

CHAPTER 110.

AN ACT TO AMEND AND CONSOLIDATE AN ACT TO AUTHORIZE THE CITY OF ST. PAUL TO PURCHASE THE FRANCHISES AND PROPERTY OF THE ST. PAUL WATER COMPANY AND CREATING THE BOARD OF WATER COMMISSIONERS, APPROVED FEBRUARY TEN (10), ONE THOUSAND EIGHT HUNDRED AND EIGHTY ONE (1881), AND THE ACT AMENDATORY THEREOF, APPROVED THE TWENTY-FIFTH (25th) DAY OF JANUARY, ONE THOUSAND EIGHT HUNDRED AND EIGHTY-THREE (1883).

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. The act entitled "An act to authorize the city of St. Paul to purchase the franchises and property of the St. Paul Water company," and creating the board of water commissioners, approved February ten (10), one thousand eight hundred and eighty-one (1881), and the act amendatory thereof, approved the twenty-fifth (25th) day of January, one thousand eight hundred and eighty-three (1883), are hereby amended and consolidated so that the same shall constitute one act, and read as follows:

SEC. 2. Whereas, by an act of the legislature of Minnesota, entitled "An act to incorporate the St. Paul Water company," approved May twenty-six (26), one thousand eight hundred and fifty-seven (1857), and sundry acts supplementary thereto, and amendatory thereof, the said company have full power and authority given it to introduce water into the city of St. Paul, from any place or places situate in the county of Ramsey, and to lay water pipes in and through the streets, avenues, land and squares thereof, and to have full and exclusive right to lay pipes for conducting water into any of the streets, avenues, lanes, alleys, and squares of said city, and to adopt any other necessary means to furnish water to any inhabitants of said city, and by virtue of the several acts as aforesaid; and, whereas, the great increase of the business and population of the city of St. Paul, and the inadequacy of the supply of water now furnished by the said company to answer the wants of the said city have rendered it expedient that the duty of supplying the said city with pure and wholesome water for all purposes should be undertaken and carried forward as in this act provided, and that the property, rights and franchises of the said St. Paul Water company should be purchased from said company by said city, if the same can be accomplished by the payment of a fair and just compensation. Now, therefore, it is hereby made the duty of the judges of the district court of the second (2d) judicial district, or a majority thereof, whenever requested by the common council of the city of St. Paul, to appoint five (5) competent persons, without regard to their residence, one of

whom shall be a practical civil engineer, and familiar with erection and maintenance of water works, whose duty it shall be, after taking an oath to faithfully and honestly discharge the duties of said appointment, to inquire into and report as to the efficiency of the general plan adopted by said water company to supply the city with water; what plan or system they would recommend, so as to furnish an adequate supply of water to all parts of the city, and the cost thereof; the propriety of the purchase of the St. Paul Water company's property and franchises by the city of St. Paul, and such other facts as the common council of the city may order and direct, and for which services the said persons, appointed as aforesaid, shall be entitled to such reasonable compensation as the common council may order and direct.

SEC. 3. Upon the receipt by the common council of the city of St. Paul, of the report of the persons named in the foregoing section, in regard to said water works, as hereinbefore provided for, if the same shall be deemed to be satisfactory, the common council of the city of St. Paul may open up negotiations with the St. Paul Water company for the purchase of all of the property, rights and franchises of the said company; and if the common council by a three-fourths (¾) vote of all the members elect, with the approval of the mayor, and the said water company can and do agree upon a price or sum to be paid by the city of St. Paul for all of the property, rights and franchises of said water company, that upon the payment, or the securing to be paid, of the sum or price agreed upon by the city of St. Paul to be paid to said water company, the said company shall forthwith, without further consideration, assign, transfer and convey to the corporation of the city of St. Paul, all the rights, franchises, lands, property, real and personal, of every kind and description to said company belonging or in them vested, or to which they are entitled, and they shall also procure from the stockholders of said company an assignment to the city of all the capital stock of said company, and the said St. Paul Water company is fully authorized and empowered to make such transfer, assignment and conveyance, and the same, when so made, shall be complete and effectual for the transfer, assignment and conveyance to the corporation of the city of St. Paul, as well as said capital stock by the stockholders thereof as of said rights, franchises, lands and property; and all certificates of said capital stock shall be forthwith, on such transfer, delivered up to the treasurer of said city. And said city of St. Paul is hereby authorized to take and hold said rights, property and franchises for the uses and purposes, and in the manner in this act declared, specified and recited, and shall so take and hold the lands and real estate, rights, franchises and property of every kind so purchased from and transferred by the St. Paul Water company, as aforesaid, and any other lands, real estate or personal property necessary for the construction of any canals, aqueducts, reservoirs or other works for conveying or containing water, or for the erection of any buildings or machinery for laying any pipes or conduits, or to secure and maintain any portion of the works; and from the time of said transfer said certificates shall have no validity in the hands of any person or persons other than the city of St. Paul.

