



Province of Alberta

EXPROPRIATION ACT

Revised Statutes of Alberta 2000
Chapter E-13

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Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Expropriation Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Expropriation Act		
Expropriation Act Forms.....	188/2001	217/2002, 354/2003, 297/2009, 170/2012, 214/2012, 182/2015
Expropriation Act Rules of Procedure and Practice	187/2001	354/2003, 298/2009, 164/2010, 213/2012, 181/2015

EXPROPRIATION ACT

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “authorizing Act” means the Act authorizing an expropriation by an expropriating authority;
- (b) “Board” means
 - (i) the Land Compensation Board constituted under this Act, or
 - (ii) in the case of expropriations referred to in section 27(2), the Surface Rights Board;
- (c) “court” means the Court of Queen’s Bench;
- (d) “Crown land” means land of the Crown in right of Alberta;
- (e) “Deputy Minister” means, except in section 70(5), the Deputy Minister of Justice;
- (f) “expropriating authority” means the Crown or any person empowered to acquire land by expropriation;
- (g) “expropriation” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers;
- (h) “land” means land as defined in the authorizing Act and if not so defined, means any estate or interest in land;

- (i) “Minister” means, except in section 7, the Minister of Justice and Solicitor General;
- (j) “municipality” means a city, town, village, summer village or municipal district;
- (k) “owner” means
 - (i) a person registered in the land titles office as the owner of an estate in fee simple in land,
 - (ii) a person who is shown by the records of the land titles office as having a particular estate or an interest in or on land,
 - (iii) any other person who is in possession or occupation of the land,
 - (iv) any other person who is known by the expropriating authority to have an interest in the land, or
 - (v) in the case of Crown land, a person shown on the records of the department administering the land as having an estate or interest in the land;
- (l) “proposed payment” means the estimated amount of compensation referred to in section 31(2);
- (m) “right of way” means the right of an expropriating authority to carry its pipes, wires, conductors or transmission lines on, over or under land and that is registrable under the *Land Titles Act*;
- (n) “work” or “works” means the undertaking and all the works and property that may be acquired, constructed, extended, enlarged, repaired, maintained, improved, formed, excavated, operated, reconstructed, replaced or removed in the exercise of any powers conferred by an authorizing Act.

RSA 2000 cE-13 s1;2013 c10 ss34,35

Application of Act

Application of Act

2(1) This Act applies to any expropriation authorized by the law of Alberta and prevails over any contrary provisions that may be found in the law, except the statutes or parts of statutes enumerated in the Schedule.

(2) This Act binds the Crown.

RSA 1980 cE-16 s2

Extent of expropriation

3 When an authorizing Act permits or authorizes an expropriation of land, the expropriating authority may, unless the authorizing Act expressly otherwise provides, acquire any estate required by the expropriating authority in the land and may, unless the authorizing Act expressly otherwise provides, acquire any lesser interest by way of profit, easement, right, privilege or benefit in, over or derived from the land.

RSA 1980 cE-16 s3

Acquisition of mines and minerals

4(1) Unless the authorizing Act expressly authorizes the expropriation of mines or minerals, the expropriating authority is not entitled to any mines or minerals in any land vested in the expropriating authority under the procedure prescribed by this Act, and, subject to subsection (2), the ownership of mines or minerals is in no way affected by the filing or registration in the land titles office of a certificate of approval under this Act.

(2) When an authorizing Act expressly authorizes the expropriation of mines or minerals, the certificate of approval by which the expropriation is effected shall state the estate or interest acquired in the mines and minerals, and failing that statement no estate or interest in the mines and minerals passes on the expropriation.

(3) Notwithstanding subsection (1), an expropriating authority may, to the extent necessary for the expropriating authority's works, excavate or otherwise disturb any minerals within, on or under land in which the expropriating authority has acquired an estate or interest by expropriation or by agreement or transfer, without permission from or compensation other than for minerals lost thereby to any person.

RSA 1980 cE-16 s4

Agreements

5 Unless an authorizing Act expressly otherwise provides, nothing in this Act restricts or affects

- (a) the right of an expropriating authority to acquire, by agreement or transfer, any estate or interest in land that the expropriating authority may acquire by expropriation, or
- (b) the right of the Crown or any person to convey to an expropriating authority any estate or interest in any land that the expropriating authority may acquire by expropriation from the Crown or person.

RSA 1980 cE-16 s5

Part 1

Procedure for Expropriation

Right to object

6(1) No person may in any proceedings under this Act dispute the right of an expropriating authority to have recourse to expropriation.

(2) In any proceedings under this Act, the owner may question whether the taking of the land, or the estate or interest in it, is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

RSA 1980 cE-16 s6

The approving authority

7 For the purpose of this Act, the approving authority in respect of an expropriation is

- (a) in the case of an expropriation by the Crown or an agent of the Crown, the Minister responsible for the administration of the authorizing Act,
- (b) the municipal council when a municipality expropriates land, or
- (c) in any other case, the Board.

RSA 1980 cE-16 s7

Notice of intention to expropriate

8(1) The expropriating authority shall file a notice of intention to expropriate in the land titles office.

(2) The expropriating authority shall forthwith serve a copy of the notice of intention on

- (a) every person shown in the records of the land titles office as having an interest in the land, and
- (b) every other person who is known to the expropriating authority to have an interest in the land.

(3) When the expropriating authority is a person other than the Crown or a municipality, the expropriating authority shall forthwith serve a copy of the notice of intention on the approving authority.

(4) The notice of intention shall be published in at least 2 issues, not fewer than 7 nor more than 14 days apart, of a newspaper in general circulation in the locality in which the land is situated.

(5) A notice of intention shall contain

- (a) the name of the expropriating authority,
- (b) the description of the land,
- (c) the nature of the interest intended to be expropriated,
- (d) an indication of the work or purpose for which the interest is required,
- (e) a statement of the provisions of sections 6 and 10,
- (f) the name and address of the approving authority, and
- (g) a statement that a person affected by the proposed expropriation need not serve an objection to the expropriation in order to preserve the person's right to have the amount of compensation payable determined by the Board or the court, as the case may be.

