

MAINE STATE LEGISLATURE

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(Emergency)
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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2274

S.P. 873

In Senate, February 16, 1988

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 CLARK of Cumberland.

Cosponsored by Representative MITCHELL of Freeport.

STATE OF MAINE

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

1 **AN ACT to Authorize the Creation of the**
2 **Freeport Water District.**
3

4 **Emergency preamble.** Whereas, Acts of the
5 Legislature do not become effective until 90 days
6 after adjournment unless enacted as emergencies; and

7 Whereas, the Town of Freeport wishes to establish
8 a water district and to purchase the assets of the

1 Maine Water Company, Freeport Division; and

2 Whereas, the Town of Freeport must act immediately
3 to purchase the Maine Water Company, Freeport
4 Division; and

5 Whereas, in the judgment of the Legislature, these
6 facts create an emergency within the meaning of the
7 Constitution of Maine and require the following
8 legislation as immediately necessary for the
9 preservation of the public peace, health and safety;
10 now, therefore,

11 Be it enacted by the People of the State of Maine as
12 follows:

13 **Sec. 1. Territorial limits; corporate name;**
14 **purposes.** The inhabitants and territory of the Town
15 of Freeport in the County of Cumberland, excluding the
16 inhabitants and territory of the South Freeport Water
17 District, shall constitute a body politic and
18 corporate under the name of "Freeport Water District"
19 for the purpose of supplying the town and the
20 inhabitants and others of the district, with pure
21 water for domestic, sanitary, commercial, industrial,
22 agricultural and municipal purposes.

23 **Sec. 2. Powers of Freeport Water District.** The
24 Freeport Water District, for the purposes of its
25 incorporation, may take, collect, store, flow, use,
26 divert, distribute and convey to the district, or any
27 part of the district, water from any lake, pond,
28 stream or river or from any surface or underground
29 brooks, springs or veins of water, natural or
30 artificial, within the area of the district or within
31 the area of the Town of Freeport and from any other
32 source from which the Maine Water Company, Freeport
33 Division, may take water. It may also locate,
34 construct and maintain aqueducts, pipes, conduits,
35 dams, wells, reservoirs, standpipes, hydrants, pumping
36 stations and other necessary structures and equipment
37 therefor, and do anything necessary to furnish water
38 for public purposes and for the public health, comfort
39 and convenience of the inhabitants and others of the
40 district, or to contract to do any and all of the

1 foregoing things.

2 All incidental powers, rights and privileges
3 necessary to the accomplishment of the main objectives
4 set forth in this Act are granted to the district
5 created by this Act.

6 Sec. 3. Authorized to lay mains, pipes, conduits
7 and other water conveyances through public ways and
8 across private lands. The district may lay in and
9 through the streets, roads, ways, highways and bridges
10 in the Town of Freeport and across private lands in
11 the Town of Freeport, and maintain, repair and replace
12 all such pipes, mains, conduits, aqueducts and
13 fixtures and appurtenances as may be necessary and
14 convenient for its corporate purposes, and whenever
15 the district shall lay any pipes, mains, conduits,
16 aqueducts and fixtures or appurtenances in any street,
17 road, way or highway, it shall cause the same to be
18 done with as little obstruction as practicable to the
19 public travel and, at its own expense, without
20 unnecessary delay, shall cause the earth and pavement
21 removed by it to be replaced in proper condition.

22 Sec. 4. Authorized to erect dams and reservoirs;
23 to cross navigable waters; to supply water to
24 utilities. The water district, for the purposes of
25 its incorporation, may erect and maintain all dams,
26 reservoirs and structures necessary and convenient for
27 its corporate purposes. The water district may lay,
28 construct and maintain its pipes and fixtures in, over
29 and under navigable waters and build and maintain
30 structures therefor, subject to the laws of the United
31 States. The water district may supply water to any
32 public utility now supplying water in the County of
33 Cumberland, subject to the consent of the Public
34 Utilities Commission.

