

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: CS/SB 2062

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Peaden

SUBJECT: Water and wastewater utilities

DATE: April 10, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) provides that non-jurisdictional counties cannot exercise the power of eminent domain over any water or wastewater utility system or facility that they regulate. The terms of the CS would prevent a non-jurisdictional county from condemning a water or wastewater facility, which has been regulated by such county within the preceding 5 years, unless the county demonstrates that the utility to be condemned poses a present danger to the public health or has been abandoned.

This CS amends section 367.171 of the Florida Statutes.

II. Present Situation:

Pursuant to chapter 367, F.S., 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), F.S., 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, F.S., 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), F.S.:

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), F.S., 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), F.S., also 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.

III. Effect of Proposed Changes:

The bill provides that non-jurisdictional counties cannot exercise the power of eminent domain over any water or wastewater utility system or facility that they regulate. The terms of the bill would prevent a non-jurisdictional county from condemning a water or wastewater facility, which has been regulated by such county within the preceding 5 years, unless the county demonstrates that the utility to be condemned poses a present danger to the public health or has been abandoned.

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:

The bill would serve to protect private utilities that are operating within non-jurisdictional counties from condemnation by the county or the imposition of regulations designed to harm the private utilities competitive position vis-à-vis any competing water or wastewater facilities operated by the county.

C. Government Sector Impact:

The bill may prevent counties from providing consolidated water and wastewater service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.