

# MAINE STATE LEGISLATURE

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(Emergency)  
(New Draft of S.P. 431, L.D. 1311)  
SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

No. 2291

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S.P. 883

In Senate, February 17, 1988

Reported by Senator KERRY of York for the Committee on Utilities and printed under Joint Rule 2. Original Bill sponsored by Senator KANY of Kennebec. Cosponsored by: Representative NORTON of Winthrop.

JOY J. O'BRIEN, Secretary of the Senate

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STATE OF MAINE

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

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1                   AN ACT Creating the Fayette Water  
2                   District.  
3

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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 Fayette has voted to  
8   establish a water district in order to protect the  
9   water resources of the town and to provide for the

1 town's water needs; and

2 Whereas, an adequate supply of pure water is  
3 essential to the health and well-being of the  
4 inhabitants of the Town of Fayette; and

5 Whereas, it is desirable that a public district be  
6 formed in Fayette to be able to supply water to the  
7 people of the area; and

8 Whereas, it is important to grant this  
9 authorization in time for the question to be  
10 considered at the town's annual meeting; and

11 Whereas, in the judgment of the Legislature, these  
12 facts create an emergency within the meaning of the  
13 Constitution of Maine and require the following  
14 legislation as immediately necessary for the  
15 preservation of the public peace, health and safety;  
16 now, therefore,

17 Be it enacted by the People of the State of Maine as  
18 follows:

19 **Sec. 1. Findings; voter approval.** The  
20 Legislature finds that the Town of Fayette has voted  
21 to establish a water district and that it is  
22 appropriate to create such a district in order to  
23 protect the water resources of the Town of Fayette and  
24 to provide for the town's water needs.

25 **Sec. 2. Territorial limits; corporate name;  
26 purposes.** Subject to section 16, the inhabitants and  
27 territory of the Town of Fayette in Kennebec County  
28 shall constitute a body politic and corporate under  
29 the name of "Fayette Water District" for the purpose  
30 of supplying the Town of Fayette and the inhabitants  
31 and others of the district with pure water for  
32 domestic, sanitary, commercial, industrial,  
33 agricultural and municipal purposes.

34 **Sec. 3. Powers of Fayette Water District.** The  
35 Fayette Water District is authorized, for the purposes  
36 of its incorporation, to take, collect, store, flow,  
37 use, divert, distribute and convey to the district, or

1 any part of the district, water from any source,  
2 natural or artificial, within the area of the district  
3 or within the area of the Town of Fayette. It is also  
4 authorized to locate, construct and maintain  
5 aqueducts, pipes, conduits, dams, wells, reservoirs,  
6 standpipes, hydrants, pumping stations and other  
7 necessary structures and equipment therefor, and do  
8 anything necessary to furnish water for public  
9 purposes and for the public health, comfort and  
10 convenience of the inhabitants and others of the  
11 district, or to contract to do any and all of the  
12 foregoing things. The district may not take, withdraw  
13 or divert water from any source for the above  
14 enumerated purposes, unless it has filed a written  
15 petition and obtained the approval of the Public  
16 Utilities Commission. The petition shall include a  
17 plan for the taking, withdrawal or diversion of  
18 water. The petition and plan shall set forth adequate  
19 information upon which findings may be made regarding  
20 the nature, capacity, safe yield and rechargeability  
21 of the source, the amount of water to be taken over  
22 time and other existing and projected uses and demands  
23 on the source. The commission may by rule or order  
24 prescribe other information to be contained in the  
25 petition and plan. The commission may not approve a  
26 petition unless it finds that the plan ensures that  
27 adequate water remains in the source to meet the  
28 reasonable needs of existing and projected demands on  
29 the source. The commission may impose reasonable  
30 terms, conditions or other requirements on the plan.  
31 The commission shall issue its order approving or  
32 disapproving the plan within 9 months after it  
33 determines the petition to be complete.

34 All incidental powers, rights and privileges  
35 necessary to the accomplishment of the main objectives  
36 set forth in this Act are granted to the district  
37 created by this Act.

38 Sec. 4. Authorized to lay mains, pipes,  
39 conduits, aqueducts, fixtures and appurtenances  
40 through public ways and across private lands. The  
41 district is authorized to lay in and through the  
42 streets, roads, ways, highways and bridges in the Town  
43 of Fayette and across private lands in the Town of  
44 Fayette, and to maintain, repair and replace

1 all such pipes, mains, conduits, aqueducts and  
2 fixtures and appurtenances as may be necessary and  
3 convenient for its corporate purposes and, whenever  
4 the district shall lay any pipes, mains, conduits,  
5 aqueducts and fixtures or appurtenances in any street,  
6 road, way or highway, it shall cause the same to be  
7 done with as little obstruction as practicable to the  
8 public travel and shall, at its own expense, without  
9 unnecessary delay, cause the earth and pavement  
10 removed by it to be replaced in proper condition.