35 Sec. 5. Rights of eminent domain. The
36 district, for the purposes of its incorporation, may
37 take and hold, as for public uses, real estate and
38 personal estate and any interest therein necessary or
39 convenient for those purposes, by purchase, lease or
40 otherwise and may exercise the right of eminent domain
41 as provided in this Act, to acquire for those purposes
42 any land or interest in land of water rights necessary

1 for erecting and maintaining dams, plants and works,
2 for flowage, power, pumping, supplying water through
3 its mains; for reservoirs, preserving the purity of
4 the water and watershed; for laying and maintaining
5 aqueducts and other structures; for taking,
6 distributing, discharging and disposing of water; and
7 for rights-of-way or roadways to its sources of
8 supply, dams, power stations, reservoirs, mains,
9 aqueducts, structures and lands.

10 The district, for the purposes of its
11 incorporation, may erect and maintain all dams,
12 reservoirs and structures necessary and convenient for
13 its corporate purposes. Nothing contained in this
14 section may be construed as authorizing the district
15 to take by right of eminent domain any of the property
16 or facilities of any other public service corporation
17 used, or acquired for future use, by the owner of that
18 property or those facilities in the performance of a
19 public duty, unless expressly authorized to do so by
20 this section or by subsequent Act of the Legislature
21 or as provided in section 6.

22 **Sec. 6. Procedure if public utility must be**
23 **crossed.** In case of crossing of any public utility,
24 unless consent is given by the company owning and
25 operating the public utility as to place, manner and
26 conditions of the crossing within 30 days after
27 consent is requested by the district, the Public
28 Utilities Commission, upon petition by the district,
29 shall determine the place, manner and conditions of
30 the crossing, and all work on the property of the
31 public utility shall be done under the supervision and
32 to the satisfaction of the public utility or as
33 prescribed by the Public Utilities Commission, but at
34 the expense of the district.

35 **Sec. 7. Procedure in exercising of eminent**
36 **domain.** After the original acquisition for which
37 provision is made in section 12, the district is
38 exercising from time to time, any right of eminent
39 domain conferred upon it by law or through or under
40 the franchise of any water company acquired by it,
41 shall file written application with the Public
42 Utilities Commission requesting its approval of the

1 proposed taking. The application shall describe the
2 property or rights to be taken, the purpose of the
3 taking and shall name all parties who may be
4 interested in the taking. The commission shall
5 appoint a time for hearing near the premises and shall
6 require such notice as the commission may direct to be
7 given to the persons interested, at least 14 days
8 before the date of the hearing. The commission shall
9 view the premises, hear the parties and shall
10 determine how much, if any, of the property described
11 in the petition should be taken for the reasonable
12 purposes of the water district and for the safe,
13 economical and efficient furnishing of an adequate
14 water supply. In authorizing any taking, the
15 commission may attach such reasonable terms,
16 limitations and restrictions as justice may require.
17 If the commission finds that any of the property
18 described in the application is necessary for the
19 purposes of the district as set out in the
20 application, the commission shall make a certificate
21 containing a definite description of the property to
22 be taken, and of any terms, restrictions and
23 limitations in connection with the property to be
24 taken, and shall furnish to the district a true copy
25 of the certificate, attested by the secretary of the
26 commission. When the copy of the certificate is filed
27 with the clerk of courts in the county where the
28 property lies, the property shall be deemed and
29 treated as taken, provided that when property is held
30 by a tenant for life and the reversion is contingent
31 as to the persons in whom it may vest at the
32 termination of the life estate, that fact shall be
33 stated in the application and the commission, in
34 addition to the notice to the tenant for life, shall
35 require notice by publication, in such manner as it
36 may deem proper to all others interested. Entry may
37 be made on any private land prior to the filing of any
38 such application for the purpose of making surveys,
39 the district being responsible for any damage
40 resulting from the entry. The district shall notify
41 the landowner 7 days prior to its entering upon the
42 property and possession may be had of the property
43 described in the certificate of the commission
44 immediately upon the filing and recording in the
45 registry of deeds of Cumberland County of the

1 certificate as provided in this section. Title to
2 that property shall not vest in the district until
3 payment for the property has been made.

