

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved July 12, 1911.

No. 81, S.]

[Published July 13, 1911.

CHAPTER 652.

AN ACT to amend section 1596, and to create section 1596a of the statutes, relating to the construction and maintenance of dams in or across navigable waters, and to create sections 1596—1 to 1596—76, both inclusive, of the statutes, relating to the granting of franchises authorizing the improvement of navigation and the development of hydraulic power created by such improvement, providing for a franchise fee therefor, and making an appropriation.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 1596 of the statutes is amended to read: Section 1596. 1. All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams, meandered or non-meandered, which are navigable in fact for any purpose whatsoever are hereby declared navigable * * * to the extent that no dam, bridge, or other obstruction shall be made in or over the same without the permission of the legislature; but this section shall not be construed to impair the powers granted by law to towns, counties, or cities to construct bridges over such rivers and streams. The consent of this state is hereby given to the acquisition by the United States of all lands and appurtenances in this state which have been or may be acquired by the United States for the purpose of erecting thereon dams, abutments, locks, lockkeeper's dwellings, chutes, or other structures necessary or desirable in improving the navigation of the rivers or other waters within and on the borders of this state, and the United States may hold, use, and occupy such lands and other property and exercise exclusive jurisdiction and control over the same subject to the right of this state to have civil and criminal process issued out of any of its courts executed within and upon said lands.

2. Any dam, bridge or other obstruction constructed or maintained in or over any navigable waters of this state in violation of the provisions of this section is hereby declared to be a public nuisance, and the construction of any such dam, bridge or other obstruction may be enjoined or its maintenance abated by action at the suit of the state or any citizen thereof,

3. Any person, firm, association of individuals, or corporation violating any of the provisions of this section shall forfeit for each such offense, and for each day that any such dam, bridge, or other obstruction is maintained or remains in or over, any such waters the sum of fifty dollars, the same to be collected in an appropriate action to be brought and prosecuted by the attorney general or by some other duly authorized person in behalf of the state.

4. It shall be the duty of the railroad commission to report to the governor any violation of this section, and the governor shall thereupon cause the attorney general, or some other person duly authorized by the governor to act in his stead, to institute proceedings against the violator as provided in subsections 2 and 3 of this section.

SECTION 2. There are added to the statutes seventy-seven new sections to read: Section 1596a. 1. No person, firm, association of individuals, corporation or municipality shall conduct or maintain or operate or use any dam or other improvements in or across any meandered or non-meandered stream in this state, navigable in fact for any purpose whatsoever, without having, holding, or obtaining a franchise from the state authorizing the construction or maintenance and operation or use of such dam or improvements.

2. Any dam or improvements constructed or maintained in or across any such stream in violation of the provisions of this section is hereby declared to be a public nuisance, and the construction of any such dam or improvements may be enjoined or its maintenance abated at the suit of the state or any citizen thereof.

Section 1596—1. The use of navigable waters for power developed under a franchise granted under the provisions of this act is hereby declared to be a public use.

Section 1596—2. All energy, developed or undeveloped, of the navigable waters of this state is subject to the control of the state for the public good.

Section 1596—3. The beneficial use and natural energy of the navigable waters of this state for all public uses are held by the state in trust for all of the people.

Section 1596—4. The state expressly reserves the right to manage, regulate and control, from time to time as provided in this act, the use and distribution of the power created, generated, or developed under a franchise granted under the provisions of this act, and to regulate, manage and control the level and flow of water in all navigable waters of this state.

Section 1596—5. 1. The term "railroad commission" as used in this act shall mean the railroad commission of Wisconsin.

2. The term "navigable waters" as used in this act shall mean all streams, rivers, lakes, and connecting waters in the state of Wisconsin, meandered or non-meandered, which are navigable in fact for any purpose whatsoever.

3. The term "franchise" as used in this act shall mean a grant of authority by the legislature, under the provisions of this act, to any person, firm, corporation or municipality to improve the navigation of navigable waters, including the right to construct and maintain any dam and improvements therein for said purpose, or for said purpose and for other lawful purposes, and the right to utilize under the provisions of this act any hydraulic power created and developed by virtue of said improvement.

4. The term "applicant" as used in this act shall mean any person, firm, corporation, or municipality applying to the railroad commission for a franchise to be granted as provided in this act.

5. The term "appropriator" as used in this act shall mean any person, firm, corporation, or municipality, their heirs, executors, administrators, successors, assigns, trustees, or receivers appointed by any court whatsoever, who have, hold, take or accept any franchise granted under the provisions of this act.

6. The term "improvements" as used in this act shall include any dam or dams constructed and maintained in navigable waters under a franchise granted pursuant to the provisions of this act for the improvement of navigation, together with all weirs, tunnels, races, flumes, sluices, pits, locks, chutes, boat hoists, marine railways, fishways, and other structures, machines, and devices necessary or essential for the development of hydraulic power and for the generation of mechanical energy or electrical energy, or both, constructed within or made a part of such dam or dams, and such machines, connections, regulation and transmission devices as may be found by the railroad commission to be necessary for the utilization of energy in connection with the proposed improvement; and all reservoir, flowage, and other rights and easements and all lands necessary and used under such franchise for the maintenance of such dam or dams and the structures and devices above enumerated.

7. The term "municipality" as used in this act shall mean any town, village, city, or county within this state.

Section 1596—6. Every franchise granted under the provisions of this act shall be granted for the purpose of improving the navigation of navigable waters, and shall include the right to construct and maintain any dam or improvements therein for

said purpose, or for said purpose and for other lawful purposes, and shall include the right to utilize under the terms, conditions and provisions of this act any hydraulic power created and developed by virtue of said improvement, and every such franchise shall contain and embrace all the terms, conditions and provisions of this act and all findings, orders, stipulations and rulings of the railroad commission made pursuant to the provisions of this act.

