

NH: EMINENT DOMAIN FOR POWER LINES

New Hampshire Statutes - Table of Contents
New Hampshire Statutes
Table of Contents

CHAPTER 371: PROCEEDINGS TO ACQUIRE PROPERTY OR RIGHTS

- Section 371:1 Petition.
- Section 371:1-a Procedure.
- Section 371:2 Contents; Recording.
- Section 371:2-a Right to Enter.
- Section 371:3 Highway Rights.
- Section 371:4 Procedure.
- Section 371:4-a Evidence of Compensation to be Paid.
- Section 371:5 Notice by Publication.
- Section 371:5-a Residential Owner Option.
- Section 371:5-b Determination of Just Compensation.
- Section 371:6 Owners Under Disability.
- Section 371:7 Compensation of Guardian.
- Section 371:8 By Railroads.
- Section 371:9 Entry by Public Utility.
- Section 371:10 Appeal on Damages.
- Section 371:11 Security.
- Section 371:12 Costs.
- Section 371:13 Reduction of Damages.
- Section 371:14 Fees.
- Section 371:15 By Pipeline Companies.
- Section 371:16 Forfeiture for Nonuse.
- Section 371:17 Petition.
- Section 371:18 Exception.
- Section 371:19 Notice to Attorney General.
- Section 371:20 Hearing; Order.
- Section 371:21 Damages.
- Section 371:22 Deeds.
- Section 371:23 Compensation.
- Section 371:24 Easements for Utility Lines Crossing Railroad Property.

Section 371:1 Petition. TITLE XXXIV
PUBLIC UTILITIES
CHAPTER 371
PROCEEDINGS TO ACQUIRE PROPERTY OR RIGHTS
Eminent Domain
Section 371:1

371:1 Petition. – Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, or a pipeline, conduit, line of poles, towers or wires across the land of another, or should acquire land, land for an electric substation, or flowage, drainage, or other rights for the necessary construction, extension or improvement of any water power or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes. No public utility may petition for permission to take private land or property rights for the construction or operation of an electric generating plant.

Source. 1911, 164:13. 1919, 162:1. PL 244:1. RL 294:1. 1951, 203:48 par. 1, RSA 371:1. 1971, 357:2. 1998, 253:1, eff. date, see contingency note set forth below.

Section 371:1-a Procedure. TITLE XXXIV
PUBLIC UTILITIES
CHAPTER 371
PROCEEDINGS TO ACQUIRE PROPERTY OR RIGHTS
Eminent Domain
Section 371:1-a

371:1-a Procedure. – Notwithstanding the procedures set forth in any other chapter, this chapter shall apply to all cases of eminent domain concerning public utility facilities.
Source. 1971, 357:3.

Section 371:2 Contents; Recording. TITLE XXXIV
PUBLIC UTILITIES
CHAPTER 371
PROCEEDINGS TO ACQUIRE PROPERTY OR RIGHTS
Eminent Domain
Section 371:2

371:2 Contents; Recording. – The petition of a public utility shall set out the title and the description of the land involved, the rights to be taken therein, and the public use for which the same are desired, and a certified copy of the petition and final decree thereon shall be recorded, if said petition shall be granted, in the registry of deeds in the county or counties in which the real estate affected thereby is located.

Source. 1911, 164:13. 1919, 162:1. PL 244:5. RL 294:8. 1951, 203:48 par. 7, eff. Sept. 1, 1951.

Section 371:2-a Right to Enter. TITLE XXXIV
PUBLIC UTILITIES
CHAPTER 371
PROCEEDINGS TO ACQUIRE PROPERTY OR RIGHTS
Eminent Domain
Section 371:2-a

371:2-a Right to Enter. – When ownership of land, upon or over which a public utility desires to erect facilities, cannot be ascertained without entry to do survey work, or, a public utility shall have filed a petition under RSA 371:1 with respect to a particular tract of land, in either case a public utility shall have the right to enter upon such land for the purpose of surveying and making such other investigation as is necessary to determine the locations of the boundaries of such land and of the facilities it desires to erect thereon or thereover, and to determine the title to, description of, or nature of such land. A public utility desiring to enter land in pursuance of this section shall make every reasonable effort to notify the owner or probable owner or owners thereof of its desire to enter for the purposes aforesaid prior to entry. The public utility shall pay the owner or owners of any land it shall enter in pursuance of the provisions of this section for any actual damage done upon entry.

Source. 1965, 90:1, eff. May 14, 1965.

Section 371:3

371:3 Highway Rights. – No such taking of flowage or drainage rights shall affect the right of a town in any highway or bridge.

Source. 1919, 162:1. PL 244:2. RL 294:2. 1951, 203:48 par. 2, eff. Sept. 1, 1951.

