WATER POWER COMPANIES

Act 232 of 1863

AN ACT to provide for the incorporation of water power companies.

History: 1863, Act 232, Eff. June 22, 1863

The People of the State of Michigan enact:

486.1 Water power companies; incorporators; notice of formation; articles of association, contents.

Sec. 1.

That any number of persons, not less than 5, may be formed into a corporation, for the purpose of maintaining, repairing and improving, any canal with water-power appurtenant thereto, constructed and used for the transmission of water, and the creation of water-power thereby, for manufacturing uses, by complying with the following requirements: Notice shall be given in at least 1 newspaper printed in the county in which the said canal may be situated, and if there be no newspaper printed in said county, then such notice shall be printed in some newspaper of an adjoining county, having circulation in said county, of the time and place where all persons desirious of forming such company may meet and subscribe articles of association, and elect directors of such company, in which articles of association shall be set forth, the name of the company, the number of years the same is to be continued, which shall not exceed 30 years from the date of said articles, the number and names of the directors who shall manage the concerns of the company for the first year, and shall hold their offices until others are elected, the canal on which the business of said company is intended to be done, and the place within the state where the office of said company shall be kept.

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History: 1863, Act 232, Eff. June 22, 1863 ;-- CL 1871, 2745 ;-- How. 3874 ;-- CL 1897, 6767 ;-- CL 1915, 8867 ;-- CL 1929, 11802 ;-- CL 1948, 486.1
Compiler's Notes: The word “desirious” near the middle of this section evidently should read “desirous.”

486.2 Articles of association; signing, filing, evidence; body corporate, powers.

Sec. 2.

Each subscriber to such articles of association shall subscribe thereto his name and place of residence. The said articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have so subscribed, and all persons who from time to time shall associate with them, shall be a body corporate, by the name specified in such articles, and as such shall be capable of suing and being sued, in all courts, and in all manner of actions, and may have a common seal. A copy of any articles of association, filed in pursuance of this section, with a copy of an affidavit, made by at least 2 of the directors named therein, setting forth that all prior proceedings of said association, had been in strict conformity with all the provisions of this act endorsed thereon, or annexed thereto, and certified by the secretary of state, to be a true copy of the whole of such articles of association, and of such affidavit, shall be in all courts and places presumptive evidence of the incorporation of such company, and the facts therein stated.

History: 1863, Act 232, Eff. June 22, 1863 ;-- CL 1871, 2746 ;-- How. 3875 ;-- CL 1897, 6768 ;-- CL 1915, 8868 ;-- CL 1929, 11803 ;-- CL 1948, 486.2

486.3 Board of directors; annual election, notice; officers, treasurer's bond; vacancy.

Sec. 3.

The business of said company shall be under the management and direction of a board of directors, composed of not less than 3 nor more than 7, who, after the first year, shall be elected annually, at such time and place, and after such notice of the election as the by-laws shall prescribe, not less than 30 days previous to said election, and who shall hold their offices until their successors are elected. The said board shall elect from their number a president, and appoint a treasurer, who shall give such bond as the board of directors may require, and a secretary; and in case any vacancy shall occur in said board, the remaining directors may elect any member of said company to fill such vacancy as director, for the remainder of the term, and until a successor is elected; and in case said annual election of directors, from any cause, shall not be held at the time appointed, it shall be proper to hold the same at any time thereafter, upon giving like notice.

History: 1863, Act 232, Eff. June 22, 1863 ;-- CL 1871, 2747 ;-- How. 3876 ;-- CL 1897, 6769 ;-- CL 1915, 8869 ;-- CL 1929, 11804 ;-- CL 1948, 486.3

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486.4 Membership in association; procedure, rights.

Sec. 4.

Any person owning any interest in the canal and water-power under the control of such association, may become a member thereof at any time by subscribing his name to the articles of association. And any person or persons who shall purchase an interest in said water-power of any member of this association shall become a member of said association without other act and shall succeed to all his grantor's rights and privileges in the same as a member thereof to the extent of the interest so purchased.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2748 ;-- How. 3877 ;-- CL 1897, 6770 ;-- CL 1915, 8870 ;-- CL 1929, 11805 ;-- CL 1948, 486.4

486.5 Repairs; permanent improvements, approval of members; expense.

Sec. 5.

