

CHAPTER 464A

DAMS AND SPILLWAYS

[P]

This chapter not enacted as a part of this title;
transferred from chapter 112 in Code 1993

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464A.1 Resolution of necessity.

Whenever, in the opinion of the commission, it is necessary and desirable for it to erect a dam or spillway across a stream or at the outlet of a lake, or to alter or reconstruct an existing dam or spillway, so as to increase or decrease its permanent height, or to permanently affect the water level above the structure, it shall proceed with said project by first adopting a resolution of necessity to be placed upon its records, in which it shall describe in a general way the work contemplated.

[C24, 27, 31, §1826; C35, §1828-e1; C39, §1828.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.1]

86 Acts, ch 1245, §1877

C93, §464A.1

464A.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Commission*” means the natural resource commission.
2. “*Department*” means the department of natural resources created under section 455A.2.
3. “*Director*” means the director of the department.

86 Acts, ch 1245, §1875

C87, §112.1A

C93, §464A.1A

464A.2 Expert plan.

The commission, upon receipt of a report and plan prepared by a competent civil engineer, showing the work contemplated, the effect on the water level, and probable cost and such other facts and recommendations as may be deemed material, may approve said plan which shall be considered a tentative plan only, for the project.

[C24, 27, 31, §1826; C35, §1828-e2; C39, §1828.25; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.2]

C93, §464A.2

464A.3 Hearing — damages.

After the approval the commission, if it wishes to proceed further with the project, shall, with the consent of the environmental protection commission, fix a date of hearing not less than two weeks from date of approval of the plan. Notice of the day, hour and place of hearing, relative to proposed work, shall be provided by publication at least once a week for two consecutive weeks in some newspaper of general circulation published in the county where the project is located, or in the counties where the water elevations are affected, under the tentative plan approved. The last publication shall not be less than five days prior to the

day set for hearing. Any claim by any persons for damages which may be caused by the project shall be filed with the commission at or prior to the time of the hearing.

[C24, 27, 31, §1826; C35, §1828-e3; C39, §1828.26; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.3; 82 Acts, ch 1199, §59, 96]

86 Acts, ch 1245, §1876

C93, §464A.3

464A.4 Adoption of plan.

If, at the time of the hearing, the commission shall find that the improvement would be conducive to the public convenience, welfare, benefit or utility, and the cost thereof is not excessive, and no claim shall have been filed for damages, it may adopt the tentative plan as final or may modify the plan, provided said modification will not, to any greater extent than the tentative plan, materially and adversely affect the interests of littoral or riparian owners.

[C24, 27, 31, §1826; C35, §1828-e4; C39, §1828.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.4]

C93, §464A.4

464A.5 Appraisal of damages.

If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be a licensed civil engineer resident of the state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project.

[C24, 27, 31, §1826; C35, §1828-e5; C39, §1828.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.5]

C93, §464A.5

2007 Acts, ch 126, §83

464A.6 Filing appraisement.

The appraisers appointed to determine the damages caused by the proposed project shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least three days before the date fixed by the commission to hear and determine the same, file with the secretary of the commission reports in writing showing the amount of damages sustained by each claimant. Should good cause for delay exist, the commission may postpone the time of final action on the project.

[C24, 27, 31, §1826; C35, §1828-e6; C39, §1828.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.6]

C93, §464A.6

464A.7 Damages determined.

At the time fixed for hearing and after receipt of the report of the appraisers, the commission shall examine said report, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant and may affirm, increase or diminish the amount awarded by the appraisers. After such action, the commission may thereupon adopt a final plan for the project, and proceed with its construction, or it may dismiss the entire proceedings.

[C24, 27, 31, §1826; C35, §1828-e7; C39, §1828.30; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.7]

C93, §464A.7

464A.8 Judicial review — bond.

Judicial review of the orders or actions of the commission fixing the amount of compensation awarded or damages sustained by any claimant may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. The petition for

review shall be accompanied by an appeal bond with sufficient sureties to be approved by the clerk of the district court conditioned to pay all costs adjudged against the petitioner.

[C24, 27, 31, §1826; C35, §1828-e8; C39, §1828.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.8]

C93, §464A.8

2003 Acts, ch 44, §114

464A.9 Final determination and costs.

The amount of damages or compensation found by the court shall be entered of record. Unless the result of the judicial review proceeding is more favorable to the petitioner than the action of the commission, all costs of the judicial review proceeding shall be taxed to the petitioner, but if more favorable, the cost shall be taxed to the respondents. All damages assessed and all costs occasioned under this chapter shall be paid from the funds of the commission.

[C24, 27, 31, §1826; C35, §1828-e9; C39, §1828.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.9]

C93, §464A.9

464A.10 Tentative plan.

If, at the time of hearing on the tentative plan, no objectors appear and no claim for damages or compensation shall have been filed, or if proper waivers giving consent to the construction of the proposed improvement have been obtained from all parties affected then the commission may adopt the tentative plan as final and proceed with the work proposed.

[C24, 27, 31, §1826; C35, §1828-e10; C39, §1828.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.10]

C93, §464A.10

464A.11 Water trails and low head dam public hazard statewide plan.

1. The department shall establish a water trails and low head dam public hazard program.
2. In administering the water trails and low head dam public hazard program, the department shall conduct a study of waterways for recreational purposes and develop a statewide plan by March 31, 2010. Elements of the plan shall include but not be limited to:

a. Compiling an inventory of low head dams, including a listing of those low head dams, for the purposes of publicizing hazards through maps and warning signage.

b. Seeking input from the public and experts in various fields, including fisheries, rescue professionals, water recreation, river management, public utilities conservation, and landscape architecture, to be used in the recreation and safety components of the plan.

c. Developing standard recommendations for local communities including signage system and placement guidelines, boating access type, placement and construction guidelines, and volunteer recommendations for communities.

d. Recommending design templates for low head dams to reduce incidents of drowning.

e. With input from stakeholders, developing criteria for prioritizing removal or modification of low head dams.

f. With input from stakeholders, developing criteria for prioritizing development of water trails.

3. The department may contract with a university or private consultant in order to assist with development of the plan.

2008 Acts, ch 1069, §1, 2; 2009 Acts, ch 144, §14

[SP] Implementation of section contingent upon appropriation of moneys necessary to carry out the section; 2008 Acts, ch 1069, §2

[SP] Appropriation of funds; 2008 Acts, ch 1178, §19; 2009 Acts, ch 184, §1, 4, 19, 28