

CHAPTER 2.**LAND ACQUISITION**

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An Act to make provision for the acquisition of lands and servitudes for public use for payment of just compensation in terms of Article II, Section 5 of the Constitution of the Marshall Islands and to provide for matters connected therewith and incidental thereto. [Section numbering modified to conform to code format]

Commencement: December 31, 1986

Source: P.L. 1986-27

PART I - GENERAL PROVISIONS**§201. Short Title.**

This Act may be cited as the "Land Acquisition Act 1986". [P.L. 1986-27, §1.]

§202. Interpretation.

In this Act unless the context otherwise requires:

(a) “acquiring officer”, with reference to any land, means an officer appointed by the Secretary for the implementation of the Act with respect to the particular land;

(b) “divesting code” means an order used by the Minister countermanding the effect of a vesting order;

(c) “land” includes:

(i) any interest in, or any benefit to arise out of any land, according to persons holding the title of Iroij Laplap, Iroij Erik, Alab, or Senior Dri Jerbal, or any or all persons claiming under the foregoing title holders;

(ii) any leasehold or other interest held by any person; and

(iii) things attached to the earth;

(d) “Minister” means the Minister who is for the time being charged with the administration of the subject and functions relating to land;

(e) “person interested”, with reference to land, means an Iroij Laplap, Iroij Erik, Alab and Senior Dri Jerbal, and any or all persons claiming under them, or a person having an interest in the land, as owner, co-owner, mortgagee, lessee or otherwise, whether absolutely for himself or in trust for any other person, or for any charitable, religious or other purpose, or a person having a servitude over land. “Person interested” does not include a monthly tenant;

(f) “public use” includes the use which, under this Act or any other written law, is deemed to be a public use. However, “public use” does not include a use primarily to generate profits or revenues and does not include a use not primarily providing a public service;

(g) “Secretary” means the Secretary to the Ministry in charge of land matters;

(h) “servitude” means any right over any land and includes a right of way, right to draw water and similar rights over any land;

(i) “vesting code” means an order issued by the Minister and published in the local newspaper directing an acquiring officer to take possession of certain land for and on behalf of the Republic or declaring that certain land is subject to a servitude for public use. [P.L. 1986-27, §2.]

PART II- PRELIMINARY INVESTIGATION AND DECLARATION OF INTENDED ACQUISITION**§203. Investigation for selecting land.**

(1) Where the Minister decides that any land in any area is needed for any public use, he may direct the acquiring officer of the area in which the land is situated to cause a notice in accordance with Subsection (2) of this Section to be exhibited in some conspicuous place in that area .

(2) The notice referred to in Subsection(1) of this Section shall be in the Marshallese and English languages and shall state that land in the area specified in the notice is required for public use and that all or any of the acts authorized by Subsection (3) of this Section may be done on any land in that area in order to investigate suitability of that land for that public use.

(3) After notice under Subsection (2) of this Section is exhibited for the first time in any area, any officer authorized by the acquiring officer who has caused the exhibition of that notice may enter any land in the area, together with such persons, implements, materials and vehicles, as may be necessary and:

(a) survey and take levels of that land;

(b) dig or bore into the subsoil of that land;

(c) set out the boundaries of that land and intended line of any work proposed to be done on that land;

(d) mark such levels, boundaries, and lines by placing marks and cutting trenches;

(e) where otherwise the survey of that land cannot be completed and such levels taken and such boundaries and lines marked, cut down and clear away any part of any standing crop, fence or jungle on that land; and

(f) do all other acts necessary to ascertain whether that land is suitable for public use for which land in that area is required.

Provided, that no officer, in the exercise of the powers conferred on him by the preceding provisions of this Subsection, shall enter any occupied building or any enclosed court or garden attached thereto, unless he has given the occupier of that building at least seven (7) days written notice of his intention to do so. [P.L. 1986-27, §3.]

§204. Compensation for damage done during investigations.

(1) Where any officer empowered by Section 203(3) of this Act to enter any land causes any damage to that land or to any thing thereon while performing any of the functions set forth in Section 203(3), he shall assess the amount of compensation for such damage and shall, if that land is owned by more than one person, determine the apportionment of that amount among the owners of that land. Such officer shall give the owner or owners of that land written notice (hereinafter "compensation damage notice") of the amount of compensation assessed by him and any of such apportionment of that amount as may have been determined by him.

(2) If any person who is entitled to receive the whole or a portion of that amount of compensation assessed with respect to any land under Subsection (1) of this Section and specified in the compensation damage notice, is dissatisfied with such amount or with the apportionment of such amount, he may, within fourteen (14) days make a written appeal to the Secretary against the assessment or apportionment of compensation referred to in the compensation damage notice.

