

MAINE STATE LEGISLATURE

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(After Deadline)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1311

S.P. 431 In Senate, April 21, 1987
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 27.

Reference to the Committee on Utilities suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator KANY of Kennebec.

Cosponsored by Representative NORTON of Winthrop.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT Creating the Fayette Water District.
2

3 Be it enacted by the People of the State of Maine as
4 follows:

5 Sec. 1. Findings; voter approval. The Legisla-
6 ture finds that the Town of Fayette has voted to es-
7 tablish a water district and that it is appropriate
8 to create such a district in order to protect the wa-
9 ter resources of the Town of Fayette and to provide
10 for the town's water needs.

11 Sec. 2. Territorial limits; corporate name; pur-
12 poses. Subject to section 16, the inhabitants and
13 territory of the Town of Fayette in Kennebec County
14 shall constitute a body politic and corporate under
15 the name of "Fayette Water District" for the purpose

1 of supplying the Town of Fayette and the inhabitants
2 and others of the district, with pure water for do-
3 mestic, sanitary, commercial, industrial, agricultur-
4 al and municipal purposes.

5 **Sec. 3. Powers of Fayette Water District.** The
6 Fayette Water District is authorized, for the pur-
7 poses of its incorporation, to take, collect, store,
8 flow, use, divert, distribute and convey to the dis-
9 trict or any part of the district, water from any
10 lake, pond, stream or river, or from any surface or
11 underground brooks, springs or veins of water, natu-
12 ral or artificial, within the area of the district or
13 within the area of the Town of Fayette. It is also
14 authorized to locate, construct and maintain aque-
15 ducts, pipes, conduits, dams, wells, reservoirs,
16 standpipes, hydrants, pumping stations and other nec-
17 cessary structures and equipment therefor, and do any-
18 thing necessary to furnish water for public purposes
19 and for the public health, comfort and convenience of
20 the inhabitants and others of the district, or to
21 contract to do any and all of the foregoing things.

22 All incidental powers, rights and privileges nec-
23 essary to the accomplishment of the main objectives
24 set forth in this Act are granted to the district
25 created by this Act.

26 **Sec. 4. Authorized to lay mains, pipes, con-**
27 **duits, etc., through public ways and across private**
28 **lands.** The district is authorized to lay in and
29 through the streets, roads, ways, highways and
30 bridges in the Town of Fayette and across private
31 lands in the Town of Fayette, and to maintain, repair
32 and replace all such pipes, mains, conduits, aque-
33 ducts and fixtures and appurtenances as may be neces-
34 sary and convenient for its corporate purposes, and
35 whenever the district shall lay any pipes, mains,
36 conduits, aqueducts and fixtures or appurtenances in
37 any street, road, way or highway, it shall cause the
38 same to be done with as little obstruction as practi-
39 cable to the public travel and shall, at its own ex-
40 pense, without unnecessary delay, cause the earth and
41 pavement removed by it to be replaced in proper con-
42 dition.

1 Sec. 5. Authorized to erect dams and reservoirs;
2 to cross navigable waters; to supply water to utili-
3 ties. The water district is authorized, for the pur-
4 poses of its incorporation, to erect and maintain all
5 dams, reservoirs and structures necessary and conven-
6 nient for its corporate purposes. The water district
7 is also authorized to lay, construct and maintain its
8 pipes and fixtures in, over and under navigable wa-
9 ters and to build and maintain structures therefor,
10 subject to the laws of the United States; to supply
11 water to any public utility now supplying water in
12 the Counties of Kennebec, Androscoggin or Franklin,
13 subject to the consent of the Public Utilities Com-
14 mission.