SEC. 4. That all authority under this act shall be exercised by a board of commissioners, to be known and designated as the board of

water commissioners, to be appointed as herein designated, and it is hereby made the duty of the judges of the district court of the second (2d) judicial district, or a majority thereof, whenever requested by the common council of the city of St. Paul by a resolution under the seal of said city, and approved by the mayor thereof, to appoint four (4) persons, residents and freeholders of said city of St. Paul, one (1) of whom shall be appointed to serve one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and thereafter one (1) annually shall be appointed for four (4) years. These four (4) persons so appointed, together with the mayor of the city, who shall *ex officio* be a member of the board, shall constitute the first (1st) board of commissioners. All vacancies, by resignation or otherwise, shall be filled by the judges aforesaid, upon notification by said board. The said board of water commissioners shall elect annually one (1) of their number to be president of the board, and one (1) of their number vice president, and may make by-laws and regulations for their government not inconsistent herewith. A majority of said board shall constitute a quorum, and all contracts and engagements, acts and doings of the said board within the scope of their duty and authority shall be obligatory upon and be in law as binding as if done by the common council of said city. That each member of said board shall, before entering upon the discharge of his official duties, take and subscribe an oath of office and give bond in the sum of five thousand (5,000) dollars to the city of St. Paul, to be approved by the common council, conditioned that he will faithfully and honestly discharge the duties of his office or appointment; and the said board may require from the persons employed by them official bonds for the faithful performance of their duties; said bonds shall be approved by said board; *Provided, however,* That the bond of the secretary of said board shall be in a sum of at least ten thousand (10,000) dollars. The salary of said commissioners shall be the same as that of aldermen of said city of St. Paul, except that of the president, which, together with the salary and compensation of all officers appointed and employed by the said board, shall be such as may be fixed from time to time by said commissioners, with the approval of the common council of said city.

SEC. 5. Said board of water commissioners may sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute unto final judgment in any court or elsewhere in the name of said board of water commissioners, have a common seal and the same alter at pleasure. They may employ all proper engineers, surveyors, clerks, or other agents or assistants necessary or convenient for accomplishing the purposes contemplated by this act, and may enter upon any land or water for the purpose of making surveys and examinations for the same. They may prosecute any action in the name of said board of water commissioners against any person or persons for money due for the use of water, for the breach of any contract, express or implied, touching the execution or management of the works or distribution of the water, or of any promise or contract made to or for them; and also for any injury or trespass or nuisance done or caused or procured to be done to the water courses, pipes, machinery, or any other apparatus belonging to or connected with any part of the works, or for any improper use or waste of the

water; and said board shall have full power and authority to take and convey from the sources of supply now used by the St. Paul Water company or which they are empowered to use, and from any other source sufficient to supply the city of St. Paul with pure and wholesome water for all purposes, and for the purposes aforesaid, in all things to exercise all the necessary rights, powers and franchises of the said St. Paul Water company to be conveyed as aforesaid to the said city of St. Paul.

SEC. 6. That the said board of water commissioners may from time to time, for the purpose of furnishing a full supply of water to the inhabitants of the city of St. Paul, extend said water works or make new lines of works, and as it shall from time to time so extend its said works or make new lines of works, it may draw water from any lake or creek by means of pipes, ditches, drains, conduits, aqueducts, or other means of conducting water so as to connect said lakes or creeks with its said works and may erect and construct dams, bulkheads, gates, and other needed structures and means for controlling of water and its protection, and in general to do any other act necessary or convenient for accomplishing the purposes contemplated by this act.