When the canal or any of its appurtenances under the control of such association may need to be repaired or rebuilt, the directors of said association may cause the same to be done at the expense of the owners thereof: Provided, That in all cases of permanent improvements of the water-power or appurtenances thereto, as distinguished from repairs, the said directors shall not be authorized to make such improvements, or incur any expense concerning the same, unless first authorized by a vote of the members of said association at a regular or annual meeting thereof, or at a meeting to be called for that purpose: And provided further, That the expense of permanent improvements which are not rendered necessary for the actual preservation or protection of said water-power or its appurtenances shall be assessed and collected in the manner hereinafter provided only upon the members of such association and such owners of water-power not members as shall have consented thereto previous to the making of such improvement.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2749 ;-- How. 3878 ;-- CL 1897, 6771 ;-- CL 1915, 8871 ;-- CL 1929, 11806 ;-- CL 1948, 486.5

486.6 Repairs; statement, filing, contents.

Sec. 6.

Whenever the board of directors shall make any repairs not authorized at any meeting of said association, it shall be their duty to file with the clerk of the said association a statement containing:

First. A description of the work done;

Second. The expense thereof;

Third. The amount paid and to whom paid;

Fourth. The amount unpaid, if any, and to whom due.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2750 ;-- How. 3879 ;-- CL 1897, 6772 ;-- CL 1915, 8872 ;-- CL 1929, 11807 ;-- CL 1948, 486.6

486.7 Assessment for repairs or improvements.

Sec. 7.

For the purpose of defraying the expenses of such repairing, rebuilding or permanent improvement, and such contingent expenses as may be incurred in the discharge of their duties as directors of such association, the said directors may make from time to time, as the work progresses, an assessment upon the owners of such water-power, assessing and apportioning to and upon each owner thereof, such portion of said expenses as the water-power used or owned by such persons bears to the whole water-power furnished by such canal and its appurtenances; and when a water-power afforded by such canal is owned by a firm or corporation, such firm or corporation shall be considered as an individual member, and such assessment may be made to and upon such firm or corporation.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2751 ;-- How. 3880 ;-- CL 1897, 6773 ;-- CL 1915, 8873 ;-- CL 1929, 11808 ;-- CL 1948, 486.7

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486.8 Assessment; collection; non-payment, use of water prohibited.

Sec. 8.

The said assessment shall then be delivered to the treasurer of the association for collection, who shall proceed forthwith and shall demand payment from each person named in said assessment of the amount apportioned to him, and if any such person shall neglect or refuse to pay the amount within 5 days after such demand to the treasurer, the same may be sued for and recovered, as provided for in section 18 of this act. Or the board of directors of such water-power company, may, by resolution direct that no member of said company or occupant of such power, whose assessment has been due and unpaid for 30 days after notice in writing of such assessment, shall be permitted to draw water from the race of said water-power company until such assessment is paid, and such board of directors may, after the expiration of 30 days, after notice in writing as aforesaid, board up, or close the gate of flume of such delinquent member, or person, or owner, and keep the same closed until the assessments due as aforesaid have been paid.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2752 ;-- How. 3881 ;-- Am. 1897, Act 32, Eff. Aug. 30, 1897 ;-- CL 1897, 6774 ;-- CL 1915, 8874 ;-- CL 1929, 11809 ;-- CL 1948, 486.8

486.9 Assessment; notice to non-resident.

Sec. 9.

In case any person upon whom an assessment shall have been made, as is herein provided, shall be a non-resident of the county in which said water-power is located, or absent, so that personal demand cannot be made

upon him by the treasurer for the payment of such assessment, then in such case the treasurer shall give notice of such assessment by inserting a notice in some daily paper published in the town or city where such canal is located, in each issue, for 4 successive weeks, if a daily paper be published therein, if not, then in a weekly paper published in the county where said canal is located, once in each week for 4 successive weeks, specifying the fact of such assessment, and the name or description of the interest so assessed, and the amount of the assessment: Provided, That in case the directors shall so direct, it shall be lawful to include 1 or more assessments upon the same person or interest in 1 notice, and by a notice by mail directed to the owners' reputed place of residence, and the publication aforesaid, and the giving of notice by mail as aforesaid, shall be deemed equivalent to a personal demand in the cases specified in this section after the publication and mailing said notices as aforesaid.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2753 ;-- How. 3882 ;-- CL 1897, 6775 ;-- CL 1915, 8875 ;-- CL 1929, 11810 ;-- CL 1948, 486.9

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486.10 Assessment; mortgage lien; preference.

