

The Code of Alabama 1975

Title 33 NAVIGATION AND WATERCOURSES.

Chapter 7 OBSTRUCTING NAVIGATION AND DAMS.

Article 1 In General.

Section 33-7-1

Navigable waters as public thoroughfares.

All navigable waters in this state are public thoroughfares.

(Code 1852, §1205; Code 1867, §1440; Code 1876, §1723; Code 1886, §1459; Code 1896, §2515; Code 1907, §6143; Code 1923, §10565; Code 1940, T. 38, §104.)

Section 33-7-2

Opening and cleaning navigable streams.

The county commission is authorized to make contracts for opening or cleaning out any navigable stream within the county, and for keeping the same free from obstructions.

(Code 1852, §1206; Code 1867, §1441; Code 1876, §1724; Code 1886, §1460; Code 1896, §2516; Code 1907, §6144; Code 1923, §10566; Code 1940, T. 38, §105.)

Section 33-7-3

Obstructing navigable watercourse.

Any person who dams up or otherwise obstructs a navigable watercourse must, on conviction, be fined not less than \$100.00 nor more than \$1,000.00.

(Code 1876, §4254; Code 1886, §4136; Code 1896, §5402; Code 1907, §7864; Code 1923, §5599; Code 1940, T. 38, §107.)

Section 33-7-3.1

Obstructing navigation on public waters.

(a) Any person who anchors, moors, or abandons a floating pier, barge, or vessel or sunken or submerged pier, barge, or vessel that obstructs navigation on a public water, as defined in subsection (a) of Section 9-11-80, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per day.

(b) This section does not apply to public waters used primarily for agricultural, industrial, power generation, public water supply, and sanitation purposes.

(Act 2013-348, p. 1247, §1.)

Section 33-7-4

Damages for diverting stream.

Any person diverting any stream, whether navigable or not, from its natural channel, is liable to any party aggrieved for the damages sustained.

(Code 1852, §1210; Code 1867, §1445; Code 1876, §1727; Code 1886, §1463; Code 1896, §2519; Code 1907, §6147; Code 1923, §10569; Code 1940, T. 38, §108.)

Section 33-7-5

Obstructing streams used for floating timber to market.

Any person who, during the season of high waters, leaves or causes to be left in any of the streams of this state used for floating timber to market saw logs or hewn or square timber which he has put or caused to be put into such stream, so massed or collected together as to obstruct such stream, and who does not use diligence to effect a removal of such obstructions, must, on conviction, be fined not less than \$25.00 nor more than \$250.00.

(Code 1876, §4255; Code 1886, §4135; Code 1896, §5401; Code 1907, §7863; Code 1923, §5598; Code 1940, T. 38, §106.)

Section 33-7-6

Floating logs, timber or lumber upon watercourse without sufficient force to prevent obstruction.

Any person who floats any logs, timber or lumber upon any navigable watercourse, without accompanying the same with sufficient force to prevent the obstruction of such watercourse so as to hinder the removal of any logs, timber or lumber from the banks or shores thereof, must, on conviction, be fined not less than \$100.00 nor more than \$1,000.00.

(Code 1896, §5403; Code 1907, §7865; Code 1923, §5600; Code 1940, T. 38, §109.)

Section 33-7-7

Turning logs, timber or lumber out of boom without notice to owner.

Any person owning or controlling any boom in any navigable watercourse who turns adrift any logs, timber or lumber caught in such boom without giving the owner of such logs, timber or lumber five days' notice of his intention to do so must, on conviction, be fined not less than \$100.00 nor more than \$1,000.00.

(Code 1896, §5404; Code 1907, §7866; Code 1923, §5601; Code 1940, T. 38, §110.)

Section 33-7-8

Opening or cutting loose boom without authority.

Any person who opens the boom of another for any purpose without his permission, or wilfully cuts, unties, loosens or casts off any rope, chain, pole, timber, pile or other fastening by which a boom containing any logs, timber or lumber is secured must, on conviction, be fined not less than \$100.00 nor more than \$1,000.00.

(Code 1896, §5405; Code 1907, §7867; Code 1923, §5602; Code 1940, T. 38, §111.)

