

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eighty - Third Legislature

OF THE

STATE OF MAINE

1927

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Private and Special Laws

OF THE

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which may be adopted by the trustees thereof. Any vacancies occurring in said board of trustees shall be filled as said by-laws may prescribe.

Sec. 4. Officers of corporation, how chosen. The said trustees shall select from their own number a president, a treasurer and a secretary and any one person may hold two of said offices. No act of said trustees shall be valid unless authorized by resolution duly adopted by a majority of the whole number of said trustees at a regular or special meeting thereof duly convened and recorded by the secretary upon the minute book of said corporation.

Sec. 5. Treasurer, duties of. The treasurer of said corporation shall deposit the moneys thereof in such bank or trust company and shall keep the securities thereof in such safe deposit company as a majority of said trustees may from time to time direct.

Sec. 6. Investment of moneys. The moneys of said corporation shall be invested in such securities as shall meet with the approval of the judge of probate for the county of York and state of Maine.

Sec. 7. Trustees authorized to make by-laws. The trustees of said corporation may make and adopt by-laws prescribing such rules and regulations as they may deem necessary for the management of the affairs of said corporation which shall in no way conflict with the laws of the state of Maine.

Sec. 8. General powers and privileges. Said corporation shall possess all the general powers and privileges which are incidental and necessary for the support, maintenance and extenuation of church work and the Gospel of St. Peters Protestant Episcopal Church.

Sec. 9. Legislative supervision. The legislature may at any time alter, amend or repeal this act.

Approved March 3, 1927.

Chapter 19.

An Act to Incorporate the Southwest Harbor Water District.

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

Sec. 1. Territorial limits; corporate name; purpose. The following territory and the people within the same, namely, the town of Southwest Harbor, except such part as is now owned by the United States of America, shall constitute a public municipal corporation under the name of the Southwest Harbor Water District for the purpose of supplying the inhab-

itants of said municipality with pure water for domestic, sanitary and municipal purposes.

Sec. 2. Sources of supply. The said district for the purpose of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from Long Pond situated in the towns of Southwest Harbor and Mount Desert and also from any artesian wells, streams or ponds in said town of Southwest Harbor, provided that no water except as herein provided, shall be taken from any spring not in actual use for domestic purposes, or ponds now used for similar purposes without the consent of the owners.

Sec. 3. Right of eminent domain conferred. The said district for the purpose of its incorporation hereby is authorized to take and hold, as for public uses, by purchase or otherwise, any land or interest therein or water rights necessary for erecting and maintaining dams, for flowage for power for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and water shed, for laying and maintaining aqueducts and other structures for taking, distributing, discharging and disposing of water and rights of way or roadways to its source of supplies, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

Sec. 4. Authorized to lay pipes through public ways. The said district is hereby authorized to lay in and through the streets, roads, ways and highways thereof, of the town of Southwest Harbor, and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes or aqueducts in any street, road, way or highway it shall cause the same to be done with as little obstruction as practicable to the public travel and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Authorized to maintain dams and reservoirs. The said district is hereby authorized for the purpose of its incorporation to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes.

Sec. 6. Procedure in exercising right of eminent domain. In exercising any right of eminent domain conferred upon it by law, from time to time, or any right of eminent domain through or under the franchises of any water company by it acquired, the said district shall file in the office of the county commissioners of Hancock county and record in the registry of deeds in said county plans of the location of all lands or interests

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therein or water rights to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire the property authorized to be taken, and which is described in such location, or if the location recorded is defective or uncertain, it may at any time correct and perfect such location and file a new description thereof, and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking and the district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of ten days from such filing, whereon possession may be had of all said lands or interests therein or water rights so taken, but title thereto shall not vest in said district until payment therefor.

Sec. 7. Adjustment of damages; procedure as in laying out highways. If any person sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Hancock county, may have said damages assessed by them; the procedure and all subsequent proceedings and right of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 8. Procedure in crossings of railroads. In case of any crossing of a railroad, unless consent is given by the company owning and operating such railroad as to place, manner and condition of the crossing, within thirty days after such consent is requested by said district, the public utilities commission shall determine the place, manner and condition of such crossing; and all work within the limits of such railroad location shall be done under the supervision and to the satisfaction of such railroad company, but at the expense of the district.