4 **Sec. 8. Adjustment of damages; procedure as in**
5 **laying out of highways.** If any person sustaining
6 damages by any taking pursuant to the right of eminent
7 domain does not agree with the district upon the sum
8 to be paid therefor, either party, upon petition to
9 the County Commissioners of Cumberland County, may
10 have the damages assessed by them. The procedure and
11 all subsequent proceedings and right of appeal shall
12 be had under the same restrictions, conditions and
13 limitations as are or may be by law prescribed in the
14 case of damages by the laying out of highways.

15 **Sec. 9. Trustees; how elected; first board;**
16 **meeting; officers.** All of the affairs of the
17 district shall be managed by a board of trustees
18 composed of 5 members, all of whom shall be residents
19 of the district and elected as provided in this
20 section.

21 1. First board. Within 14 days after the
22 acceptance of this Act, the municipal officers of the
23 Town of Freeport, who are especially appointed for
24 this purpose, shall give notice of a special election
25 of the Freeport Water District, for the purpose of
26 selecting the first board of trustees, by posting a
27 notice at least 30 days prior to the date set for
28 election. The notice shall be published in one public
29 and conspicuous place in the Town of Freeport. The
30 candidates for office shall obtain nomination papers
31 from the clerk of the Town of Freeport, who is
32 appointed especially to act as clerk in this
33 particular instance. The form of the nomination
34 papers and the form of the ballot shall be as provided
35 in this Act. After the selection of the first board,
36 the only requirements for eligibility for the office
37 of trustee of the district shall be residence within
38 the district and eligibility to vote, and all
39 subsequent trustees shall be elected as provided in
40 this section in an annual election to be held on the
41 date of annual municipal election in the Town of
42 Freeport.

1 As soon as convenient after their appointment, the
2 first board of trustees shall hold a meeting at a
3 convenient place in the district, to be called by any
4 member of the board in writing designating the time
5 and place, and the notice shall be delivered in hand
6 to the other 4 members not less than 2 full days
7 before the meeting, or the trustees elected may meet
8 by agreement without the notice and upon appropriate
9 waiver. The first order of business shall be to draw
10 by lot to fix the terms of the trustees. Of the
11 original trustees, 2 shall serve for one year, 2 for 2
12 years and one for 3 years. Thereafter, trustees shall
13 be selected to serve for a 3-year term.

14 After the selection of the terms of the trustees,
15 the trustees shall organize by electing from their own
16 number a chairman and clerk and, not necessarily from
17 their own number, a treasurer and a registrar of
18 voters for the district, as provided in this section.
19 The trustees shall adopt a corporate seal, adopt and
20 establish bylaws consistent with the laws of this
21 State and necessary for their own convenience and the
22 proper management of the affairs of the district, and
23 perform any other acts within the powers delegated to
24 them by law. The trustees shall be sworn to the
25 faithful performance of their duties.

26 2. Election of trustees. The trustees to be
27 elected shall be chosen by a plurality vote of the
28 legal voters within the district. All nominations of
29 candidates to be voted for shall be made by nomination
30 papers signed in the aggregate for each candidate by
31 not less than 25 qualified voters within the
32 district. Each voter shall sign the nomination papers
33 in person and add to it that voter's place of
34 residence. Each voter may subscribe to as many
35 nominations as there are trustees to be elected and no
36 more. The nomination papers, before being filed,
37 shall be submitted to the registrar of voters of the
38 district, who shall certify on the nomination papers
39 what number of the signatures are names of qualified
40 voters in the district; one of the signers of each
41 separate paper shall swear to the truth, and the
42 certificate of the oath shall be annexed to or made
43 under the nomination papers. The nomination papers
44 shall be filed with the clerk of the district at least
45 7 days, exclusive of Sundays, previous to the day of

