

No. 226, A.]

[Published July 1, 1919.

CHAPTER 441.

AN ACT to authorize the Apple River Improvement Company to construct, acquire, maintain, and operate a system of water reservoirs located on the headwaters of the Apple River and its tributaries, as described herein, for the purpose of producing a uniform flow of water in the Apple River and its said tributaries, and thereby improving the navigation and other uses of said stream 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:

SECTION 1. 1. Subject to the supervision and control hereinafter provided for, authority is hereby given unto the Apple River 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 Apple River and its direct or indirect tributaries above the south line of town thirty-three north, and for that purpose said grantee may construct, acquire, maintain and operate all such dams, booms, sluiceways, locks, and other structures in, along, or across any and all of said portions of said river and its said tributaries as may be necessary or reasonably convenient to accomplish the purposes of this grant, and may clean out, straighten, deepen, or otherwise improve any part of said river and its tributaries in order to improve the navigation thereof and to prevent injury to property bordering on said waters.

2. All franchises and all riparian rights and rights of flowage, either perfected or inchoate howsoever acquired, by any person or any corporation organized to improve the navigation for any purpose of said river or its tributaries, shall be and hereby are made assignable to the Apple River 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 have had before assignment to accomplish their original purpose.

SECTION 2. 1. The said authority is granted for the purpose of producing as nearly a uniform flow of water as practicable in the Apple River, 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 Apple River throughout its 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, for the purpose of utilizing said water for manufactory, electric utility, and other useful, purposes 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.

2. It shall be the duty of said grantee to so manage, operate and maintain all of its said reservoirs and other works that the purposes aforesaid shall be accomplished to the greatest practical extent and so that as nearly a uniform flow of water as practicable shall be maintained at all times and at all points on said Apple River; and during the times when it may be found impracticable to maintain at the same time such uniform flow of water throughout the entire length of said river, the upper portions of said river shall be given preference.

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 hereinabove provided for, the grantee 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 the compensation to be paid therefor, the said grantee may acquire title to any such lands and other property above specified, or the right to use the 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 statutes and laws amendatory thereof and supplemental thereto; but the said grantee 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 grantee before acquiring the title thereto or the right to the 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 damages to be caused by such taking or overflow, and the amount thereof shall be paid into the state treasury by said grantee before the taking or overflow shall occur.

SECTION 4. 1. In case said grantee shall improve any tributary of Apple River, 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 tributaries 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 statutes, and all amendments thereof, including the right of lien therein provided for, and shall be charged with all of the duties and obligations imposed upon such river improvement companies under like circumstances.

2. When said grantee 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 three hundred million 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 said Apple River, or any tributary of either of said rivers below any of said reservoirs, the actual use and operation of which is benefited 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.

3. 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 the actual use and operation of 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 said 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.

SECTION 5. 1. On or before June fifteenth and December fifteenth of each year, said grantee shall lay before the railroad commission of Wisconsin a statement showing all expenditures made or necessary to be made for the six months' period next preceding July first and January first, 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 by section 4 of this act, and such other information and statements as said 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 section 4 of this act. 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 the place where the railroad commission will hear objections to the proposed tolls. The railroad commission shall at the same time and place 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 first and January first 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 grantee.

2. Any person in interest, being dissatisfied with any order of the commission authorized to be made by 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 grantee by mail of the service of such 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.

3. 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 or judgment of the circuit court may appeal therefrom to the supreme court.

4. 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 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 the sale of the property affected thereby pursuant to such judgment of foreclosure.

SECTION 6. 1. No dam now in existence, or lands or flowage rights necessary for its maintenance and operation, owned by the owner of such dam, shall be purchased or operated by said grantee until the railroad commission of Wisconsin shall estimate and appraise the value thereof; and the appraised value so established shall be the true value thereof; and, in purchasing or acquiring such dam, lands, and flowage rights, the purchase price thereof shall in no case exceed the appraised value so placed upon said property by said railroad commission. No dam or reservoir not now in existence or heretofore authorized shall be constructed or created until the plans therefor, showing the form and location of the dam and the description of the lands to be overflowed thereby, shall have been submitted to the railroad commission of Wisconsin and approved thereby, after first having estimated and appraised the value of all lands required for the purposes of such dam and of lands to be overflowed

by means thereof; and said railroad commission may require the state conservation commission to assist it in ascertaining and determining the value of such lands. When the right to overflow any such lands, which said railroad commission may deem necessary to overflow in carrying out the purposes of this act, cannot be purchased or procured from the owner or owners thereof for the appraised value thereof as determined by said railroad commission, said grantee shall institute proceedings to procure such right by the exercise of the power of eminent domain under and in pursuance of sections 1777a to 1777d, inclusive, of the statutes. Such railroad commission shall cause the height to which the water may be raised by any dam to be indicated by permanent monuments and bench marks, and shall have supervision and control of the time and extent of the drawing of water from the reservoirs, and the power to compel the maintenance of all reservoirs established. They shall have power to employ at the expense of said grantee hydraulic engineers and other persons to assist them in obtaining information necessary to the proper discharge of their duties, such expense to be treated as a part of the cost of construction or maintenance and operation of the reservoir system.

2. No capital stock of said grantee 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 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 determine upon 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.

SECTION 7. All dams erected or acquired and maintained by the grantee shall be subject to all 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, shall be equipped with all necessary slides, chutes, guide booms, and piers for the passage of logs and timber over or through the same.

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.

SECTION 9. The right is hereby reserved to the legislature to repeal or amend this act at any time; in case the grantee shall not by the first day of January, 1923, have in operation reservoirs of a storage capacity of at least three hundred million 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 owner of all reservoirs and other works and property acquired by the grantee, 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, such actual value to be determined by the railroad commission of Wisconsin.

SECTION 10. Nothing contained in this act shall be construed so as to divest or release any right, title, or interest possessed or held by the state of Wisconsin that have been acquired by the state or may be acquired under or by virtue of any law of the United States.

SECTION 11. The rights and privileges herein granted shall be assignable subject to the duties and obligations herein imposed.

SECTION 12. This act shall take effect upon passage and publication.

Approved June 26, 1919.

No. 206, S.]

[Published July 1, 1919.

CHAPTER 442.

AN ACT to create section 1797t—13 of the statutes, relating to indeterminate permits.

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

SECTION 1. There is hereby created a new section of the statutes to read: Section 1797t—13. 1. Any interurban railway company operating under a license, permit or franchise granted in writing by a municipality, and which does not contain a provision prohibiting such surrender, shall upon filing at any time prior to five years before the expiration of such license, permit or franchise, or prior to January 1st, 1920, with the clerk of the municipality which granted such license, permit or franchise and with the commission a written declaration, legally executed,