Section 33-7-9

Trespass after warning on booms, bulkheads or piles erected, etc., by riparian proprietors.

Any person who, having been warned within the 12 months next preceding by the owner or proprietor not to do so, trespasses upon any boom, bulkhead or piles, lawfully erected or maintained in any of the waters of this state by any riparian owner or proprietor, by fastening any boat or other thing thereto, or by making any other use thereof, without first having obtained the consent of such owner or proprietor, or any person who continues to make such use of any such boom, bulkhead or piles, after being warned by the owner or proprietor thereof to discontinue the same, shall, on conviction, be fined not less than \$10.00 nor more than \$100.00 for each day he continues to make such use of such boom, bulkhead or piles, and one half of the fine shall go to the owner or proprietor thereof.

(Code 1896, §5622; Code 1907, §7873; Code 1923, §5608; Code 1940, T. 38, §115.)

Section 33-7-10

Mobile Harbor - Fastening vessels, rafts, etc., and obstructing channel in Mobile bay.

Any person who makes any vessel, boat or watercraft of any description, or any raft or collection of logs, lumber or timber, fast to any beacon or light stake or piling which may be of any use or benefit in making use of the dredged channel in the Bay of Mobile is liable to indictment in the circuit court of Mobile County, or any other court of competent jurisdiction, and shall, on conviction, be fined not more than \$500.00, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

(Code 1886, §4137; Code 1896, §5406; Code 1907, §7869; Code 1923, §5604; Code 1940, T. 38, §112.)

Section 33-7-11

Mobile Harbor - Injuring ship channel, beacon light, etc.

Any person who knowingly or wilfully causes, or is concerned in causing, any damage or injury to any part of the dredged channel as it now exists or may hereafter exist, at any point or points between the upper or northern limits of the Port of Mobile and the lower part of the Bay of Mobile, or to any beacon light, stake, piling or other matter or thing which is or may be intended to be used, or used in connection with such dredged channel for the better navigation of the same, is liable to indictment in the circuit court

of Mobile county or any other court of competent jurisdiction and, on conviction, shall be fined not more than \$10,000.00, and may also be imprisoned in the penitentiary for not more than 20 years.

(Code 1886, §4138; Code 1896, §5407; Code 1907, §7870; Code 1923, §5605; Code 1940, T. 38, §113.)

Section 33-7-12

Mobile Harbor - Master of vessel drawing more than 12 feet passing channel without permit, etc.

Any master or person in charge of any vessel drawing more than 12 feet of water which may enter into the dredged channel between the upper limits of the Port of Mobile and the outer bar of the Bay or Harbor of Mobile without a permit from the harbor master, or in violation of the rules and regulations of the State Pilotage Commission of the Port and Harbor of Mobile, is liable to indictment in the circuit court of Mobile County or any other court of competent jurisdiction, and shall, on conviction, be fined not more than \$10,000.00, and may also be imprisoned in the penitentiary for not more than 10 years.

(Code 1886, §4139; Code 1896, §5408; Code 1907, §7871; Code 1923, §5606; Code 1940, T. 38, §114.)

Article 2 Dams on Navigable Rivers.

Section 33-7-30

Easement and right to construct dams across navigable rivers.

Any person, firm or corporation organized for the purpose of improving the navigation upon a navigable river in the State of Alabama, and of developing in connection therewith a water power thereof by a dam and lock, or a system of dams and locks, and electrically transmitting and distributing such power for the use of the public, which shall have acquired the necessary lands upon both sides of said river to the extent of at least one more than half of the necessary abutment sites for the said dam or system of dams, and lock or system of locks and shall have been organized or incorporated for the specific and particular purpose of improving the navigation of and developing water power in connection with a particular and specified river, and has prepared plans for the construction of a dam or system of dams and a lock or system of locks appertaining thereto, and filed a copy of said plans in the office of the Secretary of State of Alabama, together with a certified copy of its articles of incorporation (if a corporation), which provide both for the improvement of navigation of such river, and for the developing of the full water power of the same over the stretch of river thus to be improved, shall have authority to construct a dam or system of dams, with a lock or system of locks appertaining thereto in such river, for the improvement of navigation of said river by one or more slack water pools, due to the construction of said dam or dams and the development of water power in connection therewith, and to that end and in consideration of the benefits to the public by reason of the improvement of navigation of such river and the development of water power thereof, as herein provided, is granted an easement for power purposes to and in the waters and bed of the river in which dam or system of dams, and lock or system of locks are to be constructed, for the full area covered by the slack water pool or pools which will be created by the construction of the said dam or system of dams, to the extent necessary for developing the full power of said river over that length of same upon which navigation is to be improved as provided herein, and for providing suitable

