

Memorandum 69-55

Subject: Study 36 - Condemnation Law and Procedure (Moving Expenses)

The attached tentative recommendation implements the tentative policy decision made at the March 1969 meeting to require reimbursement for moving expenses in all cases where property is acquired for public use. Copies of the administrative regulations implementing existing law are attached as Exhibit I. The staff expects to substantially edit the introduction to the tentative recommendation to emphasize the need for reimbursement of moving expenses. It should also be noted that, although the comments have been drafted as though the statute were enacted, existing law, which will be repealed, is cited to the codes rather than to the general statutes for the convenience of the Commission. Correct citations will be used at a later date. In reviewing the recommendation, the staff believes the following items should be noted.

The moving expense statute has been placed within the eminent domain title--notwithstanding the fact that the statute provides reimbursement in some cases not involving the exercise of the power of eminent domain--because the statute is so closely related to condemnation. Another alternative would be to add a new title to the Code of Civil Procedure immediately following the eminent domain title. The statute could also be located in the Government Code although that code does not generally deal with the acquisition of property for public use. If the Commission is concerned with the location of the statute, this problem should be reviewed after the scope of the moving expense statute is finally resolved.

Section 1270.01

The definition of acquirer in subdivision (a) is somewhat overbroad in that it encompasses persons who acquire property for a public use but

do not have the power of eminent domain. It also encompasses truly voluntary purchases by public entities who possess the power of eminent domain. Although at first glance this would seem to impose unnecessary acquisition costs upon the public entity, this result does not necessarily follow. Since this overbreadth occurs only in the situation where a willing buyer agrees to buy from a willing seller, the buyer will not agree to pay more than the fair market value of the property. The only possible effect of this overbreadth is that it will permit the parties to designate a part of the purchase price as payment for moving expenses to enable the seller to obtain a tax break. On the other hand, this definition makes the application of this chapter more certain and does not require the owner or tenant to prove that the property was acquired by the use of eminent domain or the threat thereof.

The definition of moving expense in subdivision (h) provides an exclusive, though not exhaustive, definition of moving expenses. The definition is based explicitly upon prior law, Admin. Code, Tit. 21, § 1430(j), and perhaps it is too restrictive. For instance, the actual and reasonable costs incurred in searching for replacement property are not reimbursable. Consideration should be given to broadening this definition.

Two possible drafting changes should be noted. Paragraphs (4) and (5) could be combined inasmuch as the apparent rationale is that moving expenses for property purchased by the acquirer should not be reimbursed. Finally, subdivision (h) does not expressly provide that reimbursement for moving expenses may not exceed the value of the property moved because it is believed that this limitation is inherent in the standard for reimbursement of moving expenses--those actually and reasonably incurred.

Section 1270.03

The test of compensability of moving expenses--those actually and reasonably incurred--is based on prior law. Sts. & Hwys. Code § 157; The Federal Highway Act of 1968; Model Code promulgated by the Advisory Committee on Intergovernmental Relations. Under other statutes, however, the test is moving expenses reasonably and necessarily incurred. Govt. Code § 15951; Pub. Util. Code § 29111. And the 1960 recommendation of the California Law Revision Commission would have provided compensation for moving expenses actually and necessarily incurred. The requirement that the moving expenses be actually incurred seems implicit in most of the statutes; a more liberal compensation provision does not appear to be justified. If the moving expenses are actually incurred, a further limitation that the expenses be reasonably or necessarily incurred would appear to be necessary only in a limited number of cases since the displaced person must generally incur out-of-pocket costs. The reasonableness test is an adequate safeguard against extravagant and unfounded claims. Moreover, it is a familiar test that represents a body of doctrine that is the product of centuries of experience. On the other hand, the necessarily incurred test is unfamiliar and its meaning is uncertain. Its use is not recommended.

Section 1270.05

It should be noted that the business and farm operation in lieu of moving expense statute has a dual purpose. First, it is intended to provide reimbursement quickly and with a minimum of administrative red tape. Second, because of the requirement of a substantial loss of patronage, this section also attempts to provide some compensation for loss of business. Nevertheless, payment under this section is a mutually exclusive

substitute for all moving expenses. In view of the dual purpose of the section, perhaps the section should be amended to provide that, in the case of a partial taking of a farm, the owner of a farm operation is not eligible for the in lieu payment unless the farm is no longer a viable economic unit because of the acquisition. The section as drafted closely conforms to Section 157 of the Streets and Highways Code.

