

Sec. 263. Manner of procuring right of way. If the said person or corporation engaged in draining as aforesaid, and the owner of any land upon which said right of way may be deemed necessary, cannot agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed in the manner provided for the exercise of the right of eminent domain as provided in chapter five (5) of this title.

Sec. 264. Limitation of provisions. The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the owners.

Sec. 265. Established districts, pending litigation, and other matters not affected. The amendment, revisions and codification of existing law contained in this act shall not affect litigation pending at the time this act goes into effect, or the validity of the establishment, construction or organization of any district then existing, the classification then existing of all lands, the assessment and levy of drainage taxes then made, existing contracts, and vested rights or any warrants, improvement certificates or drainage bonds outstanding or already provided for under prior existing laws.

Approved April 26, 1924.

CHAPTER 127

WATER POWER IMPROVEMENTS

S. F. 186

AN ACT to amend, revise, and codify chapter three (3) of title fifteen (15) of the compiled code of Iowa, relating to mill dams, races and water power improvements.

Be It Enacted by the General Assembly of the State of Iowa:

That chapter three (3) of title fifteen (15) of the compiled Code of Iowa is amended, revised, and codified to read as follows:

Section 1. No dam shall be constructed, maintained or operated in this state in any navigable or meandered stream for any purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for industrial purposes, unless a permit has been granted by the executive council to the person, firm, corporation or municipality constructing, maintaining or operating the same.

Sec. 2. Any person, firm, corporation or municipality making application for a permit to construct, maintain or operate a dam in any of the waters, including canals, raceways and other constructions necessary or useful in connection with the development and utilization of the water or water power, shall file with the executive council a written application, which shall contain the following information:

(1) The name of the navigable, meandered or other stream in or across which a dam is maintained or it is proposed to construct a dam or other obstruction, and a description of the site for such dam, including the name or names of the riparian owners of the site.

(2) The purpose for which the dam is maintained or for which it is proposed to maintain the same, including the use to which the water is to be put.

(3) A general description of the dam, raceways, canals and other constructions, including the specifications as to the material and plan of construction and a general description of all booms, piers, and other protection works which are constructed in connection therewith, or which it is proposed to erect in connection therewith.

(4) The approximate amount of hydraulic power that the dam is capable of developing and the amount of power to be used.

(5) A map or blue print on a scale of not less than four inches to the mile, showing the lands that are or may be affected by the construction, operation or maintenance of the dam, and the ownership of each tract of land within the affected area.

(6) Such additional information as may be required by the executive council.

Sec. 3. When any application for a permit to construct, maintain or operate a dam from and after the passage of this act is received, the executive council shall fix a time for hearing, and it shall give notice of the time and place of such hearing by publication once each week for two (2) successive weeks in at least one (1) newspaper in each county in which riparian lands will be affected by the dam and at the time fixed for such hearing or at any adjournment thereof, the council shall take evidence offered by the applicant and any other person, either in support of or in opposition to the proposed construction. If it shall appear to the council that the construction, operation or maintenance of the dam will not materially obstruct existing navigation, or materially affect other public rights, will not endanger life or public health, and any water taken from the stream in connection with the project if returned thereto at the nearest practicable place without being materially diminished in quantity or polluted or rendered deleterious to fish life, it shall grant the permit, upon such terms and conditions as it may prescribe; provided, however, that no permit shall be granted for the construction or operation of a dam where the water is to be used for manufacturing purposes, except to develop power, until a certificate of the State Board of Health has been filed with the council showing its approval of the use of the water for the purposes specified in the application.

Sec. 4. When it is proposed to use the water for manufacturing purposes, except to develop power, or for condensation purposes, application must be made to the department of health, accompanied by a description of the proposed use of the water and what, if any, substances are to be deposited in such water and chemical changes made in the same, and such other information as the department of health may require to enable it to determine the advisability of the issuance of such certificate. If the board of health is satisfied that the use of the water in any such project will not cause pollution of the same or render it materially unwholesome or impure, or deleterious to fish life, it may issue a certificate, and if it is not so satisfied, it shall refuse to issue same.