15 Sec. 6. Rights of eminent domain. The district,
16 for the purposes of its incorporation, is authorized
17 to take and hold, as for public uses, real estate and
18 personal estate and any interest therein, necessary
19 or convenient for those purposes, by purchase, lease
20 or otherwise and is expressly authorized to exercise
21 the right of eminent domain, as hereinafter provided,
22 to acquire for those purposes any land or interest in
23 land of water rights necessary for erecting and main-
24 taining dams, plants and works, for flowage, power,
25 pumping, supplying water through its mains, for res-
26ervoirs, preserving the purity of the water and wa-
27tershed, laying and maintaining aqueducts and other
28 structures for taking, distributing, discharging and
29 disposing of water and for rights-of-way or roadways
30 to its sources of supply, dams, power stations, res-
31ervoirs, mains, aqueducts, structures and lands.

32 The district is authorized, for the purposes of
33 its incorporation, to erect and maintain all dams,
34 reservoirs and structures necessary and convenient
35 for its corporate purposes. Nothing contained in this
36 section may be construed as authorizing the district
37 to take by right of eminent domain any of the prop-
38erty or facilities of any other public service corpora-
39tion used, or acquired for future use, by the owner
40 of that property or facilities in the performance of
41 a public duty, unless expressly authorized to do so
42 by this section or by subsequent Act of the Legisla-
43 ture or as provided in section 5.

1 Sec. 7. Procedure if public utility must be
2 crossed. In case of crossing of any public utility,
3 unless consent is given by the company owning and oper-
4 ating the public utility as to place, manner and
5 conditions of the crossing within 30 days after con-
6 sent is requested by the district, the Public Utili-
7 ties Commission, upon petition by the district, shall
8 determine the place, manner and conditions of the
9 crossing, and all work on the property of the public
10 utility shall be done under the supervision and to
11 the satisfaction of the public utility, or as pre-
12 scribed by the Public Utilities Commission, but at
13 the expense of the district.

14 Sec. 8. Procedure in exercising of eminent do-
15 main. After the original acquisition for which provi-
16 sion is made in section 13, the district in exercis-
17 ing from time to time, any right of eminent domain
18 conferred upon it by law or through or under the
19 franchise of any water company by it acquired, shall
20 file written application with the Public Utilities
21 Commission requesting its approval of the proposed
22 taking. The application shall describe the property
23 or rights to be taken, the purpose of the taking and
24 shall name all parties who may be interested therein.
25 The commission thereupon shall appoint a time for a
26 hearing near the premises and shall require such no-
27 tice as the commission may direct to be given to the
28 persons interested, at least 14 days before the date
29 of the hearing. The commission shall view the
30 premises, hear the parties and shall determine how
31 much, if any, of the property described in the peti-
32 tion should be taken for the reasonable purposes of
33 the water district and for the safe, economical and
34 efficient furnishing of an adequate water supply. In
35 authorizing any taking, the commission may attach
36 such reasonable terms, limitations and restrictions
37 as justice may require. If the commission shall find
38 that any of the property described in the application
39 is necessary for the purposes of the district as set
40 out in the application, it shall make a certificate
41 containing a definite description of the property to
42 be taken, and of any terms, restrictions and limita-
43 tions in connection therewith, and shall furnish to
44 the district a true copy thereof, attested by the
45 secretary of the commission. When the copy of the
46 certificate is filed with the clerk of courts in the

1 county where the property lies, the property shall be
2 deemed and treated as taken; provided that when prop-
3 erty is held by a tenant for life and the reversion
4 is contingent as to the persons in whom it may vest
5 at the termination of the life estate, that fact
6 shall be stated in the application and the commis-
7 sion, in addition to the notice to the tenant for
8 life, shall require notice by publication, in such
9 manner as it may deem proper to all others inter-
10 ested. Entry may be made on any private land prior
11 to the filing of any such application for the purpose
12 of making surveys, the district being responsible for
13 any damage resulting from that entry. The district
14 shall notify the landowner 7 days prior to its enter-
15 ing upon the property; and possession may be had of
16 the property described in the certificate of the com-
17 mission forthwith upon the filing and recording in
18 the registry of deeds of Kennebec County of such cer-
19 tificate as provided in this section. Title to that
20 property shall not vest in the district until payment
21 therefor has been made.