Sec. 9. Trustees; how chosen; terms of office; powers and duties; officers; compensation; annual report. All the affairs of said district shall be managed by a board of trustees composed of three members, who shall be elected by a majority vote of the legal voters within said water district at an election to be specially called and held therefor within thirty days after the approval of this act by the legal voters of said Southwest Harbor Water District. Such special election shall be called, advertised and conducted according to the law relating to municipal elections in said town of Southwest Harbor. The result of such election shall be declared by the municipal officers and due certificate thereof filed with the town clerk thereof. The term of office of the trustees shall be until the first

Monday in May in each year after the approval of this act. As soon as convenient after members of said board have been chosen, said trustees shall hold a meeting at the selectmen's office in said town of Southwest Harbor, and organize by the election of a president and clerk, adopt a corporate seal and when necessary may choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. They may also ordain and establish such by-laws as are necessary for their own convenience and the proper management of the affairs of said district. At said first meeting the trustees so elected shall determine by lot the term of office of each trustee so that one trustee shall retire each year and whenever the term of office of a trustee expires his successor shall be elected by a majority vote by the legal voters of the said water district, and for the purpose of such election a meeting of said water district shall be called and held on the first Monday of May of each year the same to be called in the manner hereinbefore provided for the first election of trustees. The trustees so elected shall serve the full term of three years; and in case a vacancy arises in the membership of the board of trustees it shall be filled in like manner for the unexpired term, by a special election to be called by the municipal officers of the town of Southwest Harbor. All such trustees shall be eligible to re-election but no person holding a municipal office in said town of Southwest Harbor shall be eligible to election as trustee. Said trustees may procure an office and incur such expenses as may be necessary. Each member shall receive in full compensation of this service an allowance of fifty dollars per annum or such other sum as may be approved by the municipal officers of the town of Southwest Harbor. At the close of each fiscal year the trustees shall make a detailed report of their doings, of the receipts and expenditures of said water district, of its financial and physical condition and of such other matters and things pertaining to said district as shall show the inhabitants of said district how said trustees are fulfilling the duties and obligations of their trust, such reports to be made and filed with the municipal officers of said town of Southwest Harbor on or before the first day of February of each year. The report of said trustees shall be printed by the municipal officers of the town of Southwest Harbor in their yearly report.

Sec. 10. Authorized to acquire property and franchises of Southwest Harbor Water Co. Said water district is hereby authorized and empowered to acquire by purchase or by exercise of the right of eminent domain which right is hereby expressly delegated to said district for said purpose, the entire plant, properties, franchises, rights and privileges of the Southwest Harbor Water Company, except its cash assets, including all lands, waters, water rights, artesian wells, dams, structures, reservoirs, pipes,

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machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said Southwest Harbor Water Company and used or usable in supplying water in said Southwest Harbor. Said water company is hereby authorized to sell and transfer its franchises and properties to said water district. All said franchises and properties shall be taken subject to all bonds, mortgages, liens and encumbrances thereon, all of which bonds, mortgages, liens and encumbrances shall be assumed and paid by said water district.

Sec. 11. Southwest Harbor Water Co., authorized to submit offer for its plant; terms and conditions; procedure in accepting offer. The Southwest Harbor Water Company may at its option, on or before the second Monday in October after the acceptance of this act by the said water district and the election of trustees file with said trustees an offer in writing, stating therein the price at which the company signing the same will sell and transfer its entire plant, property, franchises, rights and privileges, except its cash assets, subject to all bonds, liens, mortgages and encumbrances to said water district. Said offer shall provide that actual possession of the plant and property shall not be given until payment therefor, but that delivery of possession when made, shall be as of the second Monday in October as aforesaid, from which day interest on said price shall run at the rate of five per cent per annum and all net rents and profits accruing thereafter shall belong to said water district.

