

Sewers--mandatory connection sewerage system

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Subject:

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Mr. Michael S. Mullin
Nassau County Attorney
Post Office Box 1010
Fernandina Beach, Florida 32035-1010

RE: COUNTIES--SEWER SYSTEMS--residential owners whose property is served by onsite septic system required to connect with an investor-owned sewerage system after written notification of system's availability. s. 381.00655, Fla. Stat.

Dear Mr. Mullin:

On behalf of the Nassau County Board of County Commissioners, you ask substantially the following question:

Does section 381.00655, Florida Statutes, mandate that residential property owners whose property is currently served by an onsite septic system connect to an investor-owned sewerage system, and may the costs of such sewerage line be assessed to the property owners that do not hook up to the system?

In sum:

The Legislature, through the enactment of section 381.00655, Florida Statutes, has required residential owners whose property is served by an onsite septic system to connect with an investor-owned sewerage system after written notification by the owner of the investor-owned sewerage system that the system is available for connection. The statute, however, permits the investor-owned sewerage system to waive the connection with the consent of the Department of Health.

The Legislature has enacted section 381.00655, Florida Statutes, which requires property owners who currently have onsite sewage treatment and disposal systems to connect to available central sewerage systems. An onsite sewage treatment system includes such things as septic systems.[1] Pursuant to the statute:

"The owner of a properly functioning onsite sewage treatment and disposal system . . . *must connect* the system or the building's plumbing to an available publicly owned or investor-owned sewerage system within 365 days after written notification by the owner of the publicly owned or investor-owned sewerage system that the system is available for connection. The publicly owned or investor-owned sewerage system must notify the owner of the onsite sewage treatment and

disposal system of the availability of the central sewerage system. No less than 1 year prior to the date the sewerage system will become available, the publicly owned or investor-owned sewerage system shall notify the affected owner of the onsite sewage treatment and disposal system of the anticipated availability of the sewerage system and shall also notify the owner that the owner will be required to connect to the sewerage system within 1 year of the actual availability. . . ."[2] (e.s.)

If an onsite sewage treatment and disposal system must be repaired in order to function or to comply with the requirements of sections 381.0065-381.0067, Florida Statutes, or rules adopted thereunder, the owner of such system must connect to an available publicly owned or investor-owned sewerage system within 90 days after written notification from the department.[3] In hardship cases, upon request of the owner the department may approve one extension of not more than 90 days for sewerage connection.

The statute recognizes that there may be instances where the requirement of mandatory sewer hookup may be waived. Section 381.00655(2)(b), Florida Statutes, provides:

"A publicly owned or investor-owned sewerage system may, with the approval of the [Department of Health], waive the requirement of mandatory onsite sewage disposal connection if it determines that such connection is not required in the public interest due to public health considerations."

It is, however, the publicly owned or investor-owned system that determines, with the approval of the Department of Health, whether the mandatory hookup provisions of section 381.00655, Florida Statutes, may be waived. The statute makes no provision for the property owner to decline to connect to the system.

Section 381.00655(1)(a), Florida Statutes, grants the property owner the option of prepaying the amortized value of required connection charges in equal monthly installments over a period not to exceed 2 years from the date of the initial notification of anticipated availability. In addition, the local governing body of the jurisdiction in which the owner of the onsite sewage treatment and disposal system resides may provide that any connection fee charged under this section by an investor-owned sewerage system may be paid without interest in monthly installments, over a period of time not to exceed 5 years from the date the sewerage system becomes available, if it determines that the owner has demonstrated a financial hardship.[4]

Although the statute requires sewer hookup and makes provision for payment of hookup fees, there are no statutorily prescribed penalties for failure to connect to the system within the designated time period. A companion bill in the House of Representatives to Committee Substitute for Senate Bill 158 provided:

"If the owner of an onsite sewage treatment and disposal system has not connected to an available publicly owned or investor-owned sewerage system within the time required by this subsection, the publicly owned or investor-owned sewerage system may charge the owner any connection fees, customer charges, or minimum billing charges as if the owner had connected to the available sewerage system on the last day of the notification period. Such charges may be collected or enforced as permitted by applicable tariffs or rules and regulations of the sewerage

system or as otherwise permitted by law."[5]

No such provisions are contained in the Senate Bill that passed as Chapter 93-151, Laws of Florida, creating section 381.00655, Florida Statutes. Nor does section 381.00655, Florida Statutes, specifically grant enforcement authority to any agency or entity.

This office, however, has stated that a county or a municipality may take local legislative action providing for the enforcement of section 381.00655, Florida Statutes, under home rule powers.[6] The statute itself clearly recognizes the authority of counties and municipalities to "enforce other laws for the protection of the public health and safety." [7] Moreover, section 381.0065(5)(b)1., Florida Statutes, provides that the Department of Health may issue citations containing an order of correction or an order to pay a fine, or both, for violations of sections 381.0065-381.0067 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree.[8] A citation issued under sections 381.0065-381.0067, Part I of Chapter 386, or Part III of Chapter 489, Florida Statutes, constitutes a notice of proposed agency action.

Accordingly, I am of the view that the Legislature, through the enactment of section 381.00655, Florida Statutes, requires residential owners whose property is served by an onsite septic system to connect with an investor-owned sewerage system after written notification by the owner of the investor-owned sewerage system that the system is available for connection, unless the investor-owned sewerage system waives the connection with the consent of the Department of Health.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] See s. 381.0065(2)(j), Fla. Stat., as amended by s. 10, Ch. 2000-242, Laws of Florida, defining an "Onsite sewage treatment and disposal system" as used in ss. 381.0065-381.0067, Fla. Stat., to mean

"a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a *septic tank*; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403." (e.s.)

[2] Section 381.00655(1)(a), Fla. Stat.

[3] Section 381.00655(1)(b), Fla. Stat.

[4] Section 381.00655(2)(a), Fla. Stat. The statute requires the local governing body to establish criteria for making the determination that the owner has demonstrated a financial hardship, taking into account the owner's net worth, income, and financial needs.

[5] Section 2, HB 2133, 1993 legislative session.

[6] See Op. Att'y Gen Fla. 96-09 (1996), and Inf. Op. to Alan C. Jensen, dated August 27, 1999.

[7] Section 381.00655(1)(a), Fla. Stat.

[8] *Cf.* Rule 64E-6.022(1)(p), Fla.Admin.C., establishing disciplinary guidelines for the installation, modification, or repair of an onsite sewage treatment and disposal system in violation of the standards of s. 381.0065 or s. 381.00655, Fla. Stat., or chapter 64E-6, Fla.Admin.C.: First violation, \$500 per specific standard violated; repeat violation, 90 day suspension or revocation.