

No. 240, S.]

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CHAPTER 335.

AN ACT to authorize Wisconsin Valley Improvement company to construct, acquire and maintain a system of water reservoirs located on the tributaries of the Wisconsin river north of the south line of township thirty-four (34) north, for the purpose of producing a uniform flow of water in the Wisconsin river and its said tributaries, and thereby improving the navigation and other uses of said streams and diminishing the injury to property both public and private.

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

Location of reservoirs; acquisition and protection of other franchises; Eagle river to be kept navigable; tolls. SECTION 1. Subject to the supervision and control hereinafter provided for, authority is hereby granted unto Wisconsin Valley Improvement company, in order to promote the purposes hereinafter set forth, to create, construct, acquire, maintain and operate a system of water reservoirs located in or along the Wisconsin river at points north of township forty (40) north, of range ten (10) east, and in or along any or all of the direct or indirect tributaries of the Wisconsin river that discharge into said river at any point north of the south line of township thirty-four (34) north, in this state, excepting that part of the Eagle river and lakes lying between the point where Eagle river enters Cranberry lake, in section thirty-one (31) township forty (40) north, of range eleven (11) east, and the Wisconsin river, and for that purpose said grantee may construct, acquire and maintain all such dams, booms, sluiceways, locks and other structures in, along or across any and all of said tributaries, not above excepted, and the said portion of the Wisconsin river, as may be necessary or reasonably convenient to accomplish the purposes of this grant, and may clean out, straighten, deepen or otherwise improve any of said tributaries, in order to improve the navigation thereof and of said Wisconsin river and prevent injury to property bordering on said waters. All franchises, other than corporate franchises, and all riparian rights and rights of flowage, either perfected or inchoate, acquired by purchase or grant, by any person or by any corpora-

tion organized to improve the navigation for any purpose, of either of said Wisconsin or Tomahawk rivers or any of their tributaries, not above excepted, shall be and hereby are made assignable to the Wisconsin Valley Improvement company, and shall be of the same force and effect in the possession and ownership of such assignee to accomplish the purposes of this act as the same may be before assignment to accomplish their original purpose. But this act shall not amend or repeal chapter 532 of the laws of 1887, nor chapter 252 of the laws of 1889, nor chapter 483 of the laws of 1905, nor chapter 26 of the laws of 1903, nor any amendment thereof, nor abridge the rights, powers or duties conferred by said acts, nor authorize the taking by the Wisconsin Valley Improvement company, by the power of eminent domain, of any property used under or pursuant to said acts, nor any other property devoted to public uses; except that the dam authorized by and now maintained under said chapter 532 of the laws of 1887 may be raised, or a new dam or dams which are hereby authorized, may be constructed and maintained, in and across the Eagle river between Long and Cranberry lakes at any convenient point or points in townships thirty-nine (39) and forty (40) north, of range eleven (11) east, so as to raise and hold the water in Long lake aforesaid six inches, and no more, higher than the high water mark to which the water has been customarily raised and held by means of said present dam; provided, however, that between May 1st and the succeeding November 1st of each year the waters shall not be drawn down in Long lake more than eighteen (18) inches below said present high water mark as established by said dam now constructed and maintained, and provided further that said Wisconsin Valley Improvement company shall prior to June 1st, 1909, by such dam or dams, and by locks, marine slides or other safe and convenient means, make and thereafter maintain the Eagle river between said Long and Cranberry lakes navigable for the safe and convenient passage of boats of all kinds and sizes up to and including boats fifty feet in length and of twelve foot beam and drawing five feet of water. Said Wisconsin Valley Improvement company shall have the right to charge and collect reasonable and uniform tolls for the passage of boats through and over said works proportioned to the size of the boat, not, however, exceeding in the aggregate the actual cost of the care, maintenance and operation of said locks, marine slides or other means of passage.

Purposes of reservoirs. SECTION 2. The said authority is granted for the purpose of producing as nearly a uniform flow

of water as practicable in the Wisconsin and Tomahawk rivers through all seasons by holding back and storing up in said reservoirs the surplus water in times of great supply, and discharging the same in times of drought and a scarcity of water, and thereby, and by other means, improving the navigation of said Wisconsin and Tomahawk rivers throughout their entire length, for boats, barges and other water craft, and for the running, driving, rafting, booming, storing, sorting and delivering of logs, timber and lumber, and other forest products, and for the purpose of improving the usefulness of said streams for all public purposes, and of diminishing the damage and injury by floods and freshets to property, both public and private, located along said waters. It shall be the duty of said Wisconsin Valley Improvement company to so manage, operate and maintain all of its said reservoirs and other works that the purposes aforesaid shall be accomplished to the greatest practicable extent and so that as nearly a uniform flow of water as practicable shall be maintained at all times and at all points on the said Wisconsin and Tomahawk rivers, and during the times when it may be found to be impracticable to maintain at the same time such uniform flow in the Wisconsin river, both below the north line of Lincoln county and above the same line, the portions of said streams above said line shall be given preference.