Such offers shall further provide that payment of said price shall be made by said district at its option on or before the last Monday in December after the acceptance of this act by the said water district and the election of trustees. The said water district shall in writing accept or reject all said offers on or before the third Monday of November of said year after the acceptance of this act by the said water district, but it may accept either offer and reject the other, but in that event it shall not be entitled to actual possession nor be required to make payment in the case of acceptance until after its acquisition by eminent domain, as hereinafter provided, of the plant, property and franchise of the company whose offer is rejected. In all cases of acceptance as aforesaid the water company shall forthwith cause proper deeds of transfer and conveyance to be made and filed in the clerk's office of the supreme judicial court for the county of Hancock, for the inspection of said water district, and to be approved by the court, or any justice thereof, in term time or vacation. The said water district through its trustees shall file its petition, in each case where acceptance is made as aforesaid, in the clerk's office of the supreme judicial court for the county of Hancock, in term time or vacation, addressed to any justice of said court, alleging its willingness to pay the agreed

purchase price and interest in each case, in court before the said last Monday in December, for the benefit of the water company interested therein, and said court, through any justice thereof, in term time or vacation, after notice to the water company interested therein, and its mortgagees, and hearing thereon, shall make all necessary decrees for the vesting of full title in said water district to the entire plant, property and franchises of the defendant water company in such petitions subject to all bonds, liens, mortgages and encumbrances thereon. After such final decree and before transfer of the plant, property and franchises in accordance therewith, and before payment therefor, the court sitting in said county of Hancock, by a single justice thereof, as hereinbefore provided shall upon motion of either party, after notice and hearing take account of all receipts and expenditures properly had or incurred by the defendant water company, belonging to the period from and after the second Monday of October aforesaid, and all the net rents and profits accruing thereafter and shall order the net balance due to either party to be added to or deducted from the amount to be paid under said final decree as the case may be. All findings of law or fact by any single justice at the hearing aforesaid shall be final. After any such acceptance as aforesaid the water company interested therein may compel said water district, by appropriate process in equity, to perform its contract of acceptance and to pay for the plant, property and franchises in accordance therewith.

Sec. 12. Procedure in case trustees and water company fail to agree on terms of purchase. Where the said trustees fail to agree with said water company upon terms of purchase, as hereinbefore provided, on or before the said third Monday in November, then said water district, through its trustees, is hereby authorized to take all the plant, properties and franchises of such water company, subject, however, to all bonds, mortgages, liens and incumbrances thereon as provided in section ten, so failing to agree, as for public uses, by a petition therefor in the manner hereinafter provided, wherein such water company and its mortgagees shall be the parties defendant. And said water district through its trustees is hereby authorized on or before the second Monday of December after the acceptance of this act by the water district to file a petition in the clerk's office of the supreme judicial court for the county of Hancock, in term time or vacation, addressed to any justice thereof, who, after notice to said defendant water company and its mortgagees, shall after hearing and within thirty days after the filing of said petition, appoint three disinterested appraisers, none of whom shall be residents of the county of Hancock, one of whom shall be learned in the law, for the purpose of fixing the valuations respectively of the plant, property, and franchises of said defendant water company, as described in section ten. Said petition shall

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not be dismissed after filing, but may and shall be amended in any manner required to enable the court to make all necessary decrees thereon. At the hearing aforesaid, such justice upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books, and papers pertinent to the issues to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by said justice in his order therefor and to be enforced from time to time as any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice, upon motion of the petitioner, may fix a time at which the defendant water company shall file in the clerk's office of the supreme judicial court of the county of Hancock, for the inspection of the petitioner, the following: First, schedule showing the names, residence, street number, if any, and water service of each customer on the second Monday in October with rate charged therefor; second, copies of all contracts in force on said second Monday in October with all municipal corporations and water companies; third, an itemized statement of the gross income earned during its last complete fiscal year and all operating expenses and fixed charges paid or incurred during such year and properly chargeable thereto; fourth, a memorandum of all real estate, or interest therein, owned or controlled on said second Monday in October with such brief description thereof as will reasonably identify the same; fifth, a memorandum of all water rights used or owned on said second Monday in October with a brief description thereof and a concise statement of the method of acquiring the same; sixth, duplicate plans of all dams owned in whole or part on said second Monday in October, with specifications thereof; seventh, descriptions and specifications of all reservoirs and standpipes owned on said second Monday in October; eighth, a description of all pipes, service pipes, hydrants, gates, gate boxes, shut-off boxes, valves, fixtures and machinery and all the physical elements in such water system, giving in detail all quantities, sizes, length, specifying the streets, roads or ways where situated; ninth, an itemized list of all tools, apparatus and appliances used or usable in supplying water on said second Monday in October. Such orders may be enforced, from time to time, by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the condition of the mains and pipes of the defendant water company, externally and internally, all work connected therewith to be in the presence of the agents of the water