Sec. 10.

All assessments made under the provisions of this act shall be and remain a mortgage-lien upon the interest so assessed, from and after the completion of the work for which such assessment was made, until paid, together with interest and the cost of publishing notice, if notice shall be published, and said mortgage-lien shall have preference over all incumbrances on said interest from and after the recording of a certificate, as is hereinafter provided, except incumbrances now existing thereon in good faith, and except taxes assessed or to be assessed thereon by any law of this state.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2754 ;-- How. 3883 ;-- CL 1897, 6776 ;-- CL 1915, 8876 ;-- CL 1929, 11811 ;-- CL 1948, 486.10

486.11 Mortgage lien; certificate, contents, recording.

Sec. 11.

After such mortgage-lien shall have attached to such interest in such canal and water-power, the secretary of such association shall make a certificate in writing, to be signed by him, and countersigned by the president, which certificate shall state

First. The amount of such assessment or assessments;

Second. That the work for which such assessment was made has been done;

Third. The time when the same became a lien;

Fourth. A description of the property or interest upon which such assessment was made;

Fifth. The amount due thereon, together with the costs made thereon, which certificate shall be verified by the affidavit of such secretary, or some member of the board of directors, and shall be recorded and indexed by the register of deeds of the county in which such water-power is situated, in the books for mortgage, the same as if it were a mortgage given by the owner of the interest so assessed, and such record, or a certified copy thereof, shall be notice and evidence to the same intent, extent, and for the same purpose as a mortgage so recorded.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2755 ;-- How. 3884 ;-- CL 1897, 6777 ;-- CL 1915, 8877 ;-- CL 1929, 11812 ;-- CL 1948, 486.11

486.12 Mortgage lien; foreclosure.

Sec. 12.

Such mortgage-lien created as aforesaid shall be in the nature of a mortgage on real estate, and may be foreclosed and collected the same as a mortgage is now enforced and collected in equity, and shall be subject to all laws of this state in relation to the foreclosure and satisfaction of mortgages in chancery, as near as may be. All suits commenced for the foreclosure, collection, and satisfaction of such mortgage-lien shall be in the corporate name of such association.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2756 ;-- How. 3885 ;-- CL 1897, 6778 ;-- CL 1915, 8878 ;-- CL 1929, 11813 ;-- CL 1948, 486.12

486.13 Mortgage lien; commencement of suit after 60 days.

Sec. 13.

Suits may be commenced for the foreclosure of such mortgage-lien at the expiration of 60 days from the time the certificate shall be recorded as mentioned in section 11 of this act.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2757 ;-- How. 3886 ;-- CL 1897, 6779 ;-- CL 1915, 8879 ;-- CL 1929, 11814 ;-- CL 1948, 486.13

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486.14 Meetings of members of associations; notice, proof of service, filing.

Sec. 14.

Meetings of the members of the association may be called by any director, and it shall be the duty of any director to call a meeting of the members of said association on the written application of 3 members thereof. In all cases other than the annual or regular meetings, notice of such meeting, and of the time and place thereof, shall be given by personal service thereof if practicable, otherwise by posting a notice of such meeting on the premises of each member not personally served, in a conspicuous place, at least 24 hours before the time of meeting, and proof of the time and manner of such service by affidavit of the person serving the same shall be made and filed with the secretary of the association.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2758 ;-- How. 3887 ;-- CL 1897, 6780 ;-- CL 1915, 8880 ;-- CL 1929, 11815 ;-- CL 1948, 486.14

486.15 Watchman; appointment, duties, compensation.

Sec. 15.

The board of directors are also authorized, in case they deem it expedient for the safety and well-being of the property under their control, to employ a competent watchman to watch during the night to see that the canal or its appurtenances receive no injury from breaks in embankments or other causes; and they may prescribe his duties and fix his compensation, and raise means to pay the same in the manner hereinbefore provided.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1869, Act 51, Imd. Eff. Mar. 22, 1869 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2759 ;-- How. 3888 ;-- CL 1897, 6781 ;-- CL 1915, 8881 ;-- CL 1929, 11816 ;-- CL 1948, 486.15

486.16 Contracts made by board of directors.

Sec. 16.

