

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 694

S.P. 256

In Senate, February 28, 1995

**An Act to Create the Franklin Utility District.**

(EMERGENCY)

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Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.  
Cosponsored by Senators: CARPENTER of York, CLEVELAND of Androscoggin,  
HARRIMAN of Cumberland, Representatives: ADAMS of Portland, KONTOS of Windham.

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

4           **Whereas,** the Town of Franklin is in great need of  
6 installation of a sewage treatment plant and the improvement of  
its water and sewer system; and

8           **Whereas,** it is important that a sewage treatment plant be  
10 constructed at the earliest possible opportunity to supply a  
water and sewer system to the inhabitants of Franklin; and

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

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

20           **Sec. 1. Territorial limits; corporate name; purposes.** Subject to  
22 section 16, the inhabitants and territory of that part of the  
Town of Franklin in Hancock County, comprised of the area  
24 starting at a point in West Franklin at the intersection of Grist  
Mill Stream and the tidewaters of Taunton Bay; proceeding  
26 easterly along the northern shore of Taunton Bay and Hog Bay to a  
point in East Franklin where the tidewaters of Hog Bay intersect  
28 Card Mill Stream; proceeding northerly along the western shore of  
Card Mill Stream to the intersection with the southern border of  
30 Lot 29, Map 7, Property Map of Franklin; thence proceeding  
westerly along the southern border of Lot 29 to its intersection  
32 with Route 182; thence diagonally in a southwesterly direction to  
the northwest border of Lot 66, Map 7; thence northwesterly along  
34 the northern border of Lot 66, Map 7, until its intersection with  
Lot 38, Map 6; thence westerly along the northern border of Lot  
36 38, Map 6, to the intersection at the southeast corner of Lot 3,  
Map 9; thence northerly and westerly along the border of Lot 3,  
38 Map 9, until its intersection with Lot 4, Map 9; thence  
northeasterly and northwesterly along the border of Lot 4 until  
40 its intersection with Lot 4-1, Map 9; thence northerly and  
westerly along the border of Lot 4-1, Map 9 until the  
42 intersection with the Georges Pond Road; thence northerly along  
the Georges Pond Road until the intersection with the Bunkers  
44 Beach Camp Road; thence northerly and westerly along the southern  
border of the Bunkers Beach Camp Road until the intersection of  
46 the southern border of Lot 41, Map 17; thence westerly along the  
southern border of Lot 41 until the intersection with the eastern  
48 border of Lot 40, Map 17; thence northerly along the eastern  
border of Lot 40 until the intersection with Georges Pond; thence  
50 westerly following the

2 shore of Georges Pond until the intersection of the northeast  
corner of Lot 20, Map 9; thence westerly along the northern  
4 border of Lot 20 until the intersection of Lot 19, Map 9; thence  
southerly and westerly along the border of Lot 19 until the  
6 southwest corner of Lot 19, Map 9; thence westerly along the  
southern borders of Lots 4, 3, 2, 46, 42, Map 8 until its  
8 intersection with the Grist Mill Stream; thence following the  
eastern shore of Grist Mill Stream to the point of the beginning  
constitute a body politic and corporate under the name of  
10 "Franklin Utility District" for the purpose of supplying the  
inhabitants of the district with pure water and sewage treatment  
12 and disposal services for domestic, sanitary, commercial,  
industrial, agricultural, fire protection and municipal  
14 purposes. All incidental rights, powers and privileges necessary  
to the accomplishment of the main objectives set forth in this  
16 Act are granted to the Franklin Utility District, referred to in  
this Act as the "district."

18  
**Sec. 2. Powers of Franklin Utility District.** The Franklin Utility  
20 District is authorized for the purposes of its incorporation to  
take, collect, store, flow, use, divert, distribute and convey to  
22 the Town of Franklin or any part of the Town of Franklin water  
from any lake, pond, stream or river or from any surface or  
24 underground brook, spring or vein of water, natural or  
artificial, in the town. It may also locate, construct and  
26 maintain aqueducts, pipes, conduits, dams, wells, reservoirs,  
standpipes, hydrants, pumping stations, drains, treatment plants  
28 and other necessary structures and equipment, and do anything  
necessary to furnish water and sewage treatment and collection  
30 facilities for public purposes and for the public health, comfort  
and convenience of the inhabitants and others of the district.  
32 The district may contract to do any and all of the foregoing  
things.

34  
The district may, for the purposes outlined in this Act, do  
36 any and all things necessary to provide water and sewage  
treatment and collection systems for public purposes and for the  
38 health, comfort and convenience of the inhabitants of the  
district either by construction, eminent domain or purchase of  
40 any existing facilities.