and convenient sites for the said dam or system of dams, locks, power houses and other features appurtenant thereto and necessary for navigation and power purposes, or for either of them, and to the extent made necessary by the impounding, diversion and conversion of the said waters as the same may be caused by the construction of the said dam or system of dams, or by any other change from the normal state of the said river, due to said construction, and necessary for the purpose of deriving the energy therefrom.

(Code 1907, §6148; Code 1923, §10570; Code 1940, T. 38, §116.)

Section 33-7-31

Eminent domain; improvement of navigation.

Any such person, firm or corporation may exercise the power of eminent domain, for the purpose of acquiring such lands as it may be necessary or convenient to flood or otherwise utilize in order to improve navigation as provided in this article, such lands to include as well as all the area submerged a strip of land 50 feet in width bordering upon the margins of the slack water pool or pools as the same may be defined at the highest stage of the river at any time after the completion of the improvements herein provided for; and the right hereby conferred to exercise such power of eminent domain is cumulative. No person, firm or corporation shall acquire the rights granted by this article, unless the dam or system of dams, and lock or system of locks, to be constructed by such person, firm or corporation are so planned as, when constructed, will by the operation thereof improve the navigation of the river in which the dam or system of dams, lock or system of locks, are to be built, and will develop the full power of such river over the length of same upon which navigation is to be improved, as provided in this article. Such person, firm or corporation shall commence work upon said dam or system of dams, lock or system of locks, within five years from the date of securing the consent of the federal government to do so, and shall complete the same within the time prescribed by the United States government. No foreign corporation shall acquire the rights granted under this article until it has complied with the laws of Alabama with reference to foreign corporations.

(Code 1907, §6149; Code 1923, §10571; Code 1940, T. 38, §117.)

Section 33-7-32

Prior rights.

The person, firm or corporation which first, in point of time, shall have complied with the provisions of this article shall be entitled to all the rights and privileges herein granted. The operation of this section shall be retroactive.

(Code 1907, §6150; Code 1923, §10572; Code 1940, T. 38, §118.)

Article 3 Rights of Riparian Owners.

Section 33-7-50

Installing, etc., wharves, docks, etc.; charging tolls.

The owner of riparian lands upon navigable waters in the State of Alabama may install in front of their respective riparian lands wharves, docks, warehouses, sheds, tipples, chutes, elevators, conveyors and the like for receiving, discharging, storing, protecting, transferring, loading and unloading freight and commodities of commerce to and from vessels and carriers, and may use their riparian lands in connection therewith and dredge out and deepen the approaches thereto, and may charge and collect reasonable tolls for the use thereof. All such structures are to be subject to such lines and limitations as may at the time of making such improvements be laid or placed by any authority of the United States, or of the State of Alabama, who may have authority to control harbor and pier lines.

(Acts 1915, No. 589, p. 639; Code 1923, §10573; Code 1940, T. 38, §119.)

Section 33-7-51

Structures not to obstruct navigation, etc.; restriction on tolls; repossession by Legislature.