RSA 1980 cE-16 s8;1996 c32 s5(33)

No inquiry where previous hearing

9(1) When, in the opinion of the approving authority, the owner has, pursuant to any other Act, had substantially the same opportunity to object to the expropriation as the owner would have had on an inquiry under this Act, the approving authority by direction in writing may dispense with an inquiry.

(2) When the inquiry is dispensed with under subsection (1), section 8(5)(e), (f) and (g) do not apply to the notice of intention to be served by the expropriating authority but a copy of the direction of the approving authority shall be attached to it.

(3) When the inquiry is dispensed with under subsection (1), the expropriating authority may apply immediately to the approving authority for a certificate of approval.

(4) When the inquiry is dispensed with under subsection (1), sections 10 and 11 do not apply.

RSA 1980 cE-16 s9

Notice of objection

10(1) An owner who desires an inquiry shall serve the approving authority with a notice of objection,

- (a) in the case of an owner served in accordance with section 8(2), within 21 days after service on the owner of the notice of intention, and
- (b) in any other case, within 21 days after the first publication of the notice of intention.

- (2) The notice of objection shall state
- (a) the name and address of the person objecting,
 - (b) the nature of the objection,
 - (c) the grounds on which the objection is based, and
 - (d) the nature of the interest of the person objecting.

RSA 1980 cE-16 s10

Approval where no objection

11(1) On the expiration of the period within which a notice of objection may be served and on proof of service in accordance with section 8(2) and proof of publication in accordance with section 8(4), the approving authority, unless it has been served with a notice of objection, shall approve or disapprove the proposed expropriation.

- (2) The approving authority may approve the expropriation of a lesser interest than that described in the notice of intention.

RSA 1980 cE-16 s11

Withdrawal of objection

12 If a person who has served a notice of objection withdraws it, the approving authority may proceed as though no objection had been made.

RSA 1980 cE-16 s12

No inquiry where expropriation urgent

13(1) If the Lieutenant Governor in Council is at any time satisfied that the expropriating authority urgently requires the land and that delay would be prejudicial to the public interest, the Lieutenant Governor in Council may by order direct that an intended expropriation proceed without inquiry.

(2) When an order is made under subsection (1) prior to service of the notice of intention, section 8(5)(e), (f) and (g) do not apply to the notice of intention to be served by the expropriating authority but a copy of the order shall be attached to it.

(3) When an order is made under subsection (1) after the notice of intention has been served,

- (a) a copy of the order shall be served on every person served with the notice of intention, and
- (b) a copy of the order shall be published in the same newspaper and in the same manner as the notice of intention was published under section 8(4).

(4) When an order is made under subsection (1), the expropriating authority may apply immediately to the approving authority for a certificate of approval and the approving authority shall issue the certificate.

RSA 1980 cE-16 s13

Issue of certificate of approval

14 If the Lieutenant Governor in Council is satisfied that a refusal by an approving authority to grant a certificate of approval for a proposed expropriation is contrary to the public interest, the Lieutenant Governor in Council may by order direct the approving authority to issue a certificate of approval in any terms the Lieutenant Governor in Council considers necessary and appropriate.

RSA 1980 cE-16 s14

Hearing by inquiry officer

15(1) When the approving authority receives an objection, it shall forthwith notify the Minister.

(2) Within 15 days after receiving notice that the approving authority has received an objection, the Deputy Minister or the Deputy Minister's designate shall appoint an inquiry officer, who is not an officer or employee of the Crown or of any agency of the Crown, to conduct an inquiry in respect of the intended expropriation.

(3) The Deputy Minister or the Deputy Minister's designate may appoint a chief inquiry officer who shall exercise the power of the Deputy Minister or the Deputy Minister's designate under subsection (2) and who has general supervision and direction over inquiry officers.

(4) When the expropriating authority is other than the Crown or a municipality, the Deputy Minister or the Deputy Minister's designate shall appoint the Board to carry out the functions of an inquiry officer under this Act.

(5) The inquiry officer shall fix a time and place for the inquiry and shall cause notice of the inquiry to be served on the expropriating authority and on each person who has made an objection to the expropriation.

(6) The expropriating authority and each person who has objected shall be parties to the inquiry.

(7) The inquiry before the inquiry officer shall be held in public.

(8) The inquiry officer shall inquire into whether the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

(9) For the purposes of subsection (8), the inquiry officer

- (a) shall require the expropriating authority to attend at the inquiry and to produce any maps, plans, studies and documents that the inquiry officer considers necessary for the inquiry officer's inquiry;
- (b) may add as a party to the inquiry any owner whose land would be affected by the expropriation of the land concerned in the inquiry and any person who appears to have a material interest in the outcome of the expropriation;
- (c) shall give each party to the inquiry a reasonable opportunity to present evidence and argument and may permit examination and cross-examination, either personally or by counsel or agent;
- (d) may inspect the land intended to be expropriated or the land of an owner referred to in clause (b), either with or without the presence of the parties;
- (e) has general control over the procedure at the inquiry, including power to adjourn the hearing and change the venue;
- (f) may combine 2 or more related inquiries and conduct them as one inquiry;
- (g) may swear witnesses;
- (h) may provide for a transcript of the evidence;
- (i) is not bound by the rules of law concerning evidence.

(10) The expropriating authority shall pay the reasonable costs in connection with the inquiry

- (a) of the inquiry officer, and
- (b) of the owner unless the inquiry officer determines that special circumstances exist to justify the reduction or denial of costs.

Report of inquiry officer

16(1) The inquiry officer shall within 30 days after the inquiry officer's appointment make a report in writing to the approving authority and the report shall contain a summary of the evidence and arguments advanced by the parties, the inquiry officer's findings of fact, and the inquiry officer's opinion on the merits of the expropriation with reasons for that opinion.

