

No. 5, S.]

[Published December 21, 1905.]

CHAPTER 16.

AN ACT to amend chapter 461, laws of 1905, entitled, **An Act to provide fishways in dams, booms, piers and other obstructions in the streams and rivers of this state; adopting a specified fishway and providing a punishment for failure to comply.**

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

Fishways in dams, booms and piers required. SECTION 1. Section 1 of chapter 461 of the laws of 1905 is hereby amended so as to read as follows: "Section 1. It is hereby made the duty of the commissioners of fisheries of Wisconsin to require a fishway to be constructed and maintained in each and every dam now existing or which may hereafter be constructed in or across any stream or river in this state containing game fish, when in the opinion of the commissioners of fisheries, or a majority of them, such fishway is necessary for the free and uninterrupted passage of game fish and such fishway will not endanger the durability of such dam or impair its usefulness."

Fishway to be kept open and in repair. SECTION 2. Section 2 of chapter 461 of the laws of 1905 is hereby amended so as to read as follows: "Section 2. The commissioners of fisheries shall adopt such plan or plans of fishways for the various dams situated in this state, as they may deem best, and as soon as practicable after the passage of this act shall cause all dams in or across the streams and rivers of this state to be examined and shall require fishways to be constructed in all such dams as in their opinion should be provided with fishways, and shall thereafter notify in writing the person or persons, firms or corporations owning, occupying, managing or having charge or control of such dams to construct such fishways as said commissioners may have required, within six months from the date of the service of such notice to construct or maintain such fishway; such notice shall prescribe as nearly as possible the location of such fishway in the dam and the time when the fishway shall be completed and opened for the

passage of fish, and shall also be accompanied with plans and specifications of the kind of fishway to be constructed in such dam; such notice shall be served in the same manner as a summons in the circuit court is served: provided, however, that no owner or owners of any dam shall be required to construct or repair such fishway, when, in the opinion of said commissioners, or a majority of them, high water or climatic conditions may render such work impracticable. Such fishway shall be kept open and in good repair for the free and uninterrupted passage of fish from the first day of March to the first day of June in each and every year; except, that in dams in or across streams or rivers containing any variety of brook trout only, such fishways shall be kept open from the first day of October to the first day of December of each year; and except that in dams used exclusively to hold water in lakes for storage or flooding purposes such fishways shall be kept open during the entire year."

When to be constructed. SECTION 3. Section 3 of chapter 461 of the laws of 1905 is hereby amended so as to read as follows: "Section 3. It shall be the duty of the owner or occupant of any dam or dams across any stream in this state and the owner or occupant of any dam hereafter constructed in or across any stream in this state, in which the commissioners of fisheries, under the provision of this act, have required a fishway to be constructed and maintained, to construct and maintain in such dam a fishway of the kind required by said commissioners, within six months after he shall have been served with notice as herein provided by the commissioners to construct and maintain such fishway."

Complaint; hearing; findings; appeal. SECTION 4. Any person or persons, firms or corporations aggrieved by any order of the commissioners of fisheries requiring or effecting the erection, construction or maintenance of any fishway of any kind in any stream in this state, may by filing a written application therefor with said commissioners of fisheries, have a public hearing before such commissioners at the county seat of the county in which said dam is located, at such time and place as may be fixed by them, not less than ten nor more than sixty days from the filing of such application, of which hearing at least ten days' notice in writing shall be given by registered mail to such applicant.

The commissioners of fisheries shall file their findings and decision in writing within thirty days after such hearing and

shall immediately thereafter transmit by registered mail to such applicant a copy of their said findings and decisions so made and filed as aforesaid. Any person or persons, firms or corporations feeling aggrieved by the findings and decisions of said commissioners of fisheries may within thirty days after the receipt of such findings and decision, appeal therefrom to the circuit court of the county wherein such dam is situated, by filing written notice of such appeal with said commissioners of fisheries, and the said commissioners of fisheries shall within ten days after the receipt of such notice of appeal, transmit all records and papers filed or used upon such hearing to the clerk of the circuit court of the county wherein such dam is located, who shall file the same, and such matter shall be noticed, tried and determined in said court as an issue of fact for the court and the court may require an issue to be joined between said commissioners of fisheries and such appellant, and such appeal shall be regarded as an action wherein the commissioners of fisheries are plaintiff and the person or persons, firms or corporations appealing are defendants. Any order made by such commissioners, either before or after an appeal is had shall be suspended during the pendency of any appeal from such order, and upon the filing with such commissioners of a certified copy of the judgment of any circuit court upon appeal from any such order the said commissioners shall make an order conforming to such judgment.

Penalty. SECTION 5. Section 4 of chapter 461 of the laws of 1905 is hereby amended so as to read as follows: "Section 4. Any owner or occupant of any dam or dams in or across any stream or river in this state who shall neglect or refuse to construct a fishway, of the kind required by the said commissioners, after having been duly notified as herein provided, or who shall refuse or neglect to maintain and keep the same in good repair, or who shall fail to keep such fishway open for the free and uninterrupted passage of fish during the time or times herein mentioned, shall forfeit to the state of Wisconsin a sum not less than twenty-five dollars nor more than one hundred dollars for each week that he shall fail or neglect to construct such fishway, after having been duly notified and the time limited herein for constructing such fishway has expired; or for each week that he shall fail to keep such fishway in good repair after having been duly notified by the commissioners of fisheries to make repairs, or for each week that he shall fail to keep such fishway open for the free and

uninterrupted passage of fish during the time or times such fishway is required to be kept open, under the provisions of this act; said penalty and the costs of suit to be recovered in a civil action brought in the name of the state of Wisconsin."

Duty of game wardens. SECTION 6. It is hereby made the duty of the game warden and his deputies to serve all notices issued by the commissioners of fisheries and perform such other services as the said commissioners may require, in the enforcement of the provisions of this act, without any further compensation than the regular per diem and expenses as are now paid to them.

Conflicting laws repealed. SECTION 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SECTION 8. This act shall take effect and be in force from and after its passage and publication.

Approved December 19, 1905.

No. 17, A.]

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CHAPTER 17.

AN ACT to amend chapter 362, laws of 1905, entitled "An act to regulate railroads and other common carriers in this state, create a board of railroad commissioners, fix their salaries, define their duties, prevent the imposition of unreasonable rates, prevent unjust discriminations, insure an adequate railway service, prescribe the mode of procedure and the rules of evidence in relation thereto, prescribe penalties for violations, and making an appropriation therefor."

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

SECTION 1. Amend section 14 of chapter 362 of the laws of 1905 by adding thereto a new subdivision as follows:

Refusal to establish joint rate. "C" Whenever the railroads shall refuse or neglect to establish a joint rate or rates