

STORAGE NAME: h1637.ca

DATE: March 28, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1637

RELATING TO: Okaloosa Gas District

SPONSOR(S): Representative Melvin and others

TIED BILL(S): None

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

- (1) COMMITTEE ON COMMUNITY AFFAIRS (PRC)
 - (2) FINANCE & TAXATION (FRC)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill codifies all prior special acts relating to the Okaloosa Gas District in Okaloosa County into a single act and repeals all prior special acts relating to the District's charter.

The bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language.

The bill provides that the District *may* discontinue customer services if any rates, fees, or charges for services or facilities of the District are not paid when due; provides for interest, penalties, and enforcement for nonpayment. While this is new language in the charter, this has been the practice of the District since its creation.

No fiscal impacts are anticipated for either fiscal year 2000-01 or 2001-02 according to the Economic Impact Statement.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

The Okaloosa Gas District (District) was created by the Legislature in 1953, chapter 29334, Laws of Florida. The charter of the District has been subsequently amended three times by the Legislature.

Codification

Codification is the process of bringing up-to-date a special act. Special acts are not codified and, after the Legislature passes the initial enabling act, special acts continuously amend or alter previously enacted special acts. To ascertain the current status of any special act, it is necessary to research all amendments or changes made to the act since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to go to one special act to determine the current charter of a district, instead of two, ten, twenty, or sometimes more special acts.

Codification of special districts' charters was authorized by the 1997 Legislature when it amended chapter 189, Florida Statutes. The 1997 Legislature amended chapter 189, Florida Statutes, to provide for codification of all special districts' charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. In addition, section 189.429, Florida Statutes, requires that no changes be made to a district's charter as it exists on October 1, 1997, in the codifying legislation and that all prior Legislative acts relating to the district be repealed.

The 1998 Legislature further amended section 189.429, Florida Statutes, by (1) extending the deadline to codify to December 1, 2004, (2) allowing for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs, (3) removing the prohibition of substantive amendments in a district's codification bill, and (4) removing the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline.

**SCHEDULE OF SUBMITTALS OF SPECIAL
DISTRICTS' CHARTERS**

Special Districts with 2 special acts (45 districts)	1999 Legislative Session
Special Districts with 3 or 4 special acts (63 districts)	2000 Legislative Session
Special Districts with 5, 6 or 7 special acts (53 districts)	2001 Legislative Session
Special Districts with 8, 9, 10, 11 or 12 special acts (56 districts)	2002 Legislative Session
Special Districts with 13 or more (54 districts)	2003 Legislative Session
Special Fire Control Districts (47 districts)	2004 Legislative Session

Since the enactment of sections 189.429 and 191.015, Florida Statutes, 36 special districts have codified their charters. Following is a list of special districts which have codified pursuant to sections 189.429 and 191.015, Florida Statutes, and the corresponding Laws of Florida:

Alachua County Library District	Ch. 98-502
Anastasia Mosquito Control District	Ch. 99-449
Baker County Hospital District	Ch. 99-431
Carrollwood Recreation District	Ch. 98-475, as amended by Ch. 99-418
Cedar Key Water & Sewer District	Ch. 98-473
Central Broward Water Control District	Ch. 98-501
Charlotte County Airport Authority	Ch. 98-508
Citrus County Hospital Board	Ch. 99-442
Citrus County Mosquito Control District	Ch. 99-432
County Line Drainage District	Ch. 99-417
East Charlotte Drainage District	Ch. 99-439
Flagler Estates Road & Water District	Ch. 98-529
Florosa Fire Control District	Ch. 99-479

Hillsboro Inlet District	Ch. 99-433
Immokalee Water & Sewer District	Ch. 98-495
Joshua Water Control District	Ch. 99-460
Lake Apopka Natural Gas District	Ch. 99-454
Lake Worth Drainage District	Ch. 98-525, as amended by Ch. 99-422
Lee County Bonita Springs Fire Control District	Ch. 98-464
Lee County Hyacinth Control District	Ch. 98-462
Lee County Mosquito Control District	Ch. 98-461
Loxahatchee Groves Water Control District	Ch. 99-425
North Bay Fire Control District	Ch. 98-470
North Naples Fire District	Ch. 99-450
Ocean City-Wright District	Ch. 99-478
Old Plantation Water Control District	Ch. 99-435
Orange County Library District	Ch. 99-486
Panama City-Bay Co. Airport	Ch. 98-527
Ranger Drainage District	Ch. 99-453
South Broward Drainage District	Ch. 98-524
Tindall Hammock Irrigation District	Ch. 98-523
Twelve Oaks Special District	Ch. 99-452
West Coast Inland Navigation District	Ch. 98-526