(2) The inquiry officer shall forthwith send a copy of the inquiry officer's report to the parties to the inquiry and shall make it available on request to any person at reasonable cost.

RSA 1980 cE-16 s16

Proceedings before inquiry officer

17 No proceedings by or before an inquiry officer or the Board in carrying out the functions of an inquiry officer shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into court nor shall any report or recommendation by the inquiry officer or the Board in carrying out the functions of an inquiry officer be subject to review in any court.

RSA 1980 cE-16 s17

Certificate of approval

18(1) The approving authority shall consider the report of the inquiry officer and shall approve or disapprove the proposed expropriation or approve the proposed expropriation with any modifications that the approving authority considers proper, but no approval shall be modified so as to affect land of a person who was not a party to the inquiry.

(2) Subject to subsection (3), the approving authority shall give written reasons for its decision and shall cause a copy of its decision, together with the reasons for it, to be served on all the parties within 30 days after the date on which the report of the inquiry officer is received by the approving authority.

(3) When the Board is carrying out the functions of an inquiry officer under this Act, it shall, in its capacity as the approving authority,

- (a) approve or disapprove the proposed expropriation or approve the proposed expropriation with modifications,
- (b) give written reasons for its decision, and
- (c) cause a copy of its decision, together with the reasons for it, to be served on all the parties,

within 60 days after its appointment to carry out the functions of the inquiry officer.

(4) If the approving authority approves the expropriation, it shall also provide the expropriating authority with a certificate of approval in the prescribed form.

(5) When the approving authority and expropriating authority are one and the same, the requirements of subsections (2) and (4) respecting service on the expropriating authority are inapplicable.

RSA 1980 cE-16 s18

Effect of registration

19(1) The expropriating authority may register the certificate of approval in the land titles office and, subject to the *Highways Development and Protection Act* and the *Municipal Government Act*, registration vests in the expropriating authority the title to the land described in the certificate as to the interest specified in the certificate.

(2) The certificate of approval shall contain a description of the land being expropriated that is satisfactory to the Registrar of Land Titles or shall be accompanied with a plan of survey of the land.

RSA 2000 cE-13 s19;2004 cH-8.5 s64

Failure to register certificate of approval

20 Subject to section 23, if the expropriating authority does not cause the certificate of approval to be registered in the land titles office within 120 days from the date when the notice of intention was registered and no extension order has been registered under section 23(4), the expropriation shall be conclusively presumed to be abandoned, the notice of intention to expropriate lapses and the Registrar shall cancel the memorandum of it on any certificate of title affected by it.

RSA 1980 cE-16 s20

Amended certificate of approval

21(1) After the approving authority has approved a proposed expropriation and notwithstanding registration of the certificate of approval, it may vary the size, location or boundary of the expropriated land within the boundaries of the parcel from which the land was expropriated, if, in the opinion of the approving authority, the variation is minor and can be made without prejudice to the owner.

(2) If the approving authority varies the expropriation under subsection (1), it shall provide the expropriating authority with an amended certificate of approval.

- (3) The expropriating authority may register the amended certificate of approval in the land titles office.
- (4) When the amended certificate of approval is registered in the land titles office
- (a) it takes the place of the certificate of approval registered under section 19;
 - (b) the expropriating authority shall not be delayed in taking possession on account of the amendment;
 - (c) the owner is entitled to compensation for the owner's interest in the land described in the amended certificate of approval or to compensation for the owner's interest in the land described in the certificate of approval, whichever is the greater;
 - (d) the provisions of this Act for determining compensation, including the provisions relating to proposed payments, apply.

RSA 1980 cE-16 s21

Proof of compliance with Act

22 Registration of the certificate of approval is conclusive proof that all the requirements of this Act in respect of registration and of matters precedent and incidental to registration have been complied with.

RSA 1980 cE-16 s22

Extension of time

23(1) The Deputy Minister or the Deputy Minister's designate may, prior to the expiration of the 120-day period referred to in section 20,

- (a) extend the time for appointing the inquiry officer by an additional 5 days;
- (b) extend the time for the inquiry officer to report by an additional 30 days;
- (c) extend the time for the approving authority to make its decision by an additional 30 days.

(2) When the Deputy Minister or the Deputy Minister's designate has, pursuant to subsection (1), extended the time for the approving authority to make its decision and at the end of the extended period the approving authority has not made a decision, the application for a certificate of approval is deemed to have been refused.

(3) When any extension is granted under subsection (1), the Deputy Minister or the Deputy Minister's designate shall execute an extension order extending the time for registration of the certificate of approval for an equivalent number of days.

(4) The extension order executed under subsection (3) shall be registered in the land titles office prior to the expiration of the 120-day period and shall be served forthwith on the persons who were served with the notice of intention and on any other person who has given notice of objection or has otherwise become a party to the inquiry.

RSA 1980 cE-16 s23;1994 c23 s17;1996 c32 s5(33)

Abandonment of expropriation

24(1) An expropriating authority may abandon its intention to expropriate, either wholly or partially, at any time before registration of the certificate of approval in the land titles office.

(2) The expropriating authority shall serve a copy of a notice of abandonment on all persons who were entitled to be served with the notice of intention to expropriate, including the approving authority, and shall deposit the notice in the appropriate land titles office.

(3) If an expropriation has been abandoned, the expropriating authority shall pay to the owner any actual loss sustained by the owner and the reasonable legal, appraisal and other costs incurred by the owner up to the time of abandonment, as a consequence of the initiation of the expropriation proceedings.

(4) Compensation payable under this section, including costs, must be fixed by the Board.

RSA 1980 cE-16 s24

Part 2 Procedure for Compensation

Land Compensation Board

25(1) There is hereby established a Board called the "Land Compensation Board" consisting of the members appointed by the Lieutenant Governor in Council in accordance with this section.