Section 1270.07

The existing schedules fixing the in lieu moving expense payments for persons who move from a dwelling provide for a payment of about \$25 per "counted room"--a room with the usual amount of furniture. Although such payments could in some cases exceed actual out-of-pocket costs, it is not expected that this will be a substantial problem for several reasons. First, the schedule of payments is to be established by an administrative agency which presumably will base the payments upon statistics of the actual costs likely to be incurred. Second, the savings in administrative expense that should be realized by the payment of an easily ascertainable amount serves to protect the acquirer.

Sections 1270.09 and 1270.11

These two sections are based entirely upon Sections 157.5 and 158 of the Streets and Highways Code which in turn are based on the Federal Highway Act of 1968. It should be noted that the standards for payment to tenants and home owners differ. Contrast Section 1270.09(b) with Section 1270.11(b). The reason for this discrepancy has not yet been ascertained. No change is recommended at the present time.

Section 1270.15

This section provides, in part, that each acquirer may adopt rules and regulations to implement this chapter but that such rules shall

not be less favorable to the displaced person than the rules adopted by the Board of Control. This provision is designed to provide flexibility and insure minimum standards. A single rule-making body could be provided but this might be unduly restrictive. The Board of Control has been designated to adopt the minimum standards because they presently are authorized to adopt moving expense regulations for a number of diverse acquirers: the Department of Water Resources, the Department of Parks and Recreation, the Trustees of the California State Colleges, and the Regents of the University of California. Nevertheless, another public entity could be designated, such as the Public Works Board.

Section 1270.15 also provides that the time within which a claim for moving or relocation expenses and the method of review of disputed claims is to be determined by administrative regulation. This would permit the acquirer to provide for administrative review. This continues existing law. Although the justifications for this type of review may be debated, most moving expense statutes do not provide for judicial review. If the Commission does not wish to follow existing law on this matter, a procedure for judicial review could be developed. The decision ultimately reached on this question may affect several broad issues, such as the need for statutory detail.

Please read the attached recommendation prior to the meeting. We will go over it carefully at the meeting, after which we hope to be able to distribute it for comment.

Respectfully submitted,

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Regulations Implementing Moving Expense Statutes

Article 18. Moving Expenses in Connection With the Acquisition of Real Property by State Agencies

880. Statute Authority. The rules and regulations contained in this article are based upon Sections 15950 through 15956, inclusive, of the Government Code.

History: 1. New Article 18 (Sections 880 through 884) filed 9-22-65 as an emergency; effective upon filing. Certificate of Compliance included (Register 65, No. 18).

881. Definitions. (a) "State agency" means the State Public Works Board when acquiring real property or any interest therein for the Department of Parks and Recreation with funds from the State Beach, Park, Recreation, and Historical Facilities Fund, the Department of Water Resources when making such an acquisition with funds from the California Water Resources Development Bond Fund, and the Trustees of the California State Colleges and the Regents of the University of California when making such an acquisition with any funds appropriated after September 1, 1968.

(b) "Eligible person" means any individual, family, business concern, or farm to be displaced from real property to be acquired by the state agency.

(c) "Moving expenses" means the packing, loading, transportation, unloading and unpacking of personal property owned by the eligible person. Moving expenses shall not include:

(1) Payment when the personal property has been purchased, or will be relocated, as part of the acquisition agreement.

(2) Any loss of, or damage to, personal property.

(3) The cost of insuring or storage of personal property.

(4) The cost of dismantling, disconnecting, or reinstalling personal property.

(5) Expenses incurred in moving trade fixtures.

(d) "Individual" means a person owning or tenant occupying a dwelling unit who is not a member of a family.

(e) "Family" means two or more persons related by blood or by marriage who own or are tenants occupying a dwelling unit.

(f) "Business concern" means a corporation, nonprofit corporation, unincorporated association, partnership, individual or other private entity, engaged in a business or professional activity requiring the use of fixtures, equipment, stock in trade, or other tangible personal property for the carrying on of the business or profession on the premises.

(g) "Farm" means real property which is used for the production of one or more agricultural, horticultural, livestock or poultry commodities for sale and which customarily produces such commodities in sufficient quantity to contribute materially to the operator's support.

