

# MAINE STATE LEGISLATURE

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(Emergency)  
(New Draft of S.P. 873, L.D. 2274)  
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2615

S.P. 987

In Senate, April 4, 1988

Reported by Senator ERWIN of Oxford for the Committee on UTILITIES and printed under Joint Rule 2. Original Bill sponsored by Senator CLARK of Cumberland. Cosponsored by: Representative MITCHELL of Freeport.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Authorize the Creation of the  
Freeport Water District.

1  
2  
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  
9 Maine Water Company, Freeport Division; and

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

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

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

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

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

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

5 The district may not take, withdraw or divert  
6 water from any source for the above enumerated  
7 purposes, unless it has filed a written petition and  
8 obtained the approval of the Public Utilities  
9 Commission. The petition shall include a plan for the  
10 taking, withdrawal or diversion. The petition and  
11 plan shall set forth adequate information upon which  
12 findings may be made regarding the nature, capacity,  
13 safe yield, and the ability of the source to be  
14 recharged, the amount of water to be taken over time  
15 and other existing and projected uses and demands on  
16 the source. The commission may by rule or order  
17 prescribe other information to be contained in the  
18 petition and plan. The commission may not approve a  
19 petition unless it finds that the plan ensures that  
20 adequate water remains in the source to meet the  
21 reasonable needs of existing and projected demands on  
22 the source. The commission may impose reasonable  
23 terms, conditions or other requirements on the plan.  
24 The commission shall issue its order approving or  
25 disapproving the plan within 9 months after it  
26 determines the petition to be complete.

27 **Sec. 3. Authorized to lay mains, pipes, conduits**  
28 **and other water conveyances through public ways and**  
29 **across private lands.** The district may lay in and  
30 through the streets, roads, ways, highways and bridges  
31 in the Town of Freeport and across private lands in  
32 the Town of Freeport and maintain, repair and replace  
33 all such pipes, mains, conduits, aqueducts and  
34 fixtures and appurtenances as may be necessary and  
35 convenient for its corporate purposes and, whenever  
36 the district shall lay any pipes, mains, conduits,  
37 aqueducts and fixtures or appurtenances in any street,  
38 road, way or highway, it shall cause the same to be  
39 done with as little obstruction as practicable to the  
40 public travel and, at its own expense, without  
41 unnecessary delay, shall cause the earth and pavement

1 removed by it to be replaced in proper condition.

2       **Sec. 4. Authorized to erect dams and reservoirs;**  
3 to cross navigable waters; to supply water to  
4 utilities. The water district, for the purposes of  
5 its incorporation, may erect and maintain all dams,  
6 reservoirs and structures necessary and convenient for  
7 its corporate purposes. The water district may lay,  
8 construct and maintain its pipes and fixtures in, over  
9 and under navigable waters and build and maintain  
10 structures therefor, subject to the laws of the United  
11 States. The water district may supply water to any  
12 public utility now supplying water in the County of  
13 Cumberland, subject to the consent of the Public  
14 Utilities Commission.

15       **Sec. 5. Rights of eminent domain.** The  
16 district, for the purposes of its incorporation, may  
17 take and hold, as for public uses, real estate and  
18 personal estate and any interest therein necessary or  
19 convenient for those purposes, by purchase, lease or  
20 otherwise and may exercise the right of eminent domain  
21 as provided in this Act, to acquire for those purposes  
22 any land or interest in land or water rights necessary  
23 for erecting and maintaining dams, plants and works,  
24 for flowage, power, pumping, supplying water through  
25 its mains; for reservoirs, preserving the purity of  
26 the water and watershed; for laying and maintaining  
27 aqueducts and other structures; for taking,  
28 distributing, discharging and disposing of water; and  
29 for rights-of-way or roadways to its sources of  
30 supply, dams, power stations, reservoirs, mains,  
31 aqueducts, structures and lands.

32       Nothing contained in this section may be construed  
33 as authorizing the district to take by right of  
34 eminent domain any of the property or facilities of  
35 any other public utility used, or acquired for future  
36 use, by the owner of that property or those facilities  
37 in the performance of a public duty, unless expressly  
38 authorized to do so by this section or by subsequent  
39 Act of the Legislature or as provided in section 6.

40       **Sec. 6. Procedure if public utility must be**

1 crossed. In case of crossing of any public utility,  
2 unless consent is given by the company owning and  
3 operating the public utility as to place, manner and  
4 conditions of the crossing within 30 days after  
5 consent is requested by the district, the Public  
6 Utilities Commission, upon petition by the district,  
7 shall determine the place, manner and conditions of  
8 the crossing, and all work on the property of the  
9 public utility shall be done under the supervision and  
10 to the satisfaction of the public utility or as  
11 prescribed by the Public Utilities Commission, but at  
12 the expense of the district.