11       **Sec. 5. Authorized to erect dams and reservoirs;**  
12 **to cross navigable waters; to supply water to**  
13 **utilities.** The water district is authorized, for the  
14 purposes of its incorporation, to erect and maintain  
15 all dams, reservoirs and structures necessary and  
16 convenient for its corporate purposes. The water  
17 district is also authorized to lay, construct and  
18 maintain its pipes and fixtures in, over and under  
19 navigable waters and to build and maintain structures  
20 therefor; and to supply water to any public utility  
21 now supplying water in the Counties of Kennebec,  
22 Androscoggin or Franklin, subject to the consent of  
23 the Public Utilities Commission.

24       **Sec. 6. Rights of eminent domain.** The  
25 district, for the purposes of its incorporation, is  
26 authorized to take and hold, as for public uses, real  
27 estate and personal property and any interest therein,  
28 necessary or convenient for those purposes, by  
29 purchase, lease or otherwise and is expressly  
30 authorized to exercise the right of eminent domain, as  
31 hereinafter provided, to acquire for those purposes  
32 any land or interest in land or water rights necessary  
33 for erecting and maintaining dams, plants and works,  
34 for flowage, power, pumping, supplying water through  
35 its mains, for reservoirs, preserving the purity of  
36 the water and watershed, laying and maintaining  
37 aqueducts and other structures for taking,  
38 distributing, discharging and disposing of water and  
39 for rights-of-way or roadways to its sources of  
40 supply, dams, power stations, reservoirs, mains,  
41 aqueducts, structures and lands.

42       The district is authorized, for the purposes of

1 its incorporation, to erect and maintain all dams,  
2 reservoirs and structures necessary and convenient for  
3 its corporate purposes. Nothing contained in this  
4 section may be construed as authorizing the district  
5 to take by right of eminent domain any of the property  
6 or facilities of any other public utility used, or  
7 acquired for future use, by the owner of that property  
8 or facilities in the performance of a public duty,  
9 unless expressly authorized to do so by this section,  
10 by subsequent Act of the Legislature or as provided in  
11 section 7.

12       **Sec. 7. Procedure if public utility must be**  
13 **crossed.** In case of crossing of any public utility,  
14 unless consent is given by the company owning and  
15 operating the public utility as to place, manner and  
16 conditions of the crossing within 30 days after  
17 consent is requested by the district, the Public  
18 Utilities Commission, upon petition by the district,  
19 shall determine the place, manner and conditions of  
20 the crossing, and all work on the property of the  
21 public utility shall be done under the supervision and  
22 to the satisfaction of the public utility, or as  
23 prescribed by the Public Utilities Commission, but at  
24 the expense of the district.

25       **Sec. 8. Procedure in exercising right of eminent**  
26 **domain.** In exercising the right of eminent domain in  
27 the taking of land, interests therein or water rights,  
28 the district shall file in the office of the county  
29 commissioners of Kennebec County and record in the  
30 Kennebec County registry of deeds plans of the  
31 location of all such property to be taken, with an  
32 appropriate description and the names of the owners,  
33 if known. Notice of the filing shall be sent by mail  
34 to the owners at the address appearing on the tax  
35 records of the municipality in which the land is  
36 located. When for any reason the district fails to  
37 acquire the property which it is authorized to take,  
38 and which is described in that location, or if the  
39 location recorded is defective or uncertain, it may,  
40 at any time, correct and perfect that location and  
41 file a new description, and in such case the district  
42 is liable in damages only for property for which the  
43 owner had not previously been paid, to be assessed at

1 the time of the original taking, and the district is  
2 not liable for any acts which would have been  
3 justified if the original taking had been lawful. No  
4 entry may be made on any private lands, except to make  
5 surveys, until the expiration of 10 days from that  
6 filing, at which time possession may be had of all  
7 lands, interests therein or water rights so taken, but  
8 title shall not vest in the district until payment is  
9 received therefor.

10       **Sec. 9. Adjustment of damages; procedure as in**  
11 **laying out of highways.** If any person sustaining  
12 damages by any taking pursuant to the right of eminent  
13 domain shall not agree with the district upon the sum  
14 to be paid therefor, either party, upon petition to  
15 the county commissioners of Kennebec County, may have  
16 the damages assessed by them. The procedure and all  
17 subsequent proceedings and right of appeal therefrom  
18 shall be had under the same restrictions, conditions  
19 and limitations as are or may be by law prescribed in  
20 the case of damages by the laying out of highways.

21       **Sec. 10. Trustees; how elected; first board;**  
22 **meeting; officers.** All of the affairs of the  
23 district shall be managed by a board of trustees  
24 composed of 5 members, all of whom shall be residents  
25 of the district, and elected as provided in the Maine  
26 Revised Statutes, Title 35-A, chapter 63 and this  
27 section.