(h) "Counted room" means that space in a dwelling unit containing the usual quantity of household furniture, equipment, and personal property. It shall include such space as a recreation room, living room, library, study, dining room, kitchen, laundry room, finished basement, enclosed sun porch (when it contains household furniture, equipment and personal property), bedroom, and garage. Counted room does not include a bathroom, closet, pantry, hall, screened porch, shed, carport, and unfinished room.

(i) A partial taking (where only a portion of a larger parcel is acquired) shall be considered a relocation eligible for relocation payment if the removal of personal property of an eligible person from the property acquired is necessary and is not otherwise compensated.

882. **General Provisions.** Payment for moving expenses shall be made by the state agency to an eligible person under the circumstances and to the extent set forth in this section and in Sections 883 and 884. Application for payment shall be made upon forms prescribed by the state agency and shall be accompanied by such information as may be required.

(a) The date of eligibility for moving expenses is the date the acquisition agreement is signed by the property owner in a negotiated settlement, the date of service of order for possession, or date of recordation of the final order of condemnation, whichever is earlier.

(b) After an eligible person has vacated the property, no moving expenses will be made to any party with respect to the subsequent occupancy of the same property.

(c) Applications for moving expenses will be accepted only after close of escrow with the fee owner and completion of the move. Further, applications will not be accepted if received more than three months after vacation of the property.

(d) An individual or family occupying a dwelling unit on the same premises as a business concern or a farm shall be considered as a separate eligible person in determining the amount of the moving expenses.

History: 1. Amendment filed 2-16-66; effective thirtieth day thereafter (Register 66, No. 5).

883. **Provisions Applicable to an Individual or Family.** (a) Moving expenses shall not exceed \$200 in the case of an individual or family and shall be made in accordance with the schedule of fixed payments as follows:

Counted Rooms	Moving Payment
1 or 2	\$50
3	75
4	100
5	125
6	150
7	175
8 or more	200

(b) When more than one individual or family owns or occupies the same dwelling, each individual or family may qualify for moving expenses; however, their total claim for moving expenses shall not exceed the fixed moving expenses for the total number of counted rooms in the dwelling.

(c) Tenants owning only a nominal amount of furniture, equipment, and personal property shall not be eligible for moving expenses.

(d) The owner of a trailer coach, owned and occupied as a family residence in a trailer park, where the trailer coach is connected to the local water, sewer, and electric supply, and occupying space on a weekly, monthly or term lease rented basis, when ordered to remove to clear the site of the project, will be eligible to collect a flat sum of \$50 to move his entire trailer, equipment and appurtenances from the premises.

History: 1. Amendment filed 2-16-66; effective thirtieth day thereafter (Register 66, No. 5).

884. Provisions Applicable to a Business Concern or Farm. (a) Moving expenses for a business concern or a farm shall not exceed \$3,000.

(b) The allowable expense for transportation shall not exceed the cost of moving 50 miles. The distance will be measured by a straight line from the point of displacement to the point of relocation.

(c) Actual and necessary moving expenses will be paid upon receipt of a paid, receipted, and itemized bill from a moving contractor holding a permit from the Public Utilities Commission authorizing operations as a household goods carrier.

(d) A business concern or farm which desires to perform the move itself may submit its own itemized estimate of moving expenses; however, the state agency may require that two estimates be obtained from a moving contractor holding a permit from the Public Utilities Commission authorizing operations as a household goods carrier. In the latter event, the lowest estimate will be the amount paid for moving expenses.

(e) All books and records as to actual moving costs incurred kept by the business concern or farm shall be subject to review and audit by a representative of the state agency during reasonable business hours.

Article 6. Highway Relocation Assistance

1430. Definitions. The following terms where used in this article have the following meanings:

(a) "Department" means the California Department of Public Works.

(b) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired in whole or in part for State highway purposes or for a Federal-aid highway,

(1) as a result of the acquisition of such real property for State highway purposes or for a Federal-aid highway; or

(2) as a result of the reasonable expectation of acquisition of such real property, and which property is subsequently acquired.

A person who moves from real property which is subsequently acquired for such purposes as a result of the "reasonable expectation of acquisition of such real property" is one who moves from such property within the 12-month period immediately preceding the time possession of the property is required for construction purposes; provided that a person who moves onto real property less than the said 12-month period and moves from that property more than 90 days before the end of said 12-month period, is not a displaced person for purposes of this regulation, and also provided that the property is not subsequently occupied by another eligible person, prior to acquisition by the Department.