Section 1596—7. Any appropriator is hereby authorized and empowered, subject to the terms, conditions and provisions of this act, to utilize for any lawful purpose any hydraulic power created or developed by virtue of any improvement authorized by any franchise.

Section 1596—8. Any person, firm, corporation organized under the laws of this state or any municipality desiring to secure a franchise under this act shall file with the railroad commission a verified application which shall set forth and include the following:

(1) The name and location of the waters sought to be improved.

(2) The extent to which the navigation of such waters will be improved by the proposed improvement.

(3) The nature, the scope, and the manner of making said proposed improvement.

(4) A description, by metes and bounds, of the land upon which it is proposed to construct and maintain any dam or other improvements necessary for making the proposed improvement, and the value of such lands.

(5) A general description of any dam proposed to be constructed including the height thereof as measured from mean low water level, and the average head of water proposed to be maintained thereby, and a general statement as to the material to be used in the construction of any such dam and other improvements.

(6) If hydraulic power will be developed in connection with such improvement, the approximate amount of such development, and the use or uses to which it is proposed to put said power.

(7) The location of the nearest existing dam or dams in the waters proposed to be improved, and whether the same will be affected by the construction and maintenance of any dam or dams proposed to be constructed and maintained.

(8) A general map and profile on the scale of not less than one inch per thousand feet, showing the lands and the names of the owner or owners and the value thereof, that may be affected

by the construction and maintenance of any dam in connection with the proposed improvement, or by any flowage that may be caused thereby, and approximately the outline of such flowage.

(9) Such additional and other pertinent and relevant information as shall be prescribed by the railroad commission.

Section 1596—9. 1. Upon receiving such verified application, the railroad commission shall forthwith make such examination and investigation of the proposed improvement and the location thereof as shall be necessary, and shall then set a time and place for a hearing of such application, which time shall not be less than six weeks nor more than twelve weeks from the date of filing such application, and the place shall be at the city of Madison, or at some place in any county where such improvement or any part thereof is proposed to be made, if the railroad commission shall find the latter more convenient. The railroad commission shall thereupon give to the applicant a notice of the time and place of said hearing, which notice shall be published by the applicant at least once each week for six successive weeks preceding such hearing in one or more newspapers in each county in which such improvement or any part thereof is proposed to be made, and satisfactory proof of such publication shall be filed by the applicant with said railroad commission.

2. If no newspaper shall be published in any county in which the improvement or any part thereof is proposed to be located, the publications required by this act may be made in such manner and at such places as the railroad commission shall designate.

Section 1596—10. At such hearing, or any adjournment thereof the railroad commission shall carefully consider such application and shall hear such applicant in person or by counsel or agents in support thereof and any person, firm, corporation or municipality in person or by counsel or agents in opposition thereto, and upon demand of the applicant or any person, corporation or municipality appearing in opposition, take evidence and testimony orally or by deposition in support of the application or in opposition thereto and further shall take such testimony as is necessary to aid said railroad commission in finding the franchise value of a horse power, as defined in section 1596—36 of this act, and such testimony as is necessary to find the value, apart from and excluding any value due to any present or prospective franchise, of all lands taken, held, or acquired or to be taken, held, or acquired under the franchise and necessary in making or maintaining or to make and maintain the proposed improvement.

Section 1596—11. All provisions of sections 1797m—1 to 1797m—108, both inclusive, of the statutes, relating to the subpoenaing of witnesses, the production of books, documents, and papers, the administering of oaths, punishment for disobedience of an order of the commission or any commissioner, or of a subpoena, or for refusal of a witness to be sworn or to testify, witness fees, the payment thereof, taking depositions, the keeping of a record of the proceedings, the taking of testimony, transcribing copies of evidence and testimony, or relating to the procedure before said railroad commission not inconsistent with this act, shall apply to all proceedings hereunder.

Section 1596—12. 1. Upon the conclusion of the hearing of said application as above provided, said railroad commission shall carefully consider all the evidence submitted thereat and the facts ascertained by the examination and investigation provided for in section 1596—9 of this act, and if it shall appear that the proposed improvement will result in the improvement of navigation of the waters sought to be improved, that all dams and other improvements, as proposed to be constructed and maintained, will be adequate to promote, conserve, and protect all public rights in such waters and will not endanger the life, health, or property of the public, that the interests of the public will be better served by the construction, maintenance, and operation of such improvement than by any other, and, if it is proposed to develop hydraulic power in connection with such improvement, that the same will result in the efficient development thereof, the railroad commission shall so find, and the applicant is authorized to make such improvement, and a franchise therefor is hereby granted to such applicant. The railroad commission shall thereupon make and issue an order based upon and containing such findings and shall issue to such applicant a certificate evidencing the authority hereby conferred.

2. The railroad commission shall also, upon the conclusion of such hearing, from the testimony taken thereat and the facts ascertained by the examination and investigation of the proposed improvement, and in the manner provided in section 1596—36 of this act, find the franchise value of a horse power, and shall also find the value, apart from and excluding any value due to any present or prospective franchise, of all lands taken, held, or acquired, or to be taken, held, or acquired under the franchise and necessary in making or maintaining or to make and maintain the proposed improvement, and shall issue to such applicant an order containing such findings.