company, and at the election of the water company by its servants, otherwise by the petitioner, but wholly at the expense of said water district, said decree to fix the number of such examinations and to impose such conditions as may to the court seem just and proper in the premises. The said appraisers shall have the power of compelling attendance of witnesses and the production of books and papers pertinent to the issue and may administer oaths; and any witness or person in charge of such books or papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the supreme judicial court. Deposition may be taken as in civil actions. The said appraisers may appoint a sufficient number of stenographers to enable a full report of the proceedings of each day to be in readiness to be used the following day, each of said appraisers so to have one copy thereof and the parties to receive such number of copies as the appraisers may deem necessary. The compensation and expenses of said stenographers shall be taxed and allowed by the appraisers and be paid and borne as hereinafter provided. Their report certified by said appraisers as correct shall be filed with the award, to be made by said appraisers, and shall be legal evidence of all proceedings so reported. They shall make full report as required in trials had in the supreme judicial court. The appraisers so appointed shall, after due notice and hearing, fix the respective valuations of the plants, properties and franchises of said defendant water company at what they are fairly and equitably worth, so that said water company shall receive just compensation for all the same. The second Monday in October after the acceptance of this act by the water district shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award at the rate of five per cent. per annum shall run, and all net rents and profits accruing thereafter shall belong to said water district. The report of said appraisers or a majority of them shall be filed in said clerk's office within six months after their appointment, but, if at the expiration of said six months the hearing before said appraisers should then be in progress and unfinished, their report may be so filed within thirty days after the close of said hearing. After said report is filed, such single justice so appointing said appraisers, or in case of his inability to act, then any justice designated for the purpose, by the chief justice may, after notice and hearing, confirm or reject the same or recommit, if justice so requires, and in case of such rejection or recommitment such justice may fix the times for the new hearing and new report thereon. The award of the appraisers shall be conclusive as to valuation. Upon the confirmation of their report, the court so sitting in term time or vacation, shall thereupon after hearing make final decree upon the whole matter including

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transfer of the properties and franchises, jurisdiction over which is hereby conferred with the same power to enforce said decree as in equity cases. All the costs and expenses arising under such petition and appraisal shall be paid and borne as directed by the court in said final decree. The finding of such justice as to such costs and expenses and their apportionment shall be final. In all other matters the justice so making such final decree shall, upon request of any of the parties, make separate findings of law and fact. All such findings of fact shall be final, but any party aggrieved may take exception to any rulings of law so made, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within ten days after such final decree is signed, entered and filed and notice thereof has been given by the clerk to the parties or their counsel, and said exception so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing of such exceptions and there heard unless otherwise agreed, or the law court shall for good cause order a further time for the hearing thereon. Upon such hearing the law court may confirm, reverse or modify the decree of the court below, or remand the cause for further proceedings as it seems proper. During the pending of such exceptions the case shall remain on the docket of the court below marked "Law"; and decree shall be entered thereon by a single justice, in term time or vacation, in accordance with the certificate and opinion of the law court. Before the aforesaid plant, property and franchises, or any of them are transferred in accordance with such final decree, and before the payment therefor, the court sitting in said county of Hancock, by a single justice thereof, as hereinbefore provided, shall upon motion of any party after notice and hearing take account of all receipts and expenditures properly had and incurred by the said water company belonging to the period from and after the second Monday in October, after the acceptance of this act by the said water district and all net rents and profits accruing thereafter, and shall order the net balance due to any party to be added to or deducted from the amount to be paid under said final decree as the case may be. All finding of law or fact by such single justice at such hearings shall be final. On payment or tender by said water district of the amount so fixed and the performance of all the terms and conditions so imposed by the court, the entire plant, properties and franchises of said water company as described in section ten, shall become vested in said water district subject to all bonds, liens, mortgages and encumbrances thereon heretofore created by said water company. After the filing of said petition, it shall not be discontinued or withdrawn by

said water district, and the said water company may thereafter cause said valuation to be made as herein provided, and shall be entitled to appropriate process to compel said water district to perform the terms of the final decree and to pay for said plant, properties and franchises in accordance therewith. If a vacancy occurs at any time in said board of appraisers, from any cause, any justice of the supreme judicial court, sitting in said county of Hancock, may, in term time or vacation, after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers anew or for any extension of time for making their award, or otherwise, as the circumstance of the case may require.