(2) The Lieutenant Governor in Council shall designate one member as chair and may appoint one or more of the other members as vice-chair and may appoint any other members that the Lieutenant Governor in Council considers advisable.

(3) The chair and each member of the Board shall be paid

- (a) remuneration, and
- (b) payment for expenses incurred while away from their ordinary places of residence and in the course of their duties as members,

as fixed by the Lieutenant Governor in Council in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*.

(4) The chair may select a member or any uneven number of members to deal with a particular case or class or group of cases.

(5) The member or members selected pursuant to subsection (4) may perform the functions of the Board in respect of the particular case or class or group of cases for which they were selected and when performing any of those functions have all the powers and jurisdiction of the Board.

RSA 2000 cE-13 s25;2009 cA-31.5 s39

Staff

26 In accordance with the *Public Service Act*, there may be appointed a secretary, an assistant secretary, inspectors, land examiners and other employees required to carry on the business of the Board.

RSA 1980 cE-16 s26

Jurisdiction of Boards

27(1) Except as provided in subsection (2) or in section 29(3), the Land Compensation Board has jurisdiction with respect to expropriations under this Act.

(2) The Surface Rights Board has jurisdiction with respect to expropriations under this Act authorized under or pursuant to the *Hydro and Electric Energy Act* with respect to power plants or under or pursuant to the *Railway (Alberta) Act*.

RSA 2000 cE-13 s27;RSA 2000 cR-4 s60;2002 c18 s2

Rules of procedure and practice

28(1) The Lieutenant Governor in Council may make rules of procedure and practice governing the hearings and proceedings before the Board and in particular relating to

- (a) the method and form of initiating proceedings,
- (b) notice to admit facts,
- (c) production of documents,
- (d) examinations for discovery, and

(e) provision for the hearing of 2 or more claims together.

(2) The Board may hold its sittings at any place or places in Alberta that it from time to time considers expedient.

(3) The Board shall cause all oral evidence submitted before it at a formal hearing to be recorded, and that evidence, together with any documentary and other evidence, shall form the record before the Board.

(4) The Board has

(a) all the powers of a commissioner appointed under the *Public Inquiries Act*, and

(b) any further powers and duties that may be provided by the Lieutenant Governor in Council.

(5) The Board may enter on and inspect, or authorize any person to enter on and inspect, any land, building, works or other property.

(6) The Board

(a) in conducting any hearing shall proceed in accordance with its rules of procedure and practice,

(b) is not bound by the rules of law concerning evidence, and

(c) may adjourn any hearing of a proceeding from time to time for any length of time that the Board in its discretion considers expedient or advisable.

(7) If any person, other than a party without just cause,

(a) on being summoned as a witness before the Board defaults in attending, or

(b) being in attendance as a witness refuses to take an oath legally required by the Board to be taken, or to produce any document or thing in the person's power or control legally required by the Board to be produced by the person, or to answer any question to which the Board may legally require an answer,

a member of the Board may certify a statement of the facts of the default or refusal of that person and the court, on the application of the Board, may inquire into the matter.

(8) On inquiring into a matter under subsection (7), the court, after hearing any witnesses tendered and after hearing any representations offered, may

- (a) issue a warrant requiring the attendance of the person before the Board or the production by the person of the document or thing, or
- (b) commit the person for contempt.

RSA 1980 cE-16 s28

Fixing compensation

29(1) When the expropriating authority and the owner have not agreed on the compensation payable under this Act, the Board shall determine the compensation.

(2) The Board shall also determine any other matter required by this or any other Act to be determined by the Board.

(3) Notwithstanding subsection (1), when the expropriation is by the Crown, the owner may elect to have the compensation fixed by the court and in that case the provisions of this Act relating to determination of compensation by the Board apply with all necessary modifications to the proceedings before the court.

RSA 1980 cE-16 s29

Owners to consent to acquisition

30(1) Notwithstanding anything in this Act, the owner may consent to the acquisition of land by an expropriating authority subject to the condition that compensation for the land shall be determined by the Board.

(2) The consent of an owner to the acquisition of land pursuant to subsection (1) shall be evidenced by an express agreement in writing between the owner and the expropriating authority stating

- (a) that the owner consents to the acquisition,
- (b) that compensation shall be determined by the Board, and
- (c) the date fixed for possession of the land,

and the owner shall thereupon execute the necessary conveyance of the land to the expropriating authority.

(3) At any time following execution of the document under subsection (2), either the expropriating authority or the owner may apply to the Board to determine the compensation.

(4) When an application is made under subsection (3), the Board shall determine the compensation as if the land were expropriated and the provisions of this Act and the regulations respecting the determination of compensation, hearings and procedures, including interest, costs and appeals, apply to the determination in the same manner as if the land had in fact been expropriated.

(5) Unless otherwise agreed by the parties, compensation is to be determined as of the date of the document conveying the land from the owner to the expropriating authority.

RSA 1980 cE-16 s30

Payment proposed

31(1) When a certificate of approval has been registered, the expropriating authority shall forthwith serve the owner with a notice of expropriation in the prescribed form.

(2) Within 90 days after registration of the certificate of approval, the expropriating authority shall give to the owner a written notification setting out the amount that the expropriating authority, subject to subsection (3), estimates to be equal to the compensation to which the owner is then entitled in respect of the owner's interest in the land.

(3) If the expropriated land is part of a larger parcel,

- (a) the proposed payment shall be for the estimated value of the expropriated land, and excepting co-owners of the same interest, where there is more than one owner and they are not co-owners of the same interest in the land, the owners may agree as to the disposition among themselves of the proposed payment, but in the event of dispute the expropriating authority may apply to the Board for an order for payment to the Board of the proposed payment and the Board may make directions as to the disposition of that amount, and
- (b) the proposed payment shall include the expropriating authority's estimate of severance damage.

(4) Immediately on receipt of the written notification given by the expropriating authority under subsection (2), the owner is entitled to receive payment of the amount of the proposed payment.

