

No. 756, A.]

[Published June 20, 1905.]

**CHAPTER 397.**

AN ACT to authorize John S. Van Nortwick of Appleton and Ephraim Mariner of Milwaukee to build and maintain a dam across the Fox river, in the rapids at Grand Kaukauna in the city of Kaukauna in the county of Outagamie.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**Location of dam.** SECTION 1. John S. Van Nortwick of Appleton, Wisconsin, and Ephraim Mariner of Milwaukee, Wisconsin, and their successors and assigns are hereby authorized to build and maintain a dam across Fox river on the lower rapids at the city of Kaukauna, from government lots one (1), two (2), or three (3) in section twenty-one (21) south of Fox river and described on assessor's map of the city of Kaukauna as lots A. in said government lots to the north side of Fox river, connecting with lot H. in the southwesterly one-half ( $\frac{1}{2}$ ) of private claim No. 35, all in township twenty-one (21) north of range eighteen (18) east, and to make use of the hydraulic power furnished by said dam.

**Height.** SECTION 2. Said dam shall not be of greater height than is sufficient to furnish a twenty-seven (27) foot head.

**How constructed.** SECTION 3. Said dam shall have a needle dam including a sluiceway to discharge water in time of freshets of not less than two hundred and fifty (250) feet in length, and a depth of at least five feet below the line of the main spill thereof.

**Fishway.** SECTION 4. The dam so erected shall be provided with a good and sufficient fishway, to be approved by the state board of commissioners of fisheries, and such fishway shall at all times be kept in good repair and open for the free and easy passage of fish up and down said river.

**Powers conferred.** SECTION 5. Said John S. Van Nortwick and Ephraim Mariner, their associates, successors, heirs and assigns, for the purpose of acquiring any flowage rights which may be necessary in carrying out the provisions of this act may

exercise the powers granted to corporations by sections 1777a, 1777b, 1777c, 1777d of the statutes of 1898, including amendments that may have been or may hereafter be made to the same.

**Powers and privileges defined.** SECTION 6. No corporate powers or privileges are granted or intended to be granted by this act, and the same shall not be construed or deemed to grant any such powers or privileges.

**Conditions of grant.** SECTION 7. This act is passed in consideration of and upon the following express conditions:

1. The dam herein authorized shall be constructed within four years from the date of the passage of this act.

2. If so built and constructed, it must be maintained and operated continuously and its maintenance and operation must not be discontinued or cease for any length of time exceeding two years at one time.

3. The water power acquired under and by virtue of this act shall not be operated or its operation suspended pursuant to any contract, agreement or understanding express or implied in violation of any law of this state or of the United States.

4. In case the owners thereof desire to let, lease, rent or furnish any hydraulic power or accumulation of water procured or created under this act, for public purposes or for any lawful private purpose, they shall not charge or collect more than a reasonable rental therefor. In case the owners of such dam and the lessee of any part of said hydraulic power or accumulation of water shall be unable to agree upon the price to be paid for the use of the same, they shall submit the matter to arbitration, and for this purpose the owner of such power or accumulation of water shall select an expert engineer, the lessee shall select another expert engineer, and the two engineers so chosen shall select a third, who shall constitute arbitrators and have full authority to determine the price that shall be paid for the use of such power or accumulation of water. Their decision shall be reduced to writing and signed by a majority of such arbitrators, and shall be final and conclusive upon the parties in interest.

**Franchise, when forfeited.** SECTION 8. The refusal of the owners to submit to arbitration, as herein provided, the question of the price at which hydraulic power or accumulation of water shall be rented, as herein provided, or their failure to furnish such hydraulic power or accumulation of water at the

price, fixed by the said arbitrators, as hereinbefore provided, if such power or accumulation of water is not needed for other use, or their failure to comply with all the conditions of this act, shall terminate and forfeit the franchise hereby granted, and the failure of the lessee or lessees of such hydraulic power or accumulation of water to submit the question of price to be paid for the same to arbitrators, as herein provided, or after submission to pay the price determined by such arbitrators, shall work a forfeiture of his lease or leases, if any he or they had, of such power or accumulation of water.

SECTION 9. This act shall take effect and be in force from and after its passage and publication, and the filing in the office of the secretary of state, by the person or persons to whom the franchise is hereby given, of a written acceptance of the conditions herein contained.

Approved June 17, 1905.

No. 750, A.]

[Published June 20, 1905.]

## CHAPTER 398.

AN ACT to authorize W. E. Brown, J. O. Moen, Matt Stapleton and John Barnes, their heirs, associates and assigns, to build and maintain a dam across the Pelican river, in Oneida county, Wisconsin, for the purpose of improving the navigation of said river and the lakes above the site of the proposed dam.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**Location of dam.** SECTION 1. W. E. Brown, J. O. Moen, Matt Stapleton and John Barnes, their heirs, associates and assigns, are hereby authorized and empowered to build and maintain a dam, not exceeding six (6) feet in height, across the Pelican river, on any lands owned by them or either of them, in the south half of the southeast quarter of section number four (4) or the north half of the northeast quarter of section number nine (9), in township number thirty-six (36) north of range number ten (10) east, in Oneida county, Wisconsin,