42  
Upon approval of this Act by the voters of the Town of  
Franklin, the town shall convey by deed or other appropriate  
44 means of conveyance its title to all property previously used by  
the town for water and sewer utility purposes.

46  
**Sec. 3. Authorized to lay mains, pipes, conduits and other water and  
48 sewer conveyances through public ways and across private lands.** The  
district may lay in and through the streets, roads, ways,  
50 highways and bridges in

2 the Town of Franklin and across private lands in the Town of  
Franklin and maintain, repair and replace all such pipes, mains,  
4 conduits, aqueducts and fixtures and appurtenances as may be  
necessary and convenient for its corporate purposes and, whenever  
6 the district lays any pipes, mains, conduits, aqueducts and  
fixtures or appurtenances in any street, road, way or highway, it  
8 shall cause the same to be done with as little obstruction as  
practicable to the public travel and, at its own expense, without  
10 unnecessary delay, shall cause the earth and pavement removed by  
it to be replaced in proper condition.

12 **Sec. 4. Authorized to erect dams and reservoirs; to cross navigable  
waters; to supply water to utilities.** The district, for the purposes of  
14 its incorporation, may erect and maintain all dams, reservoirs  
and structures necessary and convenient for its corporate  
16 purposes. The district may lay, construct and maintain its pipes  
and fixtures in, over and under navigable waters and build and  
18 maintain structures for the pipes and fixtures, subject to the  
laws of the United States. The district may supply water to any  
20 public utility now supplying water in Hancock County, subject to  
the consent of the Public Utilities Commission.

22 **Sec. 5. Eminent domain.** The district, for the purposes of  
24 its incorporation, may take and hold within the area covered by  
the district for public uses real estate, personal property and  
26 any interest necessary for these purposes, by purchase, lease or  
otherwise. The district is authorized to acquire for these  
28 purposes any lands, interest in lands or water rights necessary  
for erecting and maintaining plants and works for flowage,  
30 pumping and supplying water through its mains; for forming basins  
and reservoirs; for preserving the purity of the water; for  
32 laying and maintaining mains, aqueducts and other structures used  
for taking, distributing, discharging and disposing of water; for  
34 erection of buildings for pumping works; for laying pipes and  
maintaining them; for laying and maintaining conduits for  
36 carrying, collecting and discharging water; for filtration,  
rectification and treatment plants, works and facilities; for  
38 such other objects necessary, convenient and proper for the  
purposes of its incorporation; and for rights-of-way for roadways  
40 to its sources of supply and reservoirs, and for mains,  
aqueducts, structures, plants, works facilities, distribution  
42 facilities and for lands.

44 This Act may not be construed as authorizing the district to  
take by right of eminent domain any of the property or facilities  
46 of any other public utility, district or cooperative or district  
used or acquired for future use by the owner in the performance  
48 of a public duty, unless expressly authorized by subsequent Act  
of the Legislature. This Act may not be construed to empower the  
50 district to take by eminent domain any dam, building or other

2 improvement or the real estate on which any dam, building or  
other improvement is situated.

4 The district may, for the purposes outlined in this section,  
do any and all things necessary in providing a water supply and a  
6 system of sewage treatment and collection and drainage for public  
purposes and for the health, comfort and convenience of the  
8 inhabitants of the district.

10 **Sec. 6. Procedure in exercising right of eminent domain; assessment  
of damage; appeal procedure.** In exercising any right of eminent  
12 domain in the taking of lands, interests in lands or water  
rights, the district shall file in the office of the County  
14 Commissioners of Hancock County and record in the Hancock County  
Registry of Deeds, plans of the location of all property to be  
16 taken, with an appropriate description and the names of the  
owners, if known. Notice of the filing must be sent by mail to  
18 owners at the address appearing on the tax records of the  
municipality in which the land is located. When for any reason  
20 the district fails to acquire the property that it is authorized  
to take and that is described in the location, or if the location  
22 recorded is defective or uncertain, it may, at any time, correct  
and perfect that location and file a new description and in that  
24 case the district is liable for damages only for property for  
which the owner had not previously been paid, to be assessed as  
26 of the time of the original taking, and the district is not  
liable for any acts that would have been justified if the  
28 original taking had been lawful. Entry may not be made on any  
private lands, except to make surveys, until the expiration of 10  
30 days from that filing, at which time possession may be had of all  
lands, interests in land or water rights so taken, but title does  
32 not vest in the district until payment is made.

