

Projects & Energy

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SOUTH AFRICA

Land, lines and the law: What the new Expropriation Act means for property on transmission routes



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Land, lines and the law: What the new Expropriation Act means for property on transmission routes

South Africa is embarking on a major expansion of its energy grid, which requires thousands of kilometres of new transmission lines. For this to happen, the state will need to acquire land or rights over land, much of which is privately owned.

This raises a critical question for affected landowners: If my property is in the path of a new power line, will I be compensated fairly under the new Expropriation Act 13 of 2024 (Expropriation Act)?

The core legal framework of the Act

The 2024 Expropriation Act makes a critical legal distinction between the two grounds for expropriation: “public purpose” and “public interest”. Understanding this difference is key to knowing your rights:

- **Public purpose:** This relates to expropriation for a specific public use. This includes the development of tangible public infrastructure like roads, schools, dams and energy transmission lines.
- **Public interest:** This is defined more broadly to include the nation’s commitment to land reform and providing equitable access to natural resources to address the results of past racial discrimination.

Clarifying “nil compensation”

The most debated part of the new Expropriation Act is its provision for “nil compensation”. It is crucial to understand that this is not a blanket policy and is strictly limited.

- The Expropriation Act states that it may be “just and equitable” for nil compensation to be paid only when land is expropriated in the public interest.
- It is not an option for land expropriated for a public purpose, such as for building transmission lines.
- Nil compensation is not automatic. It seems from the Expropriation Act that an expropriating authority or the court must consider all relevant circumstances and ensure the outcome is fair. The Expropriation Act lists specific, non-exhaustive examples where this might apply, including:
 - Unused land held purely for speculative purposes.
 - State-owned land that an organ of state is not using for its core functions.
 - Land that has been abandoned by the owner.
 - Where the property’s market value is less than or equal to the state’s direct investment in it.

The Electricity Regulation Act

While the Expropriation Act provides the general procedure for expropriation, the Electricity Regulation Act 4 of 2006 (as amended) (Electricity Regulation Act), gives specific powers to entities within the electricity sector. The Electricity Regulation Act empowers a company with a license to generate or transmit electricity to initiate an expropriation process. The licensee itself cannot expropriate land; instead, it must apply in writing to the



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Minister of Public Works and Infrastructure, who can then use the state's power to expropriate the land on the licensee's behalf. The procedure is a partnership: the Electricity Regulation Act allows a licensee to request the expropriation, and the Expropriation Act gives the state the power to perform it.

Conclusion

Once it comes into effect, the Expropriation Act will provide a clear legal framework. For landowners and others affected by the development of infrastructure like energy transmission lines, the position is clear:

- Expropriation for such projects falls under "*public purpose*".
- Therefore, the provisions for "*nil compensation*" do not apply.
- Affected parties will be entitled to just and equitable compensation as determined by the Expropriation Act.

Any attempt to expropriate land for infrastructure under the "*public interest*" banner to avoid payment would be legally flawed and subject to legal challenge and judicial review.

Jackwell Feris and Charles Green



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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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