SEC. 7. Whenever at any time said board shall propose to extend its said works so as to connect with any of said lakes or creeks, or to divert the water of any stream, creek or body of water, it shall proceed as follows: Said board shall cause to be made a survey of the line along which it shall so propose to extend its said works and of all lands or other property to be affected by flowage, drainage or otherwise, and for that purpose it may, by its officers and agents, enter upon any lands doing no unnecessary damage thereto. After such survey shall have been made and such line located, it shall cause to be made a map showing the location of said line and the lands necessary to be taken for such extension, and of lands or other property to be affected by flowage, drainage or otherwise. Said map shall be acknowledged by the surveyor making the same, and by the president of the board of water commissioners, and shall be filed as a record in the office of the register of deeds of the proper county. And after making compensation as hereinafter provided to the owners of or persons interested in the lands so to be taken, and for damages by reason of diverting the water of any stream, creek or body of water, said city shall have an easement in said land designated on said map for all the purposes contemplated in this act, which said easement shall include the right of passage without doing unreasonable damage from any public highway to and from the land included or covered by said easement. The damage for said right of passage shall be estimated in apportioning the amount of damage to be paid for such easement.

SEC. 8. Said board shall make application to the judge of the district court of the county wherein the lands are situate, at chambers, for the appointment of three commissioners to assess the damage which the owners of, or persons interested in, the lands to be taken, or any other persons may sustain by reason of the taking of such lands, or of the constructing, use and operating of such work. Notice of such application shall be given by publishing the same in a newspaper printed in the county wherein the lands are situated for at least twenty (20) days before the day of making such application, which

notice shall specify the time and place where such application shall be made, the points between which it is proposed to extend said works, and state the date of filing the said map. At the time and place specified in said notice said judge shall, upon proof to his satisfaction by affidavit of the due publication of said notice, appoint, by an instrument under his hand, three commissioners to assess said damages. Such commissioners shall take and subscribe an oath or affirmation that they will faithfully and fully examine the matter in question and make a true report thereon, according to the best of their skill and understanding. They shall appoint a time and place of meeting for the purpose of making such examination, and give notice thereof by publishing such notice in a newspaper printed in the county wherein the lands are situate, at least ten (10) days before the day so appointed. On the day so-appointed they shall proceed to view the lands so to be taken, and hear any evidence as to the damages which any person may sustain by the taking of the same or by the construction, use and operating of the works of the city and shall continue their examination until the same shall be completed. They shall make a just and equitable estimate of such damages and shall make and file in the office of the clerk of said court a report in writing signed by them, or any two (2) of them, in which they shall state the amount which said board should pay to such persons or corporations who may sustain any damage by reason of the taking of such lands or by reason of the construction, use or operating of such works. Upon said report being filed said board may pay in to the clerk of said court, for the use of the persons entitled thereto, the several amounts so awarded by said report, and thereupon said city shall have and hold said lands and rights for the purposes aforesaid and said board may proceed to construct, use and operate thereon said works and extension thereof. Said report and finding of said commissioners shall be final and conclusive as against all persons or corporations who shall not appeal therefrom within thirty (30) days after the filing of said report. Any person or corporation interested may appeal from said report and findings of said commissioners within the time aforesaid to the said district court by filing with the clerk of said court a notice of appeal specifying the nature of his or its claims and the amount thereof, and also by filing a bond in the sum of five hundred (500) dollars, with at least two (2) sureties, to be approved by the court conditioned for the payment of the judgment and of any costs that may be awarded against said appellant. Said board may likewise appeal within the time aforesaid upon the finding of said commissioners in favor of any person or corporation by filing with said clerk a notice of such appeal. The appeal shall be entered on the calendar for the succeeding term of said court and shall be tried and judgment therein given and the like costs allowed as in actions brought in said court. If the said board appeals and the same or greater damages be recovered than shall have been awarded by the commissioners it shall be liable for costs. If any other person or corporation be the appellant and do not recover greater damages than shall have been awarded by the commissioners, such appellant shall be liable for costs; but no appeal taken shall prevent said city having and holding said lands as aforesaid or said board from entering upon and proceeding to construct, use and operate said works or any part thereof.