(c) "Eligible person" means any displaced person who is, or becomes, lawfully entitled to any relocation payment under these regulations.

(d) "Individual" means a person who is not a member of a family.

(e) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(f) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(g) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. The phrase "contributing materially" means that the farm operation has or could contribute at least one-third of the farm operator's income.

(h) "Average annual net earnings" means one-half of any net earnings of a business or farm operation before federal, state or local income taxes during the two taxable years immediately preceding the

taxable year in which the business or farm operation moves from the property. It includes any compensation paid by the business or farm operation to the owner, his spouse or dependents during such two-year period. In the case of a corporate owner, such earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their dependent children shall be treated as one unit.

(i) "Nonprofit corporation" means a corporation organized in accordance with the rules of, and under permit from, the State Franchise Tax Board, engaged in a business, professional, or institutional activity on a nonprofit basis requiring the use of fixtures, equipment, stock in trade, or other tangible personal property for conducting the business, profession, or institution on the property acquired.

(j) "Moving expense" means the cost of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading and reinstalling of personal property, including service charges in connection with effecting such reinstallations, and necessary temporary lodging and transportation of eligible persons. Moving expense shall not include:

(1) Any addition, improvement, alteration or other physical change in or to any structure in connection with effecting removal from, or reinstallation in, such structure.

(2) The cost of construction or improvement at the new location to replace property for which compensation was paid in the acquisition.

(3) Any loss of, or damage to, personal property.

(4) The expense incurred in moving trade fixtures.

(5) Any payment for moving personal property where such property is purchased as part of the acquisition.

(k) "Counted room" means that space in a dwelling unit containing the usual quantity of household furniture, equipment and personal property. It shall include such space as a recreation room, living room, library, study, dining room, kitchen, laundry room, basement, bedroom and garage. Rooms or storage areas which contain substantial amounts of personal property equivalent to one or more rooms may be counted as additional rooms.

(l) "Sleeping room" means a furnished room used as the permanent place of residence of one or more individuals where the occupant furnishes none, or only a nominal amount, of his own household equipment.

(m) "Transient" means an individual or family occupying living quarters or room in a hotel, motel, or other establishment, as a patron or guest of said hotel, motel, or other establishment, who have a permanent place of residence elsewhere, and where such occupancy is under daily or weekly tenancy and the occupancy has been for less than 90 days continuously immediately preceding the date title passes to, or physical possession is taken by the State.

(n) "Dwelling unit" means the place of residence, including condominium or cooperative apartment, occupied by a family or an individual, containing the space necessary to provide permanent sleeping, living and sanitary facilities, and containing adequate space for cooking, dining, and storage purposes.

(o) "Owner" means an individual:

(1) Owning, legally or equitably, the fee simple estate, a life estate, a ninety-nine year lease, or other substantial possessory interest in the property acquired.

(2) The contract purchaser of any of the foregoing estates or interests; or

(3) Who within one year immediately preceding the date on which he was required to move has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law. In the event of acquisition of ownership by such methods, the tenure of the succeeding owner includes the tenure of the preceding owner.

(p) "Comparable dwelling" means a dwelling which, when compared with the dwelling being taken, is substantially equal regarding all major characteristics and functionally equivalent with respect to:

(1) number of rooms;

(2) area of living space;

(3) type of construction;

(4) age;

(5) state of repair;

(6) type of neighborhood; and

(7) accessibility to public services and places of employment.

(q) "Relocation payment" means "moving expense" and "replacement housing payment."

(r) "Purchase" as used in connection with claiming supplementary relocation payments means the close of the escrow by which the title to replacement property was conveyed to the claimant of a supplementary relocation payment. If no escrow was used, "purchase" means the date of delivery to such claimant of the deed to the replacement property or the date of delivery of a completely executed installment contract for purchase.

(s) "Occupy" as used in connection with claiming supplementary relocation payment means actual inhabitancy of the replacement property.

NOTE: Authority cited for Article 6: Section 159, Streets and Highways Code.
Reference: Sections 159 through 159.6, Streets and Highways Code.