(5) Acceptance by the owner of the proposed payment is without prejudice to the owner's right to claim additional compensation in respect of the expropriation.

(6) The proposed payment is irrevocable by the expropriating authority until the hearing but nothing in this section prevents the Board from awarding an amount less than that of the proposed payment.

(7) The expropriating authority may, within the 90-day period mentioned in subsection (2) and before taking possession of the land, on giving at least 2 days' notice to the registered owner, apply to the court for an order extending the 90-day period.

RSA 1980 cE-16 s31

Determination of proposed payment

32 The proposed payment shall be based on a written appraisal as prescribed in the regulations, and a copy of the appraisal shall accompany the notification to the owner pursuant to section 31(2).

RSA 1980 cE-16 s32

Information to authority

33(1) To assist the expropriating authority in making its appraisal, the owner shall furnish on request to the expropriating authority any information relevant to the valuation of the owner's interest.

(2) Any owner who withholds any relevant information may be penalized in

- (a) costs, and
- (b) interest that the owner would otherwise be entitled to under section 66.

RSA 1980 cE-16 s33

Determination of proposed payment by Board

34 If the expropriating authority is unable to obtain the information necessary to make a proper determination of the amount of a proposed payment, the expropriating authority may apply to the Board for directions and the Board may determine the amount of the proposed payment.

RSA 1980 cE-16 s34

Payment of costs

35(1) The owner may obtain an independent appraisal of the owner's interest that has been expropriated and the expropriating authority shall pay the reasonable cost of the appraisal.

(2) The owner may obtain advice from any solicitor of the owner's choice as to whether to accept the proposed payment in full settlement of compensation, and the expropriating authority shall pay the owner's reasonable legal costs for that advice.

RSA 1980 cE-16 s35

Time limit

36(1) If the expropriating authority and the owner have not agreed on the compensation payable under this Act,

- (a) the expropriating authority may institute proceedings to determine compensation after offering the proposed payment;
- (b) the owner may institute proceedings after the offering of the proposed payment or the expiration of the time for offering the proposed payment, whichever first occurs.

(2) If no proceedings have been commenced by either party within one year of the date of receipt by the owner of the written notification given by the expropriating authority under section 31(2), the amount of the proposed payment shall be conclusively deemed to be the full compensation to which the owner is entitled.

RSA 1980 cE-16 s36

Appeal

37(1) An appeal lies to the Court of Appeal from any determination or order of the Board except when it is carrying out the functions of an inquiry officer under Part 1.

(2) An appeal under subsection (1) may be made on questions of law or fact, or both, and the Court of Appeal

- (a) may refer any matter back to the Board, or
- (b) may make any decision or order that the Board has power to make,

and may exercise the same powers that it exercises on an appeal from the Court of Queen's Bench sitting without a jury, and the rules and practice applicable to appeals to the Court of Appeal apply.

RSA 1980 cE-16 s37

Stated case

38(1) When the jurisdiction of the Board or the validity of any decision, order, direction or other act of the Board is called into question by any person affected thereby, the Board, on the request of that person, shall state a case in writing to the Court of Appeal setting out the material facts and the decision of the Court on the case is final and binding.

(2) If the Board refuses to state a case, the person affected may apply to the Court of Appeal for an order directing the Board to state a case.

(3) Pending a decision on the stated case, no further proceedings in respect of the application shall be taken by the Board except with the permission of a judge of the Court of Appeal.

(4) This section does not apply to the Board when it is carrying out the functions of an inquiry officer under Part 1.

RSA 2000 cE-13 s38;2014 c13 s26

Costs

39(1) The reasonable legal, appraisal and other costs actually incurred by the owner for the purpose of determining the compensation payable shall be paid by the expropriating authority, unless the Board determines that special circumstances exist to justify the reduction or denial of costs.

(2) The Board may order by whom the costs are to be taxed and allowed.

(3) When settlement has been made without a hearing and the owner and the expropriating authority are unable to agree on the costs payable by the expropriating authority, the Board may determine the costs payable to the owner and subsections (1) and (2) apply.

(4) On appeal by the expropriating authority, costs of the appeal shall be paid on the same basis as they are payable under subsection (1) and on appeal by the owner, the owner is entitled to the owner's costs when the appeal is successful and, when unsuccessful, the costs are in the discretion of the Court of Appeal.

RSA 1980 cE-16 s39

Distribution of compensation

40(1) If the persons interested, or appearing to be interested, in the compensation fail to agree as to the disposition of it among themselves, the Board shall direct that the amount shall be paid into court.

(2) If money is paid into court pursuant to subsection (1), the court shall, on application by any party claiming an interest in the money, determine the disposition of the money.

RSA 2000 cE-13 s40;2009 c53 s62

Principles of Compensation

Determination of market value

41 The market value of land expropriated is the amount the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

RSA 1980 cE-16 s41

Principles of compensation

42(1) When land is expropriated, the expropriating authority shall pay the owner the compensation as is determined in accordance with this Act.

(2) When land is expropriated, the compensation payable to the owner must be based on

- (a) the market value of the land,
- (b) the damages attributable to disturbance,
- (c) the value to the owner of any element of special economic advantage to the owner arising out of or incidental to the owner's occupation of the land to the extent that no other provision is made for its inclusion, and
- (d) damages for injurious affection.

RSA 1980 cE-16 s42

Value of occupied land

43 If the owner of the land that is being or was expropriated is or was in occupation and as a result of the expropriation it is or was necessary for the owner to give up occupation of the land, the value of the land is the greater of

- (a) the market value of the land determined as set out in section 41, or
- (b) the aggregate of
 - (i) the market value of the land determined on the basis that the use to which the expropriated land was being put at the time of its taking was its highest and best use, and
 - (ii) damages for disturbance.

RSA 1980 cE-16 s43

Compulsory acquisition

44 In determining the amount of compensation payable, no allowance shall be made on account of the acquisition being compulsory except where unusual circumstances exist for which no provision for compensation is contained in this Act.