Section 371:4

371:4 Procedure. – The commission shall, upon notice to all parties in interest, hear and determine the necessity for the right prayed for and the compensation to be paid for such right, and shall render judgment accordingly. In such proceedings the provisions relating to flowage rights contained in RSA 482 shall not apply, but when petitions to acquire flowage or drainage rights are filed the commission shall notify the department of environmental services.

Source. 1911, 164:13. 1919, 162:1. PL 244:3. 1937, 133:99. RL 294:3. 1951, 203:48, par. 3. RSA 371:4. 1989, 138:2; 339:25. 1996, 228:108, eff. July 1, 1996.

Section 371:4-a

371:4-a Evidence of Compensation to be Paid. – In determining the compensation to be paid hereunder, all relevant and probative evidence on the question of the value of the land or rights to be taken shall be considered. If the proceeding involves a partial taking, the "before and after test" shall be considered. Without limiting the foregoing, evidence of other sales to the condemning utility shall be admitted, providing that the party seeking to introduce such evidence establishes that such sales (1) occurred reasonably close in time to the date of the petition under RSA 371:1, (2) concern relatively similar land or rights, and (3) took place under such circumstances respecting freedom of contract as to be probative.

Source. 1983, 247:6, eff. Aug. 17, 1983.

Section 371:5

371:5 Notice by Publication. – Upon evidence satisfactory to the commission that any owner or his residence is unknown or uncertain, the notice may be by publication; and if no appearance is entered for such owner, the commission shall, upon application by the public utility, appoint a guardian ad litem to represent such owner in the proceedings.

Source. 1929, 85:1. RL 294:5. 1951, 203:48 par. 5, eff. Sept. 1, 1951.

Section 371:5-a

371:5-a Residential Owner Option. –

I. When private real property which is used for residential purposes is proposed to be acquired in part for the construction of an above ground substation or transmission line, the owners of the residential property shall have the option to require the utility to condemn and take in fee the entire tract of land impacted by the proposed partial taking including all buildings and improvements thereon if all owners, excluding lien holders and mortgagees, of the private real property make such an election and provide the commission and the utility with written notice of their election within 30 days after receipt of the notice under RSA 371:4. If the utility acquires the entire tract of land with buildings and improvements thereon pursuant to this section or by agreement with the owners, the entire acquisition shall be deemed to be an acquisition for a public purpose and for use in the utility's business.

II. If any owner chooses to avail himself of the provisions of paragraph I, the utility seeking condemnation shall provide a perimeter survey of the entire tract to each owner without cost if:

- (a) Requested by an owner at time of electing to avail himself of the provisions of paragraph I; and
- (b) A perimeter survey of the premises does not already exist.

Source. 1983, 247:2. 1998, 253:2, eff. date, see contingency note set forth below.

Section 371:5-b

371:5-b Determination of Just Compensation. – The commission shall use the method of determination for just compensation as prescribed in RSA 371:4-a.

Source. 1983, 247:5, eff. Aug. 17, 1983.

Section 371:6

371:6 Owners Under Disability. – If any owner is under any legal disability and not under guardianship in this state, the commission shall, upon application by the public utility, appoint a guardian ad litem to receive notice and otherwise represent the owner in the proceedings.

Source. 1929, 85:1. RL 294:4. 1951, 203:48 par. 4, eff. Sept. 1, 1951.

Section 371:7

371:7 Compensation of Guardian. – The commission shall determine and fix the amount due to any guardian appointed by it for services and disbursements in connection with any proceedings before the commission, and the portion thereof that justice requires shall be payable out of any award that may be made for any land or right of the ward that may be taken except as otherwise provided in RSA 371:5-a. The balance of the amount due the guardian and, if no award is made, the whole of such amount shall be payable by the public utility.

Source. 1929, 85:1. RL 294:6. 1951, 203:48 par. 6. RSA 371:7. 1983, 247:1, eff. Aug. 17, 1983.

Section 371:8

371:8 By Railroads. – [Repealed 1985, 402:39, IV.]

Section 371:9

371:9 Entry by Public Utility. – If the question of necessity shall be finally determined in the affirmative, the public utility may enter upon and use the land or rights adjudged necessary, upon the payment or tender of the compensation and damages awarded by the commission. If the owner is represented by a guardian, or guardian ad litem, payment or tender under this section may be made to such guardian, and said guardian shall pay over any balance due the ward to the ward or his legal representative or, in the absence of both, to the state treasurer for the owner's use.

Source. 1929, 85:2. RL 294:9. 1951, 203:48 par. 9, eff. Sept. 1, 1951.

Section 371:10

371:10 Appeal on Damages. – Any party aggrieved by the order of the commission awarding damages in such case may, within 60 days after the entry of the order and not afterwards, file in the superior court of the county in which the land is located a petition to have the damages assessed by a jury, upon which petition notice shall be given, and the court shall assess such damages by jury.