Sec. 13. Authorized to make temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal for savings banks. For accomplishing the purposes of this act, said water district through its trustees, is authorized to borrow money temporarily, and to issue therefor the interest bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created of paying any necessary expenses and liabilities, incurred under the provisions of this act, including the expenses incurred in the creation of the district, in acquiring the properties and franchises of the Southwest Harbor Water Company, by purchase or otherwise, or the purchase or acquisition of the properties and franchise of said water company of assuming and paying the bonds, mortgages, liens, and encumbrances thereon, as provided in section ten, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant, and making renewals, extensions, additions and improvements to the same, the said water district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of said water district, which is hereby declared to be a quasi municipal corporation within the meaning of section one hundred and five of chapter fifty-one of the revised statutes, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 14. Water rates; application of revenues; sinking fund. All individuals, firms, and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them, and said rates shall be uniform within the territory supplied by the district, and subject to the approval of the public utilities commission. Said rates shall be so established so as to provide for the following purposes:

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1. To pay the current expenses for operating and maintaining the water system.

2. To provide for the payment of the interest on the indebtedness created or assumed by the district.

3. To provide each year a sum equal to not less than one-half of one per cent. nor more than five per cent. of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold.

4. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 15. Valid contracts of water company to be assumed by district; property exempt from taxation. All valid contracts now existing between the Southwest Harbor Water Company and the town of Southwest Harbor shall be assumed and carried out by the Southwest Harbor Water District. The property of said water district shall be exempt from all taxation in the town of Southwest Harbor unless a vote is passed by said town of Southwest Harbor to the contrary.

Sec. 16. Local town referendum provided for; meeting date fixed; form of ballot; certificate to secretary of state. This act so far as it includes the territory and people constituting the Southwest Harbor Water District, as provided in section one hereof, shall not take effect as to said Southwest Harbor, unless accepted and approved by a majority vote of the legal voters of said town voting at an election to be specially called and held for the purpose on the third Monday in August, nineteen hundred and twenty-seven. Such special election shall be called, advertised and conducted according to the law relating to municipal elections. The town clerk shall reduce the subject matter of this act to the following question: "Shall the act to incorporate the Southwest Harbor Water District be accepted?" and the voters shall indicate by the words "yes" or "no" their opinion of the same. The result in said town of Southwest Harbor shall be declared by the selectmen and due certificate thereof filed by the town clerk with the secretary of state.

Sec. 17. Local district referendum provided for; meeting date fixed; form of ballot; certificate to secretary of state. This act subject to the provision of section sixteen shall take effect when approved by a majority vote of the legal voters of said Southwest Harbor Water District voting

at an election to be specially called and held for the purpose on the third Monday in August, nineteen hundred and twenty-seven, such special election shall be called, advertised and conducted according to the law relating to municipal elections. The town clerk shall reduce the subject matter of this act to the following question: "Shall the act to incorporate the Southwest Harbor Water District be accepted?" and the voters shall indicate by the words "yes" or "no" their opinion of the same. The result shall be declared by the selectmen and due certificate filed by the town clerk with the secretary of state.

In case this act is not approved by a majority vote of the legal voters of said Southwest Harbor Water District at its first meeting on the third Monday in August, nineteen hundred and twenty-seven, it may be approved at any subsequent meeting held on the third Monday in August, nineteen hundred and twenty-eight, by a majority of voters in said water district said subsequent meeting to be called, advertised, and conducted in the same manner as the meeting on the third Monday in August, nineteen hundred and twenty-seven.

Sec. 18. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created.

Sec. 19. Act void on failure to obtain property of water company. If said water district shall fail to acquire by purchase or by the exercise of the right of eminent domain as in this act provided, the plant, properties, franchise, rights and privileges owned by the Southwest Harbor Water Company and used or usable in supplying water in the town of Southwest Harbor, then this act shall become null and void.

Sec. 20. Act effective ninety days after adjournment of legislature for purposes of holding elections. This act shall take effect in ninety days after the final adjournment of the legislature, so far as necessary to empower the calling and holding of the elections authorized in section sixteen herein provided for.

Sec. 21. Existing statutes not affected; rights conferred subject to provisions of R. S., c. 55. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter fifty-five of the revised statutes, and all acts amendatory thereof or additional thereto.

Approved March 3, 1927.