No such structure shall be built or maintained upon or over the lands of the state or lands underlying the navigable waters of the state so as to in any wise unreasonably obstruct navigation, or the freedom of the use of the navigable waters of the state for commerce and navigation, or for harbor purposes; nor shall any charge be exacted of any vessel, barge, boat or raft, either singly or in fleets, for anchoring, mooring or tying up or remaining on the navigable waters, presumptive or established, either or both of them, alongside of or on the lands of the state abutting thereon or thereunder, not then occupied by the structures and improvements placed thereon or therein pursuant hereto; or in the waters in front of said wharves and other structures so long as the reasonable use of said wharves and other structures occupying the lands of the state, or the aforesaid navigable waters of the state or the use of the approaches to said walls and other structures, or the coaling of vessels using same, is not unreasonably restricted, interfered with or prevented thereby; subject, however, to the further reservation and right of the Legislature or other authority constituted by it for such purpose, to vacate or cause to be vacated and repossess or cause to be repossessed by the state so much of said riparian lands belonging to it, as may be at any time necessary for use by the state or federal government in aid of navigation and commerce or for harbor purposes, or to insure the freedom and safety of navigation or the public or the property abutting upon the navigable waters of the state, but not otherwise, and to that end may proceed under its right of eminent domain as to any structures thereon, so that the right of the state and the public may be preserved and insured under Section 24 of Article 1 of the Constitution of Alabama.

(Acts 1915, No. 589, p. 639; Code 1923, §10574; Code 1940, T. 38, §120.)

Section 33-7-52

Tolls, etc., charged subject to regulation by Legislature.

All tolls, imposts, charges and duties authorized hereunder for the use of said wharves and other structures occupying the lands of the state or connected therewith, at all times hereafter, shall be subject

to regulation and revision by the Legislature or other authority now existing or hereafter created by it for such purpose, together with the right and authority of the Legislature to fix and define or to delegate to an authority constituted by it the right and power to fix, define and prescribe reasonable tolls, imposts, charges and duties for the use of said wharves and other structures, and to prevent unjust discriminations with respect thereto.

(Acts 1915, No. 589, p. 639; Code 1923, §10575; Code 1940, T. 38, §121.)

Section 33-7-53

Development and relief work upon and abutting on tidelands.

In order to encourage the building of bridges, causeways and other development work and relief work, the owner of any lands in the State of Alabama abutting on tidelands, the title to which or control of which may now or hereafter be vested in the State of Alabama, which shall not have been improved by or under valid public authority and shall not be otherwise devoted to public use, shall be authorized to acquire such tidelands and to fill, reclaim or otherwise improve same and to fill in, reclaim or otherwise improve the abutting submerged land and to own, use, mortgage and convey the lands so reclaimed, filled or improved, and any improvements thereon, under and subject to the conditions and approval herein stated.

Any such improvement shall conform to any harbor line established at the time of such improvement by state or federal authority having jurisdiction over such matters, or if not then already established, same shall conform to any harbor line stipulated by any such authority having jurisdiction on application by such riparian owner.

If such land shall be used for a bridge, road or causeway over navigable waters, or for bridgehead or approach thereto or for terminal facilities, depots, storage or sale yards, stores, warehouses or wharves abutting on such bridge or road or causeway, the plans for such bridge, road or causeway shall be approved by the United States engineer officers or other federal authority having jurisdiction, and by the director of the State Docks Department and the Governor of Alabama, and when so approved and when improved pursuant to such approval the title to the said lands and the entire improvements thereon shall vest in such riparian owner without further approval when the bridge, road or causeway shall be constructed pursuant to the plans so approved.

If such improvement constructed or proposed shall not consist of a bridge, bridgehead, road or causeway, approach or related improvement included within this section, title shall not pass to the riparian owner making or proposing such improvement unless and until the riparian owner shall have obtained the approval of the county commission of the county in which the land is situated, and of the director of the State Docks Department and the Governor of Alabama, on application of such owner made after publication of 10 days' notice thereof by a single publication in a newspaper published in the county in which the land is situated and shall have filed for record in the county a certificate of such approval executed and acknowledged by the presiding officer of said respective authorities.

(Acts 1932, Ex. Sess., No. 147, p. 167; Code 1940, T. 38, §122.)

Section 33-7-54

Dredging or cleaning creeks, etc., running through property permitted; limitations on right.

Any law, or any rule or regulation promulgated by a state agency, to the contrary notwithstanding, any property owner shall have the authority to clean out or dredge a creek or stream running through his property. However, such person shall only be authorized to maintain any stream or creek which runs through or onto his property and no other. Provided, further, that such cleaning or dredging shall not adversely affect the rights of property owners either upstream or downstream from the site of such cleaning or dredging work, nor shall it change the natural course of said stream.

(Acts 1979, No. 79-762, p. 1363.)