Section 1596—13. If upon the conclusion of such hearing and after a consideration of the facts ascertained by the exami-

nation and investigation provided for in section 1596—9 of this act, it shall appear that the proposed improvement will not result in the improvement of navigation of the waters sought to be improved, or that all dams and other improvements as proposed to be constructed and maintained, will not be adequate to conserve, promote and protect all public rights in such waters or will endanger the life, health, or property of the public, that the interests of the public will not be better served by the construction, maintenance, and operation of such improvement than by any other, and, if it is proposed to develop hydraulic power in connection with such improvement, that the same will not result in the efficient development thereof, the railroad commission shall so find, and the applicant is hereby denied authority to make such improvement, and the railroad commission shall refuse to grant a certificate of authority and shall issue an order to that effect and shall make such refusal a matter of record in the proceedings, stating their reasons for such refusal and shall give the applicant a copy thereof. If said certificate is refused no further proceedings shall be had before said railroad commission in the matter, but the application may be renewed after two years from the date of such refusal.

Section 1596—14. Any order or orders made upon any finding by the railroad commission pursuant to section 1596—12 or 1596—13 of this act shall be in force and shall be prima facie lawful and reasonable until finally found otherwise in an action brought for such purpose pursuant to the provisions of section 1596—15 of this act and in all actions under said section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that the order or orders of the railroad commission complained of are unlawful, or unreasonable, as the case may be.

Section 1596—15. 1. Any person, firm, corporation, or municipality in interest, being dissatisfied with any order of the railroad commission made upon any finding of the commission pursuant to section 1596—12 or section 1596—13 of this act, may commence an action in the circuit court for Dane county against the commission as defendant to vacate and set aside any such order on the ground that the same is unlawful or unreasonable, in which action the complaint shall be served with the summons.

2. The answer of the railroad commission to the complaint shall be served and filed within ten days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon ten days' notice to either party.

3. All such actions shall have precedence over any civil cause of a different nature pending in such court, and the circuit court

shall always be deemed open for the trial thereof, and the same shall be tried and determined as are other civil actions.

4. No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing.

Section 1596—16. 1. If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the railroad commission, or additional thereto, the court before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the railroad commission and shall stay further proceedings in said action for fifteen days from the date of such transmission.

2. Upon receipt of such evidence the railroad commission shall consider the same and may alter, modify, amend, or rescind the order or orders complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

Section 1596—17. 1. If the railroad commission shall rescind the order or orders complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or orders shall take the place of the original order or orders complained of, and judgment shall be rendered thereupon as though made by the railroad commission in the first instance.

2. If the original order or orders shall not be rescinded or changed by the railroad commission judgment shall be rendered upon such original order or orders.

Section 1596—18. Either party to said action, within sixty days after service of a copy of the order or judgment of the circuit court, may appeal to the supreme court. Where an appeal is taken the cause shall, on the return of the papers to the supreme court, be immediately placed on the state calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the state calendar.

Section 1596—19. In all actions brought pursuant to section 1596—15 of this act, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil processes shall execute any such process and shall receive such compensation therefor as may be prescribed by law for similar services.

Section 1596—20. Upon receiving an order from the railroad commission, as provided in section 1596—12 of this act, the

appropriator shall, before commencing any work of construction thereby authorized, submit to the railroad commission a complete map and profile on the scale of not less than one inch per thousand feet showing the lands that may be affected by the erection and maintenance of any dam in connection with the proposed improvement, or by any flowage that may be caused thereby, and the outline of such flowage, and such other hydrographic and topographic data as the commission may prescribe, and shall also file complete detailed plans and specifications for any dam or other improvements proposed to be constructed.

Section 1596—21. Upon receiving the map and profile and plans and specifications required by section 1596—20, the said railroad commission shall examine the same and shall hear the appropriator in support thereof, shall suggest and require modifications of the same or any part thereof, if in their judgment the public safety or welfare so demand, and shall investigate and determine that the proposed improvements and construction thereof will be adequate for securing and protecting the public safety in the maintenance and operation of said proposed improvement, and thereupon the said commission shall issue to said appropriator a written order approving said map and profile and plans and specifications as amended, if the same shall be amended, and the appropriator is hereby authorized to make such improvement and construct such improvements in accordance therewith.

Section 1596—22. Upon the completion of the construction of any improvements under the plans and specifications as approved by the railroad commission, the said appropriator shall, before operating the same, excepting for construction purposes, report the same to said railroad commission and said commission shall thereupon inspect and examine said improvements, or cause the same to be inspected and examined, and if it shall be found that the same have been constructed in accordance with said plans and specifications, as approved, said commission shall issue to said appropriator a written order authorizing it to operate the same, which order shall be presumptive evidence of the sufficiency of such construction. Said order shall specify in general terms the methods and conditions of such operation and it shall not be lawful for any such improvement or improvements to be operated till such order has been granted and obtained.

Section 1596—23. Every license, permit, or franchise authorizing the erection and maintenance of any dam in or across any navigable stream, heretofore granted and which by the terms

thereof or otherwise is subject to repeal, is hereby repealed, such repeal to take effect and be in force six months after the passage and publication of this act.

Section 1596—24. 1. Any person, firm, corporation, or municipality owning any franchise, license or permit from the state heretofore granted authorizing the maintaining of any dam or other improvements pursuant to such franchise, license, or permit repealed as provided in section 1596—23, desiring to obtain authority to continue the maintenance and operation of such dam and other improvements, shall, at any time within one year after the passage and publication hereof, file a written application with the railroad commission for a franchise granting such authority. Such application shall state the value of all lands used and useful and necessary for use in the maintenance of such dam and other improvements, and a general description of such dam and other improvements, and the amount of hydraulic power created thereby; provided that nothing in this act shall be construed as authorizing a lessee or anyone claiming under the grantee of a franchise, license, or permit, other than an assignee, trustee, or receiver thereof, to become an applicant under this section.