SEC. 9. The clerk of said court shall attach together, and keep on file in his office, the said notice of application, with the affidavit of publication thereof, the appointment of said commissioners, their oath or affirmation, the notice given by them, with an affidavit of the publication thereof; their report, the notice of appeal and bond, a certified copy of any final judgment or appeal and his certificate or certificates of the payment to him by said board of any moneys awarded to any person or corporation. A copy, certified by said clerk, of such papers may be recorded in the office of the register of deeds of said county, and the papers so filed; said record or a certified copy of either shall in all cases be received as evidence of the facts therein stated.

SEC. 10. That whenever the board of water commissioners file their maps as required by section seven (7) of this act, the board shall be deemed to be in possession of the lands and right of way as represented on their map or maps, or of any other lands they may occupy or have damaged in the construction of their works for the purpose of introducing and supplying the city of St. Paul with pure water, either by flowage, drainage or otherwise, either by the consent of the owner or owners, or not of the land used or occupied, that is not shown on their map or maps, that the owner or owners have not been settled with, nor the lands paid for as required by section eight (8) of this act. No injunction shall be maintained against the board of water commissioners, restraining them from the use of the lands, [nor any action to recover] possession, or for damage to said lands shall be maintained, except as provided in the following section.

SEC. 11. The owner or owners of any such land or lands may maintain a suit for the recovery of the possession of lands used by the board of water commissioners, for the value thereof, and the damage thereto by reason of the taking thereof as aforesaid, either by flowage, drainage or otherwise, or damage of any kind.

SEC. 12. The defendant, the board of water commissioners, may by answer admit and allege the taking of the plaintiff's land for the use of the board of water commissioners, for the purposes of introducing water into the city of St. Paul, and that no compensation has been paid therefor, and that the defendant is ready and willing to pay such compensation, upon having the same assessed by the jury trying the action, provided the plaintiff on the trial shall establish his right to recover the land in question.

SEC. 13. In all such actions where the defendant by answer admits and pleads, as hereinabove specified, the jury shall try, and by their verdict find whenever the plaintiff is entitled to recover for the land in controversy, and if so entitled, the amount of compensation to which the plaintiff is entitled for the taking and perpetual use of this land for the purpose herein specified; *Provided*, That when it appears that the land was so taken or appropriated, by and with the consent and acquiescence of the owner, such owner shall not be entitled to recover any rents or profits which accrued prior to demand for compensation for such land, and he shall be limited to recovery in such case to compensation for the land taken and damages.

SEC. 14. Upon a verdict finding that the plaintiff is entitled to recover the land in suit and the compensation due him for the taking and perpetual use of such land, judgment shall be entered in substance as follows: That the plaintiff have and recover from the defendant

the land in suit or, in lien thereof, the compensation fixed by the jury, with costs and disbursements, and reasonable attorney's fees, to be fixed by the court; on the expiration of ninety (90) days after the entry of the judgment aforesaid, if the compensation, costs, disbursements and attorney's fee specified in the judgment are not paid, then a writ of execution shall issue for the delivery of the possession of the land described in the judgment to the plaintiff, and to satisfy the judgment as to costs, disbursements and attorney's fee out of any property of the defendants.