RSA 1980 cE-16 s44

Determining value of land

45 In determining the value of the land, no account may be taken of

- (a) any anticipated or actual use of the land by the expropriating authority at any time after the expropriation;
- (b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the land, if that transaction or agreement was entered into after the commencement of expropriation proceedings;
- (c) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation;
- (d) any increase or decrease in the value of the land due to the development of other land that forms part of the development for which the expropriated land is taken;
- (e) any increase or decrease in value that results from the imposition or amendment of a land use bylaw, land use classification or analogous enactment made with a view to the development under which the land is expropriated.

RSA 1980 cE-16 s45

Special purpose structures

46(1) If any land has a building or other structure erected on it that was specially designed for use for the purpose of a school, hospital, municipal institution or religious or charitable institution or for any similar purpose, and the use of the building or other structure for that purpose by the owner has been rendered impracticable as a result of the expropriation, the value of the expropriated interest is, if the expropriated interest was and, but for the expropriation, would have continued to be used for that purpose and if at the time of its taking there was no general demand or market for the building or structure to be used for that purpose, the greater of

- (a) the market value of the expropriated interest determined as set out in section 41;
- (b) the aggregate of
 - (i) the cost of any reasonable alternative interest in land for that purpose, and
 - (ii) the cost, expenses and losses arising out of or incidental to moving to and re-establishment on other premises, minus the amount by which the owner has improved, or may reasonably be expected to improve, the owner's position through re-establishment on other premises.

(2) For the purposes of subsection (1)(b), the cost of any reasonable alternative interest in land shall be computed as of the date at which construction of the new building or the structure could reasonably be begun.

RSA 1980 cE-16 s46

Relocation of residence

47(1) On application therefor, the Board shall, after fixing the market value of land used for the principal residence of the owner, award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate the owner's residence in accommodation that is at least equivalent to the accommodation expropriated, and in fixing the additional amount of compensation the Board shall include the increase in cost between the time of expropriation and the time when the new accommodation could reasonably be obtained.

(2) In this section, "owner" means a registered owner or purchaser and does not include a tenant.

RSA 1980 cE-16 s47

Valuation of separate interests

48 When there is more than one separate interest in land, the market value of each separate interest shall, where practical, be established separately.

RSA 1980 cE-16 s48

Security interests

49(1) When the expropriated land is subject to a security interest, the market value of each person having an interest in the land shall be established separately.

(2) When the amount owing to the security holder is greater than the market value of the security holder's interest and there is no collateral security other than the covenant of the purchaser or borrower to pay the amount of the debt, the security interest is deemed to be fully paid, discharged and satisfied on payment to the security holder of the market value of the security.

(3) When the amount owing to the security holder is greater than the market value of the security holder's interest and there is collateral security other than the covenant of the purchaser or borrower to pay the amount of the debt, and whether that collateral is by way of security on other property or a guarantee of a third party or otherwise, the compensation shall not fully discharge the debt and the Board shall determine the balance remaining and the manner in which it is to be repaid.

(4) When the expropriation is of a part of land that is subject to a security interest, the Board shall determine the market value of the expropriated part and shall distribute the compensation between the parties as it considers just in the circumstances.

RSA 1980 cE-16 s49

Disturbance compensation to owner

50 The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs and expenses as are the natural and reasonable consequences of the expropriation, including,

- (a) when the premises taken include the owner's residence,
 - (i) an allowance of
 - (A) 5% of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, or
 - (B) the actual amount proved with respect to those items, whichever is the greater, to compensate for inconvenience and the costs of finding another residence, if the part of the land so used was not being offered for sale on the date of the expropriation, and
 - (ii) a reasonable allowance for improvements, the value of which is not reflected in the market value of the land;
- (b) when the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, if the lands were not being offered for sale on the date of the expropriation;
- (c) relocation costs, to the extent that they are not covered in clause (a) or (b), including
 - (i) moving costs, and
 - (ii) legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

RSA 1980 cE-16 s50

Disturbance compensation to tenant

51(1) The expropriating authority shall pay to a tenant occupying expropriated land, in respect of disturbance, so much of the cost referred to in section 50 as is appropriate having regard to

- (a) the length of the term,
- (b) the portion of the term remaining,
- (c) any rights to renew the tenancy or the reasonable prospects of renewal,
- (d) in the case of a business, the nature of the business, and
- (e) the extent of the tenant's investment in the land.

(2) The tenant's right to compensation under this section is not affected by the premature determination of the lease as a result of the expropriation.

RSA 1980 cE-16 s51

Disturbance compensation to security holder

52(1) When the expropriated land is subject to a security interest, the expropriating authority shall pay to the security holder 3 months' interest at the rate prescribed in the security document or, if no rate is prescribed, at the rate that would normally be payable in respect of the security, on the amount of the outstanding principal.

(2) When the Board makes a determination under section 49, the amount payable in respect of interest under this section to the security holder shall be in the same proportion in relation to the total payment made on account of interest that the land being expropriated and subject to the security interest bears to the entire amount of land subject to the security interest.

RSA 1980 cE-16 s52;1984 c55 s19

Business losses

53 When a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business because of the expropriation and the Board may defer determination of the business losses until the business has moved and been in operation for 6 months or until a 3-year period has elapsed, whichever occurs first.

RSA 1980 cE-16 s53

Compensation for good will

54 The Board may, on the application of the expropriating authority or an owner, include in determining compensation an amount not exceeding the value of the good will of a business when the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate.

RSA 1980 cE-16 s54

Partial expropriation

55 When only part of an owner's land is expropriated and as a result of the expropriation the value of the remaining land is increased, the owner is nevertheless entitled to the market value of the land expropriated.

