

No. 49, A.]

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CHAPTER 568

AN ACT to amend 31.01 (3), 31.05 (3), 31.06 (3), 31.08, 31.13 (2), 31.21 (1) and 31.38 (1), (2), (4) and (5); and to create 31.14, 31.185 and 31.38 (6) of the statutes, relating to the maintenance and abandonment of dams.

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

SECTION 1. 31.01 (3) of the statutes is amended to read:

31.01 (3) "Permit", unless the context otherwise requires, means legislative permission granted under s. 31.06 to construct, operate and main-

tain a dam in or across navigable waters, or under s. 31.08 to continue the operation and maintenance of any dam so situated which was constructed before such legislative permits were required.

SECTION 2. 31.05 (3) of the statutes is amended to read:

31.05 (3) In case the application is for a permit to construct, operate and maintain a dam for a private purpose * * *, *proof satisfactory to the commission that the * * * applicant owns or has an enforceable option to purchase the described dam site and at least 65 per cent of the land to be flowed, or the flowage rights on at least 65 per cent of such land. This subsection shall not apply to a person who has the power of eminent domain.*

SECTION 3. 31.06 (3) of the statutes is amended to read:

31.06 (3) At such hearing or any adjournment thereof the commission shall consider the application, and shall take evidence offered by the applicant and other persons in support thereof or in opposition thereto, may require the amendment of the application, and if it * * * *appears* that the construction, operation or maintenance of the proposed dam will not materially obstruct existing navigation or violate other public rights and will not endanger life, health or property, the commission shall so find and a permit is hereby granted to the applicant, *provided the commission also finds that the applicant has complied with s. 31.14 (2) or (3) and, where applicable, with s. 31.05 (3), based on the commission's own estimate of the area of the flowage.* The enjoyment of natural scenic beauty is declared to be a public right to be considered along with other public rights and the economic need of electric power for the full development of agricultural and industrial activity and other useful purposes in the area to be served. In considering public rights to the recreational use and natural scenic beauty of the river, the commission shall investigate the potentialities of the lake and lake shore created by the flowage and shall weigh the recreational use and scenic beauty thereof against the known recreational use and scenic beauty of the river in its natural state, and the commission shall further weigh the known recreational use and scenic beauty of the particular section of river involved against the known recreational use and scenic beauty of other sections of the same river and other rivers in the area remaining in their natural state (without regard to plans of other dams subsequently filed or to be filed); if it appears that the river in its natural state offers greater recreational facilities and scenic value for a larger number of people than can by proper control of the flowage level be obtained from the use of the lake and lake shore and that the remaining sections of the river and other rivers in the area in their natural state provide an insufficient amount of recreational facilities and scenic beauty, and if it further appears that the economic need of electric power is less than the value of the recreational and scenic beauty advantages of such river in its natural state, the commission shall so find and the permit be denied, provided that in the case of a dam or flowage located outside the boundaries of a state park or state forest the commission shall accept the findings of the county board * * * provided for in sub. (4), if made within 50 days after notice to the county clerk * * * as provided in sub. (1) and concurred in by all county boards in which the proposed dam and flowage created thereby are located, unless such findings of the county board * * * are contrary to the preponderance of the evidence introduced before the commission.

SECTION 4. 31.08 of the statutes is amended to read:

31.08 Upon receipt of an application under s. 31.07 procedure shall be had substantially as required by s. 31.06, and if the commission * * * *finds* that such operation and maintenance does not materially obstruct existing

navigation or violate other public rights and will not endanger life, health or property, a permit is hereby granted to the applicant, *provided the commission also finds that the applicant has complied with s. 31.14 (2) or (3).*

SECTION 5. 31.13 (2) of the statutes is amended to read:

31.13 (2) Upon receipt of an application under this section procedure shall be had substantially as required by s. 31.06; and if the commission * * * *finds* that the dam, raised or enlarged or rebuilt, or rebuilt, enlarged and raised in accordance with the application, will not materially obstruct existing navigation or violate other public rights, and will not endanger life, health or property, *and that the applicant has complied with s. 31.14 (2) or (3),* permission is hereby granted to raise or enlarge or rebuild, or rebuild, enlarge and raise the same in accordance with the application.