22 **Sec. 9. Adjustment of damages; procedure as in**
23 **laying out of highways.** If any person sustaining dam-
24 ages by any taking pursuant to the right of eminent
25 domain shall not agree with the district upon the sum
26 to be paid therefor, either party, upon petition to
27 the county commissioners of Kennebec County, may have
28 the damages assessed by them. The procedure and all
29 subsequent proceedings and right of appeal therefrom
30 shall be had under the same restrictions, conditions
31 and limitations as are or may be by law prescribed in
32 the case of damages by the laying out of highways.

33 **Sec. 10. Trustees; how elected; first board;**
34 **meeting; officers.** All of the affairs of the district
35 shall be managed by a board of trustees composed of 5
36 members, all of whom shall be residents of the dis-
37 trict, and elected as provided in this section.

38 1. First board. Within 14 days after the accept-
39 ance of this Act, the selectmen of the Town of Fay-
40 ette, who are especially appointed for this purpose,
41 shall give notice of a special election of the Fay-
42 ette Water District, for the purpose of selecting the
43 first board of trustees, by posting a notice at least
44 30 days prior to the date set for election. The no-

1 tice shall be published in one public and conspicuous
2 place in the Town of Fayette. The candidates for of-
3 fice shall obtain nomination papers from the clerk of
4 the Town of Fayette, who is appointed especially to
5 act as clerk in this particular instance. The form of
6 the nomination papers and the form of the ballot,
7 shall be as provided in this Act. After the selection
8 of the first board, the only eligibility for the of-
9 fice of trustee of the district shall be residence
10 within the district and eligibility to vote, and all
11 subsequent trustees shall be elected as provided in
12 this section in an annual election to be held on the
13 first Saturday of March in each year.

14 As soon as convenient after their appointment,
15 the first board of trustees shall hold a meeting at
16 some convenient place in the district, to be called
17 by any member of the board in writing, designating
18 the time and place, and the notice being delivered in
19 hand to the other 4 members, not less than 2 full
20 days before the meeting; provided that the trustees
21 so elected may meet by agreement without the notice
22 and upon appropriate waiver. The first order of busi-
23 ness shall be to draw by lot to fix the terms of the
24 trustees. Of the original trustees, 2 shall serve
25 for one year, 2 for 2 years and one for 3 years.
26 Thereafter, trustees shall be selected to serve for a
27 3-year term.

28 After the selection of the terms of the trustees,
29 the trustees shall then organize by electing from
30 their own number a chairman and clerk and, not neces-
31 sarily from their own number, a treasurer and a reg-
32 istrar of voters for the district, as provided in
33 this section. The trustees shall adopt a corporate
34 seal and adopt and establish bylaws consistent with
35 the laws of this State and necessary for their own
36 convenience and the proper management of the affairs
37 of the district and perform any other acts within the
38 powers delegated to them by law. The trustees shall
39 be sworn to the faithful performance of their duties.

40 2. Election of trustees. The trustees to be
41 elected shall be chosen by a plurality vote of the
42 legal voters within the district. All nominations of
43 candidates to be voted for shall be made by nomina-
44 tion papers signed in the aggregate for each candi-

1 date by not less than 25 qualified voters within the
2 district. Each voter signing the nomination paper
3 shall make his signature in person and add to it his
4 place of residence, and each voter may subscribe to
5 as many nominations as there are trustees to be
6 elected and no more. The nomination papers shall be-
7 fore being filed, be submitted to the registrar of
8 voters of the district, who shall forthwith certify
9 on the nomination papers what number of the
10 signatures are names of qualified voters in the dis-
11 trict; one of the signers to each separate paper
12 shall swear to the truth and the certificate of the
13 oath shall be annexed to or made under the nomination
14 papers. The nomination papers shall be filed with the
15 clerk of the district at least 7 days, exclusive of
16 Sundays, previous to the day of the election. With
17 the nomination papers, shall also be filed the con-
18 sent in writing of the person or persons nominated.
19 All nomination papers being filed and being in appar-
20 ent conformity with the provisions of this section
21 shall be deemed to be valid, and if not in apparent
22 conformity, they may be seasonably amended under
23 oath. In case any candidate who has been duly nomi-
24 nated under this section dies before the day of elec-
25 tion, or shall withdraw in writing, the vacancy may
26 be supplied in the manner provided in this section
27 for nominations. The name supplied for the vacancy
28 shall, if the ballots have not been printed, be
29 placed on the ballots instead of the original nomina-
30 tion; or if the ballots have been printed, new bal-
31 lots containing the new nomination shall, if practi-
32 cable, be furnished, or slips containing the new nom-
33 ination shall be printed under the direction of the
34 district clerk, which may be pasted in proper place
35 upon the ballots and thereafter shall become part of
36 the ballots as if originally printed on the ballots.