In 1998, the Environmental Protection Commission in Hillsborough County unsuccessfully attempted to codify its charter. The District is scheduled to codify in 2002. In 1999, there were two unsuccessful codifications. Mid-Bay Bridge Authority's codification bill passed the Legislature, but was vetoed by the Governor. The Authority was scheduled to codify its charter in 1999. The South Walton Fire District's codification bill died on the House calendar on April 30, 1999. The District is scheduled to codify its charter in 2004.

According to the Schedule of Submissions of Special District Charters and information relating to charters previously codified, there are 94 special districts that should have been codified during the 1999 session but which were not. There are 56 special districts that are scheduled for codification during the 2000 Legislative Session.

Status Statement Language

Section 189.404(5), Florida Statutes, provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform with the department's determination or declaratory statement regarding the status of the district.

C. EFFECT OF PROPOSED CHANGES:

The bill codifies all prior special acts relating to the Okaloosa County Gas District (District) into a single act and repeals all prior special acts relating to the District's charter.

The bill changes the name of the District to the Okaloosa Gas District.

The bill declares the District to be an independent special district.

The bill does not modify the boundaries of the District.

The bill provides that the District *may* discontinue customer services if any rates, fees, or charges for services or facilities of the District are not paid when due; provides for interest, penalties, and enforcement for nonpayment. While this is new language in the charter, this has been the practice of the District since its creation.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Codifies, reenacts, amends, and repeals special acts relating to the District's charter.

Section 2: Provides for the recreation of the District and the charter for the District with the following provisions.

Section 1: Provides definitions.

Section 2: Provides that the District is an independent special district; provides that the public and governmental purposes of the District are to acquire by purchase or construction, and to own, finance, operate, maintain, extend, and improve one or more gas systems described as follows:

-- A gas transmission system or systems to connect each member municipalities and such other municipalities in the District's area of service as the District may determine to serve;

-- A gas transmission line or lines for the purpose of supplying gas to any gas system even though located outside of the area of service of the District;

-- A gas manufacturing plant and system;

-- Such gas distribution system or systems serving such member municipalities and other municipalities as the District may determine;

--Such other facilities and lines as may be necessary or desirable to serve such other customers along the District's supply lines as the District may determine to serve or as the District may be obligated to furnish service;

-- Such gas transmission lines, laterals, gas distribution systems, and facilities to serve such customers in the District's area of service as the District or the board may determine;

-- The District may itself own and operate gas distribution systems in the District's area of service, whether in the municipality which is a member of the District in some other municipality or in unincorporated territory.

Section 3: Provides for the boundaries of the District; provides that the District may acquire a supply of gas either within or without the District's territorial limits and area of service and may transport and transmit gas from the point of such acquisition to the system or systems of the District; provides that the District may also sell and transport gas for delivery beyond the territorial limits and area of service of the District; provides that the District may acquire, finance, operate, maintain, extend, and improve gas transmission lines, laterals, and facilities beyond the territorial limits and area of service of the District for such purposes and also for the purpose of making direct sales to industrial and institutional users and to line tap commercial and residential waters, but the District shall not acquire, construct, own, or operate any gas distribution system in any area other than within the territorial limits and area of service of the District, unless authorized by special act of the Legislature.

Section 4: Provides that the undertakings enumerated in the act constitute a proper purpose for the benefit and welfare of the inhabitants of the District and it is hereby found and declared that in the construction, acquisition, improvement, maintenance, operation, extension, and improvement of any or all of said gas systems, the District will be exercising a proper governmental function.