13 **Sec. 7. Procedure in exercising of eminent**  
14 **domain.** After the original acquisition for which  
15 provision is made in section 12 of this Act, the  
16 district, in exercising, from time to time, any right  
17 of eminent domain in the taking of land, interests  
18 therein or water rights, shall file in the office of  
19 the county commissioners of Cumberland County and  
20 record in the Cumberland County registry of deeds  
21 plans of the location of all such property to be  
22 taken, with an appropriate description and the names  
23 of the owners, if known. Notice of the filing shall  
24 be sent by mail to the owners at the address appearing  
25 on the tax records of the municipality in which the  
26 land is located. When for any reason the district  
27 fails to acquire the property which it is authorized  
28 to take, and which is described in that location, or  
29 if the location recorded is defective or uncertain, it  
30 may, at any time, correct and perfect that location  
31 and file a new description, and in such case the  
32 district is liable for damages only for property for  
33 which the owner had not previously been paid, to be  
34 assessed as of the time of the original taking, and  
35 the district is not liable for any acts which would  
36 have been justified if the original taking had been  
37 lawful. No entry may be made on any private lands,  
38 except to make surveys, until the expiration of 10  
39 days from that filing, at which time possession may be  
40 had of all lands, interests therein or water rights so  
41 taken, but title shall not vest in the district until  
42 payment therefor.

43 **Sec. 8. Adjustment of damages; procedure as in**

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

11 **Sec. 9. Trustees; how elected; first board;**  
12 **meeting; officers.** All of the affairs of the  
13 district shall be managed by a board of trustees  
14 composed of 3 members, all of whom shall be residents  
15 of the district and, after selection of the first  
16 board, elected as provided in Title 35-A, chapter 63.

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

35 As soon as convenient after their appointment, the  
36 first board of trustees shall hold a meeting at a  
37 convenient place in the district, to be called by any  
38 member of the board in writing designating the time  
39 and place, and the notice shall be delivered in hand  
40 to the other 2 members not less than 2 full days  
41 before the meeting; provided that the trustees elected  
42 may meet by agreement without the notice and upon

1 appropriate waiver. The terms of office of the  
2 members of the first board of trustees shall be  
3 established as follows: The member receiving the  
4 greatest number of votes shall serve for a term of 3  
5 years; the member receiving the next highest number of  
6 votes shall serve for a term of 2 years; and the 3rd  
7 member shall serve for a term of one year. In the  
8 event of a tie vote, the terms of office of the  
9 members affected shall be determined by lot.  
10 Thereafter, trustees shall be elected to serve for  
11 3-year terms.

12 2. Organization; conduct of business.  
13 Organization and powers of the board of trustees shall  
14 be in accordance with the Maine Revised Statutes,  
15 Title 35-A, chapter 63.

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

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

22 3. Bylaws. The trustees may adopt and establish  
23 such bylaws as are necessary for their own convenience  
24 and the proper management of the affairs of the  
25 district.

26 4. Vacancy. Whenever the term of office of a  
27 trustee expires, the trustee's successor shall be  
28 elected by a plurality vote by the inhabitants of the  
29 district, and upon nomination made as provided in this  
30 section for the election of trustees. For the purpose  
31 of election, a special election shall be called and  
32 held on the annual municipal election in each year,  
33 the election to be called by the trustees of the  
34 district in the same manner as town meetings are  
35 called and for this purpose the trustees are vested  
36 with the powers of selectmen of towns. The trustee so  
37 elected shall serve the full term of 3 years. If any  
38 vacancy arises in the membership of the board of  
39 trustees, it shall be filled in like manner for the  
40 unexpired term by a special election to be called by



1 the trustees of the district. When any trustee ceases  
2 to be a resident of the district, the trustee shall  
3 vacate the office of trustee and the vacancy shall be  
4 filled as provided in this section. All trustees  
5 shall be eligible for reelection, but no person who is  
6 a member of the town council in the Town of Freeport  
7 may be eligible for nomination or election as trustee.

8 The trustees may procure an office and incur such  
9 expenses as may be necessary.

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

27 **Sec. 10. Annual report.** The trustees shall  
28 make and publish an annual report, including a report  
29 of the treasurer. The report may be included in and  
30 published as part of the annual town report of the  
31 Town of Freeport.

32 **Sec. 11. District and towns authorized to make  
33 and assume contracts.** The district, through its  
34 trustees, may contract with persons and corporations,  
35 including the Town of Freeport, and the Town of  
36 Freeport may contract with the district for the supply  
37 of water for municipal purposes.

38 **Sec. 12. Authorized to acquire property and  
39 franchises of Maine Water Company, Freeport  
40 Division.** This district, through its trustees,

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

23 In exercising the right of eminent domain under  
24 this Act, the trustees shall file with the district  
25 clerk a condemnation order that includes a detailed  
26 description of the property interests to be taken, the  
27 name or names of the owner or owners of record so far  
28 as they can be reasonably determined and the amount of  
29 damages determined by the trustees to be just  
30 compensation for the property or interest therein  
31 taken. The trustees shall then serve upon the owner  
32 or owners of record a copy of the condemnation order  
33 and a check in the amount of the damages awarded and  
34 record a certified copy of the condemnation order in  
35 the Cumberland County Registry of Deeds. In the event  
36 of multiple ownership, the check may be served on any  
37 one of the owners. This title shall pass to the  
38 district upon service of the order of condemnation and  
39 check or upon recordation in accordance with this Act,  
40 whichever occurs first. Acceptance and negotiation of  
41 the check shall not bar an appeal under this Act.