Source. 1911, 164:13. 1919, 162:1. PL 244:6. RL 294:10. 1951, 203:48 par. 10, eff. Sept. 1, 1951.

Section 371:11

371:11 Security. – If an appeal is taken, the public utility shall also file in the office of the clerk of said court reasonable security to the satisfaction of the court for the payment of any further damages and of the costs which may be awarded to the owner upon the appeal.

Source. 1929, 85:3. RL 294:11. 1951, 203:48 par. 11, eff. Sept. 1, 1951.

Section 371:12

371:12 Costs. – If the result of an appeal is to change the award of damages in favor of the appellant, the appellant shall recover costs; otherwise he shall pay costs.

Source. 1929, 85:3. RL 294:12. 1951, 203:48 par. 12, eff. Sept. 1, 1951.

Section 371:13

371:13 Reduction of Damages. – If the owner's damages are reduced upon appeal, the public utility shall have judgment and execution against him for the amount of such reduction and costs if he has taken the damages tendered to him; but, if he has not taken such damages, the public utility may retain the amount of such reduction and costs from the tender, or, if the damages have been paid to the state treasurer, the public utility shall be entitled to have such reduction and costs returned by the treasurer.

Source. 1929, 85:3. RL 294:13. 1951, 203:48 par. 13, eff. Sept. 1, 1951.

Section 371:14

371:14 Fees. – In such proceedings the commission shall charge and collect fees as follows: For the entry of each petition, \$25; for the making of each order of notice for service upon the owners of each parcel of land described in said petition in which rights are sought to be taken, \$1; and for the entry of each order granting land, rights or easements in any such case, \$10 for each tract of land granted or affected.

Source. 1915, 99:3. PL 244:7. RL 294:14. 1951, 203:48 par. 14, eff. Sept. 1, 1951.

Section 371:15

371:15 By Pipeline Companies. – Whenever any business entity organized under the laws of this state, another state, or the United States to construct and operate a natural gas pipeline holds a certificate of public convenience and necessity issued under the federal Natural Gas Act, authorizing it to construct and operate a natural gas pipeline or pipelines and appurtenant facilities within this state, or any petroleum pipeline company doing exclusively an interstate business, shall be unable to acquire necessary lands by purchase, lease or otherwise, it may institute condemnation proceedings as follows:

I. Said pipeline company shall cause a plan or location of the real estate proposed to be taken to be prepared and a copy thereof filed with the clerk of the superior court for each county in which any of such real estate is located and shall apply by petition to the superior court for the county in which such real estate is located to acquire said real estate for the purposes of such pipeline and to have assessed the damages occasioned by the taking. Such petition shall state the name and residence so far as known to said pipeline company of all persons claiming ownership of or interest in the real estate proposed to be taken. Where such real estate is located in more than one county the petition may be filed in either county.

II. The superior court, upon the filing of any such petition, shall order notice thereof to

be given, by publication, to all persons claiming ownership of or interest in such real estate to appear and present their claims at a time and place to be stated in the notice; and an attested copy of such notice shall be given in hand to, left at the usual place of residence or business of, or sent by registered mail to the last known address of all claimants whose names appear in the petition at least 14 days before the said date of hearing. The superior court, after notice to all parties interested, shall hear the preliminary questions, if any, and all issues relating to title, and shall determine the rights and interests of any and all parties, and the findings and decree relating to such issues shall be final and subject to review only upon questions of law.

III. Upon final determination of any and all of said questions, the superior court shall, unless the parties elect a trial by jury, appoint a commission consisting of 3 suitable persons to assess the damages occasioned by the taking. The commissioners, upon reasonable notice to all interested parties and after hearing, shall assess the damages and make report of such assessment to the superior court, and such action shall be taken thereon as justice may require. If either party shall so elect, before reference of such petition to a commission, the damages occasioned by the taking shall be assessed by jury.

IV. In trying any question of damages before said commissioners or by jury, the appraisal for taxation of such real estate, and, in cases where less than the whole interest in real estate is sought to be acquired, the appraisal for taxation of such whole interest, by the selectmen or tax assessors for the tax year in which such application shall have been filed, and for as many preceding years as the commissioners or the court may consider relevant, shall be competent as evidence of value. The damages as determined shall be awarded to the owner or apportioned among the several owners in accordance with their several interests as determined and judgment shall be entered accordingly.

V. Said pipeline company at any time after filing such petition may enter upon and take possession of the real estate upon providing such security as justice may require to pay any damages occasioned by the entry or to satisfy any judgment which may be rendered on the petition. The amount of the security and all questions relating thereto may be determined by the superior court upon application of either party. The title to the real estate shall, upon payment or tender of the damages occasioned by the taking, be vested in the pipeline company. For purposes of surveying and other investigation, said pipeline company shall be entitled to enter upon any real estate, doing no unnecessary damage; and the owner thereof may, if the parties are unable to agree, recover any damages sustained by him by reason of any preliminary entry authorized by this section by action at law against said pipeline company.