28       1. First board. Within 14 days after the  
29 acceptance of this Act, the selectmen of the Town of  
30 Fayette, who are especially appointed for this  
31 purpose, shall give notice of a special election of  
32 the Fayette Water District, for the purpose of  
33 selecting the first board of trustees, by posting a  
34 notice at least 30 days prior to the date set for  
35 election. The notice shall be published in one public  
36 and conspicuous place in the Town of Fayette. The  
37 candidates for office shall obtain nomination papers  
38 from the clerk of the Town of Fayette, who is  
39 appointed especially to act as clerk in this  
40 particular instance. The form of the nomination papers  
41 and the ballot shall be as provided in this Act. After  
42 the selection of the first board, the

1 only eligibility requirements for the office of  
2 trustee of the district shall be residence within the  
3 district and eligibility to vote, and all subsequent  
4 trustees shall be elected as provided in Maine Revised  
5 Statutes, Title 35-A, chapter 63 in an annual election  
6 to be held on the first Saturday of March in each  
7 year.

8 Organization of the board of trustees and their  
9 specific powers shall be in accordance with the Maine  
10 Revised Statutes, Title 35-A, chapter 63. The first  
11 order of business shall be to draw by lot to fix the  
12 terms of the trustees. Of the original trustees, 2  
13 shall serve for one year, 2 for 2 years and one for 3  
14 years. Thereafter, trustees shall be selected to serve  
15 for 3-year terms.

16 2. Decisions of the board. All decisions of the  
17 board of trustees shall be by a majority of those  
18 present and voting. A quorum of the board of trustees  
19 shall be 3 trustees.

20 3. Compensation. Trustees' compensation shall be  
21 set in accordance with the Maine Revised Statutes,  
22 Title 35-A, chapter 63.

23 4. Vacancies; incompatible offices. Whenever the  
24 term of office of a trustee expires, a successor shall  
25 be elected by a plurality vote by the inhabitants of  
26 the district, and upon nomination made as provided in  
27 this section for the election of trustees; and for the  
28 purpose of election a special election shall be called  
29 and held on the first Saturday of March in each year,  
30 the election to be called by the trustees of the  
31 district in the same manner as town meetings are  
32 called. For this purpose, the trustees are vested  
33 with the powers of selectmen of towns. The trustees so  
34 elected shall serve the full term of 3 years and, in  
35 case any vacancy arises in the membership of the board  
36 of trustees, it shall be filled in like manner for the  
37 unexpired term by special election to be called by the  
38 trustees of the district. When any trustee ceases to  
39 be a resident of the district, that trustee shall  
40 vacate the office of trustee and the vacancy shall be



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

6 5. Additional powers. The trustees may procure  
7 an office and incur such expenses as may be necessary.

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

24 Sec. 11. Annual report. The trustees shall  
25 make and publish an annual report, including a report  
26 of the treasurer, and the report may be included in,  
27 and published as part of, the annual town report of  
28 the Town of Fayette.

29 Sec. 12. District and towns authorized to make  
30 and assume contracts. The district, through its  
31 trustees, is authorized to contract with persons and  
32 corporations, including the Town of Fayette, and the  
33 Town of Fayette is authorized to contract with it for  
34 the supply of water for municipal purposes.

35 Sec. 13. Authorized to receive governmental aid;  
36 borrow money; issue bonds and notes. For  
37 accomplishing the purposes of this Act and for such  
38 other expenses as may be necessary for the carrying  
39 out of these purposes, the district, through its  
40 trustees, without vote of the inhabitants, is

1 authorized to receive both state and federal aid  
2 grants; and to borrow money temporarily and to issue  
3 therefor its negotiable notes, for the purpose of  
4 renewing and refunding the indebtedness so created,  
5 for paying any necessary expenses and liabilities  
6 incurred under this Act, including organizational and  
7 other necessary expenses and liabilities, whether  
8 incurred by the district or the Town of Fayette, the  
9 district being authorized to reimburse the Town of  
10 Fayette for any such expense incurred by them and in  
11 acquiring properties, paying damages, laying pipes,  
12 mains, aqueducts and conduits, constructing,  
13 maintaining and operating a water plant or system and  
14 making renewals, additions, extensions and  
15 improvements to the same and to cover interest  
16 payments during the period of construction. The  
17 district, through its trustees, is authorized to  
18 issue, in accordance with the Maine Revised Statutes,  
19 Title 35-A, chapter 63, from time to time, bonds,  
20 notes or other evidence of indebtedness of the  
21 district in such amount or amounts bearing interest at  
22 such rate or rates, selling at par, or at a discount  
23 or a premium and having such other terms and  
24 provisions as the trustees shall determine, except  
25 that loans running for one year or less do not require  
26 the Public Utilities Commission's approval.