The said board of directors shall have power to make all necessary contracts in the name of the corporation to carry out the duties imposed upon them by this act, which contract shall be signed by the president of the board, if in writing, in the corporate name thereof.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2760 ;-- How. 3889 ;-- CL 1897, 6782 ;-- CL 1915, 8882 ;-- CL 1929, 11817 ;-- CL 1948, 486.16

486.17 Treasurer; duties.

Sec. 17.

The treasurer of said board shall receive all moneys paid to him on assessment, and hold the same, to be paid out on the order of the said board, certified to the president thereof.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2761 ;-- How. 3890 ;-- CL 1897, 6783 ;-- CL 1915, 8883 ;-- CL 1929, 11818 ;-- CL 1948, 486.17

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486.18 Assessment; recovery, interest.

Sec. 18.

All sums due from any person upon any assessment authorized by this act may be recovered with interest in an action of assumpsit brought in the name of the corporation, in any court of competent jurisdiction, or as provided in section 12 of this act.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2762 ;-- How. 3891 ;-- CL 1897, 6784 ;-- CL 1915, 8884 ;-- CL 1929, 11819 ;-- CL 1948, 486.18

486.19 Disposition of funds at annual meeting.

Sec. 19.

At the annual meeting of the members of said association, held for the election of officers, pursuant to the by-laws thereof, the members representing the majority of interest in such water-power may by vote make disposition of all the funds shown by the report of the treasurer of the board of directors, to be made to said meeting, to be in his hands, and such funds shall be paid out as so voted by said treasurer upon the certificate of the president of said board.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2763 ;-- How. 3892 ;-- CL 1897, 6785 ;-- CL 1915, 8885 ;-- CL 1929, 11820 ;-- CL 1948, 486.19

486.20 By-laws of association; regulations, promulgation, publishing, enforcement; meetings.

Sec. 20.

Said association shall have power by its by-laws to regulate the use of the water transmitted through the canal under its control by the several owners thereof; to determine the absolute or average head of said water; for the measurement of the quantity to be used by the several owners thereof in proportion to their interest in the water-power furnished by said canal; and to provide for the construction and maintenance in good order of all flumes, gateways, and other structures built to draw water from said canal, and for the tightening, contracting, or enlarging of the same according to the various stages of water in said canal; and in said by-laws to provide for the manner in which the aforesaid regulations shall be made, published, and enforced; and to provide for regular meetings of the association and the time and place of holding the same.

History: 1863, Act 232, Eff. June 22, 1863 ;-- Am. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2764 ;-- How. 3893 ;-- CL 1897, 6786 ;-- CL 1915, 8886 ;-- CL 1929, 11821 ;-- CL 1948, 486.20

486.21 Stockholder's liability.

Sec. 21.

The stockholders of all corporations or associations formed under the provisions of this act, shall be individually liable for all labor performed for such corporation or association.

History: 1863, Act 232, Eff. June 22, 1863 ;-- CL 1871, 2765 ;-- How. 3894 ;-- CL 1897, 6787 ;-- CL 1915, 8887 ;-- CL 1929, 11822 ;-- CL 1948, 486.21

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486.22 Tenants in common; consent for improvements and repairs, liability.

Sec. 22.

All owners of water-power afforded by any canal or its appurtenances which is under the control of any association formed under this act, who are tenants in common of the water, water-power, or easements or canal and appurtenances with the members of said association formed under this act, or the act to which this act is amendatory, shall be deemed to have consented to the making of such repairs, and improvements as are proper or necessary for the protection and preservation of such canal and its appurtenances and such as render the same generally available to the owners thereof; and it shall not be necessary in any such case in any proceedings under this act, to allege or show a previous request made to them to join in making such repairs and improvements, but they shall be respectively liable to pay their just proportion at the time and in the manner in this act provided for.

History: Add. 1871, Act 90, Imd. Eff. Apr. 12, 1871 ;-- CL 1871, 2766 ;-- How. 3895 ;-- CL 1897, 6788 ;-- CL 1915, 8888 ;-- CL 1929, 11823 ;-- CL 1948, 486.22