VI. No lands or rights of way or easements therein shall be taken by eminent domain under the provisions of this chapter in any public property, or within the location of any railroad or other public utility company; provided that such pipeline or pipelines may be constructed under or through any public highway or street, public park or reservation or other public property if the method of such construction, compensation, if any, and the plans and specifications therefor have been approved by the authority having jurisdiction over the maintenance of such public highway or street, public park or reservation or other public property; and provided further that such pipeline or pipelines may be constructed over or across the location of any railroad or other public utility company by agreement with such railroad or other public utility company or, in the event of failure so to agree, then with the approval of the public utilities commission and in such manner as may be

determined by said commission. Provided, however, that nothing herein shall be deemed to repeal any of the provisions of this chapter relative to acquisition of rights in public waters and on public lands.

Source. 1941, 197:3. RL 294:15. 1951, 71:1; 203:48 par. 15. RSA 371:15. 1981, 449:1, eff. Aug. 22, 1981.

Section 371:16

371:16 Forfeiture for Nonuse. – All acquisitions of water rights acquired under this chapter, which, within 5 years from the date of acquisition, have not become a used and useful part of the utility's property, shall be forfeited to the state unless otherwise ordered by the commission.

Source. 1951, 203:48 par. 16, eff. Sept. 1, 1951.

Rights in Public Waters and Lands

Section 371:17

371:17 Petition. – Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

Source. 1921, 82:1. PL 244:8. RL 294:16. 1951, 203:48 par. 17. 1953, 52:1, eff. March 30, 1953.

Section 371:18

371:18 Exception. – The requirement for petition to and hearing by the commission as provided in RSA 371:17 shall not be required when the license is requested by the public

utility for the exclusive purpose of furnishing facilities to the state, or any department or agency thereof.

Source. 1951, 203:48 par. 18, eff. Sept. 1, 1951.

Section 371:19

371:19 Notice to Attorney General. – The commission shall cause due notice of said petition to be given to the attorney general, and to such owners of lands bordering on such public waters as the commission may designate in its order of notice, which shall state the time and place appointed for hearing on said petition.

Source. 1921, 82:1. PL 244:9. RL 294:17. 1951, 203:48 par. 19, eff. Sept. 1, 1951.

Section 371:20

371:20 Hearing; Order. – The commission shall hear all parties interested; and, in case it shall find that the license petitioned for, subject to such modifications and conditions, if any, and for such period as the commission may determine, may be exercised without substantially affecting the public rights in said waters or lands, it shall render judgment granting such license. Provided, however, that such license may be granted without hearing when all interested parties are in agreement.

Source. 1921, 82:1. PL 244:10. RL 294:18. 1951, 203:48 par. 20. RSA 371:20. 1967, 21:1, eff. May 7, 1967.

Section 371:21

371:21 Damages. – The commission shall determine the compensation, if any, to be paid to the owners of lands bordering on such public waters for any damage thereto occasioned by the continuation and maintenance of any such structures, subject to appeal as provided in RSA 371:10. The commission shall also determine the amount of compensation to be paid to the state for rights on public lands as above provided.

Source. 1921, 82:1. PL 244:11. RL 294:19. 1951, 203:48 par. 21, eff. Sept. 1, 1951.

Section 371:22

371:22 Deeds. – Any such license creating rights over, under or across any of the lands owned by the state shall be evidenced by an instrument executed in the name of the state by the governor and attested by the secretary of state and recorded in the county where the property is situated.

Source. 1923, 6:1. PL 244:14. 1929, 113:1. RL 294:23. 1951, 203:48 par. 22, eff. Sept. 1, 1951.

Section 371:23

371:23 Compensation. – Any compensation payable on account of any such license shall be paid to the state treasurer and, if derived from licenses affecting state forests or forestry reservations, shall be added to the forest improvement fund; otherwise it shall be a part of the general funds of the state.

Source. 1923, 6:1. PL 244:15. 1929, 113:1. RL 294:24. 1951, 203:48 par. 23, eff. Sept. 1, 1951.

Section 371:24

371:24 Easements for Utility Lines Crossing Railroad Property. – Upon approval of the commission, a public utility may construct transmission and distribution lines that traverse or parallel the tracks and property of a railroad and establish a permanent or temporary easement thereby. The public utility shall file a plan and layout delineating the route for such lines with the commission 30 days prior to beginning construction and shall make any payment to the railroad the commission determines to be just and reasonable.

Source. 1979, 116:1, eff. July 20, 1979.