(3) Where the Secretary allows an appeal made to him under Subsection (2) of this Section, he shall either make a new assessment and apportionment of compensation or shall confirm the amount of compensation assessed under Subsection (1) of this Section and make a new apportionment of that amount. The decision of the Secretary on such appeal shall be final.

(4) Where a timely appeal of the assessment or apportionment of compensation referred to in the compensation damage notice is made under Subsection (2) of this Section or where such an appeal is so made and the Secretary to whom the appeal is made disallows the appeal, the officer who uses a compensation damage notice shall tender to each person who is entitled to compensation according to the compensation damage notice the amount of compensation allowed to him by such notice; or where such a timely appeal under Subsection (2) of this Section is made and such Secretary allows the appeal, the officer who uses a compensation damage notice shall tender to each person who is entitled to compensation according to the decision of such appeal the amount of compensation allowed to him by such decision.

(5) Where the person to whom any amount is payable as compensation under this Section is, a minor or is of unsound mind or declines to accept that sum when it is tendered to him or is dead or cannot be found after diligent search, that sum shall be paid into the High Court to be drawn by the person entitled thereto. [P.L. 1986-27, §4.]

§205. Notice of intended acquisition.

(1) Where the Minister considers that particular land is suitable for a public use, or that a particular servitude over particular land should be acquired for public use, he shall direct the Secretary to cause notice in accordance with Subsection (3) of this Section to be given to the owner or owners of that land to be exhibited in some conspicuous places on or near that land; provided, however, that it shall not be necessary to give a notice under the preceding provisions of this Subsection to the owner or any owner of land whose name and address cannot be found or ascertained.

(2) Before any decision is made by the Minister under Subsection (1) of this Section to acquire any particular land, the Minister shall be satisfied that there does not exist any alternative means, by landfill or otherwise, of achieving at non-prohibitive expense the purpose to be served by such acquisition.

(3) The notice to be provided in Subsection (1) of this Section shall:

(a) be in the Marshallese and English languages;

(b) contain a description of the land or servitude which is intended to be acquired;

(c) state that the Government of the Marshall Islands intends to acquire that land or servitude for public use, and that written objections to the intended acquisition may be made to the Secretary; and

(d) specify a period within which such objections must be made, such period being not less than one month from the date on which such notice is given.

(4) Where a notice relating to the intended acquisition of land or of a servitude over land is exhibited under Subsection (3) of this Section, and objections to such acquisition are made to the Secretary by any of the persons interested in the land within the time allowed therefor in the notice, the Secretary shall consider such objections and make recommendations to the Minister. When such objections are considered every objector shall be given an opportunity of being heard in support thereof. After the consideration of the objections the Secretary shall make his recommendations on the objections to the Minister.

(5) After expiration of the time allowed for making objections to the intended acquisition of any land or servitude and where any such objections have been timely made under Subsection (3)(d) of this Section, the Minister shall, subject to the provisions of Subsection (6) of this Section, decide whether that land or servitude should or should not be acquired under this Act after the Minister has considered the Secretary's recommendations on those objections.

(6) A decision shall not be taken under Subsection (5) of this Section to acquire only a part of a building if the owner of the building desires that the entire building should be acquired under this Act, unless such part can be severed or demolished without serious detriment to or seriously affecting the amenities of, the building.

(7) For the purposes of this Subsection "building" includes land which is necessary for the convenient use and occupation of the building. [P.L. 1986-27, §5.]

PART III - PROCEEDINGS IN COURT**§206. Determination by High Court.**

(1) Where the Minister decides that particular land or a servitude in any area should be acquired under this Act, he shall direct the Attorney-General to file an application in the High Court praying for a declaration by the High Court, that such taking of land for public use is lawful.

(2) The Attorney-General upon the receipt of a direction by the Minister, shall within fourteen (14) days make an application to the High Court praying for a declaration by the High Court, that such taking of land or servitude is lawful and for an order providing for just compensation.

(3) The Attorney-General in his application referred to in Subsection (2) of this Section shall:

(a) describe the land or servitude which is intended to be acquired;

(b) give the names and the addresses of claimants or persons who have any interest in the land or the servitude;

(c) make all persons interested in the land or who have objected to the proposed acquisition, parties to the application;

(d) give a brief description of the purpose for which the land is to be acquired;

and

(e) state that alternative means do not exist, by landfill or otherwise, for achieving at non-prohibitive expense the purpose to be served by such acquisition. [P.L. 1986-27, §6.]

§207. The procedure before the High Court.

