

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: SB 2120
 SPONSOR: Senator Fasano
 SUBJECT: Monopoly Water Utilities/Pasco County
 DATE: March 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill establishes a pilot project in Pasco County to allow the Pasco County Commission to respond to water customers’ complaints regarding black water and rotten-egg odor from water arising from local variations in raw water chemistry, and customer service. Provides for the creation of a monopoly water utility ad hoc committee to review and evaluate customer complaints. Provides committee membership. Provides that the committee may not exist for more than 2 years. Provides that the act would expire July 1, 2005.

II. Present Situation:

Chapter 367, F.S., governs water and wastewater systems. As provided in s. 367.011, F.S., the Public Service Commission (PSC) shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates. Section 367.022, F.S., provides that certain utilities are not subject to regulation by the PSC. Included are systems owned, operated, managed, or controlled by governmental authorities and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility. Investor-owned utilities are generally within the jurisdiction of the PSC.

Drinking water standards are set by the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act¹ and in Florida by the Department of Environmental Protection (DEP) pursuant to the Florida Safe Drinking Water Act.² Pursuant to s. 403.853, F.S., the DEP must adopt and enforce:

¹ 42 U.S.C. 300f. et seq.

² ss. 403.850-403.864, F.S., Florida’s Safe Drinking Water Act.

- State primary drinking water regulations that shall be no less stringent at any given time than the complete interim or revised national primary drinking water regulations in effect at such time; and
- State secondary drinking water regulations patterned after the national secondary drinking water regulations.

In August of 2000, the PSC initiated the Interagency Copper Pipe Corrosion Project with the Florida Department of Community Affairs and the DEP. The Interagency Copper Pipe Corrosion Project was initiated in response to complaints of black water occurring in some customers' homes in Florida. Several years ago it was noted that some Floridians were experiencing problems with copper corrosion. The black water discussed in the Interagency Copper Pipe Corrosion Project Final Report occurs when hydrogen sulfide in the source water reacts with copper pipes to create copper sulfide, a form of copper corrosion. This corrosion can result in gray to black water in the customers' homes, pin hole leaks, and eventually failure of the copper pipe. In many instances, failure of copper pipe due to corrosion will result without evidence of discolored water. Further, the quality of the potable water as it enters the customers' home is meeting all state and federal drinking water standards for health effects. Consequently, this is viewed as an aesthetic rather than a health problem.³

The report further noted that hydrogen sulfide is present in the ground water in several areas of the state, notably along coastal areas, and bordering the I-4 corridor. Further, it is known that water utilities in Duval, Nassau, Orange, Pasco, and Highlands Counties have experienced failure of copper pipes due to copper corrosion. Duval County has passed an ordinance banning copper water pipes in new residential construction as a result of the copper pipe corrosion problems experienced in that county.⁴

In Pasco County, black water is not the only complaint residents have expressed. Other concerns in that county center around a foul, rotten-egg smell resulting from variations in raw water chemistry and customer service.

III. Effect of Proposed Changes:

This bill establishes a pilot project in Pasco County to allow the Pasco County Commission to respond to water customers' complaints regarding black water and rotten-egg odor from water arising from local variations in raw water chemistry, and customer service. It is the stated intent of the Legislature to maintain a statewide uniform system of regulation with respect to the establishment of water quality standards. However, it is recognized that technology may be available to assist in lessening black water and rotten-egg odor arising from local variations in raw water chemistry.

The bill further recognizes that monopoly water utilities have established varying degrees of customer service programs that are designed to respond to consumer complaints regarding customer service.

³ *Interagency Copper Pipe Corrosion Project Final Report*, page iv.

⁴ *Id.* at page 1.

If Pasco County is receiving black water, rotten-egg odor, or other customer service complaints from a significant number of the customers serviced by any monopoly water utility, the chair of the county commission may establish a monopoly water utility ad hoc committee consisting of:

- The chair of the county commission;
- Two representatives from the monopoly water utility;
- Two customer representatives;
- The county health officers; and
- Two independent scientific experts in water chemistry.

The committee cannot exist for more than 2 years. The functions of the committee are:

- To review and evaluate customer service complaints and, if deemed necessary, recommend to the county commission the establishment of uniform customer service criteria to be applied to all monopoly water utilities.
- To review and evaluate black water and rotten-egg odor concerns expressed by customers serviced by a monopoly water utility if similar complaints have also been filed with the PSC.
- If deemed necessary, to recommend to the county commission the propriety of requiring new technology or new uniform minimum technology standards for use by monopoly water utilities in the treatment of black water and rotten-egg odor and the delivery of customer service. The committee may evaluate a monopoly water utility's operational protocol only insofar as it relates to customer service and water quality issues related to local variations in water chemistry. The committee may not recommend standards that deal with the financial aspects of a water utility or standards or criteria relating to water quality which would conflict with water quality standards imposed by the PSC, the DEP or the U.S. Environmental Protection Agency (EPA). However, the committee may recommend the establishment of local technological standards or methods of processing relating to black water and rotten-egg odor or other minimum standards regarding general responsiveness to customer service complaints. Such technological standards must be economically, technologically, and environmentally feasible.
- The committee shall consult with the PSC, the DEP, or the EPA as necessary.

On the recommendation of the committee, the county commission may choose to adopt additional technological standards upon demonstration that there will be a substantial improvement in black water and rotten-egg odor conditions and such standards do not conflict with the permitting requirements of the PSC, the DEP, or the EPA. The county commission may also choose to adopt other minimum standards for customer service responsiveness. Upon the adoption of new standards, each monopoly water utility shall be informed of the new standards and shall be given 3 months to submit to the county a plan for compliance with the new standards. The county shall allow a reasonable time to bring such systems into compliance with the new standards.

The county commission may not adopt standards that deal with the financial aspects of a monopoly water utility or standards or criteria relating to water quality as applied to a monopoly water utility which would either conflict with or be more stringent than water quality standards or criteria presently imposed by the PSC, the DEP, or the EPA.

The county's decision to adopt any technological or customer service standards shall be considered an agency action only for the purposes of this act and is subject to ch. 120, F.S. If there is no challenge to the decision of the county commission to impose additional standards, or if the county prevails in an administrative challenge to impose additional standards, the full amount of any reasonable and prudent costs incurred in complying with the county requirements and any legal or other costs incurred by the utility in participating in the process provided in this bill are recoverable by a monopoly water utility under s. 367.081(4)(b), F.S., if that monopoly water utility is regulated by the PSC.

This act takes effect upon becoming a law and expires July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would provide the Pasco County Commission with some control over the delivery of water to residents in the county who are being served by a monopoly water utility.

C. Government Sector Impact:

According to an economic impact statement filed on the identical House companion, HB 987, the costs of administration and implementation would be approximately \$54,000 in

FY 2004-2005 and \$54,000 in FY 2005-2006, depending on the number of customer complaints.⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Art. III, s. 10 of the State Constitution provides that no special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Notice shall be given by publishing in the county affected in a newspaper published in or circulated throughout the county at least 30 days before introduction of the proposed law in the Legislature. (ss. 11.02, 11.021, 11.03, F.S.)

The required notice was published on January 9, 2004, in the Gulf Coast Business Review; therefore the constitutional and statutory notice requirements have been met.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

⁵ House of Representatives policy requires that economic impact statements for local bills be prepared at the local level. The economic impact statement was prepared for the HB 987 by the chairman of Aloha Utilities Citizen's Advisory Committee in Pasco County.