SECTION 6. 31.14 of the statutes is created to read:

31.14 PROOF OF ABILITY TO MAINTAIN DAMS REQUIRED.

(1) It is the policy of this section to preserve public rights in navigable waters, including those created by dams, and to provide a means of maintaining dams and the developments which have been made adjacent to the flowage of such dams.

(2) Except as provided in sub. (3), a permit shall not be granted under s. 31.06, 31.08 or 31.13:

(a) Unless the applicant furnishes to the commission proof of ability to operate and maintain the dam in good condition, either by the creation of a special assessment district under ss. 31.38 and 66.60, or by any other means which in the commission's judgment will give reasonable assurance that the dam will be maintained for a reasonable period of time not less than 10 years; or

(b) If a majority of the municipalities in which 51 per cent or more of the dam or flowage is or will be located files with the commission, prior to the granting of the permit, their objections to the granting of such permit in the form of resolutions duly adopted by the governing bodies of such municipalities.

(3) Subsection (2) does not apply if the applicant complies with each of the following requirements:

(a) Furnishes proof satisfactory to the commission that he owns or has an enforceable option to purchase all the land which is or will be flowed by the impoundment, together with the shore line and an immediately adjacent strip of land at least 60 feet in width, but the commission may in a particular case permit a narrower strip where the 60-foot minimum is impractical and may, in furtherance of the policy stated in sub. (1), require ownership of a wider strip.

(b) Files with the commission a writing in such form as the commission requires in which he agrees that following the initial filling of the proposed pond he will not convey the dam to another without first obtaining commission approval. The commission may require from an applicant who does not have the power of eminent domain a bond or other reasonable assurances that he will adhere to such agreement.

(c) Furnishes proof satisfactory to the commission that he has dedicated or will dedicate a parcel of land for public access to the impounded waters.

(4) No person shall assume ownership of any dam after [the effective date of this act, 1961] without first complying with sub. (2) or (3). Every transfer of the ownership of a dam made without so complying is void unless a permit to abandon the dam has been granted or unless the transfer occurred by operation of law. Every person who accepts ownership by operation of law is subject to the requirements of this chapter.

(5) For the purpose of implementing the policy stated in sub. (1), the commission may by rule require all or specified classes of persons operating a dam for profit to create a fund or reserve to be used for major repairs, reconstruction or removal of the dam when necessary. Such rules shall prescribe the manner in which such fund or reserve is to be created, maintained and expended. This subsection shall not apply to a person who has the power of eminent domain.

SECTION 7. 31.185 of the statutes is created to read:

31.185 PERMITS TO ABANDON DAMS. (1) No owner of any dam shall abandon or remove or alter or transfer ownership of such dam without first obtaining a permit therefor from the commission.

(2) An application for a permit to abandon, remove, alter or transfer ownership of a dam shall be made to the commission upon forms prescribed by it and shall contain the owner's name and address, a brief description of the dam and its location, and such other information as the commission requires for the purpose of enabling it to act on the application.

(3) Upon receipt of an application for such a permit, the commission shall fix a time and place for a public hearing thereon and shall give written notice of such hearing to the conservation department and to the clerk of each municipality in which the dam and flowage are located. The commission may give such additional notice as it deems necessary and may require the applicant to give notice of the hearing substantially as provided in s. 31.06 (2) with respect to hearings on applications for construction of dams.

