

STORAGE NAME: h0949s1.utco.doc
DATE: March 23, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND TELECOMMUNICATIONS
ANALYSIS**

BILL #: CS/HB 949

RELATING TO: Local Government Regulation of Water or Wastewater Utilities

SPONSOR(S): Committee on Utilities and Telecommunications and Representative(s) Attkisson

TIED BILL(S):

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

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

I. SUMMARY:

Pursuant to chapter 367, Florida Statutes, a board of county commissioners by resolution, or the appropriate board of a charter county by declaration, may opt to cede regulatory authority of its privately owned water and wastewater utilities over to the Public Service Commission (PSC). There are 36 counties that have opted for PSC jurisdictional authority over such utilities. Section 367.171(1), Florida Statutes, provides that after a period of 10 continuous years under the jurisdiction of the PSC, a county may rescind its assignment of PSC regulatory authority.

There are 31 non-jurisdictional counties that have retained authority to regulate their privately owned water and wastewater utilities. Chapter 153, Florida Statutes, provides the general grant of power for any of the non-jurisdictional counties of the state to condemn private water and wastewater utilities.

The bill would eliminate the authority of non-jurisdictional counties to exercise the power of eminent domain over any water or wastewater utility system or facility that they regulate.

The bill takes effect upon becoming a law.

On March 20, 2001, the Utilities and Telecommunications Committee adopted one amendment and made the bill 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.

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:

B. PRESENT SITUATION:

Pursuant to Chapter 367, Florida Statutes, a board of county commissioners by resolution, or the appropriate board of a charter county by declaration, may opt to cede regulatory authority of its privately owned water and wastewater utilities over to the Public Service Commission (PSC). There are 36 counties that have opted for PSC jurisdictional authority over such utilities. Section 367.171(1), Florida Statutes, provides that after a period of 10 continuous years under the jurisdiction of the PSC, a county may rescind its assignment of PSC regulatory authority.

There are 31 non-jurisdictional counties that have retained authority to regulate their privately owned water and wastewater utilities. 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, it is further provided that such counties are 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, additionally authorizes that non-jurisdictional counties are empowered:

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.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that in non-jurisdictional counties such counties cannot exercise the power of eminent domain over any water or wastewater utility system or facility that they regulate.

D. SECTION-BY-SECTION ANALYSIS:

Please See "Effect of Proposed Changes" section.

II. 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.

III. 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.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Counties can, by local ordinance, not legislative action, opt in or out of PSC jurisdiction. The industry has indicated that when a county elects to exercise its authority to regulate private utilities an inherent conflict is created with the ability of the county to condemn those same utilities. A county can manipulate the rate-setting process to lower utility rates below what they would otherwise be and thereby lower the amount the county would have to pay for the utilities 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 concerns about this bill, because it would require a county to turn back regulation of all investor owned water or wastewater facilities in the county to the PSC in order to condemn a single facility. Such facilities are usually condemned for comprehensive planning and water resource protection purposes. The Association asserts that once regulation has been returned to the PSC, even though the county could then condemn investor owned facilities, a county would be required to wait ten years before it could seek to regulate the utilities in that county again. This would be contrary to the interests of the constituents of the county, who are the primary motivators behind county regulation of these facilities. The Association further maintains that if this bill passes, counties may be less willing to condemn facilities with environmental or public health problems, because to do so they would then be

STORAGE NAME: h0949s1.utco.doc

DATE: March 23, 2001

PAGE: 5

required to return regulation of all investor owned facilities in the county back to the PSC. Further the Association has no evidence of county abuses.

The non-jurisdictional county of Collier opposes the bill because the proposed prohibition against the exercise of eminent domain authority against privately owned water and wastewater utilities could endanger the health, safety and welfare of county residents without curing any of the problems complained of by the industry. 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.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Utilities and Telecommunications Committee adopted one amendment and made the bill 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.

VI. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Staff Director:

Wendy G. Holt

Patrick L. "Booter" Imhof