

Florida State Statutes: Failing Septic Systems

PART I

SANITARY NUISANCES

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386.01 Sanitary nuisance.—A sanitary nuisance is the commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused.

History.—s. 1, ch. 4346, 1895; GS 1153; RGS 2157; CGL 3386.

386.02 Duty of Department of Health.—The Department of Health, upon request of the proper authorities, or of any three responsible resident citizens, or whenever it may seem necessary to the department, shall investigate the sanitary condition of any city, town, or place in the state; and if, upon examination, the department shall ascertain the existence of any sanitary nuisance as herein defined, it shall serve notice upon the proper party or parties to remove or abate the said nuisance or, if necessary, proceed to remove or abate the said nuisance in the manner provided in s. 823.01.

History.—s. 11, ch. 4346, 1895; GS 1154; RGS 2158; CGL 3387; ss. 19, 35, ch. 69-106; s. 148, ch. 77-147; s. 75, ch. 97-101.

386.03 Notice to remove nuisances; authority of Department of Health and local health authorities.—

(1) The Department of Health, upon determining the existence of anything or things herein declared to be nuisances by law, shall notify the person or persons committing, creating, keeping, or maintaining the same, to remove or cause to be removed, the same within 24 hours, or such other reasonable time as may be determined by the department, after such notice be duly given.

(2) If the sanitary nuisance condition is not removed by such person or persons within the time prescribed in said notice, the department, its agents or deputies or local health authorities, may within the county where the nuisance exists, remove, cause to remove, or prevent the continuing sanitary nuisance condition in the following manner:

(a) Undertake required correctional procedures, including the removal of same if necessary; the cost or expense of such removal or correctional procedures shall be paid by the person or persons committing, creating, keeping, or maintaining such nuisances; and if the said cost and expense thus

accruing shall not be paid within 10 days after such removal, the same shall be collected from the person or persons committing, creating, keeping, or maintaining such nuisances, by suit at law; but this paragraph shall not authorize the department to alter, change, demolish, or remove any machinery, equipment, or facility designed or used for the processing or disposing of liquid or smoke effluent of a manufacturing plant.

(b) Institute criminal proceedings in the county court in the jurisdiction of which the condition exists against all persons failing to comply with notices to correct sanitary nuisance conditions as provided in this chapter.

(c) Institute legal proceedings authorized by the department as set forth in s. 381.0012.

(d) Institute administrative proceedings authorized by the department as set forth in s. 381.0061.

History.—s. 12, ch. 4346, 1895; GS 1155; RGS 2159; CGL 3388; s. 1, ch. 63-64; ss. 19, 35, ch. 69-106; s. 1, ch. 77-119; s. 149, ch. 77-147; s. 5, ch. 80-351; s. 53, ch. 91-297; s. 76, ch. 97-101.

386.041 Nuisances injurious to health.—

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization, or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

(a) Untreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases, and noisome odors which are harmful to human or animal life.

(b) Improperly built or maintained septic tanks, water closets, or privies.

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381.0012 Enforcement authority.—

(1) The department may commence and maintain all proper and necessary actions and proceedings to enforce the rules adopted pursuant to this chapter and may defend all actions and proceedings involving the department's powers and duties.

(2) The department may apply for an injunction to the proper circuit court, and the judge of that court upon hearing and for cause shown may grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter. A permanent injunction may be issued without bond. However, a temporary injunction may not be issued without bond except after a hearing of which the respondent has been given not less than 7 days' prior notice. A temporary injunction may not be issued without bond which limits or prevents operations of an industrial, manufacturing, or processing plant, unless at the hearing, it is shown by clear, certain, and convincing evidence that irreparable injury will result to the public from the

failure to issue the temporary injunction. If a temporary injunction or restraining order is improperly or erroneously granted, the state is liable in damages and to the extent provided for in chapter 768.

(3) The department may commence and maintain all proper and necessary actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.

(4) The department may appear before any trial court judge empowered to issue warrants in criminal cases and request the issuance of a warrant. The trial court judge shall issue a warrant directed to any sheriff, deputy, or police officer to assist in any way to carry out the purpose and intent of this chapter.

(5) It shall be the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials upon request to assist the department or any of its agents in enforcing the state health laws, rules, and orders adopted under this chapter.

History.—s. 4, ch. 91-297; s. 9, ch. 2004-11; s. 1, ch. 2015-120.

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381.0061 Administrative fines.—

(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which may not exceed \$500 for each violation, for a violation of s. [381.006\(15\)](#), s. [381.0065](#), s. [381.0066](#), s. [381.0072](#), or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of chapter 386. 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.

(2) In determining the amount of fine to be imposed, if any, for a violation, the following factors shall be considered:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or operator to correct violations.

(c) Any previous violations.

(3) All amounts collected under this section shall be deposited into an appropriate trust fund of the department.

History.—s. 4, ch. 80-351; s. 2, ch. 85-300; s. 13, ch. 89-324; s. 22, ch. 91-297; s. 7, ch. 92-180; s. 11, ch. 99-397; s. 41, ch. 2020-150.

Note.—Former s. 381.112.

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public.

(b) It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.