History: 1. New Article C (Sections 1430 through 1433) filed 7-20-65 as an emergency; effective upon filing (Register 65, No. 13).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 11-12-65 (Register 65, No. 21).
3. Repealer of Article 6 (§§ 1430-1433) and new Article 6 (Secs. 1430-1434) filed 10-1-68 as an emergency; effective upon filing (Register 68, No. 37).
4. Certificate of Compliance filed 11-22-68 with amendment filed 11-22-68 as an emergency; designated effective 11-22-68 (Register 68, No. 44).

1431. General Provisions Relocation Payment. (a) Application for relocation payment shall be made to the Department upon forms prescribed by the Department and shall be accompanied by such information and documentation as may be required by the Department.

(b) Except as otherwise provided, no applications for relocation payment will be accepted more than 18 months after vacation of the property or six months after date of recording of the Final Order of Condemnation, whichever is later.

(c) Where more than one displaced person occupies the same premises, each is separately eligible for a relocation payment.

(d) After an eligible person has vacated the property, no relocation payments will be made to any party with respect to the subsequent occupancy of the same property unless:

(1) an eligible person qualified for payment because he moved as a result of the reasonable expectation of acquisition of the real property; and

(2) any subsequent person moved onto the property acquired less than 12 months prior to and moved off of such property less than 90 days prior to the time possession of the property was required for construction purposes.

(e) Any displaced person aggrieved by a determination as to eligibility for a relocation payment, or the amount of such payment, may have his application reviewed by the Director of the Department, whose decision shall be final. All displaced persons shall be informed by the Department of their right to appeal and shall be furnished the address of the Director. Such persons shall be given full opportunity to be heard and a prompt decision giving reasons in support of the decision. Appeals must be submitted within six months following the final date specified in Paragraph (b) of this section for applying for relocation payments.

(f) The date of eligibility for relocation payment to eligible persons is as follows:

(1) For those eligible persons who are in possession and the escrow has not closed on the effective date of these rules,

the date of eligibility shall be the date of close of escrow. For those persons who have moved from the property acquired pursuant to an Order for Possession or Right of Entry, the date of eligibility shall be the date of the close of escrow or the date of recording the final Order of Condemnation if either occurs after the effective date of these rules.

(2) Negotiated settlement—the date that the Right of Way Contract is signed by the grantor.

(3) Condemnation action—date of service of Order for Possession, or date of recording the Final Order of Condemnation, whichever is earlier.

(g) A displaced person who moves from real property as a result of the reasonable expectation of acquisition of such real property shall not be eligible for any relocation payment unless that real property is subsequently acquired in whole or in part. Claims from such persons shall be accepted by the Department if presented, but payment shall be deferred until the property is acquired.

(h) Relocation payment shall not be made prior to the date the property is acquired or possession is taken.

(i) A State agency, city, county, district or other subdivision of government shall not be eligible to receive relocation payments.

(j) Transients shall not be eligible for relocation payment.

(k) Where a highway is a part of the Federal-aid system, but is not designated as a part of the State highway system, no payments shall be made under these regulations to a displaced person by a project on such highway unless the project has been approved for Federal participation.

(l) A displaced person who rents or leases property from the Department shall not be eligible for relocation payment unless the eligibility is a result of occupancy under prior ownership or tenancy.

History: 1. Amendment of subsection (c) filed 11-22-68 as an emergency; designated effective 11-22-68. Certificate of Compliance included (Register 68, No. 44).

1432. Moving Expense Payment. (a) General Provisions:

(1) The adoption of these regulations shall not deprive a displaced person of any eligibility such person may have had under the regulations adopted July 20, 1965 in Title 21, Chapter 2, Subchapter 2 of the California Administrative Code, as amended. Any such person which vacated real property prior to September 23, 1968, shall be eligible under said regulations adopted July 20, 1965. If such person vacates on or after September 23, 1968, he shall be eligible for moving expense payment as provided in these regulations.

(2) The allowable expense for transportation shall not exceed the cost of moving 50 miles. The distance shall be measured by a straight line, from the point from which the move was made to the point of relocation.

(3) The costs of temporary storage of personal property and temporary lodging and transportation of eligible persons, shall be paid by the Department only upon showing of necessity by such persons and approval by the Department in advance of incurring such costs.

(4) Where only a portion of a larger parcel is acquired, a displaced person shall be eligible for moving expense payment only where the removal of personal property of an eligible person from the property acquired is necessary and is not otherwise compensated.

