

CHAPTER 16
HB 543 – FINAL VERSION

20Feb2013... 0265h

2013 SESSION

13-0592
05/10

HOUSE BILL **543**

AN ACT relative to ascertaining damages to abutting landowners.

SPONSORS: Rep. Aguiar, Graf 7; Rep. Renzullo, Hills 37; Rep. Ford, Graf 3; Rep. Bradley,
Graf 6; Rep. Lauer, Graf 15

COMMITTEE: Judiciary

ANALYSIS

 This bill establishes a procedure for ascertaining damages to private land when a highway is maintained or repaired in a manner that changes the grade or drainage of the property, including changes in drainage structures such as culverts or ditches.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 16
HB 543 – FINAL VERSION

20Feb2013... 0265h

13-0592
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to ascertaining damages to abutting landowners.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 16:1 Statement of Intent. The purpose of this act is to clarify the procedures to be followed for
2 the determination of whether, and by what amount, private property has been damaged when a town
3 highway is maintained or repaired in such a way as to change the grade or alter the drainage,
4 including changes in drainage structures such as ditches or culverts. It is not the intent of this act to
5 alter in any manner the existing substantive law of New Hampshire governing maintenance and
6 repair of highways or the rights and duties of municipalities pertaining to the grades and drainage
7 thereof.

8 16:2 Damages From Grade or Drainage Change; Assessment by Selectmen. RSA 231:75 is
9 repealed and reenacted to read as follows:

10 231:75 Damages From Grade or Drainage Change; Assessment by Selectmen. If in repairing a
11 highway by the authority of the town the grade is raised or lowered, or a ditch made at the side
12 thereof, or a new culvert, ditch, or other drainage structure is installed, or alterations are made to
13 any existing culvert, ditch, or drainage structure, whereby damage is occasioned to any estate
14 adjoining or not adjoining said highway, the determination of the amount of damages, if any, due to
15 an aggrieved owner shall be determined as follows:

16 I. The selectmen or their designee shall, at least 30 days prior to commencement of the work,
17 give notice by certified mail, in the manner set forth in RSA 231:9, to adjoining landowners and any
18 other owners whose land might reasonably be anticipated to be affected, describing the work to be
19 performed, and setting forth a place and time, at least 15 days after the mailing of said notice, but
20 prior to the commencement of the work, at which said owners may be heard by the selectmen;
21 provided however that:

22 (a) No such notice shall be required in cases where none of the work is proposed to be
23 done outside the limits of the highway right-of-way, and such work consists solely of (i) maintenance
24 grading, or the cleaning or repairing of existing ditches, or (ii) the repairing or replacing of existing
25 culverts or drainage structures without altering their size, depth, or positioning.

26 (b) In the event of an emergency rendering the highway “insufficient” as defined in
27 RSA 231:90, II, and where exigent repair is deemed imperative by the selectmen, the time limits set
28 forth above need not be strictly observed; however such notice and opportunity for hearing shall be
29 given to the greatest extent which is reasonable and practical under the circumstances, and the

CHAPTER 16
HB 543 – FINAL VERSION
- Page 2 -

1 selectmen's minutes shall describe the nature of the emergency and the need for exigent repair.

2 II. The selectmen shall hear any owner desiring to be heard, either at a hearing noticed
3 under paragraph I, or otherwise within 30 days after receiving a hearing request from an aggrieved
4 owner. If an aggrieved owner applies for damages, the selectmen shall view the premises and assess
5 the damages, if any, within 30 days of said hearing or within 30 days after the completion of the
6 work, whichever is later, and shall file a record of their proceedings in the office of the town clerk. In
7 assessing damages, any benefit which the landowner may receive by such repairs may be set off
8 against the owner's claim. A hearing request made under this paragraph shall be made within 6
9 months following the completion of the work, and not afterward.

10 III. So long as the procedures set forth in paragraphs I and II are followed, the pendency of
11 proceedings under this section shall not be deemed to require any delay in, or modification of, the
12 proposed work, unless so ordered by the selectmen or by a restraining order issued by the superior
13 court.

14 16:3 Petition to Court; Remedy Exclusive. RSA 231:76 is repealed and reenacted to read as
15 follows:

16 231:76 Petition to Court; Remedy Exclusive.

17 I. If an owner is aggrieved by a decision of the selectmen under RSA 231:75, such owner may
18 appeal to the superior court in accordance with the appeals of highway layout decisions, as set forth
19 in RSA 231:34.

20 II. The question of the public need for the change of grade or drainage, and the
21 reasonableness of the methods chosen shall be reviewed by the court only for an abuse of discretion,
22 and there shall be no right to a jury trial on that question. The amount of damages, if any, shall be
23 determined by jury, or by trial without jury if jury trial is waived.

24 III. So long as the notice provisions in RSA 231:75 have been followed, the remedy provided
25 in this subdivision shall be the exclusive remedy to a landowner aggrieved by a change in grade or
26 drainage made by a town in the repair of a town highway. This subdivision shall be deemed an
27 exception to the otherwise-applicable limits on municipal liability arising from repair of public
28 highways, as set forth in RSA 231:92.

29 16:4 Repeal. RSA 231:77, relative to damage to land not adjoining a highway, is repealed.

30 16:5 Effective Date. This act shall take effect 60 days after its passage.

31 Approved: May 9, 2013

32 Effective Date: July 8, 2013