation or partnership who act on its behalf as portable restroom contractors in this state are registered as provided by this part, and if the corporation or partnership has been issued a certificate of authorization by the department;
- An agent of the corporation may be a manager of the corporation only when no officers of the corporation reside in Florida. In this case, the corporation must provide a notarized letter of authorization for one or more managers to act as the agent and registered contractor on behalf of all matters of the corporation. This authorization must provide the list of names and addresses of all officers and include a statement that it in no way removes any responsibility from the officers of the corporation.
- A registered contractor may not be the sole qualifying contractor for more than one business that requests a certificate of authorization;
- A business organization that loses its qualifying 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 organization may complete any 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 subsection may not be construed to mean that a certificate of registration to practice portable restroom contracting must be held by a corporation;
- A corporation or partnership is not relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, and an individual practicing portable restroom contracting is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a corporation or partnership;
- A certificate of authorization is required for a corporation, a partnership, an association, or a person practicing under a fictitious name when offering portable restroom contracting services to the public, except that when an individual is practicing portable restroom contracting in his or her own given name, he or she is not required to register under this subsection;
- Each certification of authorization shall be renewed every two years;
- Each partnership and corporation certified under this section shall notify the department within one month after any change in the information contained in the application upon which the certification is based;

- Disciplinary action against a corporation or partnership is to be administered in the same manner and on the same grounds as disciplinary action against a registered portable restroom contractor; and
- When a certificate of authorization has been revoked, 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;
- Violated a departmental order or rule;
- Obtained a registration or other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts; or
- Been found guilty of gross misconduct in the pursuit of his or her profession.

*Subsection (7)* requires DOH to establish by rule fees for registration as a portable restroom contractor as follows:

- Application and examination fee: not less than \$25 nor more than \$75;
- Initial registration fee: not less than \$50 nor more than \$100;
- Renewal of registration fee: not less than \$50 nor more than \$100; and
- For certification of a partnership or corporation: not less than \$100 nor 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 and other 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., providing that the department may impose a fine which shall not 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 such fine shall 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 the department the authority to regulate the use of portable restrooms, mobile restrooms, mobile shower trailers, and to permit and inspect portable

or stationary temporary toilet services and holding tanks. The department is also given the authority to regulate, permit, and inspect the companies that provide and service 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 departmental 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 under s. 381.0069, F.S., to determine compliance with that section.

This section gives the department 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 the department authority to reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department 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., shall 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, the department must elect to use only a single method of enforcement for each violation.

**Section 4.** Amends s. 381.0066, F.S., to remove the limitation to fiscal years 1996-2004 on a \$5 research fee added to each new system permit issued for onsite sewage treatment and disposal systems.

**Section 3.** Provides an effective date of July 1, 2004.

#### **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 establishes fees, within specified ranges, for portable restroom contractor application and examination, initial registration, and renewal of registration, and for certification of partnerships and corporations.

The bill continues a \$5 research fee that is added to each new system permit issued for onsite sewage treatment and disposal systems that is set to expire at the end of fiscal year 2004.

B. Private Sector Impact:

The portable toilet 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, mailing, examination, enforcement, and travel expenses. The statute provides a fee range. Fiscal impact estimates were based on the minimum fee of the range. The department has sufficient funds to cover the start up costs but would need budget authority. Recurring costs would be fully supported by the fees.

	<b>Amount</b>	<b>Amount</b>
	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>
1. Expenses		
Total Non-Recurring	\$20,200	
Total Recurring Costs	14,585	14,585
<b>Total Expenses</b>	<b>\$34,785</b>	<b>\$14,585</b>

2. Estimated Revenues <sup>1</sup>		
150 exams @ \$25	\$ 3,750	0
150 registrations @\$50	7,500	0
15 exams @\$25	0	375
15 registrations @\$50	0	750
75 authorizations @\$100 <sup>2</sup>	7,500	7,500
150 renewals \$50	0	7,500
Total Estimated Revenues	\$18,750	\$16,125

<sup>1</sup>Revenues were based on current number of portable toilet service providers regulated by the DOH. Business authorizations are renewed every 2 years.

<sup>2</sup>The revenue shown for authorizations has been pro-rated to reflect an annual amount.

**VI. Technical Deficiencies:**

Section 381.0069(3)(f), F.S., would allow anyone who was employed by a permitted portable restroom service for one or more years prior to October 1, 2004, to be registered if they register before October 1, 2005. Those that become registered by the October 1 deadline would have to maintain their registration for 3 years before they would become portable restroom contractors. An individual who becomes registered should be a portable restroom contractor upon registration.

**VII. Related Issues:**

Proposed s. 381.0069(6)(a)-(d), F.S., could be read to require DOH to prove (a)-(d) in order to discipline a contractor. Proposed s. 381.0069(6)(d), F.S., requires gross misconduct in order to impose discipline. DOH, by case law, is already required to prove a violation by a clear and convincing standard of evidence. The proposed language requires DOH to prove gross misconduct, which seems an inordinate burden of proof.

**VIII. Amendments:**

None.