(1) Upon the receipt of an application by the Attorney-General, the High Court shall take immediate steps to issue notice on the defendants who have been made parties to the application, to show cause why the application should not be allowed.

(2) In the said notice the Court shall set a date for the defendants to file objections, if necessary, and such date shall be a date less than one month from the receipt of notice but more than fourteen (14) days after receipt thereof.

(3) Upon the filing of any objections on or before the due date provided in Subsection (2) of this Section, or in any event whether objections have or have not been filed by the defendants, the Court shall inquire into the application of the Attorney-General and shall make an order whether the taking of such land is lawful or not. Where the Court decides that the taking of such land is lawful it shall make an order on the payment of compensation.

(4) An application made by the Attorney-General under this Section shall be disposed of by the High Court within a period of three (3) months from the date of filing of the application.

(5) The Attorney-General may, if he is dissatisfied with the decision of the High Court with respect to the legality of the acquisition or quantum of compensation, appeal that decision to the Supreme Court. The decision of the Supreme Court in an appeal under this Section shall be final. [P.L. 1986-27, §7.]

§208. Assessment of compensation.

(1) Where any land or servitude is taken, the amount of compensation shall include reasonably equivalent land rights for all interest holders or the means to obtain the subsistence and benefits that such land rights provide.

(2) Whenever the taking of land or servitude forces those who are dispossessed to live in circumstances reasonably requiring a higher level of support, that fact shall be considered in assessing whether the compensation provided is just.

(3) In determining whether compensation for land rights is just, the High Court shall refer the matter to the Traditional Rights Court and shall give substantial weight to the opinion of the Traditional Rights Court.

(4) In construing this Section the High Court shall have due regard for the unique place of

land rights in the life and law of the Republic.

(5) In the event of a dispute to ownership among the persons interested in the land, the High Court shall adjudicate and determine the ownership of the property as part of the proceedings and determine the apportionment of compensation among the persons interested. [P.L. 1986-27, §8.]

PART IV - PAYMENT OF COMPENSATION

§209. Tender and payment.

Where an order is made by the High Court under Section 207(3) of this Act or by the Supreme Court under Section 207(5) of this Act with respect to compensation, the acquiring officer shall tender to each person who is entitled to compensation according to the order, the amount of compensation allowed to him by that order and shall pay the tendered amount to him if he consents to receive it. [P.L. 1986-27, §9.]

§210. Compensation which cannot be paid.

Where any person, whom any compensation for the acquisition of land or a servitude under this Act is awarded, declines to receive such awarded compensation when it is tendered to him, or is dead or cannot be found after diligent search, or where no person entitled to any compensation for the acquisition of land or a servitude under this Act is known, that compensation shall be paid into the High Court to be drawn by that person entitled thereto. [P.L. 1986-27, §10.]

§211. Renunciation of right to compensation.

(1) If any person to whom compensation is payable under this Act for his interest in any land which is to be acquired or over which a servitude is to be acquired under the Act, desires to renounce his right to such compensation, he shall make or sign a written declaration that he renounces such right. Such declaration shall be conclusive evidence that such person has renounced such right, and thereafter no person shall, save as provided in Subsection (3) of this Section, be entitled to claim compensation from the Government of the Marshall Islands with respect to such interest.

(2) The declaration made by any person under Subsection (1) of this Section shall state the amount of compensation which would have been paid to such person by the Government of the Marshall Islands had such person not renounced his right thereto.

(3) Where any person, other than the declarant in a declaration made under Subsection (1) of this Section, proves that he was entitled to such interest in the land to which that declaration relates as was claimed by that declarant, he shall be entitled to compensation from the Government of the Marshall Islands with respect to such interest. The amount of compensation payable to him shall not exceed the amount of compensation specified under Subsection (2) of this Section. [P.L. 1986-27, §11.]

§212. Interest on compensation.

Where the amount of compensation payable under this Act to any person for the acquisition of any land or servitude is not paid to him or into court before the date on which an order under Section 216 of this Act with respect to the subject land or servitude is published, that amount shall be paid with interest thereon at the rate of twelve percent (12%) per annum from the date of such order up to the date of payment. [P.L. 1986-27, §12.]

§213. Exchange.

(1) Any person, to whom compensation for the acquisition of any land is payable under this Act, may enter into a written agreement with the Minister (in lieu of the whole or part of such compensation) for transfer of any other land which is the property of the Government of the Marshall Islands or for transfer of any other land, if available, with other landowners for such compensation. The amount of compensation in lieu of which the transfer is accepted shall be specified in such agreement.

(2) Where any person accepts the transfer of any land made under an agreement executed under Subsection (1) of this Section, such transfer shall, for the purposes of this Act, be deemed to be payment of the compensation in lieu of which such transfer is accepted by that person. [P.L. 1986-27, §13.]