RSA 1980 cE-16 s55

Injurious affection and incidental damage

56 When only part of an owner's land is taken, compensation shall be given for

- (a) injurious affection, including
 - (i) severance damage, and
 - (ii) any reduction in market value to the remaining land,
- and
- (b) incidental damages,

if the injurious affection and incidental damages result from or are likely to result from the taking or from the construction or use of the works for which the land is acquired.

RSA 1980 cE-16 s56

Easement or right of way

57 On the expropriation of an easement or right of way, the Board, in making its award for the value of the interest taken, may ignore the residual value to the owner.

RSA 1980 cE-16 s57

Compensation for damages

58 When the expropriation is of an easement or right of way, the Board may determine the amount of compensation payable by the expropriating authority for

- (a) damage caused by or arising out of the operation of the expropriating authority to any land of the owner or occupant other than the area expropriated,
- (b) the loss of or damage to livestock or other personal property of the owner or occupant caused by or arising out of the operations of the expropriating authority, and
- (c) time spent or expense incurred by the owner or occupant in repairing or recovering any of the owner's or occupant's personal property, or in recovering any of the owner's or occupant's livestock that have strayed, due to an act or

omission of the expropriating authority, and shall direct the person to whom the compensation is payable.

RSA 1980 cE-16 s58

Part 3 General

Crediting of proposed payment

59 When a proposed payment has been paid to a person in respect of an expropriated interest, the amount so paid shall be deducted from the amount of the compensation awarded by the Board, and if the amount so paid exceeds the amount awarded by the Board, the excess constitutes a debt to the expropriating authority and may be recovered by action.

RSA 1980 cE-16 s59

Regulations

60 The Lieutenant Governor in Council may make any orders and regulations that the Lieutenant Governor in Council considers necessary to effect the intent of this Act.

RSA 1980 cE-16 s60

Effect of expropriation

61(1) The right to compensation and the compensation finally awarded for any estate or interest acquired or taken under this Act in Crown or other land by an expropriating authority stands in the stead of the estate or interest so acquired or taken and a claim to or an encumbrance on the estate or interest is converted, as against the expropriating authority, into a claim for the compensation or a portion of the compensation.

(2) When the estate or interest has been expropriated in the manner provided by this Act, the estate or interest becomes the property of the expropriating authority free and clear of any and all claims and encumbrances in respect of the previous estate or interest.

RSA 1980 cE-16 s61

Unregistered land

62 When an estate in fee simple in any land is held by any person and the land is not registered in a land titles office, the land may be expropriated by a deposit in the land titles office of a certificate of approval and such certificates of title may be made in respect of it by the Registrar of Land Titles as may be necessary to indicate the vesting in the expropriating authority of the land expropriated.

RSA 1980 cE-16 s62;1996 c32 s5(33)

Right of entry

63(1) Whether or not expropriation proceedings have been commenced by registration of notice of intention to expropriate, the

expropriating authority may, after making reasonable effort to give notice of the proceedings to the person in possession of the land, enter by itself or by its servants or agents on any Crown or other land for the purpose of making

- (a) surveys, examinations, soil tests, or other necessary arrangements to determine the location of any proposed works or the description of the land that it may require in connection with it, and
- (b) an appraisal of the value of the land or any interest in it.

(2) Subject to subsection (3), if it is necessary to effect a survey an expropriating authority may, by itself or by its servants or agents, cut down any trees or brush that obstruct the running of survey lines.

(3) An expropriating authority who exercises a power given by this section shall compensate the registered owner or person in possession of the land, as the case may be, for all damage caused by it or its servants or agents in or by the exercise of all or any of the powers given by this section.

(4) If the land entered on is not expropriated, no action lies against the expropriating authority for damage occasioned by it in the exercise of a power given by this section unless notice in writing signed by the claimant is given to the expropriating authority who exercised the power within 6 months after notice was given to the claimant pursuant to subsection (1).

(5) The provisions of this section for notice and compensation apply notwithstanding that the authorizing Act makes express provision with respect to the subject-matter of this section.

RSA 1980 cE-16 s63

Date of possession

64(1) Within 30 days after the certificate of approval has been registered, the expropriating authority shall, subject to any agreement to the contrary, serve on the person in possession a notice that it requires the land on the date specified in the notice.

(2) The date specified in the notice shall be

- (a) 7 days from the date of service of the notice when the land expropriated is for a right of way, and
- (b) in all other cases, at least 90 days from the date of service of the notice.

(3) Any time after service of the notice, either party may apply to the court on 3 days' notice for an adjustment of the date for possession specified in the notice referred to in subsection (1) and the court may order an adjustment in the date.

(4) Notwithstanding anything in this section, the expropriating authority is not, except with the permission of the court, entitled to take possession

- (a) in the case of land expropriated for a right of way, until the proposed payment has been tendered, and
- (b) in all other cases, until the expiry of 30 days after the proposed payment has been tendered.

RSA 2000 cE-13 s64;2009 c53 s62;2014 c13 s26

Enforcement of right to possession

65 If any resistance or opposition is made or is threatened to be made by any person to the expropriating authority, or to any authorized person acting for it, in exercising its rights in or over, or to enter on and take possession of, the land, the court may on application issue an order of possession or any other order that may be necessary to enable the expropriating authority to exercise those rights.

RSA 2000 cE-13 s65;2009 c53 s62;2011 c14 s8

Interest payments

66(1) An expropriating authority shall pay interest at a rate the Board considers just

- (a) with respect to
 - (i) compensation for the land, and
 - (ii) severance damages on a partial taking from the date of acquisition of title until payment in full;
- (b) on damages for disturbance from the date of the award of the damages until payment in full.

(2) Notwithstanding subsection (1), if the owner is in possession when the expropriating authority acquires title, the owner is not entitled to interest until the owner has given up possession.

(3) If the expropriating authority has delayed in notifying the owner of the proposed payment beyond the prescribed time, the Board shall order the expropriating authority to pay additional interest on the value of the land and severance damage, if any, from the beginning of the delay until the proposed payment is or was made, at the same rate as that prescribed in subsection (1).