2. Upon the filing of such written application authority is hereby conferred upon such applicant to continue the maintenance of such dam and improvements for the purpose or purposes specified in the franchise, license, or permit granting authority to construct and maintain the same, and a franchise therefor, subject to all the terms, conditions, and provisions of this act, is hereby granted to such applicant. The railroad commission shall issue to such applicant a certificate evidencing the authority hereby conferred; provided that the railroad commission may, in the interest of the public rights in navigable waters and of the public safety and welfare order and require that any such dam or other improvements shall be strengthened and put in good repair, and compliance with such order and requirement shall be a condition precedent to the right to maintain and operate such dam and improvements under the franchise hereby granted, and provided, further, that authority to continue the maintenance of any dam or other improvements erected and maintained under any franchise, license or permit forfeited and terminated, or forfeitable under section 1775c of the statutes, or for non-user or misuser, or for any other reason, or under any other law of this state, shall not be granted under the provisions of this section.

3. If any person, firm, corporation, or municipality owning any franchise, license, or permit from the state heretofore

granted authorizing the maintaining of any dam or other improvements pursuant to such franchise, license, or permit repealed by section 1596—23, and not coming within the provisions of subsection 2 of this section, desires to obtain authority to maintain such dam or other improvements under a franchise granting authority to maintain the same for a purpose other than or additional to that specified in the franchise, license, or permit so repealed, and if such other or additional purpose is a purpose for which a franchise may be granted under this act, such person, firm, corporation, or municipality shall make application therefor as provided in section 1596—8, and a franchise containing all the terms, conditions, and provisions of this act may be granted as is provided in sections 1596—9 to 1596—22, both inclusive, hereof, and the railroad commission shall issue to any applicant obtaining a franchise hereunder a certificate evidencing the authority thereby conferred.

Section 1596—25. If any person, firm, corporation, or municipality, owning any franchise, license, or permit from the state heretofore granted authorizing the maintaining of any dam or other improvements in or across any navigable waters of this state under such franchise, license, or permit repealed as provided in section 1596—23, fails to apply for a franchise as provided in section 1596—24 and within the time therein specified, a franchise embodying all the terms, conditions, and provisions of this act, and authorizing the maintenance of such dam and other improvements, may be applied for and granted as provided in section 1596—8 to 1596—22, both inclusive, of this act, to any person, firm, corporation, or municipality applying therefor.

Section 1596—26. 1. On and after the day on which the repeal of any such franchise, license, or permit takes effect, no person, firm, corporation, or municipality shall exercise or attempt to exercise any powers, rights, or privileges under such franchise, license, or permit.

2. Any person, firm, or corporation violating any provision of this section shall forfeit for each such offense, and for each day of such violation, the sum of fifty dollars, the same to be collected in an appropriate action by the state, and any exercise or attempted exercise of any powers, rights, or privileges under any such repealed franchise may be enjoined at the suit of the state or any citizen thereof.

Section 1596—27. 1. If any franchise granted under this act shall be forfeited or otherwise terminated before the expiration thereof, the right to continue the improvement thereby author-

ized for the unexpired term shall be subject to be applied for. The manner of applying for and of obtaining a franchise to continue such improvement shall be governed by section 1596—24 of this act.

2. At the expiration of any franchise granted under the provisions of this act the right to continue improvement thereby authorized shall be subject to be applied for. The manner of applying for and of obtaining a franchise to continue such improvement shall be governed by sections 1596—8 and by 1596—9 to 1596—22, both inclusive, of this act.

Section 1596—28. 1. At the termination of any franchise granted under the provisions of this act, or of any franchise, license, or permit granted prior to the passage and publication of this act authorizing the erection and maintenance of any dam and other improvements in or across any navigable waters, by expiration, forfeiture, repeal, or otherwise, the improvements erected, maintained, held and enjoyed, and used and useful in connection with the improvement authorized by such franchise, license, or permit may be taken by any appropriator authorized to maintain such dam and other improvements under the provisions of this act, and said appropriator is authorized and empowered to acquire, by and through condemnation proceedings under the power of eminent domain, in the manner provided in section 1596—46 of this act and to hold title to all such improvements.

2. Provided that in condemnation proceedings under this section the retiring appropriator in accepting the franchise therefore granted to such appropriator shall be deemed to have agreed that any succeeding appropriator may acquire all lands and improvements acquired, erected, and maintained, or used or useful under the franchise of said retiring appropriator, by paying just compensation therefor, and that in determining such just compensation no allowance shall be made to such retiring appropriator for any increase in the value of any lands acquired or used and useful under such franchise, over and above the value of such lands at the time of the granting of such franchise, if the same were previously acquired, or at the time of acquisition, if the same were acquired subsequent to the granting of such franchise, and that no allowance shall be made for such franchise or any rights or privileges included therein.

Section 1596—29. No franchise granted pursuant to the provisions of this act shall become effective and be in force unless within ninety days after notice from the railroad commission, that the same has been granted, the applicant shall file with the railroad commission a written acceptance thereof.

Section 1596—30. Every franchise granted under the provisions of this act shall be granted for a term of twenty years, but the appropriator, or his or its successors or assigns, shall have a right of continuance of such franchise for two further and successive terms of ten years each upon filing an application therefor with the railroad commission, subject to the right of the state to readjust the franchise value of a horse power, hereinafter provided for, at the commencement of the first and second continuances.

Section 1596—31. Upon filing an application therefor at the conclusion of the twenty year period, the franchise granted to such appropriator shall be continued, subject to all the terms, conditions and provisions of this act, for a period of ten years, and the like filing of an application at the end of the first continuance shall continue the franchise, in a like manner, for an additional period of ten years.