§214. Finality as to payment of compensation.

Where compensation for the acquisition of any land or servitude has been, or is deemed to have been paid in accordance with the provisions of this Act, no further claim against the Government of the Marshall Islands for compensation for such acquisition shall be allowed. [P.L. 1986-27, §14.]

§215. Exchange with other landowners.

(1) Where land is available for the purpose of exchange (as referred to in Section 213 , above) with other landowners and any person to whom compensation for the acquisition of any land is payable, the Minister may enter into an agreement with the landowners of such land to transfer a portion of that amount of land in lieu of the land acquired, in the name of the person to whom compensation is payable, for the sum awarded as compensation for the acquisition for such land.

(2) The amount payable to the landowners of such land who have agreed to transfer to such person who is willing to accept such land in lieu of compensation, shall be the amount of compensation which has been assessed under this Act for the land acquired. [P.L. 1986-27, §15.]

PART V - POSSESSION AND DISPOSAL**§216. Vesting order for taking possession of land and acquiring servitudes.**

At any time after a compensation order is made by the Court on the quantum of compensation pursuant to Section 207 of this Act, the Minister may, by vesting order published in the local newspaper:

(a) direct the acquiring officer to take possession of that land for and on behalf of the Republic, where the vesting order relates to the acquisition of any land; or

(b) declare that the land over which that servitude is to be acquired shall be subject to that servitude where the vesting order relates to the acquisition of any servitude. [P.L. 1986-27, §16.]

§217. Effect of vesting order.

(1) When a vesting order of the Minister is made with regard to taking possession of particular land, that land shall, by virtue of that vesting order, vest absolutely in the Republic free from all encumbrances from the date on which that order is so published, and any officer who is

authorized to do so by that order may, on or after that date, take possession of that land for and on behalf of the Republic.

(2) Where a vesting order of the Minister is made with regard to the subjection of particular land to a particular servitude, that land shall be subject to that servitude, and that servitude may be utilized for the public use for which it was acquired on and after the date on which the vesting order is so published. [P.L. 1986-27, §17.]

§218. Possession.

(1) No officer shall, under Section 217 of this Act, take possession of any occupied building or any part of an occupied building without giving the occupier of that building at least forty-eight (48) hours notice of the intention to do so.

(2) Where any officer directed by a vesting order to take possession of any land is unable or apprehends that he will be unable to take possession of that land because of any obstruction or resistance which has been or is likely to be offered, such officer shall, on making an application to the High Court, be entitled to an order directing the person in occupation of the subject land to deliver possession of that land to the applying officer for and on behalf of the Republic.

(3) Where an order under Subsection (2) of this Section is made by the High Court, any failure to obey such order shall constitute an offense and be punished as a contempt of court. [P.L. 1986-27, §18.]

§219. Immediate possession on urgency.

(1) Notwithstanding anything contrary in this Act or in any other law, where it becomes necessary to take immediate possession of any land on the ground of any urgency, the Minister shall direct the Attorney-General to file an application in the High Court praying for a declaration to take immediate possession of the land so described. The Attorney-General shall also along with the application deposit a sum of money which is considered to be the fair value of the land.

(2) The Attorney-General in his application referred to in Subsection (1) of this Section shall:

- (a) describe the land or servitude which is intended to be acquired;
- (b) give the name and address of all persons interested in the land, if known;
- (c) give a brief description of the purpose for which the land is to be acquired;
- (d) state that the Republic requires immediate possession of the land;

(e) state that alternative means do not exist, by landfill or otherwise, for achieving at non-prohibitive expense the purpose to be served by such acquisition;

(f) state that a sum of money which is considered to be a fair value of the land has been deposited in court which may be drawn by the defendants anytime after an order from the court; and

(g) state that the payment to the court in accordance with this Section shall entitle the Republic to take immediate possession of the land.

(3) Upon the application being filed under Subsection (2) of this Section the High Court shall at an ex-parte hearing determine whether taking of such land is lawful or not. Upon the determination by the Court that taking of such land is lawful, the Court shall direct the defendants to give immediate possession of the land and the Republic shall take immediate possession of the land, and such land shall vest absolutely in the Republic free from all encumbrances from the date of such determination. Any failure to obey such an order by the defendants shall constitute an offense and be punished as a contempt of court.

(4) Anytime after the Republic has taken possession of the land the court shall determine the quantum of compensation as provided for in Section 208 of this Act and the payment shall be made in terms of Part III of this Act. [P. L. 1986-27, §19.]

§220. Immediate possession after proceedings commenced.

