

No. 22, S.]

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**CHAPTER 523**

AN ACT to repeal 195.08 (8); to renumber 87.04; to amend 29.29 (3), 31.14 (7), 184.04, 192.51, 194.20, 194.31, 195.03 (2), 196.49 (4), 196.80 (1) (a) to (3), 196.85 (1) and (2) and 227.015 (1); to repeal and recreate 194.24 and 194.35; and to create 30.02 (1) (ba), 31.50, 87.04 (2) and 195.08 (12) of the statutes, relating to sundry items to correct the statutes concerned with the functions of the public service commission.

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

SECTION 1. 29.29 (3) of the statutes is amended to read:

29.29 (3) **DELETERIOUS SUBSTANCES.** No person shall cast, deposit, or throw overboard from any boat, vessel or other craft into any waters within the jurisdiction of the state, or deposit or leave upon the ice thereof until it melts, any fish offal; or throw or deposit, or permit to be thrown or deposited, into any waters within the jurisdiction of the state any lime, tanbark, ship ballast, stone, sand, *except where permitted by s. 30.02 (1) (ba)*, slabs, decayed wood, sawdust, sawmill refuse, planing mill shavings, or any acids or chemicals or waste or refuse arising from the manufacture of any article of commerce, or any other substance deleterious to game or fish life other than authorized drainage and sewage from municipalities and industrial or other wastes discharged from mines or commercial or industrial or ore processing plants or operations, through treatment and disposal facilities installed and operated in accordance with plans submitted to and approved by the committee on water pollution under ch. 144, or in compliance with orders of that committee. Any such order shall be subject to modification by subsequent orders.

SECTION 2. 30.02 (1) (ba) of the statutes is created to read:

30.02 (1) (ba) A riparian owner may place a layer of sand or other similar material on the bed of the lake adjacent to his property for the purpose of improving recreational use upon obtaining approval as herein stated. An application for approval to put sand or other similar material on the bed of a lake for such purpose shall be made to the public service commission. The commission shall thereupon notify the conservation director of such application, and the latter shall cause an inspection to be made of such proposal and location involved, and report in writing to the public service commission whether it will materially impair navigation or be inconsistent with the public interest. Thereafter the public service com-

mission may disapprove such application in event it finds the proposed work will materially impair navigation or be detrimental to the public interest. If the commission does not disapprove within 10 days after receipt of the report of the conservation director, approval is deemed granted. Applicant shall be notified by mail as to the manner in which his application is disposed of.

SECTION 3. 31.14 (7) of the statutes, is amended to read:

31.14 (7) On receipt of the application, the commission shall set the application for a public hearing, notice of which shall be given by publication and by mailing a copy of the notice, as provided in s. 31.06, to every person upon whose land any part of the canal or other structures will be located *to the clerk of the town, village or city and county in which the diversion will take place, the clerk of the town next downstream and the clerk of any village or city through which the stream runs and which is adjacent to said municipalities in which the diversion takes place, and by posting the notice in 5 public places in each of said towns, villages or cities.*

SECTION 4. 31.50 of the statutes is created to read:

31.50 GENERAL PROVISION FOR NOTICE AND HEARING. In any proceeding under chs. 30 or 31 where a hearing is required by statute and there is no specific provision as to the time and manner of giving notice thereof, the commission shall, not less than 10 days before such hearing, mail a written notice of such hearing to the clerk of each county, town, city or village directly affected thereby, and may give such further or other notice as it deems proper.

SECTION 5. 87.04 of the statutes is renumbered 87.04 (1).

SECTION 6. 87.04 (2) of the statutes is created to read:

87.04 (2) If the petition alleges that the proposed project will be located wholly upon land owned by the petitioners, that the stream affected is nonnavigable, or if navigable in fact, is not navigable for any substantial commercial or major recreational purposes, that the project is required by public health, safety, convenience or welfare and that the petitioners desire to construct and operate the project as a co-operative enterprise, the commission may hear the petition upon due notice to the petitioners and to the town clerk of each town in which the project is located. If the commission finds that the allegations of the petition are true, it may authorize the petitioners to proceed with the construction and operation of the project subject to plans to be approved by the commission and all other procedural requirements of this chapter may thereafter be omitted, provided that the petitioners shall be jointly and severally liable for any damage to the property of others resulting from said project.