1 the election. The consent in writing of the person or
2 persons nominated shall be filed with the nomination
3 papers. All nomination papers which are filed and in
4 apparent conformity with the provisions of this
5 section shall be deemed to be valid and, if not in
6 apparent conformity, may be seasonably amended under
7 oath. If any candidate who has been duly nominated
8 under this section dies before the day of election or
9 withdraws in writing, the vacancy may be supplied in
10 the manner provided in this section for nominations.
11 If the ballots have not been printed, new ballots
12 containing the new nomination shall be furnished. If
13 the ballots have already been printed, slips
14 containing the new nomination shall be printed under
15 the direction of the district clerk and may be pasted
16 in the proper place upon the ballots and shall become
17 part of the ballots as if originally printed on the
18 ballots.

19 3. Form of ballot. The ballot shall be
20 substantially as follows: It shall contain the names
21 of all candidates so nominated printed in one column
22 under the heading "For Trustees of the Freeport Water
23 District." Above the heading shall be printed "Vote
24 for 2 Trustees" or such number as may be appropriate.
25 The voters shall make a cross (X) or a check mark (✓)
26 to the right of each name for whom the voter desires
27 to vote. As many blank spaces shall be left after the
28 name of the candidates as there are trustees to be
29 elected, in which the voter, by writing, may insert
30 the name or names of any person or persons for whom
31 the voter desires to vote. In casting the ballot, the
32 voter shall mark a cross (X) or a check mark (✓)
33 against and to the right of the names on the ballot
34 for whom the voter desires to vote, not to exceed the
35 number of trustees to be elected. If the voter
36 desires to vote for any person or persons whose name
37 or names are not on the printed ballot, the voter may
38 fill in the name or names in the blank spaces left by
39 writing the name or names in the blank spaces. The
40 result of the election shall be declared by the
41 trustees and due certificates of the results filed
42 with the district clerk. All trustees shall serve
43 until their successors are elected and qualified.

1 4. Meetings of trustees. Within one week after
2 each annual election, the trustees shall meet for the
3 purpose of electing a chairman, treasurer and clerk
4 from among them to serve for the ensuing year and
5 until their successors are elected and qualified. The
6 trustees, from time to time, may choose and employ and
7 fix the compensation of any other necessary officers
8 and agents who shall serve at their pleasure. The
9 treasurer shall furnish bond in the sum and with
10 sureties as approved by the trustees. The cost shall
11 be paid by the district. The trustees shall be sworn
12 to the faithful performance of their duties. They may
13 adopt and establish such bylaws as are necessary for
14 their own convenience and the proper management of the
15 affairs of the district.

16 Whenever the term of office of a trustee expires,
17 the trustee's successor shall be elected by a
18 plurality vote by the inhabitants of the district, and
19 upon nomination made as provided in this section for
20 the election of trustees. For the purpose of
21 election, a special election shall be called and held
22 on the annual municipal election in each year, the
23 election to be called by the trustees of the district
24 in the same manner as town meetings are called and for
25 this purpose the trustees are vested with the powers
26 of selectmen of towns. The trustees so elected shall
27 serve the full term of 3 years. If any vacancy arises
28 in the membership of the board of trustees, it shall
29 be filled in like manner for the unexpired term by a
30 special election to be called by the trustees of the
31 district. When any trustee ceases to be a resident of
32 the district, the trustee shall vacate the office of
33 trustee and the vacancy shall be filled as provided in
34 this section. All trustees shall be eligible for
35 reelection, but no person holding the office as a
36 member of the town council in the Town of Freeport may
37 be eligible for nomination or election as trustee.

38 The trustees may procure an office and incur such
39 expenses as may be necessary. The trustees shall
40 receive compensation as recommended by them and
41 approved by a majority of the municipal officers of
42 the Town of Freeport, including compensation for any

1 duties they perform as officers, as well as for their
2 duties as trustees.