27 The bonds, notes and evidences of indebtedness may  
28 be issued to mature serially or made to run for such  
29 periods as the trustees determine. Bonds, notes or  
30 evidences of indebtedness may be issued with or  
31 without provisions for calling the same prior to  
32 maturity and, if callable, may be made callable at par  
33 or at such premium as the trustees determine. All  
34 bonds, notes or other evidences of indebtedness shall  
35 have inscribed upon their face the words "Fayette  
36 Water District", shall be signed by the treasurer and  
37 countersigned by the president of the board of  
38 trustees of the district and, if coupon bonds are  
39 issued, the interest coupon attached to the coupon  
40 bonds shall bear the facsimile signature of the  
41 treasurer.

42 All bonds, notes and evidences of indebtedness so  
43 issued by the district shall be legal obligations of  
44 the district, which is declared to be a

1 quasi-municipal corporation within the meaning of the  
2 Maine Revised Statutes, Title 30, section 5053, and  
3 all provisions of that section shall be applicable  
4 thereto.

5 The district may refund and reissue, from time to  
6 time, in one or in separate series, its bonds, notes  
7 and other evidences of indebtedness, and each  
8 authorized issue shall constitute a separate loan. All  
9 bonds, notes and evidences of indebtedness issued by  
10 the district shall be legal investments for savings  
11 banks in the State, and shall be free from taxation.

12 **Sec. 14. Rates; application of revenue; sinking**  
13 **fund.** Individuals, firms and corporations, whether  
14 private, public or municipal, shall pay to the  
15 treasurer, or other designated officer, of the  
16 district the rates established by the board of  
17 trustees for the water used by them. The rates shall  
18 be established in accordance with the Maine Revised  
19 Statutes, Title 35-A, chapter 61 to provide for the  
20 purposes set forth therein.

21 **Sec. 15. Existing statutes not affected; rights**  
22 **conferred subject to provisions of law.** Nothing  
23 contained in this Act is intended to repeal, or may be  
24 construed as repealing, the whole or any part of any  
25 existing law, and all the rights and duties mentioned  
26 in this Act shall be exercised and performed in  
27 accordance with all the applicable provisions of the  
28 Maine Revised Statutes, Title 35-A, and all Acts  
29 amendatory thereof and additional thereto, to the  
30 extent that the Maine Revised Statutes, Title 35-A and  
31 the amendments thereto affect the operations of the  
32 district.

33 **Sec. 16. Separability clause.** If any section  
34 or part of a section of this charter shall be held  
35 invalid by a court of competent jurisdiction, the  
36 holding shall not affect the remainder of this  
37 charter, with the intention that the remaining  
38 portions of this charter shall stand, notwithstanding  
39 the unconstitutionality or invalidity of any section,  
40 sentence, clause or phrase.

1           Sec. 17. Referendum; effective date. This Act  
2 shall take effect when approved only for the purpose  
3 of permitting its submission to the legal voters of  
4 the district at a special election or elections called  
5 and held for the purpose. The election shall be called  
6 by the municipal officers of the Town of Fayette and  
7 shall be held at the regular voting places; the dates  
8 of the elections shall be determined by the municipal  
9 officers, but the first meeting of the town shall not  
10 be later than December 1, 1988. These special  
11 elections shall be called, advertised and conducted  
12 according to the law relating to municipal elections,  
13 provided that the board of registration is not  
14 required to prepare, nor the town clerk to post, a new  
15 list of voters. For this purpose, the board of  
16 registration shall be in session on the 3 secular days  
17 next preceding the elections, the first and 2nd days  
18 to be devoted to registration of voters and the last  
19 day to enable the board to verify the corrections of  
20 the lists and to complete and close up their records  
21 of the session. The town clerk shall reduce the  
22 subject matter of this Act to the following question:

23           "Shall 'The Act to Incorporate the Fayette Water  
24 District' passed by the Legislature be accepted?"

25           The voters shall indicate by a cross or check mark  
26 placed against the words "Yes" or "No" their opinion  
27 of the same. This Act shall take effect for all the  
28 purposes hereof immediately upon its acceptance by a  
29 majority of the legal voters of the district voting at  
30 the elections, but only if the total number of votes  
31 cast for and against the acceptance of this Act in the  
32 special elections equals or exceeds 20% of the total  
33 number of names on the check list of voters of the  
34 town provided for in this Act, which check list shall  
35 be used at such elections, but failure of approval by  
36 the necessary majority or percentage of voters shall  
37 not prevent subsequent elections.

38           The result of these elections shall be declared by  
39 the municipal officers of the town and due  
40 certificates thereof filed by the town clerk with the  
41 Secretary of State.

