

STORAGE NAME: h0949s1.lgva.doc
DATE: April 10, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: CS/HB 949
RELATING TO: Local Government Regulation of Water or Wastewater Utilities
SPONSOR(S): Committee on Utilities & Telecommunications and Representative Attkisson
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES & TELECOMMUNICATIONS (RIC) YEAS 12 NAYS 2
- (2) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (3) COUNCIL FOR READY INFRASTRUCTURE
- (4)
- (5)

I. SUMMARY:

The bill provides that a county cannot exercise the power of eminent domain over any water or wastewater utility system or facility that the county has regulated in the preceding five years unless the county demonstrates that the utility to be condemned presents a danger to the public health or has been abandoned.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

N/A

B. PRESENT SITUATION:

The Public Service Commission (PSC) has the responsibility for regulation of the authority, service, and rates of privately owned electric, telephone, and natural gas utilities. Counties may own and operate water and wastewater utilities while regulating the authority, service, and rates of privately owned water and wastewater utilities operating within the county. Privately owned water and wastewater utilities are regulated by the counties unless the Board of County Commissioners has officially transferred jurisdiction to the PSC. Section 367.171(1), Florida Statutes, provides that a board of county commissioners may by resolution, or the appropriate board of a charter county may by declaration, cede regulatory authority of privately owned water and wastewater utilities over to the Public Service Commission (PSC). However, the county cannot choose the utilities it wishes to regulate. Section 367.171, Florida Statutes, provides that the county must choose to retain regulatory jurisdiction over all of the privately owned water and wastewater utilities within the county (exclude itself from the provisions of chapter 367, Florida Statutes) or to cede regulatory jurisdiction over all of the privately owned water and wastewater utilities within the county over to the PSC (choose to adopt the provisions of chapter 367, Florida Statutes, by resolution or declaration, as applicable). Section 367.171(1), Florida Statutes, also provides that after a period of 10 continuous years under the jurisdiction of the PSC, a county may rescind its assignment of regulatory authority to the PSC.

There are 36 "jurisdictional" counties in which a county has ceded jurisdiction to the PSC to regulate privately owned water and wastewater utilities. The 36 jurisdictional counties are: Alachua, Bay, Bradford, Brevard, Broward, Charlotte, Clay, Columbia, Franklin, Gadsden, Gulf, Highlands, Jackson, Lake, Lee, Levy, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Palm Beach, Pasco, Pinellas, Polk, Putnam, Seminole, Saint Lucie, Sumter, Volusia, and Washington Counties. There are 31 "non-jurisdictional" counties that have retained authority to regulate their privately owned water and wastewater utilities. There are 31 non-jurisdictional counties that have chosen to retain regulatory control over privately owned water and wastewater utilities. These 31 non-jurisdictional counties are: Baker, Calhoun, Citrus, Collier, DeSoto, Dixie, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Holmes, Indian River, Jefferson, Lafayette, Leon, Liberty, Madison, Miami-Dade, Okeechobee, Santa Rosa, Sarasota, Saint Johns, Suwanee, Taylor, Union, Wakulla, and Walton Counties.

Chapter 153, Florida Statutes, provides the general grant of power for any of the non-jurisdictional counties of the state as it relates to water and wastewater systems. Non-jurisdictional counties are empowered pursuant to section 153.03(3), Florida Statutes:

To fix and collect rates, fees and other charges for the service and facilities furnished by any such water supply system or water system improvements and sewage disposal system or sewer improvements and to fix and collect charges for making connections with the water system of the county.

Pursuant to section 153.03(4), Florida Statutes, a non-jurisdictional county is further authorized:

To acquire in the name of the county by gift, purchase as hereinafter provided or by the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property as it may deem necessary for the efficient operation or for the extension of or the improvement of any facility purchased or constructed under the provisions of this chapter and to hold and dispose of all real and personal property under its control; provided, however, that no county shall have the right to exercise the right of eminent domain over any such lands or rights or interests therein or any personal property owned by any municipality within the state nor to exercise such right with respect to any privately owned water supply system or sewage disposal system including without limitation ponds, streams and surface waters constituting a part thereof, provided any such system is primarily used, owned or operated by an industrial or manufacturing plant for its own use as a water supply system or in disposing of its industrial wastes.

Section 153.03(8), Florida Statutes, further empowers non-jurisdictional counties:

To acquire by gift or purchase at a price to be mutually agreed upon, any of the facilities or portions thereof, provided for by this chapter, which shall, prior to such acquisition, have been owned by any private person, group, firm, partnership, association or corporation; provided, however, if the price for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the board of county commissioners, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided, further, that in the event said board cannot agree as to the price to be paid by the said board of county commissioners, then the board of county commissioners shall exercise the right of eminent domain.

According to Florida Water Services, the need to provide affordable, safe, and clean drinking water is met by more than 7,160 public water systems throughout the state. More than 94% of the public utilities in Florida are privately owned and operated.

As of April 2, 2001, the PSC regulates 55 electric utilities, 8 gas and 50 gas safety utilities, 199 water and 157 wastewater utilities, and 1,827 telecommunications utilities (10 incumbent local exchange utilities, 443 alternative local exchange utilities, 689 pay telephone utilities, 27 shared tenant service utilities, 37 alternative access vendor utilities, 139 facility based carrier utilities, 25 multi-location discount aggregation utilities, 97 operator service provider utilities, 209 prepaid debit card provider utilities, 335 reseller utilities, and 250 switchless rebiller utilities).

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 367.171(8), Florida Statutes, to provide that a county cannot exercise the power of eminent domain over any water or wastewater utility system or facility that the county has regulated in the preceding five years unless the county demonstrates that the utility to be condemned presents a danger to the public health or has been abandoned.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsection (8) of section 367.171, Florida Statutes, to provide that a county cannot exercise the power of eminent domain over any water or wastewater utility system or facility that the county has regulated in the preceding five years unless the county demonstrates that the utility to be condemned presents a danger to the public health or has been abandoned.

Section 2: Provides an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue-raising authority for any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to industry representatives, an inherent conflict exists when a county may condemn utilities over which the county also exercises regulatory jurisdiction. Since the value of the utility is a function of the utility's revenue stream, a county can manipulate the rate-setting process to lower utility rates below what they would otherwise be and thereby lower the price that would have to be paid for the utility in a condemnation case. The industry believes this bill would eliminate this conflict by requiring counties to choose between regulation and condemnation.

The Association of Counties (Association) has expressed concern that a county would have to cede regulatory jurisdiction over all privately owned utilities to the PSC in order to condemn a single facility. The Association states that water and wastewater facilities are usually condemned for comprehensive planning and water resource protection purposes. The Association points out that once regulatory jurisdiction has been transferred to the PSC, current law requires a county to wait ten years before rescinding its assignment of regulatory authority to the PSC.

Collier County, a county that has chosen to retain regulatory jurisdiction over water and wastewater facilities, opposes the proposed prohibition against the exercise of eminent domain authority against privately owned water and wastewater utilities. Collier County argues that the statutory right of eminent domain is intended to protect the health, safety and welfare of citizens and this bill will critically impair that right. Collier County believes sufficient safeguards currently exist to protect against abuses.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Utilities and Telecommunications Committee adopted one amendment and approved a committee substitute. This amendment provided that no non-jurisdictional county may exercise eminent domain authority over any water or wastewater utility system it has regulated in the preceding five years, unless the county demonstrates that the utility to be condemned presents a danger to the public health or has been abandoned.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Wendy G. Holt

Staff Director:

Patrick L. "Booter" Imhof

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AS REVISED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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