3 The trustees shall appoint a registrar of voters
4 for the district, who may also be the registrar of
5 voters for the Town of Freeport, and fix the
6 registrar's salary. It shall be the registrar's duty
7 to make and keep a complete list of all the eligible
8 voters of the district. The list prepared by the
9 registrar, as provided by the laws of the State, shall
10 govern the eligibility of any voter. In determining
11 the eligible voters of the district, the registrar of
12 voters shall exclude from those lists and from all
13 checklists the legal voters who are resident outside
14 the territorial limits of the water district as
15 defined in this Act. All warrants issued for
16 elections by the trustees shall be varied accordingly
17 to show that only the voters resident within the
18 territorial limits of the water district are entitled
19 to vote.

20 **Sec. 10. Annual report.** The trustees shall
21 make and publish an annual report, including a report
22 of the treasurer. The report may be included in and
23 published as part of the annual town report of the
24 Town of Freeport.

25 **Sec. 11. District and towns authorized to make**
26 **and assume contracts.** The district, through its
27 trustees, may contract with persons and corporations,
28 including the Town of Freeport, and the Town of
29 Freeport may contract with the district for the supply
30 of water for municipal purposes.

31 **Sec. 12. Authorized to acquire property and**
32 **franchises of Maine Water Company, Freeport**
33 **Division.** This district, through its trustees, may
34 acquire by purchase all of the entire plant,
35 properties, franchises, rights and privileges owned by
36 the Maine Water Company, Freeport Division, located
37 within the Town of Freeport, including all lands,
38 waters, water rights, reservoirs, pipes, machinery,
39 fixtures, hydrants, tools and all apparatus and
40 appliances used or usable in supplying water in the
41 area of the district. The water district may acquire
42 by the

1 exercise of the right of eminent domain, which right
2 is expressly delegated to the district for that
3 purpose, the entire plant, properties, franchise,
4 rights and privileges, except cash assets and accounts
5 receivable, owned by the Maine Water Company, Freeport
6 Division, including all lands, waters, water rights,
7 dam structures, reservoirs, pipes, machinery,
8 fixtures, hydrants, tools and all apparatus and
9 appliances used or usable in supplying water in the
10 area of the district, and if and when so acquired, the
11 district, in addition to the powers conferred by this
12 Act, shall have and enjoy and be entitled to exercise
13 all rights, privileges and franchises of the Maine
14 Water Company, Freeport Division.

15 **Sec. 13. Authorized to receive government aid;**
16 **borrow money; issue bonds and notes.** For
17 accomplishing the purposes of this Act and for such
18 other expenses as may be necessary for the carrying
19 out of the purposes, the district, through its
20 trustees, without vote of the inhabitants, may receive
21 state and federal aid grants, borrow money temporarily
22 and issue therefor its negotiable notes, for the
23 purpose of renewing and refunding the indebtedness so
24 created, of paying any necessary expenses and
25 liabilities incurred under this Act, including
26 organizational and other necessary expenses and
27 liabilities, whether incurred by the district or the
28 Town of Freeport, the district being authorized to
29 reimburse the Town of Freeport for any such expense
30 incurred by the town and in acquiring properties,
31 paying damages, laying pipes, mains, aqueducts and
32 conduits, constructing, maintaining and operating a
33 water plant or system and making renewals, additions,
34 extensions and improvements to the water plant or
35 system and to cover interest payments during the
36 period of construction. The district, through its
37 trustees, without the vote of its inhabitants, but
38 only with the approval of the Public Utilities
39 Commission, may also issue, from time to time, bonds,
40 notes or other evidence of indebtedness of the
41 district in such amount or amounts bearing interest at
42 such rate or rates, selling at par or at a discount or
43 a premium and having such other terms and provisions
44 as the trustees shall determine, except that loans
45 running

1. for one year or less will not require the Public
2 Utilities Commission's approval.