SECTION 7. 184.04 of the statutes is amended to read:

184.04 No securities shall be issued by any public service corporation \* \* \* *except* for money, property or services actually received by it. The amount of money, and the value of the property or the services to be so received shall be: (a) in case of stock having a par value, not less than the par value thereof; (b) in case of stock having no par value, not less than the amount specified in the commission's certificate of authority as the selling price of such stock; *and* (c) in case of evidences of indebtedness \* \* \*, such sum as the commission may determine to be a reasonable price, but in any event not less than 75 per cent of their face value \* \* \*. The limitations of this section shall not apply to the sale of evidences of indebtedness of a public service corporation by way of enforcement of a

pledge of such evidences of indebtedness, made by the corporation pursuant to a certificate of authority issued by the commission, as security for lawful indebtedness of the corporation; but in all such cases the instrument of pledge shall contain a provision to the effect that none of the pledged securities shall be sold or become the absolute property of the pledgee, either directly or indirectly, except at public sale, notice whereof shall be published once a week for at least 3 weeks prior thereto in at least one newspaper of general circulation published in the English language in the place where such sale shall take place, and further to the effect that the sale shall not be made below the price fixed therefor by the commission in its certificate authorizing the pledging of such securities.

SECTION 8. 192.51 of the statutes is amended to read:

192.51 No person or corporation shall have, construct or operate any railroad or bridge of any kind across the bay of Superior, between Minnesota Point, in the state of Minnesota, and the opposite shores. Every railroad corporation which \* \* \* *constructs* or \* \* \* *operates* any railroad or railroad bridge across the St. Louis river or bay, at or above Connor's Point, shall, at some point in Superior, on the navigable water of the bay of Superior, between Namadji river and Connor's Point, establish and maintain a depot and construct and forever maintain proper tracks and sidetracks, docks, piers, warehouses and freight houses and depot accommodations suitable and convenient for the receipt, transfer or shipment of all freights and the general business of railroads; and shall furnish and maintain at such point facilities for such receipt, transfer, shipment and railroad business equal in all respects to the facilities which said corporation may have and maintain at any port in Minnesota, on or upon the St. Louis river or bays of St. Louis or Superior. \* \* \* Every act or charter heretofore passed granting any right to cross the St. Louis river shall be held subject to the foregoing provisions.

SECTION 9. 194.20 of the statutes is amended to read:

194.20. Motor carriers operating in interstate and foreign commerce shall obtain certificates and licenses, amendments thereto, and approval of the assignment thereof, as provided in ss. \* \* \* 194.23, 194.25 and 194.34, but the issuance thereof shall not be predicated upon findings in respect to public convenience and necessity. Certificates, licenses, amendments thereto and approval of assignments thereof which involve operations in interstate and foreign commerce may be denied by the commission if it finds that the record and experience of the applicant evinces a disposition to violate or evade the laws or regulations of the state applicable to the operations proposed by him.

SECTION 10. 194.24 of the statutes is repealed and recreated to read:

194.24 APPLICATION; FORM. (1) Applications for certificates shall be verified, written, and in conformity with commission requirements as to form and content.

(2) Applications for motor vehicle permits shall be verified, written and in conformity with the requirements of the commissioner of the motor vehicle department as to form and content.

SECTION 11. 194.31 of the statutes is amended to read:

194.31 The *public service commission and the commissioner* of the motor vehicle department, or any person employed by \* \* \* *either of them*, shall, upon demand, have the right to inspect the books and papers of any common motor carrier of property or of passengers and to examine under oath any officer, agent or employe of such carrier in relation to its business and affairs; provided that any person other than said *com-*

*mission or commissioner who shall make such demand shall produce his authority under the hand and seal of the commission or of the department.*

SECTION 12. 194.35 of the statutes is repealed and recreated to read:

194.35 APPLICATION; FORM. (1) Applications for contract motor carrier licenses shall be verified, written and in conformity with commission requirements as to form and content.