Section 1596—32. Whenever there shall be any transfer or assignment of any franchise granted under this act, the same shall be in writing and a certified copy thereof shall, within ten days after the execution thereof, be filed with the secretary of state and with the railroad commission of Wisconsin, provided that no franchise granted hereunder shall be transferred or assigned to a foreign corporation; and provided further that no municipality shall transfer or assign any franchise granted hereunder nor make any contract or lease of any rights thereunder for a period longer than ten years.

Section 1596—33. Every franchise granted under the provisions of this act is accepted, taken, and held subject to all the terms, conditions, and provisions of such franchise and of this act and is so accepted, taken, and held in consideration of the powers, privileges, and prerogatives conferred by said franchise.

Section 1596—34. No substantial alterations or additions shall be made to any dam or other improvements constructed or maintained under any franchise granted under the provisions of this act without first obtaining an order authorizing such alterations or additions from the railroad commission. Such order shall be issued by the railroad commission after an investigation and a finding by said commission that the proposed alterations or additions will not impair the efficiency or sufficiency of such dam or other improvements.

Section 1596—35. 1. No appropriator shall use or utilize any dam or other improvements constructed or maintained under any franchise granted under the provisions of this act for any purpose or purposes other than or additional to those specified in such franchise.

2. Any appropriator desiring to use or utilize any such dam or other improvements for any purpose other than or additional to those specified in the franchise granting authority to construct or maintain the same shall make application therefor to the railroad commission as provided in section 1596—8 of this act, and a franchise granting such authority and containing all the terms, conditions, and provisions of this act may be granted to said appropriator as is provided in sections 1596—9 to 1596—22, both inclusive, hereof.

Section 1596—36. 1. Every appropriator during the life of his appropriation, as fixed by the franchise creating the authority to so appropriate, shall pay to the state of Wisconsin as a franchise fee, on or before the first day of February of each year, five per cent per annum of the franchise value of each and every horse power produced by the use of water power and utilized and put to beneficial use by the said appropriator during the year ending December 31, next preceding; provided that such franchise fee for each and every such horse power shall not be less than ten cents nor more than two dollars per horse power.

2. The franchise value of each horse power shall be fixed as nearly as may be, as the difference in cost of producing for use at the place of development or generation, a horse power by the use of the water power under consideration, and the cost of producing for use at such place in like quantities and on an equivalent basis a horse power by the use of any kind of fuel, provided that for all power transmitted from the place of development and generation the franchise value of a horse power shall be fixed as near as may be, as the difference in cost of producing and delivering to the place of utilization a horse power by the use of the water power under consideration, and the cost of producing and delivering at the same place in like quantities and on an equivalent basis a horse power by the use of any kind of fuel.

3. The franchise value of a horse power shall be fixed by the railroad commission and in fixing the same as provided in subsection 2 hereof, the railroad commission shall take into consideration on the one hand: the cost of machinery and the expense of installation and maintenance and the depreciation thereof, the cost of labor, the uniformity of the flow of the stream, the amount of hydraulic horse power developed and capable of development and put to beneficial use or capable of being put to such use, the load factor, the use or uses to which the power developed is to be or may be put, and all other relevant and material facts affecting the cost and value of the production and

delivery of the hydraulic horse power, and shall give to each its proper weight; and, on the other hand, the cost of machinery and the expense of installation and maintenance and the depreciation thereof, the cost of labor and fuel used in the production of a horse power by the use of any kind of fuel, and all other relevant and material facts affecting the cost and value of the production and delivery of the horse power by the use of any kind of fuel, and shall give to each its proper weight.

4. The railroad commission shall take as its basis for value, a horse power operating ten hours per day, and, for the purposes of this act, a horse power is hereby defined and declared to be five hundred fifty feet pounds of energy per second net horse power delivered at the place or places of utilization.

5. Such appropriator shall pay the annual franchise fee to the state treasurer to be placed in the general fund. The railroad commission shall annually, on or before the 15th day of January, notify each appropriator the amount of the franchise fee due to the state from said appropriator and shall certify a copy of such notification to the state treasurer.

Section 1596—37. The failure of any appropriator to pay the annual franchise fee provided for within ninety days after the same is due and payable shall cause a forfeiture of the franchise of such appropriator. Upon proper suit brought by the state such franchise shall be forfeited and terminated, and all rights thereunder shall thereupon be subject to reappropriation as provided in this act.

Section 1596—38. The state shall have a preference lien, second only to the lien for taxes, upon all property of the appropriator used in connection with any appropriation for the annual franchise fee herein provided for, and upon notice from the railroad commission to the governor, the state shall foreclose such lien by appropriate action brought for said purpose.

Section 1596—39. It shall be the duty of every appropriator to keep a correct daily record of the number of horse power daily put to beneficial use by said appropriator. It shall be the further duty of every appropriator to report once in each three months, viz., on the first day of April, July, October, and January, to the railroad commission, upon blanks to be furnished by said commission, the exact and correct number of horse power daily put to beneficial use by the said appropriator, stating the number of hours per day such horse power was put to beneficial use.

Section 1496—40. The railroad commission may prescribe the character of measuring instruments and devices to be used by any appropriator for the purpose of ascertaining facts required

by this act to be ascertained, and a reasonable standard of the accuracy thereof, and the methods by which said accuracy is to be determined. Said appropriator shall provide and use such instruments and devices and have the same tested accordingly.

Section 1596—41. Every franchise granted under the provisions of this act is granted subject to the express condition that the state, when it shall have the constitutional power, may at the termination of the twenty or either ten year period for which the franchise is granted, acquire, by purchase, lease, condemnation, or other manner provided by law, and all improvements constructed and maintained by any appropriator under the provisions of this act, and the basis of value for any and all such improvements shall be the same as in the case of acquisition of any such improvements by a municipality as provided and defined in section 1596—42 of this act.