SEC. 15. Whenever the board of water commissioners has located the line of its works or any of its appurtenances, upon a crop, or over, across or contiguous to any land or lots belonging to infant heirs, or other wards having any interest therein, it shall be lawful for the guardian of such heirs or wards to sell and convey to the city of St. Paul, upon such terms as may be agreed upon between said guardian and said board of water commissioners, such portion of said land or lots as may be deemed necessary or required by said board, and the right of way upon and across the same, together with all such grounds and rights as may be deemed necessary or required for any purpose by said board in the discharge of their duties, as herein provided, subject only to the approval and confirmation of the probate court of the county having jurisdiction of the matter of the guardianship of such heirs or wards, such approval and confirmation shall be indorsed upon or annexed to the deed or other instrument between the parties and shall be recorded with and as a part of such deed or instrument, in the office of the register of deeds in the proper county, and shall be notice to all parties interested of the facts therein stated; *Provided*, That before granting such approval and confirmation the judge of probate shall require a petition, subscribed and verified by such guardian and signed by the president of the board of water commissioners, or by its attorney, to be filed in such probate court, setting forth the names of such heirs or wards, the name of the board of water commissioners, a description of the lands or lots to be conveyed, the terms of sale, and that the price to be paid is the just and full value of the lands or lots intended to be conveyed to said board, and upon the filing of such petition the judge of the probate court shall determine the matter, without any further formality, notice, order or delay whatever.

SEC. 16. Said board is hereby authorized to resurvey the line of its works heretofore or hereafter to be located, and to relocate said line or any portion thereof, the same as though said line had not heretofore been located. In case of making such new survey and relocation said board shall proceed in the same manner as is provided in sections seven (7), eight (8) and nine (9) of this act, and all the provisions of said sections shall in all respects be applicable to the proceedings for such resurvey and relocation, and the effect thereof, and of constructing, using, and operating its works over said relocated line. It may join its proceedings for such resurvey and relocation with any proceedings for extending its said works; *Provided*, That if said board shall, in the proceedings heretofore or hereafter to be had for locating its said line, have paid unto the said clerk the amount awarded to any person by the commissioners in said proceedings, the amount so paid in shall be deemed a payment to such person upon

the amount which may be awarded in the proceedings hereby authorized.

SEC. 17. Any person who shall willfully and without authority from said board break, remove or damage any dam, bulkhead, gate, gate house, conduit, air vent, air box, air box cover, main pipe or culvert, or fill up, or partially fill up, any excavation, or raise or open any gate, break down or force open any doors of said works executed, constructed and maintained for the purposes specified in this act shall, on conviction thereof, be punished by imprisonment in the state prison for a term of not more than ten (10) years nor less than one (1) year.

SEC. 18. Any person who shall, without authority from said board, lay any main or service pipe or take water therefrom, or open or shut any service cock or fire hydrant, or remove or unscrew, wholly or partially, the cap from such fire hydrant, or enter or form any connection with or turn water into any tunnel excavated or used by said board for the purpose of laying its pipe, or who, being authorized by said board to take water from any main or service pipe into any specified building or upon any specified premises or to be used for any specified purpose, shall, without authority from said board, use such water for any other than such specified purpose, or permit any other person to use the same for any other than such specified purpose, or to take the same out of such building; and such other person so using or taking such water, or who, without lawful authority, shall dig or excavate within six (6) feet of any main pipe, gate, hydrant or blow-off of said works, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred (100) dollars and not less than twenty five (25) dollars, or by imprisonment in the county jail for a term not more than three (3) months nor less than twenty (20) days, or by both such fine and imprisonment.

SEC. 19. If any person or persons shall maliciously or willfully divert the water, or any portion thereof, from the said works, or shall corrupt or render the same impure, or shall destroy or injure any canal, aqueduct, pipe, conduit, machinery, or other property used or required for procuring or distributing the water, such person or persons and their aiders and abettors shall forfeit to the said board, to be recovered in a civil action, treble the amount of damages (besides costs of suit), which shall appear on trial to have been sustained; and all such acts are hereby declared to be misdemeanors, and the parties found guilty thereof may be further punished by a fine not exceeding one thousand (1,000) dollars or by imprisonment not exceeding one (1) year, or both, at the discretion of the court.

SEC. 20. That said board, in behalf of the city of St. Paul and all persons acting under their authority, shall have the right to use the grounds or soil under any road, railroad, highway, street, lane, alley or court for the purpose of constructing, enlarging, improving or repairing the works contemplated by this act, on condition that they shall cause the surface of such road, railroad, highway, street, lane, alley or court to be restored to its original state, and all damages done thereto to be repaired.