Condemnation proceedings. State lands. SECTION 3. For the purpose of creating, acquiring, maintaining and operating the dams and other works, authorized as aforesaid, and subject to the supervision and control hereinafter provided for, the Wisconsin Valley Improvement company excepting as herein otherwise excepted or provided, is hereby authorized to take and use any lands, riparian or other rights, that may be required for the creation, construction and maintenance of any and all reservoirs, dams and other structures and improvements that may be necessary to accomplish the purposes of this act, and whenever it cannot agree with the owner or owners of any such required lands, or other property, for the purchase thereof and for the compensation to be paid therefor, the said Wisconsin Valley Improvement company may acquire title to any such lands and other property above specified, or the right to use same for said purposes, by the exercise of the power of eminent domain under and in pursuance of sections 1777a, 1777b, 1777c and 1777d of the Wisconsin statutes of 1898 and the laws amendatory thereof and supplemental thereto, but the said company shall have no right to take or enter into possession or overflow

any of the property condemned until it shall have first paid in the manner provided by section 1777c, the damages awarded.

And in case the possession or use of any such property shall be obtained by said Wisconsin Valley Improvement company, before acquiring the title thereto or the right to use thereof by purchase or condemnation, the owner or owners of the same property shall have the same right to institute proceedings for condemnation thereof and ascertainment of damages to be paid, as is granted by the aforesaid statutes relating to the exercise of eminent domain. In case any lands of the state of Wisconsin be required to be taken or overflowed for any of the purposes of this act the railroad commission of Wisconsin shall appraise and fix the damage to be caused by such taking or overflow, and the amount thereof shall be paid into the state treasury by the Wisconsin Valley Improvement company before the taking or overflow shall occur.

Tolls secured by liense; other companies taxable therewith; railroad commission to regulate. SECTION 4. In case said Wisconsin Valley Improvement company shall improve any navigable tributary of the Wisconsin river not herein excepted or shall acquire the improvements or the control of the improvements of any river improvement company already operating on any such stream and shall so keep in repair and operate the works as to render the driving of logs and other floatables to the mouth of such tributary reasonably practicable and certain, it may charge and collect reasonable and uniform tolls upon all such logs, timber and other floatables driven or floated on said stream, and shall have all of the rights and remedies granted to river improvement companies by section 1777 of the Wisconsin statutes, and all amendments thereof, including the right of lien therein provided for, and shall be charged with all the duties and obligations imposed upon such river improvement companies under like circumstances.

When said Wisconsin Valley Improvement company shall have created or acquired and maintained in successful operation water reservoirs in accordance with this act, of a capacity sufficient to store up in times of abundance and retain and discharge in times of scarcity two billion cubic feet of water that would not be so stored up and retained by nature it shall, subject to the supervision and control hereinafter provided for, be entitled to charge, collect and receive reasonable and uniform tolls from the owner or owners or lessee or lessees of each and every improved and operated water power located upon the

Wisconsin river, or any tributaries thereof, below any said reservoirs and benefitted thereby, but not exceeding in the aggregate of all its revenues sufficient to pay all reasonable costs of operation and maintenance and a net annual return of six per cent on the cash capital actually paid in on stock subscriptions to the grantee. Said tolls shall be semi-annually fixed, ascertained and determined by the railroad commission of Wisconsin on or about the first day of July and the first day of January of each year, for the six months' period preceding each of said dates. Said tolls shall be fixed in proportion to the benefits conferred by the reservoir system upon each of the improved and operated water powers aforesaid. It shall be the duty of the grantee to employ competent hydraulic engineers to be selected by the railroad commission of Wisconsin to assist in determining the tolls to be charged as aforesaid and the expense thereof shall be treated as a part of the cost of maintenance and operation of said works. If any such improved water power be operated by a lessee or lessees under lease or contract made prior to the enactment and publication of this act, then such lessee or lessees shall be chargeable with the payment of such tolls; otherwise the same shall be paid by the owner or owners of the water power. Each water power liable to tolls as above provided which shall be operated two months or more during any six months' toll period shall be subject to tolls for the whole of the same period; otherwise no tolls for that period shall be chargeable.

Railroad commission, semi-annual reports to; hearings on tolls; appeals from. Tolls, use and enforcement. SECTION 5. On or before June 15th and December 15th of each year, said Wisconsin Valley Improvement company shall lay before the railroad commission of Wisconsin a statement showing all expenditures made or necessary to be made for the next six months' period next preceding July 1st and January 1st respectively of each year for maintenance and operation of such reservoir system, all capital stock of said company issued and then outstanding, the cash capital actually paid in, the storage capacity and location of each reservoir, and all reports and data obtained from engineers employed as provided in section four of this act and such other information and statements as the commission shall require, together with a recommendation of the amount of tolls necessary to pay such cost of maintenance and operation and a net return of six per cent. per annum on the capital invested, and a recommendation as to the apportionment thereof against the owners or operators of improved powers in

accordance with said section four. The railroad commission shall, thereupon, give to each water power operator proposed to be charged with tolls ten days' notice by mail of the amount of tolls recommended to be charged against him and of the time when and place where the railroad commission will hear objections to the proposed tolls. The railroad commission shall at the time appointed hear all objections made and may take evidence and make or cause to be made independent investigation of the validity of the same, and may adjourn, from time to time, and shall, as soon as practicable, on or about July 1st and January 1st of each year, determine and certify the amount of tolls to be collected from each water power operator for the period under consideration, and such tolls shall, thereupon be due and payable to the Wisconsin Valley Improvement company.