Section 1596—42. 1. Any municipality may, at the termination of the twenty or either ten year period for which any franchise is granted, and in the manner provided in this section, acquire any improvements constructed and maintained by any appropriator under such franchise.

2. The compensation for any such improvements to be acquired by any municipality shall be determined by the railroad commission subject to the provisions of subsection 3 of this section, and in acquiring such property and in determining such compensation the procedure for acquiring the property of a public utility by a municipality, provided for in section 1797m—80 to 1797m—86, both inclusive, of the statutes, shall, in so far as applicable, govern and be followed.

3. Any appropriator by the acceptance of a franchise granted under the provisions of this act shall be deemed, by the acceptance thereof, to have agreed that any municipality or the state may acquire all dams and improvements acquired, erected, and maintained, or used or useful under the franchise of said appropriator by paying just compensation therefor, and that in determining such just compensation no allowance shall be made to such appropriator for any increase in the value of any lands acquired or used or useful under such franchise, over and above the value of such lands at the time of the granting of such franchise, if the same were previously acquired, or at the time of acquisition, if the same were acquired subsequent to the granting of such franchise, and that no allowance shall be made for such franchise or any rights or privileges included therein.

Section 1596—43. Any franchise granted pursuant to the provisions of this act shall be null and void unless the improvement thereby authorized be completed within three years from

the time when such franchise becomes effective and in force. The railroad commission may, however, upon good cause being shown, extend such time for an additional two years. Provided that no extension of time shall be granted unless it be shown that least one-third of the work of construction authorized by the franchise has been completed at the time of making application for such extension.

(Am. 1911, c. 664, s. 157.)

Section 1596—44. After such dam and other improvements are completed the same shall be maintained and operated for at least one-half the time during each six year period throughout the duration of the franchise authorizing the same, and the failure to maintain and operate the same continuously for a period of three years shall constitute an abandonment and surrender of the franchise, unless some maintenance and operation is prevented by the act of God or the public enemy.

Section 1596—45. The provisions of this act shall apply to all franchises granted authorizing the improvement of the navigation of any navigable waters lying between this and an adjoining state, provided that the franchise fee provided for in section 1596—36 of this act shall be computed upon fifty per cent of the horse power developed and utilized under the franchise granted from this and the adjoining state.

Section 1596—46. 1. Every appropriator shall, for the purpose of taking or flowing any lands or property for any improvement authorized by any franchise granted under this act, be subject to all the provisions, remedies, and liabilities, and shall be entitled to all the benefits, privileges, remedies, and provisions of chapter 146 of the statutes, which are applicable and not inconsistent with this act, but nothing contained in this section shall be taken to preclude said appropriator from acquiring title to or the right to use any and all such lands or property by purchase, lease, license, or by any usual method or means of acquisition of title by act of parties.

2. Also for the purpose of acquiring the necessary lands or easements or privileges in lands, so that the complete improvement under this act and any franchise granted hereunder may be carried out, such appropriator shall enjoy the rights granted to and conferred upon corporations by sections 1777a to 1777e, both inclusive, of the statutes.

Section 1596—47. 1. The improvement of the navigation of all navigable waters of this state, and the construction and maintenance of all improvements under this act, shall be under the supervision of the railroad commission. Such railroad commission or any member thereof or any person appointed by said

railroad commission for such purpose, shall, during the construction thereof and at all times, have free access to any and all parts of the premises, structures, and works necessary and constructed and maintained in connection with such improvement.

2. The railroad commission shall have power to regulate and control the level and flow of water in all navigable waters in this state, and may order and require monuments or benchmarks to be erected or may erect monuments or benchmarks upon which shall be designated the maximum and minimum level of water that may be maintained under any franchise or in any navigable waters of the state.

Section 1596—48. For the purpose of aiding and protecting navigation and other public rights in any navigable waters of this state, any dam authorized to be constructed and maintained in or across such waters, shall be constructed and maintained under the following provisions:

(1) When required by the railroad commission, every such dam shall be provided with suitable slides and chutes for the passage of logs and timber products, and such slides and chutes shall at all time be kept in good repair.

(2) If the water in or across which any such dam is constructed and maintained are navigable for purposes of commerce or for pleasure boats and crafts, every such dam shall, when required by the railroad commission, be equipped and maintained with a lock, boathoist, marine railway, or other efficient device of a size and construction to be approved by the railroad commission. Such lock, boathoist, marine railway, or other efficient device when constructed shall at all times be maintained in good repair and working order.

(Am. 1911, c. 604, s. 157.)

(3) When required by the railroad commission every such dam shall be provided with a good and sufficient fishway, and said fishway when constructed shall at all times be kept in good repair and open for the free and easy descent and ascent of fish.

(4) When required by the railroad commission every such dam shall be equipped and maintained with spillways or flood gates capable of permitting the passage through or over the same of any or all floods during freshets and during all seasons of the year.

(5) Subject to the approval of the railroad commission, there shall be erected and maintained by the owner thereof, two permanent monuments at every such dam marking the minimum and maximum heights to which the head of water may be maintained in accordance with the franchise.

Section 1596—49. During the continuance of any franchise granted pursuant to the provisions of this act, the appropriator shall keep and maintain all improvements in good repair and condition, and shall not wilfully or otherwise injure or destroy the same or any material part thereof.