SEC. 21. That for the purpose of paying the cost of purchasing the capital stock, property and franchises of the St. Paul Water company, the common council of the city of St. Paul shall have authority, by a

vote of two-thirds ($\frac{2}{3}$) of all members elect thereof, and may issue the bonds of said city of St. Paul, in such sums and amounts as the said common council may direct, to an amount not exceeding three hundred and fifty thousand dollars (\$350,000), which bonds shall bear interest at a rate not to exceed five (5) per cent per annum, interest payable semi-annually, and redeemable in thirty (30) years from the date thereof; and for the purpose of enlarging, improving, extending and repairing said works already erected and of constructing such new works as are contemplated by this act, the common council of the city of St. Paul shall have authority to issue the bonds of the city of St. Paul to the amount of two hundred and fifty thousand dollars (\$250,000), bearing interest at a rate not to exceed five (5) per cent per annum, payable semi-annually, which bonds shall not be disposed of for less than their par value. Such bonds shall be denominated as the St. Paul water bonds; *Provided, however,* That in the event of the purchase of the water works for a sum less than three hundred and fifty thousand dollars (\$350,000), an additional amount of bonds may be issued for construction, so as to make up the difference between the amount so paid for the purchase of said water works and three hundred and fifty thousand dollars (\$350,000). That before any of the bonds authorized by this act are issued the proposition to issue the same shall be submitted to a vote of the electors of the city of St. Paul at the next general annual election in November, one thousand eight hundred and eighty-one (1881). The ballot to be issued thereat shall have printed or written thereon, or partly written or printed, the words "for the issue of water bonds," or the words "against the issue of water bonds." Said votes shall be canvassed in the same manner as votes for city officers are canvassed, and the result thereof announced, and if upon such official canvass it be found that a majority of the votes cast upon that subject are in favor of the issue of said bonds, then the issue of said bonds shall be lawful for all intents and purposes.

SEC. 22. All bonds heretofore issued by the said city under and by virtue of the provisions of the said act for the purchase of the franchises and property of the St. Paul Water company are hereby declared to be legal and valid bonds of the city of St. Paul.

SEC. 23. That said board shall regulate the distribution and use of the water in all places and for all purposes where the same shall be required for either public or private use, and fix the price and rates therefor; *Provided, however,* That in the case of fire hydrants for the extinguishment of fires, and public fountains and watering places, the board shall fix and locate the same as the common council of said city may direct. On the line of constructed works, where practicable, said board shall, from time to time, cause to be assessed the water rate to be paid by the owner or occupant of any house or other building having or using water, on the basis and for the purposes in this act specified, and such water rates shall become a continuing lien, until paid, upon such house or other building, and upon the lot or lots upon which such house or other building is situated. The said city of St. Paul shall pay out of the general fund of said city and place, to the account of said board at the price and rates so fixed by said board for all water furnished and supplied to said city for public fire hydrants for the extinguishment of fires, for water used at public fountains and

watering places, for water furnished and supplied to any of the boards or departments of said city, as the same are or may be hereafter established, and all other water supplied to or used or consumed by said city. The said board shall keep separate accounts with each of said boards and departments of all water furnished and consumed by each of said respective boards and departments. And said board is hereby authorized and required to restrain and prevent any and all wastage of water, and to that end may, when in its judgment necessary, turn off the water or take such other action as in its judgment may be proper.

SEC. 24. In case of damage to the pipes or works of the water board, caused by a change of grade or operation of any department of the city, such damage shall be paid out of the general fund of said city, except in cases where an assessment shall be made by the board of public works of said city for a change of grade as now or as may be hereafter provided by law. In such case the damage occurring to the board of water commissioners shall be paid out of such assessment.

SEC. 25. That the said board shall have full power and authority to require payment in advance for the use of water furnished by them in or upon any building, place or premises, and in case prompt payment for the same shall not be made they may shut off the water from such building, place or premises, and shall not be compelled again to supply said building, place or premises with water until said arrears, with interest thereon, together with the cost and expense of turning said water off and on shall be fully paid.

SEC. 26. In addition to all other powers conferred upon said board, they are authorized to, and shall assess upon each and every lot in the city of St. Paul in front of which water pipes are laid an annual tax or assessment of ten (10) cents per lineal foot of the frontage of such lot or lots, and which shall be a lien upon such lot or lots and shall be collected as hereinafter provided.