Any person in interest being dissatisfied with any order of the commission authorized to be made under this act, may commence an action in the circuit court of the county where the property affected is located, against the commission as defendant to vacate and set aside any such order within sixty days from the date of the mailing to such person of a copy of such order by the commission, on the ground that such order is unlawful or unreasonable, in which case the complaint shall be served with the summons. The commission shall immediately notify the said company by mail of the service of said complaint. Within twenty days after the mailing of such notice, to said company, the said company or said commission shall file its answer to said complaint and said action shall be at issue and stand ready for trial the same as any other action.

In all trials under this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable as the case may be. Every party to said action, within sixty days after the service of a copy of the order of judgment of the circuit court may appeal to the supreme court.

No tolls shall be levied or used to pay for any part of the original construction or purchase or betterment of the reservoir system. The amount of such tolls shall be a lien upon the water power, dam, franchises and flowage rights of the person or corporation chargeable with such tolls and in case such tolls shall not be paid when due the person or corporation entitled to collect the same, shall be entitled to sue for and collect the same, by an action at law, or by a suit in equity for the foreclosure and enforcement of said lien, and for sale of the property affected thereby pursuant to such judgment of foreclosure.

Forestry board to regulate constructions and flow. Railroad commission's approval of stock requisite. Separate sources for cost and maintenance. SECTION 6. No dam or reservoir not now in existence or heretofore authorized shall be constructed or created until the plan therefor showing the form and location of the dam and a description of the lands to be overflowed thereby be first submitted to the state board of forestry and approved thereby, after first giving reasonable notice and opportunity to be heard, to all persons interested, by publication in one or more newspapers most likely to give such notice, or such other notice as the board shall deem advisable; nor shall any petition be filed for the condemnation of any property for the purposes of this act without first having attached thereto the approval in writing of said board. Said board shall cause the height to which the water may be raised by any dam to be marked by permanent monuments and bench marks and shall have supervision and control of the times and extent of the drawing of water from the reservoirs, and the power to compel the maintenance of all reservoirs, established. They shall have authority to employ at the expense of said improvement company hydraulic engineers and other persons to assist them in obtaining the information necessary to a proper discharge of their duties, such expense to be treated as part of the cost of construction or maintenance and operation of the reservoir system. No capital stock of said improvement company shall be issued until the proposed issue thereof shall have been submitted to the railroad commission of Wisconsin and said commission shall have ascertained, determined and certified that the proposed issue will be in consideration of money or labor or property estimated at its true money value actually received by said company, equal to the par value thereof, and it shall be the duty of the said commission to act promptly on any such proposition submitted. The money received by said company upon account of capital stock shall be used only in payment of the original cost of purchase, construction or betterment of the reservoir system and of the work preliminary thereto and necessary to prepare for or to determine upon the same; and all tolls collected as hereinbefore authorized shall be applied only to the payment of cost of maintenance and operation of the system and payment of the net return on capital above provided for; to the end that the capital stock shall be maintained at par value at all times.

Fishways. Free passage of logs, etc. SECTION 7. All dams erected or acquired and maintained by the grantee shall

be subject to all of the requirements of the statutes now in effect, and all that may be hereafter enacted relating to the providing of good and sufficient fishways in said dams, and shall be equipped with all necessary slides, chutes, guide booms and piers for the passage of logs and timber over or through the same.

This act a public act. SECTION 8. This act is hereby declared to be a public act and for the accomplishment of public purposes, and shall be favorably construed to the accomplishment of said purposes.

Repeal and amendment reserved; time for completion; state may acquire. SECTION 9. The right is hereby reserved to the legislature to repeal or amend this act at any time; in case the Wisconsin Valley Improvement company shall not by the first day of January, 1909, have in operation reservoirs of the storage capacity of at least two billion cubic feet of water, then the rights and privileges granted by this act shall cease. The state of Wisconsin shall have the right at any time whenever it may have the constitutional power, to take over to itself and become the owner of all reservoirs and other works and property acquired by the Wisconsin Valley Improvement company, pursuant to this act, by paying therefor the cash capital actually paid on the capital stock of said company theretofore lawfully issued and outstanding or the actual value of the physical properties so taken over and without any allowance for franchises or good will of the business, and if such actual value cannot be agreed upon between the state and such owner, then the same shall be determined by the railroad commission of Wisconsin.

SECTION 10. This act shall take effect and be in force from and after its passage and publication.

Approved June 22, 1907.