Section 1596—50. 1. If any improvement, maintained under a franchise granted pursuant to the provisions of this act, shall be owned, leased, trusteeed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in an manner whatsoever so that the same form part of or in any way affect any combination, or shall be in any wise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy to limit the output of any hydraulic power or electric energy derived therefrom or in any manner or degree in restraint of trade in the generation, sale, or distribution of hydraulic power or electric energy derived therefrom, the franchise granted authorizing the erection and maintenance of said dam and the improvement of navigation and the development of hydraulic power by the appropriator, shall be forfeited to the state of Wisconsin by proceedings instituted by the state in the courts for that purpose.

2. Provided that nothing herein contained shall be so construed as to prohibit any appropriator from uniting or joining with any person, firm, or corporation in an adjoining state for the construction and maintenance of any dam in or across any navigable waters which in whole or in part are a boundary between this and such adjoining state, for the purpose of improving navigation of any such waters or developing hydraulic power or for the purpose of generating and transmitting for sale to the public any electrical energy derived from any hydraulic power created and developed by virtue of any such improvement.

Section 1596—51. Any appropriator developing hydraulic power under a franchise granted pursuant to the provisions of this act is authorized and required to lease or dispose of said power and any electrical energy derived therefrom to the public without discrimination and at a reasonable rate. However, said appropriator may retain and use as much of said hydraulic power and electrical energy as shall be reasonably necessary for its own purpose or purposes.

Section 1596—52. 1. The railroad commission shall have supervision over the sale and distribution of and may regulate and fix a reasonable rate to be charged for any and all hydraulic power resulting from any improvement authorized under any

franchise granted pursuant to the provisions of this act and for any and all electrical energy and mechanical power derived therefrom. In the exercise of such supervision and regulation and fixing of rates, said railroad commission shall have the rights, powers, and privileges conferred upon such commission by sections 1797m—1 to 1797m—108, both inclusive, of the statutes, and shall be governed in its procedure by said sections of the statutes, except as herein otherwise provided.

2. Any appropriator offering for sale or selling or leasing any hydraulic power resulting by reason of any improvement authorized under this act or any electrical energy or mechanical power derived therefrom shall be subject to all the provisions of sections 1797m—1 to 1797m—108, both inclusive, of the statutes, and shall enjoy all privileges and rights conferred upon public utilities by said sections of the statutes, and not inconsistent with or repugnant to the provisions of this act.

Section 1596—53. Upon complaint made against any appropriator by any mercantile, agricultural, or manufacturing society, or by any body politic or municipal organization, or by any twenty-five persons, firms, corporations, or associations, that the supply of hydraulic power of such appropriator is inadequate or cannot be obtained because of the unreasonable failure or refusal of such appropriator to develop a reasonable amount or all of the hydraulic power capable of development in connection with any improvement authorized by such franchise, or because such appropriator unreasonably fails or refuses to transform into electrical energy a reasonable amount of such power and transmit the same for sale to the public, the railroad commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting such service shall be entered by the railroad commission without a formal hearing.

Section 1596—54. The railroad commission shall, prior to such formal hearing, notify the appropriator complained of that a complaint has been made, and ten days after such notice has been given the railroad commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided.

Section 1596—55. The railroad commission shall give the appropriator complained of and the complainant ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the appropriator and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

Section 1596—56. 1. If upon such hearing and investigation it shall be found that for the reason or reasons set out in the complaint the supply of hydraulic power of any appropriator is inadequate or cannot be obtained, and if a showing be made at such hearing that public convenience and a necessity require it, the railroad commission shall have power to order such appropriator to develop and dispose of to the public all or any additional part of the hydraulic power capable of development in connection with any improvement authorized by the franchise granted to such appropriator and not used or necessary for its purposes, and may also, upon such showing, order that all or any part of such developed hydraulic power not used or necessary for the purpose of such appropriator be transformed into electrical energy and that the same be transmitted for sale to the public.

2. However, in no case shall any such appropriator be required to develop additional power or to transform and transmit any electrical energy when it appears that a reasonable return cannot be earned upon the total investment involved including the additional investment necessary for such additional development or for such transformation and transmission.

Section 1595—57. If upon such investigation the allegations of the complaint shall be found to be true, the expenses incurred by the railroad commission in making investigation may be assessed by the said commission against the appropriator complained of.

Section 1596—58. Whenever the railroad commission shall believe that public convenience and a necessity require the development of all the hydraulic power capable of development in connection with any improvement authorized by any franchise granted under this act, or the transformation of any or all of such hydraulic power into electrical energy and the transmission of the same for sale to the public, said commission may on its own motion summarily investigate the same, with or without notice.

Section 1596—59. If, after making such summary investigation, the railroad commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so summarily investigated, such commission shall furnish the appropriator interested a statement notifying such appropriator of the matters under investigation. Ten days after such notice has been given the railroad commission may proceed to set a time and place for hearing and investigation as hereinbefore provided.

Section 1596—60. Notice of the time and place for such hearing shall be given to the appropriator and to such other interested persons as the railroad commission shall deem necessary, as provided in section 1596—54, and thereafter procedure shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the railroad commission, relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

Section 1596—61. 1. If public convenience and a necessity require it, any appropriator maintaining any dam under a franchise granted under the provisions of this act shall develop any or all of the hydraulic power created by such dam and capable of development and shall transform any or all of such power, not reasonably necessary for the purpose or purposes of said appropriator, into electrical energy and shall transmit the same, or such part thereof as is not reasonably necessary for the purpose or purposes of said appropriator, for sale to the public.

