

# MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H   L E G I S L A T U R E

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**Legislative Document**

**No. 280**

S. P. 213

In Senate, Feb. 1, 1933.

Referred to Committee on Judiciary and 500 copies ordered printed.  
Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Schnurle of Cumberland.

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S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-  
THREE

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AN ACT Enabling Cities and Towns to Take Advantage of Reconstruc-  
tion Finance Corporation Loans for Construction of Sewerage Works.

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**Emergency Preamble.** Whereas, many municipalities are faced with  
the great problem of unemployment, and

Whereas, it is necessary and important to increase the buying power of  
our citizens, and

Whereas, employment in public works is the most efficacious method of  
putting our unemployed to work, and

Whereas, the Reconstruction Finance Corporation is authorized to make  
loans to municipalities under certain conditions, and

Whereas, the following act is necessary to enable our municipalities to  
so borrow, and

Whereas, in the judgment of the legislature these facts create an emer-  
gency within the meaning of § 16 of article 31 of the constitution of Maine  
and require the following legislation as immediately necessary for the  
preservation of the public peace, health and safety, now, therefore,

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

Section 1. Every city and town in the state is hereby authorized and  
empowered to own, acquire, construct, equip, operate and maintain within  
and/or without the corporate limits of such city or town, a sewage col-  
lection system and/or a sewage treatment plant or plants, intercepting

sewers, outfall sewers, force mains, pumping stations, ejector stations and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such city or town, and shall have authority to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights of way and property therefor, within and/or without the corporate limits of such city or town, and to issue revenue bonds to pay the cost of such works and property. The term "works", where hereinafter used in this act, shall be construed to mean and include such structures and property. No obligation shall be incurred by the municipality in such construction or acquisition except such as is payable solely from the funds provided under the authority of this act.

Sec. 2. The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage and the collection or revenues therefrom for the service rendered thereby, shall be under the supervision and control of the board of public works of the city, or of the committee or body authorized to perform the duties of a board of public works in cities where there is no such board, or of the municipal officers of the town, as the case may be. The term "board", when hereinafter used in this act, shall be construed to mean the board of public works of the city, or the committee or body authorized to perform the duties of a board of public works in cities where there is no such board, or the municipal officers of the town, as the case may be.

Sec. 3. The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this act; Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the common council of such city or the board of such town before the same shall be effective. The board may employ engineers, architects, inspectors, superintendent, manager, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board or said city or town beyond the extent to which money shall have been or may be provided under the authority of this act. Any contract or agree-

ment with any contractor or contractors for labor and/or material, exceeding in amount the sum of one thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this act, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the board in carrying out its authority under this act shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of funds provided by this act.

Sec. 4. All necessary preliminary expenses actually incurred by the board of any city or town in the making of surveys, estimates of costs and of revenues, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this act, may be met and paid in the following manner. Said board may from time to time certify such items of expense to the controller of said city, directing him to pay the several amounts thereof, and thereupon said controller shall at once draw a warrant or warrants upon the city treasurer, which warrant or warrants shall be paid out of the general funds of said city or town not otherwise appropriated, without a special appropriation being made therefor by the common council; or, in case there are no general funds of such city not otherwise appropriated, the city controller shall recommend to the common council the temporary transfer from other funds of such city of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such common council shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such city: Provided, however, that the fund or funds of such city or town from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses shall be a first charge against the proceeds resulting from the sale of such revenue

bonds until the same has been repaid as herein provided: And provided, also, that in towns the board of trustees shall have the powers and perform the duties in relation to such preliminary expenses as are in this section conferred upon the board, controller and common council in cities; and in cities where there is no city controller, the city clerk shall have the powers and perform the duties in this section conferred upon the city controller.

Sec. 5. Before any city or town shall construct or acquire any works under this act, the common council of the city, or the board of the town, shall upon petition of the board, enact an ordinance or ordinances which shall (a) set forth a brief and general description of the works and, if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen by the board as aforesaid; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the city or town shall be issued pursuant to this act in such an amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary in the premises.

Sec. 6. Every such city or town shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal, deemed necessary or convenient for the construction of any such works, or for extensions, improvements, or additions thereto, and in connection therewith may have and exercise all the rights, powers and privileges of eminent domain granted to cities and towns under the laws relating thereto. Title to property condemned shall be taken in the name of the city or town. Proceedings for such appropriation of property shall be under and pursuant to the provisions of law relating to condemnation of land for highway purposes: Provided, the city or town shall be under no obligation to accept and pay for any property condemned and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this act; and in any proceedings to condemn, such orders may be made as may be just to the city or town and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the city or town to accept and pay for the property, but such undertaking or security shall impose no liability upon the city or town except such as may be paid from the funds provided under the authority of this act. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the

purchase thereof, and such purchase may be made upon such terms and conditions and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section 5 hereof, shall cause to be determined what repairs, replacements, additions and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of cost required by section 5 hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof.

Sec. 7. The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in section 6 of this act; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expense for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

Sec. 8. Nothing in this act contained shall be so construed as to authorize or permit any city or town to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this act. Funds for the payment of the entire cost of the works shall be provided by the issuance of revenue bonds of the city or town, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment, and said bonds shall not, in any respect, be a corporate indebtedness of such city or town, within the meaning of any statutory or constitutional limitations thereon. All the details of such bonds shall be determined by ordinance or ordinances of the city or town.