SEC. 27. That the said board shall make up, on or before the first (1st) day of August in each and every year, a detailed statement, duly certified to by the president and secretary of said board of commissioners under the seal of said board for the tax or assessment described in the foregoing section for the year preceding and ending on the first (1st) day of December, which statement shall be transmitted by the secretary of said board to the county auditor of Ramsey county as delinquent taxes for collection; whereupon it shall be the duty of the county auditor to extend the same on his rolls against the property in said statement as aforesaid, for collection, and if not paid within the time prescribed by law then the same shall become a lien on said real estate, and said real estate shall be subject to all the penalties and charges as property delinquent for taxes for county and state purposes. All moneys collected or paid into the treasury of Ramsey county on account of said assessment or tax shall be paid over, from time to time, to the city of St. Paul for the use of said board of water commissioners.

SEC. 28. Said board of water commissioners are hereby invested with full power to make and enforce such by-laws, regulations and ordinances as may be necessary to carry into effect the object and intent of this act, and to supply any power or mode not already speci-

fied therein, and shall cause all such by-laws, regulations and ordinances to be entered into a book to be kept for that purpose, and signed by the president and secretary, which, when so entered and signed, shall be evidence in any court of justice.

SEC. 29. That the said board of water commissioners shall elect some suitable person as secretary, and the treasurer of the city of St. Paul is hereby declared to be *ex officio* treasurer of said board, and the city comptroller is hereby declared to be *ex officio* the comptroller of the said board. It is made the duty of the secretary, under the direction of the said board, to collect and receive and pay into the city treasury all moneys due on account of the operations of said water works, except the frontage tax and proceeds from the sale of bonds, and to keep a set of books, which shall contain a full and complete statement of the condition and operation of the water works, of all moneys received and paid out by order of said board, and all debts due and owing said board for any cause whatever, together with an accurate account of all the expenses of said board; and the said secretary may appoint an assistant secretary, for whose acts he shall be responsible, who shall only be authorized to act in the absence of said secretary from said city, and while the secretary is unable to perform such duties, owing to sickness; and in case of the disability, from absence or other cause, of said secretary and the failure of said secretary to appoint such assistant, the said board may appoint a secretary *pro tem.* to perform the duties of such secretary. It is made the duty of the treasurer of said board to receive all moneys which may be paid in to said treasurer on account of said board of water commissioners from the sale of bonds, for water taxes, or from any source whatever; and all moneys so received shall be retained by said treasurer and paid out only upon the orders of said board, signed by the president and secretary thereof, and countersigned by the city comptroller, and shall keep a detailed and exact account thereof in such manner as to show at all times the exact financial condition of said board; and the city comptroller shall keep regular books of account, in which all moneys received or paid out for or on account of said board shall be entered. He shall audit and countersign all bills and accounts allowed by said board and other evidences of the indebtedness of said board, and shall keep an exact account thereof, stating to whom and for what purposes issued, and shall keep an account with the treasurer of said board, showing the amount received from all the different sources of revenue and the amount disbursed under the direction of said board. The said comptroller shall, on the first (1st) day of each month, return to the secretary of said board all bills and accounts received from said board during the month next preceding. The books of said board shall be opened to the examination of any person or persons appointed for that purpose, or to any committee of the common council, or the comptroller of said city. Said board shall also, on the first (1st) day of December of each year, make a report to the common council of said city of the condition of the works under their charge, and of the receipts and expenditures on account of the same.

SEC. 30. All contracts for materials or for the construction of any part of said work which shall involve the expenditure of the sum of three hundred (300) dollars or more shall be in writing and in duplicate, one of which shall be filed with the said comptroller, the other with

the secretary of the board; *Provided*, That in the event of any extraordinary and sudden injury to said works, whereby great damage might ensue by reason of any delay, the said board may cause the damage or break to be repaired without a contract and in such manner as the commissioners may deem for the best interests of the city.