2. Upon complaint made against any appropriator by any mercantile, agricultural, or manufacturing society, or by any body politic or municipal organization, or by any twenty-five persons, firms, corporations, or associations that public convenience and a necessity require that all or any part of the hydraulic power created by any such dam and capable of development be developed and that any or all of such developed power, not reasonably necessary for the purpose or purposes of said appropriator, be transformed into electrical energy and the same or any part thereof not reasonably necessary for the purpose or purposes of said appropriator, be transmitted for sale to the public, and that said appropriator unreasonably neglects and refuses to develop or transform and transmit such power, the railroad commission shall make such investigation as it shall deem necessary. But no order affecting the development or transformation and transmission of such power shall be made or entered by the railroad commission without a formal public hearing.

Section 1596—62. The railroad commission shall prior to such formal hearing, notify the appropriator complained of that a complaint has been made, and ten days after such notice has been given the railroad commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided.

Section 1596—63. The railroad commission shall give the appropriator complained of and the complainant ten days'

notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the appropriator and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

Section 1596—64. If upon such hearing and investigation the allegations of the complaint be found to be true, and if it be shown that public convenience and a necessity require it, the railroad commission shall have power to order such appropriator to develop all or any part of the hydraulic power created by any dam constructed and maintained by said appropriator under the provisions of this act, and to order that any or all of such developed power, not reasonably necessary for the purpose or purposes of said appropriator, be transformed into electrical energy and that all or any part thereof not reasonably necessary for the purpose or purposes of said appropriator, be transformed and transmitted for the sale to the public.

(Am. 1911, c. 664, s. 157.)

Section 1596—65. For the purpose of carrying into effect sections 1596—53 to 1596—64, both inclusive, of this act, the railroad commission shall have all the rights, powers, and privileges conferred upon said commission by sections 1797m—43 to 1797m—73, both inclusive, of the statutes, and shall be governed in its procedure by said sections of the statutes; and for such purpose every appropriator shall be subject to all the provisions of said sections 1797m—43 to 1797m—73, both inclusive, of the statutes, and shall enjoy all the rights and privileges conferred by said sections of the statutes upon public utilities against which complaint has been made as for inadequacy of service.

Section 1596—66. 1. Every appropriator shall furnish to the railroad commission, upon blanks to be furnished by said commission, all information required by it to carry into effect the provisions of this act, and shall make specific answers to all questions submitted by the railroad commission, and shall make any and all reports required by said commission.

2. Every such appropriator receiving from the railroad commission any blanks with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and said answer shall be verified under oath by the appropriator or his duly authorized representative and returned to the railroad commission at its office within the period fixed by said commission.

Section 1596—67. The railroad commission or any member of such commission or any person or persons employed by such commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any appropriator operating under a franchise granted pursuant to this act, and to examine under oath any agent or employe of such appropriator in relation to its business and affairs.

Section 1596—68. The railroad commission and each member of such commission for the purposes mentioned in this act shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents, and testimony.

Section 1596—69. Any appropriator operating under a franchise granted pursuant to this act shall be subject to all the duties and liabilities imposed by the statutes and laws of this state upon river improvement companies organized under the general law, and shall be entitled to all such reasonable tolls by reason of facilities or improvements furnished in aid of navigation, and shall be entitled to all rights and remedies in relation thereto as are given to river improvement companies by the statutes and laws of this state; but the tolls to be charged and collected shall at all times be subject to regulation and restriction by the railroad commission of Wisconsin in the same manner as railroad rates may be regulated by said commission.

Section 1596—70. The provisions of this act shall not apply to corporations heretofore organized in whole or in part to establish, maintain, or operate a system of water reservoirs for the purpose of regulating the flow of water in any river in the state. Nothing in this act shall be construed to authorize the establishment, maintenance, or operation of a system of reservoirs for the purpose of regulating the flow of water in any river of the state, nor shall the right or authority to establish, maintain, or operate such a system of water reservoirs be included in or made a part of any franchise.

Section 1596—71. If any appropriator operating under any franchise granted pursuant to the provisions of this act fails substantially to comply with any of the provisions of this act, or its franchise, or of law, or if any such appropriator fails to comply with any ruling, finding, stipulation, or determination of the railroad commission, the franchise of such appropriator shall be forfeited. The railroad commission shall notify the

governor of any such failure, and upon proper suit being brought by the state, such franchise shall be forfeited and all rights thereunder shall terminate and cease.

Section 1596—72. It is the intention of the legislature that sections 1596—1, 1596—2, 1596—3, 1596—23 and 1596—73 of this act, be construed to be separable or independent portions thereof, and that any one or all of said sections may fail or be declared invalid without affecting any other section or sections of the act; and it is the further intention of the legislature, that if any other separable or independent portion of this act, not necessary for the accomplishment of the main purposes sought to be accomplished thereby, fails, the remainder of said act shall not be affected by the failure of such separable or independent portion of said act.

Section 1596—73. Every body of navigable water created by any dam, and lawfully, continuously and adversely maintained for over twenty years, is hereby declared to be a permanent public body of water and shall be held in trust by the state for the use of all the people the same as other navigable waters of this state, and no such body of water shall be destroyed nor shall its navigability be impaired.

Section 1596—74. The franchise fee provided for in section 1596—36 of this act shall not be construed to be a tax or to be in lieu of or to in any manner affect any tax, state or local, authorized by law to be levied against the property of and collected from any appropriator.

Section 1596—75. The legislature reserves the right to at any time transfer the duties, powers, and privileges conferred by this act upon the railroad commission to any other commission or body or state agency as may be provided by law.

Section 1596—76. There is hereby appropriated out of any money in the treasury not otherwise appropriated a sum sufficient to carry out the provisions of this act, not exceeding the sum of ten thousand dollars.

(Am. 1911, c. 664, s. 157.)

SECTION 3. This act shall take effect and be in force from and after its passage and publication.

Approved July 12, 1911.