34 If any person sustaining damages by any taking does not  
agree with the trustees of the district upon the sum to be paid,  
36 either party, upon petition to the county commissioners of  
Hancock County, may have damages assessed by the county  
38 commissioners. The procedure and all subsequent proceedings and  
the rights of appeal are under the same restrictions, conditions  
40 and limitations as are or may be by law prescribed in the case of  
damages by the laying out of highways.

42 **Sec. 7. Procedure if public utility must be crossed.** In case of any  
44 crossing of any public utility, unless consent is given by the  
company, district or cooperative owning or operating the public  
46 utility as to place, manner and conditions of the crossing within  
30 days after the consent is requested by the district, the  
48 Public Utilities Commission, upon petition by the district, shall  
determine the place, manner and conditions of the crossing. All  
50 work on the property of the public utility must be

2 done under the supervision and to the satisfaction of the public  
utility or as prescribed by the Public Utilities Commission, but  
4 at the expense of the district.

6 **Sec. 8. Trustees; how elected; first board meeting; officers.** All of  
the affairs of the district must be managed by a board of  
8 trustees composed of 5 members, all of whom must be residents of  
the district and, after selection of the first board, elected as  
10 provided in the Maine Revised Statutes, Title 35-A, chapter 63  
and this section.

12 **1. First board.** Within 90 days after the acceptance of  
this Act, the municipal officers of the Town of Franklin, who are  
14 especially appointed for this purpose, shall appoint 5 trustees.  
After the selection of the first board, the only eligibility  
16 requirements for the office of trustee of the district are  
residence within the district and eligibility to vote, and all  
18 subsequent trustees are elected by the residents of the district  
as provided in the Maine Revised Statutes, Title 35-A, chapter 63  
20 in an annual election to be held the 2nd Saturday of June in each  
year.

22 **2. Organization; conduct of business.** Organization and  
24 powers of the board of trustees must be in accordance with the  
Maine Revised Statutes, Title 35-A, chapter 63.

26 All decisions of the board of trustees must be by a majority  
28 of those present and voting. A quorum of the board of trustees  
is 3 trustees.

30 Trustees are entitled to compensation in accordance with the  
32 Maine Revised Statutes, Title 35-A, chapter 63.

34 **Sec. 9. Annual meeting of district.** After the acceptance of this  
Act and the organization of the first board, the district shall  
36 hold annual meetings within the district for the election of  
trustees, at a time and place designated by resolution of the  
38 board of trustees. The trustees shall give 7 days' notice to the  
voters of the district of the time and place of the meeting.

40 The trustees may establish bylaws as are necessary for their  
42 own convenience and the proper management of the affairs of the  
district. The trustees may procure an office and incur such  
44 expenses as may be necessary. The treasurer shall furnish bond  
in such sum and with such sureties as trustees may approve.  
46 Members of the board are eligible for any office under the board.

48 **Sec. 10. District and town authorized to make contracts.** The  
district, through its trustees, may contract with persons and  
50 corporations, including the Town of Franklin, and the Town of  
Franklin

2 may contract with the trustees for the supply of water for  
municipal purposes and for the use of sewerage and drainage  
4 facilities.

6 All valid contracts between the Town of Franklin and other  
towns, persons or corporations for supplying water or sewerage  
8 services within the Town of Franklin that are in effect on the  
date of transfer by the Town of Franklin to the district of the  
10 town's plant, properties, rights and privileges used or useful in  
providing a water supply and sewerage system in the Town of  
12 Franklin must be assumed and carried out by the Franklin Utility  
District.

14 **Sec. 11. Authorized to borrow money, to issue bonds and notes.** For  
accomplishing the purposes of this Act, and for such other  
16 expenses as may be necessary for the carrying out of the  
purposes, the district, through its trustees, may accept state,  
18 federal or municipal grants and may borrow money temporarily and  
issue its negotiable notes. For the purpose of renewing and  
20 refunding the indebtedness so created, paying any necessary  
expenses and liabilities incurred under this Act, including  
22 organizational and other necessary expenses and liabilities,  
whether incurred by the district or the Town of Franklin, the  
24 district being authorized to reimburse the town for any expenses  
incurred by them and in acquiring properties; paying damages;  
26 laying pipes, mains, aqueducts and conduits; constructing,  
maintaining and operating a water or sewer plant or water or  
28 sewer system and making renewals, additions, extensions and  
improvements to them and to cover interest payments during the  
30 period of construction; the district, through its trustees, may  
also issue from time to time bonds, in one series or in separate  
32 series, in such amount or amounts, bearing interest at such rate  
or rates and having such terms and provisions as the trustees  
34 determine. The issuance of any bonds for water projects must be  
in accordance with the Maine Revised Statutes, Title 35-A,  
36 chapter 63.