Sec. 5. Every person, firm or corporation, excepting a municipality, to whom a permit is granted to construct or to maintain and operate a dam already constructed in or across any stream for the purpose herein specified, shall pay to the executive council a permit fee of one hundred dollars (\$100.00) and shall pay an annual inspection and license fee, to be fixed by the executive council, on or before the first day of January, nineteen hundred twenty-five (1925), and annually thereafter, but in no case shall the annual inspection and license fee be less than twenty-five dollars (\$25.00). All fees shall be paid into the general fund of the state treasury. Provided, however, that the provisions of this section shall not apply to dams already constructed having less than twenty-five (25) horse power capacity.

Sec. 6. The executive council shall investigate methods of construction, reconstruction, operation, maintenance and equipment of dams, so as to determine the best methods to conserve and protect as far as possible all public and riparian rights in the waters of the state and so as to protect the life, health and property of the general public, and the method of construction, operation, maintenance and equipment of any and all dams in such water, shall be subject to the approval of the executive council and such council or any member, agent or employee thereof shall at all times be accorded full access to all parts of any dam and its appurtenances being constructed, operated or maintained in such waters, and it shall be the duty of the council to require that all existing statutes of the state, including the provisions of this act, with reference to the construction of dams, shall be enforced.

Sec. 7. The construction, maintenance or operation of a dam for the purpose specified herein without a permit first being issued, as in this act provided, shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00). If any dam is constructed, operated or maintained without the provisions of this act having been first complied with, including the payment of the permit fee and the annual inspection and license fee, the permit fee and the inspection and license fee may be recovered in an action brought in the name of the state, and in addition to the recovery of the amount due, there shall be collected a penalty of one thousand dollars (\$1,000.00).

Sec. 8. If any dam for which a permit has been issued becomes owned, leased, trusteeed, possessed or controlled in such manner as to be controlled by any unlawful combination or trust, or forms the subject or part of the subject of any contract or agreement to limit the output of any hydraulic or hydroelectric power derived therefrom for the purpose of price fixing as to such output, the state may take possession thereof by receivership proceedings instituted by the council, and such proceedings shall be conducted for the purpose of disposing of said property for lawful use and the proceeds shall be turned over to the persons found by the court to be entitled thereto, after the payment of all expenses of the receivership.

Sec. 9. If any dam is constructed, maintained or operated for any of the purposes specified herein, in waters of this state in violation of any of the provisions of this act or in violation of any provisions of the law, the state may, in addition to the remedies herein prescribed, have such dam abated as a nuisance.

Sec. 10. Any person, firm, corporation or municipality owning land on one or both sides of a water course, desiring to construct or heighten any dam in such water course or to construct or enlarge a raceway, canal or other construction necessary for the development or utilization of the water or water power for any of the purposes specified in this act therefrom for the purpose of propelling any mill or machinery or developing any power by the use of the water, and to whom a permit has been granted as in this act provided, may file in the office of the clerk of the district court of the county in which such dam is, or is to be erected or heightened, a petition designating himself as plaintiff and the owners of the lands affected, or that will be affected, as defendants, and describing with reasonable certainty the locality where such dam is to be erected or improved, and also of the lands that will be overflowed or otherwise affected thereby.

Sec. 11. The clerk shall thereupon issue an order, with a copy of the petition attached, directed to the sheriff, commanding him to summon a jury of twelve (12) disinterested electors of his county to meet on a day fixed therein, and upon the lands described, which order, including the copy of the petition, shall be served on the defendants in the same manner and for the same length of time previous to the day fixed in the order as is required for the service of original notices. When service is made upon a minor or insane person having no

guardian, the clerk at the time of issuing the order shall, by indorsement made thereon, appoint a suitable person to make defense for him. Where the owner of any land affected is a non-resident of the state, service shall be made of the notice by publication in a newspaper in the county once each week for three (3) successive weeks.

Sec. 12. If any of the lands are situated in a different county than that in which the petition is required to be filed, the proceedings shall apply thereto to the same extent as if such lands were situated in the county where it is filed.