Where it becomes necessary to take immediate possession of the land on the ground of any urgency, after the proceedings under this Act have been commenced but before the quantum of compensation is determined by court under Section 208 of this Act, the provisions of Section 219 of this Act shall apply mutatis mutandis and possession shall be taken accordingly. [P.L. 1986-27, §20.]

PART VI- DIVESTING OF LANDS

§221. Divesting orders.

(1) Notwithstanding that by virtue of a vesting order under Section 216 of this Act, where any land has vested absolutely in the Republic, if possession of the land has not actually been taken for and on behalf of the Republic in pursuance of such order, the Minister may by subsequent order revoke the order and the land to which the order relates shall be deemed never to have vested in the Republic.

(2) Notwithstanding the issuance of any vesting order in which any land has vested absolutely in the Republic and actual possession of such land has been taken for and on behalf of the Republic under the provisions of Section 217(1) of this Act, the Minister may, subject to Subsection (3) of this Section, by subsequent divesting order, divest the Republic of the land so vested by the aforesaid vesting order with the effect as though the land had never vested in the Republic.

(3) The Minister shall, prior to making a divesting order under Subsection (2) of this Section, satisfy himself that:

(a) no compensation has been paid under this Act to any person or persons interested in the land in relation to which the said divesting order is to be made;

(b) the said land has not been used for the public use after possession of such land has been taken by the Republic under the provisions of Section 217(1) of this Act;

(c) no improvements to the said land have been effected after the order of possession under Section 216(a) of this Act has been made; and

(d) the person or persons interested in the said land have consented in writing to take possession of such land immediately after the divesting order is made.

(4) The following provisions shall apply in any case where any land vested in the Republic by a vesting order is subsequently divested by a divesting order under Subsection (2) of this Section:

(a) the subject land shall be deemed never to have vested in the Republic by virtue of that vesting order;

(b) every right, title, or interest in or over the subject land of a person interested in that land existing at the time the vesting order was made, shall be deemed not to have been extinguished, and every such right, title or interest shall be valid and enforceable notwithstanding such vesting order;

(c) the person or persons interested in that land at the time the vesting order was made shall forthwith be restored to possession of the said land;

(d) all claims made under this Act to the compensation payable with respect to the

subject land and all proceedings taken under this Act in relation to such claims before the divesting order took effect shall be deemed to be null and void;

(e) no fresh claims to compensation with respect to the subject land and no claim for damages against the Republic, a public officer or the Minister, by any person or persons interested in the subject land at the time the vesting order was made, or subsequent thereto, shall be entertained or allowed in any court or tribunal; and

(f) the preceding provisions of this Section shall have effect notwithstanding anything in any other provisions of this Act or in any other written law. [P.L. 1986-27, §21.]

PART VII - GENERAL

§222. Compulsory acquisitions authorized by any other written law.

Where any other written law authorizes the acquisition of land under this Act and the Minister decides that any land is reasonably required under such other written law by any authority, person or body of persons, the purpose for which that land is required shall be deemed to be a public use and the provisions of this Act shall apply accordingly to the acquisition of that land for that authority, person or body of persons. [P.L. 1986-27, §22.]

§223. Abandonment of acquisition proceedings.

(1) The proceedings commenced under this Act for the acquisition of any land or servitude may, at any time before a vesting order under Section 216 of this Act with respect to that land or servitude is made, be abandoned.

(2) Where the proceedings commenced under this Act for the acquisition of any land or servitude are abandoned after a person interested in the land which is to be acquired or over which the servitude is to be acquired, has incurred costs by reason of any proceedings taken under this Act in any court, the Government of the Marshall Islands shall pay to that person the amount of those costs as determined by that court. [P.L. 1986-27, §23.]

§224. Serving of notices.

Where this Act requires a notice to be given to any person interested in certain land to be acquired under this Act, such notice shall be deemed to be given if:

(a) it is sent by registered letter through the post to such person at his address, if known; or

(b) it is exhibited in some conspicuous places on or near the land, if such person's address is not known. [P.L. 1986-27, §24.]

§225. Application of Constitutional Provisions.

The provisions of this Act shall not be in derogation but in addition to the provisions of Article II, Section 5 of the Constitution of the Marshall Islands. [P. L. 1986-27, §25.]

§226. Payment.

The payment of money for compensation herein shall be a charge and paid out of the Marshall Islands General Fund or may be appropriated from the monies allocated to the Ministry of Interior and Outer Islands Affairs or upon a supplementary estimate passed by the Nitijela for that purpose. [P.L. 1986-27, §27.][section re-numbered as §226, former s.226 was "reserved"]

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