42 Any person aggrieved by the determination of the  
43 damages awarded to owners of property or interests

1 therein under this Act may, within 60 days after  
2 service of the condemnation order and check, appeal to  
3 the Superior Court, Cumberland County. The court  
4 shall determine damages by a verdict of its jury or,  
5 if all parties agree, by the court without a jury or  
6 by a referee or referees and shall render judgment for  
7 just compensation, with interest when such is due, and  
8 for costs in favor of the party entitled thereto.  
9 Appeal from the decision of the Superior Court may be  
10 had to the Law Court, as in other civil actions.

11 **Sec. 13. Authorized to receive government aid;**  
12 **borrow money; issue bonds and notes.** For  
13 accomplishing the purposes of this Act and for such  
14 other expenses as may be necessary for the carrying  
15 out of these purposes, the district, through its  
16 trustees, without vote of the inhabitants, may receive  
17 state and federal aid grants, borrow money temporarily  
18 and issue therefor its negotiable notes for the  
19 purpose of renewing and refunding the indebtedness so  
20 created, for paying any necessary expenses and  
21 liabilities incurred under this Act, including  
22 organizational and other necessary expenses and  
23 liabilities, whether incurred by the district or the  
24 Town of Freeport, the district being authorized to  
25 reimburse the Town of Freeport for any such expense  
26 incurred by the town and in acquiring properties,  
27 paying damages, laying pipes, mains, aqueducts and  
28 conduits, constructing, maintaining and operating a  
29 water plant or system and making renewals, additions,  
30 extensions and improvements to the water plant or  
31 system and to cover interest payments during the  
32 period of construction. The district, through its  
33 trustees, without the vote of its inhabitants, may  
34 also issue, from time to time, in accordance with the  
35 Maine Revised Statutes, Title 35-A, chapter 63, bonds,  
36 notes or other evidence of indebtedness of the  
37 district in such amount or amounts bearing interest at  
38 such rate or rates, selling at par or at a discount or  
39 a premium and having such other terms and provisions  
40 as the trustees shall determine, except that loans  
41 running for one year or less will not require the  
42 Public Utilities Commission's approval.

43 The bonds, notes and evidences of indebtedness may

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

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

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

30 **Sec. 14. Rates.** The rates established pursuant  
31 to this section shall be sufficient to provide revenue  
32 for the purposes of this Act and for all other  
33 purposes of the district, without the need for any  
34 financial assistance from the Town of Freeport, other  
35 than the normal payment of water charges for services  
36 rendered and the loan or loans for initial funds as  
37 set forth in section 13. Individuals, firms and  
38 corporations, whether private, public or municipal,  
39 shall pay to the treasurer, or other designated  
40 officer, of the district the rates established by the  
41 board of trustees for the water used by them. The  
42 rates shall be established in accordance with the

1 Maine Revised Statutes, Title 35-A, chapter 61, so as  
2 to provide for the purposes set forth therein.

3       **Sec. 15. Existing laws not affected; rights**  
4       **conferred subject to provisions of law.** Nothing  
5       contained in this Act is intended to repeal, or may be  
6       construed as repealing, the whole or any part of any  
7       existing law, and all the rights and duties mentioned  
8       in this Act shall be exercised and performed in  
9       accordance with all the applicable provisions and  
10       amendatory Acts of the Maine Revised Statutes, Title  
11       35-A, to the extent that this title and its amendments  
12       affect the operations of the district.

13       **Sec. 16. Separability clause.** If any section  
14       or part of a section of this Act shall be held invalid  
15       by a court of competent jurisdiction, the holding  
16       shall not affect the remainder of this Act, it being  
17       the intention that the remaining portions of this Act  
18       shall stand, notwithstanding the unconstitutionality  
19       or invalidity of any section, sentence, clause or  
20       phrase.

21       **Sec. 17. Acceptance subject to referendum.**  
22       This Act shall be submitted to the legal voters within  
23       the district at an election to be called for that  
24       purpose and held by December 31, 1988. The election  
25       shall be called, advertised and conducted according to  
26       the law relating to municipal elections, provided that  
27       the registrar of voters shall not be required to  
28       prepare or the clerk to post a new list of voters and,  
29       for this purpose, the registrar of voters shall be in  
30       session the 3 secular days preceding the election, of  
31       which the first 2 days will be devoted to registration  
32       of the voters and the last day to verification of the  
33       lists and completion of the records of these sessions  
34       by the registrar. The subject matter of this Act  
35       shall be reduced to the following question:

36       "Shall the Freeport Water District be created?"

37       The voters shall indicate by a cross [x] or check  
38       mark [ ] placed against the words "Yes" or "No" their  
39       opinion of the same.