Section 5: Provides that the members of the District shall be the municipalities of Crestview, Niceville, Valparaiso, and Fort Walton Beach. Provides that other municipalities in Okaloosa County may become members of the District by filing with the Secretary of State a resolution, duly adopted by such municipality's governing body, declaring the desire and intention of such municipality to become a member of the District and the municipality's willingness to be bound in all respects by the obligations of the District and the by-laws, resolutions, and acts of the board relating to the affairs of the District; provided that the filing of such resolution with the Secretary of State shall not be effectual to make such municipality a member of the District unless and until the board of the District shall have first filed and adopted with the Secretary of State a resolution signifying their willingness and desire to accept said municipality as a member of the District; provides that other municipalities in other counties adjoining Okaloosa County may, if authorized by special act of the Legislature, become members of the District in the same manner.

Section 6: Provides that the District shall have each and all of the following powers, together with all powers incidental to such powers or such powers or necessary to the discharge of such powers:

-- to sue and be sued and to defend suits against the District;

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- to have and use an official seal for attesting bonds and other officials acts and deeds and to alter the same at the District's pleasure;
- to receive, acquire, take, and hold, whether by purchase, gift, lease, devise, or otherwise, real, personal, and mixed property of any nature whatsoever that the board may deem a necessary or convenient part of or useful in connection with, any system or systems authorized in this charter;
- to make contracts extending over a period not exceeding 40 years for a supply or supplies of natural gas and for the sale and delivery of natural or manufactured gas;
- to contract for the entire supervision, operation, and management of any one or more of the systems of the District, including the collection and distribution of the revenue from such system or systems, for such period of time as the board may deem advisable not exceeding 10 years and at such compensation and upon such terms as may be agreed upon and approved by the board;
- to borrow money for any authorized purpose and to issue in evidence of the borrowing interest bearing bonds payable solely from the revenues derived from the operation of any one or more of the District's systems;
- to pledge to the payment for the District's bonds any revenues from which said bonds are made payable and to mortgage, pledge, or otherwise convey as security for such bonds the system or systems the revenues of which are so pledged;
- to make such covenants in connection with the issuance of bonds, or in order to secure the payment of bonds, as are needful to secure and protect the rights of the holders of such bonds, notwithstanding that such covenants may operate as limitations on the exercise of other powers granted by this charter;
- to establish rates and charges for the District's gas and gas services and to alter such rates and charges;
- to collect and enforce collection of such charges
- to lease, exchange, sell, convey, and otherwise dispose of the District's real, personal, or mixed property by any form of conveyance or transfer, provided that the District does not sell and convey a gas system or systems to private ownership
- to appoint and employ officers, agents, and employees, including attorneys, as the District's business may require, and to fix the compensation of such persons;
- to provide for such insurance as the District's board may deem advisable;
- to exercise all powers of eminent domain now or hereafter conferred on counties in this state.

Section 7: Provides that the powers of eminent domain granted in this charter and conferred upon Districts incorporated under this charter shall be exercised in

the same manner and subject to the same limitations as in the case of counties in this state.

- Section 8: Provides that the District shall have a board, consisting of one member of each member municipality and one member appointed by the county commissioners of Okaloosa County; provides that board members shall serve for a term of four years and until his or her successor is appointed like manner and qualified; provides that appointments to fill a vacancy shall be for the unexpired term; provides that the representative of each municipality may, but need not be, the mayor or chief executive officer of such municipality and the member appointed by the county commissioners of Okaloosa County may, but need not be, an elected official, except that no member of the board of county commissioners shall serve in such capacity; provides that the members of the board shall serve without compensation, except that they shall be reimbursed for actual expenses incurred in and about the performance of their duties thereunder and, at the discretion of the board, they may be paid director's fee of not exceeding \$25 for each directors' meeting attended by them, not exceeding one meeting during each calendar month; provides that the appointing authority may remove any member of the board within the term for which such member shall have been appointed for malfeasance or misfeasance in office or other just cause;
- Section 9: Provides that after appointment of the members, the members of the board shall meet, organize, and elect officers.
- Section 10: Provides that the board of directors shall constitute the governing body of the District and shall exercise all the powers of the District and the board shall do all things necessary or convenient in acquiring, owning, operate, developing, extending, improving, financing, and refinancing the gas system or systems owned or to be owned by the District; provides that action of the board shall be taken by resolution and that such resolution shall be effective without posting or publication.
- Section 11: Provides that the bonds of the District shall be authorized by resolution of the board; provides for the how the bonds may be issued and what the bonds may be issued for; provides that the authorizing resolution shall provide for the execution and delivery of bonds of the District by officers of the District designated in such resolution; provides for the execution of coupons by facsimile; provides that any bonds issued by the District may be refunded by the issuance of the refunding bonds; provides that the District may pay all expenses, premiums, and commissions which the board may deem necessary or desirable in connection with any financing done by the District; provides all bonds issued by the District shall be construed to be negotiable instruments and bona fide holders of such bonds for value shall be entitled to all benefits provided by the negotiable instruments of this state; provides that pending the preparation or execution of definitive bonds, interim receipts, certificates, or temporary bonds may be delivered to the purchaser or purchasers of said bonds; provides that any bonds issued by the District may be purchased by the District out of any funds available for such purposes but such right of purchase may be limited in the authorizing resolution; provides that all bonds purchased by the District shall be canceled; provides that bonds of the District and all matters connected with such bonds may be validated pursuant to the provisions of chapter 75, Florida Statutes, and any other applicable provisions.