SEC. 31. That the said board of water commissioners shall establish such water rates as will at all times insure to the city a sufficient income to pay the interest and to provide a fund to pay the principal upon all the bonds to be issued under this act, as well as to pay all the expenses and costs of the maintenance and repairs of said water works; and it is hereby declared to be a misdemeanor, punishable by a fine not exceeding five hundred (500) dollars, or imprisonment in the county jail not exceeding one (1) year, or both at the discretion of the court, for said board knowingly to omit the property of any person from assessment for water rates, or to neglect or refuse to collect the same, or to give any person other or different credit for the use of water than that given the whole public; *Provided, however*, When metres are used for the purpose of showing the amount used, the water rent shall be collected on the first (1st) day of each and every month.

SEC. 32. Whenever the board shall determine to lay new mains, set hydrants, to relay mains, or reset hydrants on any of the streets of said city, the board shall make application to the city engineer, whose duty it shall be, without unnecessary delay, to furnish the water commissioners with a profile of the street, with the grade lines thereon, and to set stakes of grades and lines of streets and sidewalks when required. Before the board of public works of said city shall report in favor of a change of grade on any street on which the mains of said board of water commissioners are laid they shall notify the said board of water commissioners of the contemplated change; and it is hereby made the duty of said board, upon being so notified, to report to the board of public works the damage, if any, that will be incurred by said board of water commissioners by said change of grade, which damage shall be taken into consideration as part of the cost of said improvement.

SEC. 33. In all cases where rights of way and easements have been or may be hereafter acquired, either by purchase of title or by condemnation, for the laying of any conduits, supply mains or other appliances or works for supplying water as contemplated in this act, such rights of way and easements shall be paramount, and neither said city of St. Paul nor said county of Ramsey nor other county or municipal body or corporation, or other corporation or person shall enter thereon, use or occupy the same for any purpose other than said purpose for which said right of way or easement was or may be acquired as aforesaid, except with the consent of said board, and upon such terms and in such manner as may be agreed upon with said board of water commissioners, and said board of water commissioners is hereby authorized to make and enter into any agreement in that behalf which it may deem necessary and expedient.

SEC. 34. Any and all causes of action, either at law or in equity, which may now exist, or which may hereafter occur by reason of any act or omission by or on the part of the board of water commissioners, or of any of its servants, agents, employes, or otherwise, shall be

brought and maintained by such claimant or claimants against the said board of water commissioners, anything in the statutes of the state of Minnesota to the contrary notwithstanding. And any and all judgments recovered against said board of water commissioners shall be paid out of any moneys in the hands of the city treasurer of the city of St. Paul belonging to said board, as other indebtednesses are paid.

SEC. 35. Before any action shall hereafter be maintained in any court of this state having jurisdiction thereof, against said board of water commissioners, for any cause whatever, the subject matter thereof, together with the evidence in support of the same, must have first been presented and submitted to said board for its investigation and approval, and that, too, within sixty (60) days after said cause of action accrues. If, upon and after such investigation by said board, the same shall by it be rejected, then and in that case action thereon must be commenced within one (1) year thereafter, or forever be barred from maintaining an action thereon, or recovering a judgment against said board upon said claim or cause of action.

SEC. 36. Said acts hereby amended and consolidated, except as hereby amended, are continued in full force and effect, and all rights acquired or existing, and all things whatsoever done, acted or performed under said acts, or either of them, are hereby established, continued and saved; and all matters and things whatsoever commenced or pending under said acts, or either of them, are saved and continued to be had, done, and completed under this act. And this act shall not be construed to vacate the office, or in any way to change or impair the term of office of any of said commissioners, or of the officers of said board, or of the officers, agents or other employes elected or appointed by said board. The term "real estate," as used in this act, shall be construed to signify and embrace all uplands, lands under water, the waters of any lake, pond or stream, all and every estate, interest and right, legal and equitable, in lands or water, including term for years, and liens thereon by way of judgment, mortgage or otherwise, and also all claims for damage to such real estate.

SEC. 37. No law of this state contravening the provisions of this act shall be construed as repealing, amending or modifying the same, unless such purpose be expressly set forth in such law.

SEC. 38. This act shall take effect and be in force from and after its passage.

Approved March 4, 1885.