37 3. Form of ballot. The ballot shall be substan-
38 tially as follows: It shall contain the names of all
39 candidates so nominated printed in one column under
40 the heading "For Trustees of Fayette Water District."
41 Above the heading shall be printed "Vote for 2," or
42 such number as may be appropriate, "Trustees." Make a
43 cross (X) or a check mark (✓) to the right of each
44 name voted for. As many blank spaces shall be left
45 after the name of the candidates as there are trust-
46 ees to be elected, in which the voter may, by writ-

1 ing, insert the name or names of any person or per-
2 sons for whom he desires to vote. In casting his bal-
3 lot the voter shall mark a cross (X) or a check mark
4 (✓) against and to the right of the names on the bal-
5 lot as he desires to vote for, not to exceed the num-
6 ber of trustees to be elected. If the voter desires
7 to vote for any person or persons whose name or names
8 are not on the printed ballot, he may fill in the
9 name or names in the blank spaces left by writing the
10 name or names in the blank spaces. The result of the
11 election shall be declared by the trustees and due
12 certificates of the results filed with the district
13 clerk. All trustees shall serve until their succes-
14 sors are elected and qualified.

15 4. Meetings of trustees. Within one week after
16 each annual election, the trustees shall meet for the
17 purpose of electing a chairman, treasurer and clerk
18 from among them to serve for the ensuing year and un-
19 til there successors are elected and qualified. The
20 trustees, from time-to-time, may choose and employ
21 and fix the compensation of, any other necessary of-
22 ficers and agents who shall serve at their pleasure.
23 The treasurer shall furnish bond in the sum and with
24 sureties as approved by the trustees. The cost shall
25 be paid by the district. The trustees shall be sworn
26 to the faithful performance of their duties. They may
27 adopt and establish such bylaws as are necessary for
28 their own convenience and the proper management of
29 the affairs of the district.

30 Whenever the term of office of a trustee expires,
31 his successor shall be elected by a plurality vote by
32 the inhabitants of the district, and upon nomination
33 made as provided in this section for the election of
34 trustees; and for the purpose of election a special
35 election shall be called and held on the first Satur-
36 day of March in each year, the election to be called
37 by the trustees of the district in the same manner as
38 town meetings are called and for this purpose, the
39 trustees are vested with the powers of selectmen of
40 towns. The trustees so elected shall serve the full
41 term of 3 years; and in case any vacancy arises in
42 the membership of the board of trustees, it shall be
43 filled in like manner for the unexpired term by spe-
44 cial election to be called by the trustees of the
45 district. When any trustee ceases to be a resident of

1 the district, he shall vacate the office of trustee
2 and the vacancy shall be filled as provided in this
3 section. All trustees shall be eligible for reelection,
4 but no person holding office of selectman or
5 road commissioner in the Town of Fayette may be eligible
6 for nomination or election as trustee.

7 The trustees may procure an office and incur such
8 expenses as may be necessary. The trustees shall receive
9 compensation as recommended by them and approved by a
10 majority of the municipal officers of the
11 Town of Fayette, including compensation for any duties
12 they perform as officers, as well as for their
13 duties as trustees.