Sec. 9. Such revenue bonds shall bear interest at not more than 6% per annum, payable annually or at shorter intervals, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the city or town, to be exercised by said board, at not more than the par value thereof and a premium of 5%, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and

interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, including the interest coupons to be attached thereto, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the state. The bonds shall contain a statement on their face that the city shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the negotiable instruments law of the state. Said bonds shall be exempt from all taxation, state, county and municipal. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone. Such bonds shall be executed in the same manner as other bonds issued by cities and towns are executed. The bonds shall be sold by the city controller, or where there is no city controller then by the city clerk, or by the town clerk, in such manner as may be determined to be for the best interests of the city or town and subject to approval by the common council or the board, but not at a price so low as to require the city or town to pay more than 6% interest on the amount received therefor, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment, without preference or priority of the bonds first issued. Prior to the preparation of the definite bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definite bonds upon the issuance of the latter.

Sec. 10. The common council or board may provide by said ordinance authorizing the issuance of the bonds, or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction be-

tween any one bond and any other bond by reason of priority of issuance or otherwise.

Sec. 11. All moneys received from any bonds issued pursuant to this act, after reimbursements and repayment to said city or town of all amounts advanced for preliminary expenses as provided in section 4 of this act, shall be applied solely to the payment of the cost of the works, extensions, improvements or betterments or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

Sec. 12. In the discretion of the common council or board such bonds may be secured by a trust indenture by and between the city or town and a corporate trustee, which may be any trust company or bank having the powers of a trust company within of the state, but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the city or town and the board in relation to the construction or acquisition of the works and the improvement, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depositary of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this act otherwise provided, the common council or board may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depositary as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

Sec. 13. At or before the issuance of any such bonds the common council or board shall by said ordinance create a sinking fund for the payment of the bonds and the interest thereon and the payment of the charges



of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds for (a) the interest upon such bonds as such interest shall fall due, and (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time and (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal 10% of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may by ordinance be given the right to use or direct the trustee to use such sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price if any, at which the same shall in the same year be payable or redeemable and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into the sinking fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works.

Sec. 14. The common council of the city, or the board, of the town, shall have power, and it shall be its duty, by ordinance to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the city or town, or that in any way uses or is served by such works and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be deemed the revenues of the works. No such rates or charges shall be established until after a public hearing, at which all the users of the

works and owners of property served or to be served thereby and others interested shall have opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by one publication in a newspaper published in the city or town, if there be such a newspaper, but otherwise in a newspaper having general circulation therein, at least ten days before the date fixed in such notice for the hearing, which may be adjourned from time to time. After such hearing the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the city clerk or town clerk, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinabove provided: Provided, however, That if such change or readjustment be made substantially pro rata as to all classes of service, no hearing or notice shall be required. The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges if not paid when due shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of 10%, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the city or town, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto.

Sec. 15. The city or town shall be subject to the same charges and rates established as hereinabove provided, or to charges and rates established in harmony therewith, for service rendered the city or town, and shall pay such rates or charges when due from corporate funds and the same shall be deemed to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of such revenues.

Sec. 16. The common council of said city or the board of the town may in its discretion provide by ordinance that the custody, administration, operation and maintenance of such works shall be under the super-

vision and control of a sanitary board, created as herein provided. Such sanitary board shall be composed of the mayor of the city or the president of the board of the town, as the case may be, and two persons appointed by the common council or board, one of which must be a registered professional engineer. No officer or employee of the city or town whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his public office. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. Such mayor or president of the board shall act as chairman of the sanitary board, which shall select a vice-chairman from its members and shall designate a secretary and treasurer (but the secretary and treasurer may be one and the same) who need not be a member or members of the sanitary board. The vice-chairman, secretary and treasurer shall hold office as such at the will of the sanitary board. The members of the sanitary board shall receive such compensation for their services, either as a salary or as payments for meetings attended, as the common council or board may determine, not in excess of twenty-five dollars per month for each member, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The common council or board shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amount of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this act. The sanitary board shall have power to establish by-laws, rules and regulations for its own government. The sanitary board, in respect of all matters of custody, operation, administration and maintenance of such works, shall have all the powers and perform all the duties hereinbefore provided for the board of public works in respect of such matters. When reference is made hereinafter in this act to the board, such reference shall be deemed made to the board having actual supervision and control of such works.

Sec. 17. Any city or town operating a sewage collection system and/or sewage disposal works as defined in this act or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner) is hereby authorized to contract with one or more other cities, towns or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into such con-

tracts with such owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, however, That no such contract shall be made for a period of more than fifteen years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture. The lessees shall by ordinance have power to establish, change and adjust rates and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates and charges for the service rendered in the city or town where the works are owned and operated, and such rates or charges shall be collectable and shall be a lien as herein provided for rates and charges made by the owner. The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this act unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any such contract shall, if so provided in said ordinance or trust indenture, be deemed to be a part of the revenues of the works as in this act defined and be applied as herein provided for the application of such revenues.

Sec. 18. No property shall be acquired under this act upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

Sec. 19. Nothing herein contained shall prevent the issuance of additional bonds from time to time, if such bonds shall be authorized by law: Provided, however, That all thereof shall be subordinate to bonds issued pursuant to sections 8, 9 and 10 hereof in respect of the application of revenues to such additional bonds.

Sec. 20. Any holder of any of such bonds or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this

act or by such ordinance or trust indenture to be performed by the city or town issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for services rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the city or town and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this act and the said ordinance and/or trust indenture.

Sec. 21. The authority herein given shall be in addition to and not in derogation of any power existing in any city or town under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this act, all cities and towns shall have jurisdiction for ten miles outside the corporate limits thereof.

Sec. 22. This act, shall, without reference to any other statute be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this act authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this act and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this act, any provisions of other statutes of the state to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state board of health shall remain unaffected by this act.

Sec. 23. This act being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purposes thereof.

Sec. 24. The sections and provisions of this act are separable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions or parts thereof is for any reason illegal, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

**Emergency clause.** In view of the emergency recited in the preamble this act shall take effect when approved.