(4) If the amount of the proposed payment is less than 80% of the amount awarded for the interest taken and severance damage, if any, the Board shall order the expropriating authority to pay additional interest at the same rate as that prescribed in subsection (1), from the date of notifying the owner of the proposed payment until payment, on the amount by which the compensation exceeds the amount of the proposed payment.

(5) Notwithstanding subsections (3) and (4), if the Board is of the opinion that a proposed payment of less than 80% of the amount awarded for the interest taken and severance damage, if any, or any delay in notifying the owner of the proposed payment is not the fault of the expropriating authority, the Board may refuse to allow the owner additional interest for the whole or any part of any period for which the owner would otherwise be entitled to interest.

RSA 1980 cE-16 s66

Service of documents

67 When a document is required by this Act to be served on any person and no method of service is prescribed, the document may be served personally or by registered mail addressed to the person to be served at the person's last known address or, if that person or that person's address is unknown, by publication once in a newspaper having general circulation in the locality in which the land concerned is situated, and service is deemed to be made

- (a) in the case of service by registered mail, in the ordinary course of mail;
- (b) in the case of service by publication, on the date of publication.

RSA 1980 cE-16 s67

Court order re proposed payment

68(1) If the owner of land that is the subject of expropriation is under a legal disability, or is not known, or the owner's residence is not known, or the owner cannot be found, the court may appoint a person to act in the owner's behalf for any purpose under this Act.

(2) If there is no guardian, committee or other person to represent an owner who is under a legal disability, or the owner is unknown, or the owner's residence is unknown, or the owner cannot be found, the expropriating authority shall apply to the court for an order for payment into court of the proposed payment and the court may make directions as to the disposition of that amount.

RSA 1980 cE-16 s68

Determination of interest in land

69(1) After the expropriating authority has acquired title, if the expropriating authority or the Board is in doubt as to the persons who had any interest in the land or the nature or extent of the interest, the expropriating authority may apply or the Board may direct the expropriating authority to apply to the court to make a determination respecting the state of the title of the land immediately before the expropriation, and the court shall determine that issue.

(2) When an application is made under subsection (1),

- (a) notwithstanding section 31(2), the expropriating authority has 90 days from determination of the issue by the court to make its notification of proposed payment, and
- (b) the expropriating authority may apply to the court for permission to take possession of the land as soon as it is required by the expropriating authority.

RSA 2000 cE-13 s69;2014 c13 s26

Revesting of expropriated interest

70(1) If, within 2 years of acquiring title to land by expropriation, the expropriating authority finds that the land or any portion of it is no longer required for its purposes and the expropriating authority desires to dispose of it, it shall first offer to sell it to the former owner of the fee simple and if the former owner does not accept the offer, the expropriating authority may sell the land to any other person on terms that are at least as favourable to the expropriating authority.

(2) When the expropriation is of part of a parcel of land, the offer pursuant to subsection (1) shall be to the former owner or that owner's successor in title to the residue of the parcel, and if there is more than one successor, to such of them as to the expropriating authority appears just.

(3) In the case of the taking of a right of way, if at any time the expropriating authority or its successor has discontinued the use for which the land was expropriated, the expropriating authority or the former owner of the expropriated land or that owner's successor in title to the land from which the right of way was taken may apply to the court in those cases where the expropriation was authorized by the court and in all other cases to the Board for an order terminating the estate or interest of the expropriating authority and the court or the Board, as the case may be, may

- (a) terminate the estate or interest acquired by the expropriating authority, and

(b) grant the estate or interest so terminated to the person from whom it was expropriated or to such other person as the court or Board, as the case may be, may order.

(4) If the expropriated estate or interest is one to which Part 6 of the *Environmental Protection and Enhancement Act* applies, the court or the Board, as the case may be, shall not make an order under subsection (3) unless a reclamation certificate has been issued under that Act.

(5) An order of the court or the Board made pursuant to subsection (3), or a certified copy of it,

- (a) may be registered in the appropriate land titles office, or
- (b) if the land is not registered in a land titles office, may be filed with the Deputy Minister of the department charged with the administration of the land affected,

and on registration or filing the estate or interest so terminated is revested in the person from whom it was expropriated or is vested in the other person named in the order, as the case may be.

RSA 1980 cE-16 s70;1992 cE-13.3 s246(7)

Expropriation of lessee's interest

71(1) Subject to subsection (2), when only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated to the extent that the parties agree or, failing agreement, as determined by the Board.

(2) When all the interest of a lessee in land is expropriated or when part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease is deemed to be frustrated from the date of the expropriation.

RSA 1980 cE-16 s71

Regulations

72 The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Act.

RSA 1980 cE-16 s72

Schedule**(Section 2)**

	Title	Extent of Exception
1.	Agricultural Service Board Act	Orders of reclamation under section 12
2.	Land Titles Act	Plans of subdivisions and plans of surveys under sections 82 and 91
3.	Municipal Government Act, Part 17	Cancellation of plans of subdivision
4.	Public Lands Act	Cancellations or withdrawals under sections 82, 109 and 110
5.	Surface Rights Act	The whole
6.	Mines and Minerals Act	Cancellations or refusals to renew under section 8(1)(c)
7.	Oil Sands Conservation Act	Schemes under section 18
8.	Oil and Gas Conservation Act	Schemes under section 99
9.	Metis Settlements Act	Right of entry order under Part 4
10.	Metis Settlements Land Protection Act	Acquisition of an interest less than the fee simple in patented land under section 6
11.	Municipal Government Act	Part 1 of the Expropriation Act does not apply to a temporary road or right of way established under section 26

RSA 1980 cE-16 Sched.;1981 c48 s2;1981 cR-9.1 s15;
1983 cO-5.5 s30;1988 cT-3.5 s49;1990 c29 s10;
1990 cM-14.3 s266;1994 cM-26.1 s642(23);1995 c24 s100



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