Sec. 13. The jury shall be sworn, impartially and to the best of their skill and judgment, to view the lands described in the petition, and ascertain and appraise the damages each of the defendants will sustain by reason of such lands being overflowed or otherwise injuriously affected by the dam or raceway or heightening or enlarging the same. They may, in addition to examining the premises, examine witnesses, and shall determine the amount of damages to which each of the defendants are, in their judgment, entitled, by reason of the construction or improvement of the dam or raceway, and shall report their findings in writing, attaching the same to the order and returning it to the sheriff. All costs and fees in connection with the assessment of damages under this act shall be the same as in condemnation cases and shall be paid by the plaintiff.

Sec. 14. Either party may appeal from such assessment to the district court within thirty (30) days after the assessment is made and such appeal and all further proceedings in connection with such matter, whether as to an appeal or the payment of damages and costs, and all other matters connected with the proceedings, shall be the same as provided by law for assessment of damages in taking property for works of internal improvement.

Sec. 15. Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill or machinery, if he does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or over the banks, or washing a channel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof.

Sec. 16. If any person shall injure, destroy or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason thereof.

Sec. 17. Any person, owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of mill dams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof prior to such change.

Sec. 18. If the person to whom a permit is issued under the provisions of this act does not begin the construction or the improvement of the dam or raceway within one (1) year from the date of the granting of the permit, his permit may be revoked by the executive council, and if any permit holder does not finish and have in operation the plant for which the dam is constructed within three (3) years after the granting of the permit, unless for good cause shown the council has extended the time for completion, such permit shall be forfeited.

Sec. 19. No permit granted or rights acquired hereunder shall be perpetual, but they shall be subject to restriction, cancellation and regulation by legislative action, and subject to all the provisions of this act.

Sec. 20. All applications for a permit to construct a dam pending in the district courts of this state at the time of the passage of this act shall be heard and determined by the district court of the county in which same is pending under the laws of Iowa at the time of the making of the application to the district court, and where a permit has, prior to the passage of this act, been granted by the district court of any county, the applicant shall in addition to the making of the application in the form provided in section two (2) hereof file a transcript of the proceedings of the district court granting the said permit with said application, and thereupon a permit shall be issued to the applicant without further proceedings, upon payment of the required fees.

Sec. 21. The owner of a dam existing at the time of the taking effect of this act shall make application for a permit, which application shall be accompanied by such proofs and data as may be required by the executive council. Upon receipt of such application with proofs and data and payment of fees as required, the executive council shall grant a permit for the maintenance and operation of said dam as a matter of course. The owner of such dam shall, however, be subject to all of the regulatory provisions of this act.

Sec. 22. Whenever the erection of any such dam will affect state owned lands, the applicant shall as a condition precedent secure a permit from the board, commission or other official body charged with jurisdiction over and control of said lands.

Approved April 25, 1924.

CHAPTER 128

CONDEMNATION OF PRIVATE PROPERTY

S. F. 187

AN ACT to amend, revise, and codify sections forty-nine hundred fifty-nine (4959) to forty nine hundred sixty-one (4961), inclusive, forty-nine hundred sixty-three (4963) to forty-nine hundred sixty-five (4965), inclusive, forty-nine hundred sixty-seven (4967), forty-nine hundred sixty-eight (4968), forty-nine hundred seventy-one (4971) to forty-nine hundred seventy-five (4975), inclusive, forty-nine hundred seventy-seven (4977) to forty-nine hundred eighty-one (4981), inclusive, forty-nine hundred eighty-three (4983) to fifty hundred one (5001), inclusive, fifty hundred eight (5008), and fifty hundred eleven (5011) of the compiled code of Iowa and sections forty-nine hundred fifty-nine-a one (4959-al), forty-nine hundred sixty-eight-a one (4968-al), and forty-nine hundred seventy-a one (4970-al) of the supplement to said code, relating to the condemnation of private property for works of internal improvement and for other public uses and purposes.