(2) Applications for contract motor carrier permits shall be verified, written and in conformity with the requirements of the commissioner of the motor vehicle department as to form and content.

SECTION 13. 195.03 (2) of the statutes is amended to read:

195.03 (2) The commission may *upon its own motion* initiate and investigate and order a hearing upon \* \* \* *such notice as it deems proper, unless a statute prescribes in a particular case a specific manner of giving notice,* in every case in which it is authorized to investigate \* \* \* and hear upon complaint or petition \* \* \* *or in which it is authorized to investigate or act without complaint or petition* and may exercise therein the same jurisdiction as upon complaints filed. *The authority herein conferred extends to all matters within the jurisdiction of the commission in whatever chapter of the statutes set forth.*

SECTION 14. 195.08 (8) of the statutes is repealed.

SECTION 15. 195.08 (12) of the statutes is created to read:

195.08 (12) The word "schedules" as used in this section does not include "time tables."

SECTION 16. 196.49 (4) of the statutes is amended to read:

196.49 (4) In such general or special order the commission may provide that no such project as herein described shall proceed until the commission has certified that public convenience and necessity require such work; but, such general or special order shall not require such certificate for the completion of the construction and installation of plants and facilities upon which construction work has begun prior to June 7, 1931 or for which contracts may have been entered into prior to such date. The commission may refuse such certificate if it appears that the completion of such project: (a) will substantially impair the efficiency of the service of such public utility; (b) provides facilities unreasonably in excess of the probable future requirements; or (c) will, when placed in operation, add to the cost of service without proportionately increasing the value or available quantity thereof unless the public utility shall waive consideration by the commission, in the fixation of rates, of such consequent increase of cost of service. The commission shall have power to issue a certificate for such project or for such part thereof as complies with the requirements of this section, or the commission may attach to the issuance of its certificate such terms and conditions as will insure that the project meets the requirements of this section. *The certificate issued, hereunder, shall not be a condition precedent to the exercise of eminent domain under ch. 32.*

SECTION 17. 196.80 (1) (a) to (3) of the statutes are amended to read:

196.80 CONSOLIDATION OF UTILITIES. (1) (a) Any 2 or more public utilities \* \* \* may consolidate with each other.

(b) Any public utility \* \* \* may acquire the stock of any other public utility or any part thereof.

(c) Any public utility \* \* \* owning all the stock of any other public utility \* \* \* may file in the office of the secretary of state a certificate of such ownership, in its name and under its corporate seal, signed by its

president or a vice president and its secretary or treasurer, and setting forth a copy of the resolution of its board of directors to merge such other corporation and to assume all of its obligations, and the date of the adoption of such resolution. Thereupon all of the estate, property rights, privileges and franchises of such other corporation shall vest in and be held and enjoyed by such possessor corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such possessor corporation, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The possessor corporation shall be deemed to have assumed all the liabilities and obligations of the merged corporation, and shall be liable in the same manner as if it had itself incurred such liabilities and obligations. The possessor corporation may relinquish its corporate name and assume in place thereof the name of the merged corporation by including a provision to that effect in the resolution of merger adopted by the board of directors and set forth in the certificates of ownership and upon the filing of such certificate the change of name shall be complete.

(d) *Any public utility may consolidate or merge, in the manner provided by sub. (1) with any Wisconsin corporation substantially all of whose assets consist of the entire stock of such public utility. The total of the resulting securities outstanding of the possessor corporation, if not theretofore authorized pursuant to ch. 184, shall require such authorization as a condition precedent to such merger.*

(e) Any public utility \* \* \* may sell, acquire, lease or rent any public utility plant or property constituting an operating unit or system.

(2) Nothing in this section shall be construed as affecting or limiting the operation of ss. 197.01 to 197.10 or of ss. 66.06 to 66.078 \* \* \*.