14 The trustees shall appoint a registrar of voters
15 for the district who may also be the registrar of
16 voters for the Town of Fayette and fix his salary.
17 It shall be the registrar's duty to make and keep a
18 complete list of all the eligible voters of the district,
19 and the list prepared by him, as provided by
20 the laws of the State, shall govern the eligibility
21 of any voter. In determining the eligible voters of
22 the district, the registrar of voters shall exclude
23 from his lists and from all check lists the legal
24 voters who are resident outside the territorial limits
25 of the water district as defined in this Act, and
26 all warrants issued for elections by the trustees
27 shall be varied accordingly to show that only the
28 voters resident within the territorial limits of the
29 water district are entitled to vote.

30 **Sec. 11. Annual report.** The trustees shall make
31 and publish an annual report, including a report of
32 the treasurer, and the report may be included in, and
33 published as part of, the annual town report of the
34 Town of Fayette.

35 **Sec. 12. District and towns authorized to make**
36 **and assume contracts.** The district, through its
37 trustees, is authorized to contract with persons and
38 corporations, including the Town of Fayette, and the
39 Town of Fayette is authorized to contract with it,
40 for the supply of water for municipal purposes.

41 **Sec. 13. Authorized to receive governmental aid;**
42 **borrow money; issue bonds and notes.** For accomplish-

1 ing the purposes of this Act and for such other ex-
2 penses as may be necessary for the carrying out of
3 the purposes, the district, through its trustees,
4 without vote of the inhabitants, is authorized to re-
5 ceive both state and federal aid grants; to borrow
6 money temporarily and to issue therefor its negotia-
7 ble notes, for the purpose of renewing and refunding
8 the indebtedness so created, of paying any necessary
9 expenses and liabilities incurred under this Act, in-
10 cluding organizational and other necessary expenses
11 and liabilities, whether incurred by the district or
12 the Town of Fayette, the district being authorized to
13 reimburse the Town of Fayette for any such expense
14 incurred by them and in acquiring properties, paying
15 damages, laying pipes, mains, aqueducts and conduits,
16 constructing, maintaining and operating a water plant
17 or system and making renewals, additions, extensions
18 and improvements to the same and to cover interest
19 payments during the period of construction. The dis-
20 trict, through its trustees, without the vote of its
21 inhabitants, but only with the approval of the Public
22 Utilities Commission, is also authorized to issue,
23 from time to time, bonds, notes or other evidence of
24 indebtedness of the district or in such amount or
25 amounts bearing interest at such rate or rates, sell-
26 ing at par, or at a discount or a premium and having
27 such other terms and provisions as the trustees shall
28 determine, except that loans running for one year or
29 less will not require the Public Utilities Commis-
30 sion's approval.

31 In the event that the trustees vote to authorize
32 bonds or notes the estimated cost of which, singly or
33 in the aggregate included in any one financing, is
34 \$150,000 or more adjusted, relative to 1981 as the
35 base year according to the annual Consumer Price In-
36 dex, as defined in the Maine Revised Statutes, Title
37 5, section 17001, subsection 9, the trustees shall
38 provide notice to the general public of the proposed
39 bond or note issue and the purposes for which the
40 debt is being issued. The notice shall be published
41 at least once in a newspaper having general circula-
42 tion in the district. The trustees shall give notice
43 to each ratepayer by mail.

44 No debt may be incurred under the vote of the
45 trustees until the expiration of 7 full days follow-

1 ing the date on which the notice was first published
2 and mailed. Prior to the expiration of the period,
3 the trustees shall call a special district meeting
4 for the purpose of permitting the collection of tes-
5 timony from the public concerning the amount of debt
6 so authorized.

7 Except for indebtedness to fund projects specifi-
8 cally mandated by the State Government and the Feder-
9 al Government, for debts in excess of the amount
10 specified in this section, if requested by petition
11 of not less than 50 voters of the district or 5% of
12 the voters, whichever is greater, filed with the
13 clerk of the district on or before the date of the
14 meeting, the meeting shall express approval or disap-
15 approval of the amount of debt so authorized. If a ma-
16 jority of voters present and voting expresses disap-
17 approval of the amount of debt authorized by the trust-
18 ees, the debt shall not be incurred and the vote of
19 the trustees authorizing it shall be void and of no
20 effect.