38 The bonds, notes and evidences of indebtedness may be issued  
for water and sewer purposes, and may be made to mature serially  
40 or made to run for such periods as the trustees determine, but  
none of them may run for a longer period than 40 years from the  
42 date of original issue. Bonds, notes or evidences of  
indebtedness may be issued with or without provision for calling  
44 the same prior to maturity, and, if callable, may be made  
callable at par or at such premium as the trustees determine.  
46 All bonds, notes or other evidences of indebtedness must have  
inscribed upon their face the words "Franklin Utility District,"  
48 and be signed by the treasurer and countersigned by the chair of  
the board of trustees of the district. If coupon bonds are



2 issued, the interest coupons attached to the coupon bonds must  
bear the facsimile signature of the treasurer.

4 All bonds, notes and evidences of indebtedness issued by the  
district are legal obligations of the district, which is declared  
6 to be a quasi-municipal corporation within the meaning of the  
Maine Revised Statutes, Title 30-A, section 5701 and all  
8 provisions of that section are applicable. The district may  
refund and reissue from time to time in one or in separate series  
10 its bonds, notes and other evidences of indebtedness and each  
authorized issue constitutes a separate loan. All bonds, notes  
12 and evidences of indebtedness issued by the district are legal  
investments for savings banks in the State and are tax exempt.

14 **Sec. 12. Rates; application of revenue; sinking fund.** The rates  
16 established pursuant to this section must be sufficient to  
provide revenue for the purposes of this Act and for all other  
18 purposes of the district, without the need for any financial  
assistance from the Town of Franklin, other than the normal  
20 payment of water and sewer charges for services rendered.  
Individuals, firms and corporations, whether private, public or  
22 municipal, shall pay to the treasurer or other designated officer  
of the district the rates established by the board of trustees  
24 for the water and sewer service used by them. The water rates  
must be established in accordance with the Maine Revised  
26 Statutes, Title 35-A, chapter 61, to provide for the purposes set  
forth in that chapter. Sewer rates must be established in  
28 accordance with the Maine Revised Statutes, Title 38, section  
1202.

30 **Sec. 13. Property tax exempt.** The property of the district is  
32 exempt from all taxation in the Town of Franklin.

34 **Sec. 14. Existing laws not affected; rights conferred subject to law.**  
This Act is not intended to repeal or may not be construed as  
36 repealing the whole or any part of any existing law, and all the  
rights and duties mentioned in this Act must be exercised and  
38 performed in accordance with all the applicable provisions of the  
Maine Revised Statutes, Title 35-A, to the extent that Title  
40 affects the water operations of the district.

42 **Sec. 15. Separability clause.** If any section or part of a  
section of this Act is held invalid by a court of competent  
44 jurisdiction, the holding does not affect the remainder of this  
Act, it being the intention that the remaining portions of this  
46 Act stand, notwithstanding the unconstitutionality or invalidity  
of any section, sentence, clause or phrase.

48 **Sec. 16. Acceptance subject to referendum.** This Act must be  
50 submitted to the legal voters within the district at an election

2 called for that purpose and held not later than December 1,  
1995. The election must be called, advertised and conducted  
4 according to the law related to municipal elections, except that  
the registrar of voters is not required to prepare or the clerk  
6 to post a new list of voters and, for this purpose, the registrar  
of voters must be in session the 3 secular days preceding the  
8 election, of which the first 2 days must be devoted to  
registration of the voters and the last day to verification of  
the list and completion of the records of these sessions by the  
10 registrar. The subject matter of this Act is reduced to the  
following question.

12 "Shall the Franklin Utility District be created?"

14 The voters shall indicate by a cross or check mark placed  
16 against the words "Yes" or "No" their opinion of the same.

18 The results must be declared by the municipal officers of  
the Town of Franklin and due certificate of the results filed by  
20 the clerk with the Secretary of State.

22 This Act takes effect upon its acceptance by a majority of  
the legal voters within the district voting at the special  
24 election. Failure of the approval by the necessary majority of  
voters at any such election does not prevent a subsequent  
26 election or elections from being held for that purpose.

28 **Sec. 17. Local referendum impact.** Notwithstanding the Maine  
Revised Statutes, Title 30-A, section 5684, additional costs, if  
30 any, imposed on any municipality by the provisions of this Act  
are not funded by the State.

32 **Emergency clause.** In view of the emergency cited in the  
34 preamble, this Act takes effect when approved.

36

### STATEMENT OF FACT

38

This bill creates the Franklin Utility District.