3 The bonds, notes and evidences of indebtedness may
4 be issued to mature serially or made to run for such
5 periods as the trustees may determine. Bonds, notes
6 or evidences of indebtedness may be issued with or
7 without provisions for calling the bonds, notes or
8 evidences of indebtedness prior to maturity, and if
9 callable, may be made callable at par or at such
10 premium as the trustees may determine. All bonds,
11 notes or other evidences of indebtedness shall have
12 inscribed upon their face the words "Freeport Water
13 District," shall be signed by the treasurer and
14 countersigned by the president of the board of
15 trustees of the district, and if coupon bonds are
16 issued, the interest coupon attached to the coupon
17 bonds shall bear the facsimile signature of the
18 treasurer.

19 All bonds, notes and evidences of indebtedness so
20 issued by the district shall be legal obligations of
21 the district, which is declared to be a
22 quasi-municipal corporation within the meaning of the
23 Maine Revised Statutes, Title 30, section 5053, and
24 all provisions of that section shall be applicable to
25 the district.

26 The district may refund and reissue, from time to
27 time, in one or in separate series, its bonds, notes
28 and other evidences of indebtedness, and each
29 authorized issue shall constitute a separate loan.
30 All bonds, notes and evidences of indebtedness issued
31 by the district shall be legal investments for savings
32 banks in the State and shall be free from taxation.

33 **Sec. 14. Property tax exempt.** The property,
34 both real and personal, rights and franchises of the
35 district shall be forever exempt from taxation in the
36 Town of Freeport.

37 **Sec. 15. Rates; application of revenue; sinking**
38 **fund.** All individuals, firms and corporations,
39 whether private or public, shall pay to the treasurer
40 of the district the rates established by the board of

1 trustees for the services used by them and the water
2 rates shall be uniform within the territory supplied
3 by the district and shall be subject to the approval
4 of the Public Utilities Commission.

5 The board of trustees shall establish and file
6 rates to provide revenue for the following purposes:

7 1. Current expenses. To pay the current expenses
8 for operating and maintaining the water system and to
9 provide for normal renewals and replacements;

10 2. Payment of interest. To provide for the
11 payment of the interest on the indebtedness created or
12 assumed by the utility;

13 3. Sinking fund. To provide each year a sum equal
14 to not less than 2% nor more than 10% of the term
15 indebtedness represented by the issuance of bonds
16 created or assumed by the utility, which sum shall be
17 turned into a sinking fund and kept there to provide
18 for the extinguishment of term indebtedness. The
19 money set aside in this sinking fund shall be devoted
20 to the retirement of the term obligations of the
21 utility and may be invested in such securities as
22 savings banks in the State are allowed to hold;

23 4. Payment of principal. To provide for annual
24 principal payments on serial indebtedness created or
25 assumed by the utility; and

26 5. Contingency reserve fund allowance. To
27 provide for a contingency reserve fund allowance by
28 providing rates to reflect up to a 5% addition to
29 yearly revenues over what is required to operate the
30 water company. If this allowance results in an
31 excessive surplus, rates may be set which use the
32 excess to offset future revenue requirements or
33 returned to the customer in accordance with the rules
34 of the Public Utilities Commission.

35 Sec. 16. Existing laws not affected; rights
36 conferred subject to provisions of law. Nothing
37 contained in this Act is intended to repeal, or may be
38 construed as repealing, the whole or any part of any

1 existing law, and all the rights and duties mentioned
2 in this Act shall be exercised and performed in
3 accordance with all the applicable provisions and
4 amendatory Acts of the Maine Revised Statutes, Titles
5 35 and 35-A, to the extent that the Maine Revised
6 Statutes, Titles 35 and 35-A and the amendments to
7 those titles affect the operations of the district.

8 **Emergency clause.** In view of the emergency
9 cited in the preamble, this Act shall take effect when
10 approved.

11 **STATEMENT OF FACT**

12 This bill authorizes the creation of the Freeport
13 Water District.

14 4625122987