Section 12: Provides that neither bonds nor any obligations of the District shall be a debt or obligation of the state, county, or member municipality; provides that neither the state nor the county shall be liable in any way for bonds or obligations, nor may the holder of such bonds compel the levy of any taxes for the payment of such bonds or obligations; provides that such bonds shall not payable out of any funds other than the revenues of the gas system or systems of the District; provides such bonds are not subject to any statutory or other limitations upon indebtedness; provides that neither the members of the board nor any person executing such bonds shall be liable personally on such bonds by reasons of the issuance of such bonds; provides that no referendum or election shall be required for the issuance of bonds of the District, except in such cases as such referendum or election may be required by the Florida Constitution.

Section 13: Provides that the District shall have no power or authority to levy or collect any tax, assessment, or charge other than rates, fees, and charges for selling gas and furnishing gas services as provided in this charter, and any such tax or assessment levy is hereby specifically prohibited.

Section 14: Provides that any mortgage, deed of trust, or pledge agreement may contain provisions as the board may deem advisable respecting the operation and maintenance of the gas system or systems and the collection and application of the revenues subject to such mortgage, deed of trust, or pledge agreement and respecting the rights and duties of the parties to such instrument or the parties for the benefit of whom such instrument is made, provided that no such mortgage or deed of trust shall be subject to the sale of the system or systems at foreclosure to private ownership; provides that the District may enter into contract binding the District to the proper application of the money borrowed, for the continued operation and maintenance of any gas system or systems of the District, for the imposition of reasonable rates for, and the promulgation of reasonable regulations respecting any service furnished from the District's gas system or systems, for the disposition and application of the District's gross revenues or any part of such revenues, and for any other act not inconsistent with the provisions of this charter for the protection of the loan and the assurance that the revenues from the District's gas system or systems will be sufficient to operate and maintain the system and pay the principal and interest of any bonds payable from revenues as well as maintain necessary reserves.

Section 15: Provides that any mortgage or conveyance of property and any pledge of revenues to secure the bonds of the District shall be valid and binding from the time when such mortgage or conveyance is delivered or such pledge is made; provides that the system, properties, revenue, income, and moneys so mortgaged, conveyed, or pledged and received by the District shall be subject to the lien of such mortgage, conveyance, or pledge and shall be valid and binding as against all other parties from the time when a statement thereof is appropriately filed; provides that such notice shall be sufficient if the notice states the date of the resolution and information about the bonds and the system; provides that the county judge or other officer in charge of the recording office shall file and index such notice in the record of mortgages in their offices.

Section 16: Provides that in addition to all other rights and all other remedies, any holder of any bond of the District shall have the right, subject to any contractual limitation: to sue on the bonds; to enforce the bondholder's rights against the

District by mandamus or other suit; to require the District to carry out the other covenants and agreements with the bondholder and to perform the District's and board's duties, to require the District to account as if the District were the trustee of an express trust for the bondholder; to enjoin any act or things which may be unlawful or a violation of the rights of the bondholder by action or suit in equity; to obtain in the event of the default by the District or failure in the performance of any other covenants or obligations in excess of 60 days and after notice to cure, the appointment of a receiver for the District and sets forth the responsibilities of the receiver.