(4) Prior to the hearing the commission shall have its staff make its own investigation of the dam and, on the basis of such investigation, shall make recommendations as to the type of requirements, if any, which it would impose on the applicant under sub. (5) as a condition to granting the permit. Such recommendations shall be presented at the hearing. If no one registers opposition to the application at the hearing, the commission shall grant the permit, subject to such conditions as it deems necessary under sub. (5). If someone registers opposition to the abandonment at the hearing and such opposition is not withdrawn, the commission shall defer action on the application for a period of 120 days after the hearing. Within a reasonable time after the expiration of such period, the commission shall deny the permit, or grant the permit, subject to such conditions as it imposes under sub. (5), unless, within such 120-day period, one or more municipalities or other persons or associations have agreed to acquire ownership of the dam and have furnished satisfactory proof of intent to comply with s. 31.14 (2) or (3).

(5) As a prerequisite to the granting of a permit under this section, the commission may require the applicant to comply with such conditions as it deems reasonably necessary in the particular case to preserve public rights in navigable waters, to promote safety, and to protect life, health and property.

SECTION 8. 31.21 (1) of the statutes is amended to read:

31.21 (1) No transfer or assignment of any permit granted under s. 31.06 or * * * 31.08 shall be * * * of any effect whatsoever unless * * * *it is* in writing and a certified copy thereof * * * within 10 days after the execution thereof, * * * *is* filed with the commission and unless such transfer or assignment is approved in writing by the commission; and no such transfer or assignment shall be approved by the commission except after an investigation and a finding that the transfer or assignment is not made or intended to be made for a purpose or to create a condition prohibited by s. 31.22 *and that the transferee or assignee has complied with s. 31.14 (2) or (3).* No permit shall be transferred or assigned to a foreign

corporation, nor shall any permit granted to a municipality be assigned or transferred to any person * * *, otherwise than as security for a loan made in good faith and concurrently with and as consideration for such transfer or assignment, and no foreign corporation shall have power to acquire title to any such permit, nor shall any person * * * have power to acquire title to a permit granted to or acquired by a municipality, otherwise than in the enforcement of such security, and in no case shall any such foreign corporation hold title to or operate under any such permit for a period longer than 3 years.

SECTION 9. 31.38 (1), (2), (4) and (5) of the statutes are amended to read:

31.38 (1) Every municipality may, subject to this chapter, authorize the *acquisition*, construction, maintenance or repair of dams across any lake or stream adjoining or within the limits of such municipality, and may locate such dam within or without such limits.

(2) Whenever it is deemed necessary to *acquire*, construct, *maintain* or repair any such dam, a plan * * * *therefor*, with specifications and cost estimates, shall be prepared and presented to the governing body of the municipality for adoption. *Cost estimates may include the estimated cost of maintenance for a period of years.* When * * * adopted by the governing body, the plan shall, where required, be submitted to the public service commission or proper officer of the United States for approval. No work shall be done in pursuance of such plan until it has been so approved.

(4) The municipality shall proceed in accordance with s. 66.60 to make special assessments to property on account of benefits resulting to the property from the improvement mentioned in sub. (2) *or from the acquisition and maintenance of a dam.* If the excess of benefits over damages accruing to property within the assessment district is not sufficient to pay the cost of the improvement, the municipality * * * *may* pay the balance, either out of its general fund or out of any special fund created for that purpose. The municipality may issue its negotiable bonds, as provided in ch. 67, to pay for such improvement. *The commission upon request of a municipality shall assist in engineering, surveying and determination of charges necessary in establishing special assessment districts under this section, cost of which shall be advanced by the requesting municipality and later charged against the various parcels of the special assessment district in direct proportion to the assessed benefits of each parcel in the district.*

(5) Whenever 2 or more municipalities propose to co-operate in * * * *acquiring, constructing, maintaining or repairing a dam,* their governing bodies shall first meet and adopt a method of proceeding and a plan of apportioning to each its share of the entire cost. Such method of proceeding and plan of apportionment shall be embodied in a resolution adopted by the governing bodies of the co-operating municipalities acting jointly and later such resolution shall be adopted by each of the governing bodies acting separately.

SECTION 10. 31.38 (6) of the statutes is created to read:

31.38 (6) Whenever a county or town acts under this section, the references in s. 66.60 to a city or village or clerk thereof means the county or town or clerk thereof, as the case may be.

Approved October 4, 1961.