(3) Application for the approval and consent of the commission shall be made by the interested public utility \* \* \*, and shall contain a concise statement of the proposed action, the reasons therefor and such other information as may be required by the commission. Upon the filing of such application the commission shall investigate the same, with or without public hearing, and in case of a public hearing upon such notice as the commission may require, and if it shall find that the proposed action is consistent with the public interest it shall give its consent and approval in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property \* \* \* and assets of the corporation to be acquired or merged.

SECTION 18. 196.85 (1) and (2) of the statutes are amended to read:

196.85 (1) Whenever the commission in a proceeding upon its own motion, on complaint, or upon an application to it \* \* \* deems it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make appraisals of the property of any public utility, power district or railroad or to render any engineering or accounting services to any public utility, power district or railroad, such public utility, power district or railroad shall pay the expenses reasonably attributable to such investigation, appraisal or service. The commission shall ascertain such expenses, and shall render a bill therefor, by \* \* \* mail, to the public utility, power district or railroad, either at the conclusion of the investigation, appraisal or services, or \* \* \* during its progress, which bill shall constitute notice of said assessment and demand of payment thereof. Upon bill so rendered such public utility, power district or railroad shall, within 30 days after the mailing thereof pay to the commission the amount of the special expense for which it is billed, and such payment when made shall be credited to the appropriation to the commission in s. 20.660 (41). The total amount, in any one calendar

year, for which any public utility, power district or railroad shall become liable, by reason of costs incurred by the commission within such calendar year including charges under s. 184.10 (2), shall not exceed four-fifths of one per cent of its gross operating revenues derived from intrastate operations in the last preceding calendar year. Where, pursuant to this subsection, costs are incurred within any calendar year, which are in excess of four-fifths of one per cent of such gross operating revenues, the excess costs shall not be chargeable as part of the remainder under sub. (2) \* \* \* but shall be paid out of the general appropriation to the public service commission. Nothing herein contained shall prevent the commission from rendering bills in one calendar year for costs incurred within a previous year.

(2) (a) The commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures during such year which are reasonably attributable to the performance of its duties relating to public utilities and power districts under chs. 184, 196 and 198, and shall deduct therefrom all amounts chargeable to public utilities and power districts under sub. (1) \* \* \* and s. 184.10 (2). The remainder shall be assessed by the commission to the several public utilities and power districts in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. Such assessment shall be paid within 30 days after the bill has been mailed \* \* \* to the several public utilities and power districts, which shall constitute notice of said assessment and demand of payment thereof. When paid said assessment shall be credited to the appropriation made in s. 20.660 (41). The total amount which may be assessed to the public utilities and power districts, under authority of this subsection, shall not exceed one-fifth of one per cent of the total gross operating revenues of such public utilities and power districts, during such calendar year, derived from intrastate operations.

(b) The commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures during such year which are reasonably attributable to the performance of its duties relating to railroads, as defined in s. 195.02, under ch. 184, 190, 191, 192, 193, 195 and 196, and shall deduct therefrom all amounts chargeable to railroads under \* \* \* sub. (1) and s. 184.10 (2). The remainder shall be assessed by the commission to the several railroads in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. Such assessment shall be paid within 30 days after the bill has been mailed \* \* \* to the several railroads, which bill shall constitute notice of said assessment and demand of payment thereof. When paid said assessment shall be credited to the appropriation made in s. 20.660 (41). The total amount which may be assessed to the railroads under authority of this subsection shall not exceed two-fifths of one per cent of the total gross operating revenues of such railroads, during such calendar year, derived from intrastate operations.

SECTION 19. 227.015 (1) of the statutes is amended to read:

227.015 (1) Except where the right to petition for a rule is restricted by statute to a designated group or except where the form of procedure for such petition is otherwise prescribed by statute, any municipality, corporation or any 5 or more persons having an interest in a rule may petition an agency requesting the adoption, amendment or repeal of such rule.

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