- Section 17: Provides that all monies derived from the sale of any bonds issued by the District shall be used solely for the purpose or purposes for which such bonds are authorized; sets forth requirements for bonds for construction and refunding; provides that the treasurer or other officer designated by the board shall give a receipt for the purchase price to the purchaser of any such bonds, which receipt shall be full acquittal to such purchaser and the purchaser shall not be under any duty to inquire as to the application of proceeds of such bonds.
- Section 18: Provides that no distribution of net profits shall be made to the member municipalities.
- Section 19: Provides that notwithstanding any other law or laws to the contrary, all bonds issued pursuant to this charter, shall constitute legal investments for savings banks, banks, trust companies, executors, administrators, trustees, guardians, other fiduciaries, and any board, body, agency, or instrumentality of the state, a county, municipality, or other political subdivision of the state; provides that all bonds shall be and constitute securities which may be deposited by banks of trust companies as security for deposits of state, county, municipal, and other public funds.
- Section 20: Provides that all property and all income of the District shall be exempt from all state, county, municipal, and other taxation of the state; provides that all bonds of the District and the interest on such bonds shall be exempt from taxation; provides that all deeds, mortgages, indentures of trust, and other documents executed by or delivered to the District shall be exempt from taxation.
- Section 21: Provides that it shall not be necessary for the District to obtain any certificates of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the state or county in order to construct, acquire, or improve such system or systems or to exercise any of the powers granted in this charter.
- Section 22: Provides that neither the rates, fees, rentals, or other charges to be established and collected for gas and services of such system or systems, when constructed, acquired, or improved as provided in this charter, nor bonds which may be issued under this charter, be subject to approval, supervision, regulation, or control of any bureau, board, commission, or other like instrumentality of the state.
- Section 23: Provides that the state will not in any manner limit or alter the power and obligation vested by this charter in the District to fix, establish, and collect such fees, rentals, or other charges as will always be sufficient, together with any

other pledged funds, to pay the expenses of operation, maintenance, and repair of such system or systems, the principal of and interest on all bonds or other obligations issued and to comply fully with and fulfill the terms of all agreements and covenants made by the District with the holders of such bonds or other obligations, until all such bonds or other obligations, together with all interest accrued or to accrue on such bonds, and all costs or expenses in connection with any action or proceedings by or on behalf of the holders of such bonds or other obligations are fully paid and discharged, or adequate provision made for the payment of discharge of such bonds.

Section 24: Provides that the District is hereby authorized to use the right of way of all public roads, whether state or county, without securing the prior approval of the state or county, without securing the prior approval of the state or any agency or department of the state or governing body of any county.

Section 25: Provides that if any rates, fees, or charges for the services and facilities furnished by any gas system or systems constructed or reconstructed by the District under the provisions of this charter shall not be paid when due, the District may discontinue and shut off the supply of the services and facilities of the system to the customer until such fees, rentals, or other charges for the shutting off and discontinuance or the restoration of such services or facilities are fully paid; provides that the District may enter on any lands, waters, and premises of such delinquent customers, within or without the boundaries of the District; provides that such delinquent fees, rentals, or other charges, together with interest, penalties, and charges for the discontinuance or restoration and reasonable attorney's fees and other expenses may be recovered by the District by suit in any court of competent jurisdiction; provides that the District may also enforce payment of such delinquent fees, rentals or other charges by any other lawful means of enforcement. This is new language in the charter, but comports with the practice of the District.

Section 3: Repeals all previous special acts.

Section 4: Provides that the contracts and obligations heretofore made and incurred and other actions heretofore taken by the Okaloosa Gas District shall not be impaired or otherwise affected by the enactment of this codification of the special acts or by the repeal of such special acts.

Section 5: Provides that in the event of a conflict of the provisions of this act with the provisions of any other act, the provisions of this act shall control to the extent of such conflict.

Section 6: Provides that in the event any section or provision of this act is determined to be invalid or unenforceable, such determination shall not affect the validity of or enforceability of each other section and provision of this act.

Section 7: Provides this act shall take effect upon becoming a law.

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III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 2, 2000

WHERE? Northwest Florida Daily News in Okaloosa, Santa Rosa, and Walton Counties

IF YES, WHEN? February 2, 2000

WHERE? The Santa Rosa Press Gazette in Milton, Santa Rosa County

IF YES, WHEN? February 3, 2000

WHERE? The DeFuniak Springs Herald Breeze in DeFuniak Springs, Walton County

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Kyle V. Mitchell

Joan Highsmith-Smith