21 The bonds, notes and evidences of indebtedness
22 may be issued to mature serially or made to run for
23 such periods as the trustees may determine. Bonds,
24 notes or evidences of indebtedness may be issued with
25 or without provisions for calling the same prior to
26 maturity, and if callable, may be made callable at
27 par or at such premium as the trustees may determine.
28 All bonds, notes or other evidences of indebtedness
29 shall have inscribed upon their face the words "Fay-
30 ette Water District," shall be signed by the treasur-
31 er and countersigned by the president of the board of
32 trustees of the district, and if coupon bonds are is-
33 sued, the interest coupon attached to the coupon
34 bonds shall bear the facsimile signature of the trea-
35 surer.

36 All bonds, notes and evidences of indebtedness so
37 issued by the district shall be legal obligations of
38 the district, which is declared to be a quasi-municipal
39 corporation within the meaning of the Maine Re-
40 vised Statutes, Title 30, section 5053, and all pro-
41 visions of that section shall be applicable thereto.

42 The district may refund and reissue, from time to
43 time, in one or in separate series, its bonds, notes

1 and other evidences of indebtedness, and each autho-
2 rized issue shall constitute a separate loan. All
3 bonds, notes and evidences of indebtedness issued by
4 the district shall be legal investments for savings
5 banks in the State, and shall be free from taxation.

6 **Sec. 14. Property tax exempt.** The property, both
7 real and personal, rights and franchises of the dis-
8 trict shall be forever exempt from taxation in the
9 Town of Fayette.

10 **Sec. 15. Rates; application of revenue; sinking**
11 **fund.** All individuals, firms and corporations, wheth-
12 er private or public, shall pay to the treasurer of
13 the district the rates established by the board of
14 trustees for the services used by them, and the water
15 rates shall be uniform within the territory supplied
16 by the district and the water rates shall be subject
17 to the approval of the Public Utilities Commission.

18 The board of trustees shall establish and file
19 rates so as to provide revenue for the following pur-
20 poses, but no other:

21 1. Current expenses. To pay the current expenses
22 for operating and maintaining the water system and to
23 provide for normal renewals and replacements;

24 2. Payment of interest. To provide for the pay-
25 ment of the interest on the indebtedness created or
26 assumed by the utility;

27 3. Sinking fund. To provide each year a sum
28 equal to not less than 2% nor more than 10% of the
29 term indebtedness represented by the issuance of
30 bonds created or assumed by the utility, which sum
31 shall be turned into a sinking fund and kept there to
32 provide for the extinguishment of term indebtedness.
33 The money set aside in this sinking fund shall be de-
34 voted to the retirement of the term obligations of
35 the utility and may be invested in such securities as
36 savings banks in the State are allowed to hold;

37 4. Payment of principal. To provide for annual
38 principal payments on serial indebtedness created or
39 assumed by the utility; and

1 5. Contingency reserve fund allowance. To pro-
2 vide for a contingency reserve fund allowance by pro-
3 viding rates to reflect up to a 5% addition to yearly
4 revenues over what is required to operate the water
5 company. If this allowance results in an excessive
6 surplus, rates may be set which use the excess to
7 offset future revenue requirements or returned to the
8 customer in accordance with the rules of the Public
9 Utilities Commission.

10 Sec. 16. Existing statutes not affected; rights
11 conferred subject to provisions of law. Nothing con-
12 tained in this Act is intended to repeal, or may be
13 construed as repealing, the whole or any part of any
14 existing law, and all the rights and duties mentioned
15 in this Act shall be exercised and performed in ac-
16 cordance with all the applicable provisions of the
17 Maine Revised Statutes, Title 35, and all acts amend-
18 atory thereof and additional thereto, to the extent
19 that the Maine Revised Statutes, Title 35 and the
20 amendments thereto affect the operations of the dis-
21 trict.

22

STATEMENT OF FACT

23 The purpose of this bill is to create a quasi-mu-
24 nicipal water district to protect the water resources
25 of the Town of Fayette and to provide for the town's
26 water needs.

27

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