(5) Payment of actual and reasonable moving expense, except as provided in Paragraph 5 of Subsection (c) of this section for businesses and farm operations which move themselves, shall be accomplished as follows:

(A) The displaced person shall secure at least two firm bids or estimates from responsible moving companies and submit them to the Department for approval prior to the move. The Department will authorize payment for the move based on the lowest of such bids or estimates.

(B) Payment shall be made by the Department upon presentation of the paid, receipted and itemized bills after the claimant has moved from the premises. Where the rules and regulations of the Public Utilities Commission authorize firm bids, or where the Public Utilities Commission does not have jurisdiction, the payment shall not

exceed the low bid submitted. Where the Public Utilities Commission prohibits firm bids, payment shall be made upon the basis of paid, receipted bills accompanied by freight bills, cartage tickets, or similar documents which indicate the basis of the charge and are signed by a responsible employee or representative of the moving company.

(6) By written prearrangement between the Department, the displaced person and the mover, a displaced person may present unpaid moving bills to the Department and the Department may pay the mover directly. The Department shall not enter into any written prearrangement to pay moving expense bills directly to movers where moves are made as a result of the reasonable expectation of acquisition.

(7) All books and records kept by a business or farm operation as to actual moving expense incurred shall be subject to review and audit by a Department representative during reasonable business hours.

(b) Individual or Family

(1) An individual or family displaced from a dwelling unit is entitled to receive a payment for his actual and reasonable moving expense.

(2) In lieu of actual and reasonable moving expense, any individual or family displaced from a dwelling unit may elect to receive a payment which shall cover all items and incidentals necessary to the vacating of the property acquired according to the following number of counted rooms from which the individual or family moves:

1 room	-----	\$25.00
2 rooms	-----	50.00
3 rooms	-----	75.00
4 rooms	-----	100.00
5 rooms	-----	125.00
6 rooms	-----	150.00
7 rooms	-----	175.00
8 rooms or more	-----	200.00

(3) If the individual or family elects to receive payment based on the schedule in paragraph (2) of this subsection, he may receive, in addition to the amount payable under the schedule, a dislocation allowance of \$100.00. No dislocation allowance shall be paid to those individuals or families who elect to receive actual moving expense as provided in paragraph (1) of this subsection.

(4) The owner of a trailer coach which is used as a permanent family residence which must be relocated because all or part of the mobile home park in which the trailer coach is located is acquired, shall be reimbursed for the actual and reasonable costs of moving the trailer. In the case of self-moves, reasonable moving expense payment shall be based on the

lowest of two firm bids or estimates from licensed trailer moving companies.

(c) Business or Farm Operation

(1) A business or farm operation is entitled to receive actual and reasonable moving expense for relocation of the business or farm operation.

(2) In lieu of actual reasonable moving expense payment as provided in paragraph (1) of this subsection, a business or farm operation which moves or discontinues its business or farm operation may elect to receive a payment in an amount equal to the average annual net earnings of the business or farm operation or \$5,000, whichever is lesser. A business shall not be eligible for this payment unless the Department is satisfied that:

(A) The business cannot be relocated without a substantial loss in the average dollar volume of business, compared with the volume of business transacted during the two taxable years immediately preceding the year in which the business is displaced; and

(B) The business is not part of a commercial enterprise having at least one other establishment, not being acquired, and which is engaged in the same or similar business.

(3) To be eligible for the payment in lieu of actual and reasonable moving expense, the business or farm operation must make its State income tax returns available and its financial statements and accounting records available for audit for confidential use by the Department. Payment shall not be made where such business or farm operation has not filed State income tax returns for the two full tax years immediately preceding the tax year in which the business or farm operation moves from the property.

(4) In the case of partial takings, a business or farm operation which the Department determines can continue to operate on the remaining property with equal economic success to that achieved before the taking shall not be eligible for the payment provided in Paragraph (2) of this subsection.

(5) A business or farm operation which performs the moving itself may be paid a reasonable amount to be agreed upon, in writing in advance of such move, between the Department and the business or farm operation. The amount agreed upon shall not exceed the lower of at least two firm bids or estimates obtained by or for the Department or prepared by other qualified estimators. The cost of securing firm bids or estimates shall be considered part of the cost of moving.

(6) A business or farm operation shall not be eligible for payment provided in Paragraph (2) of this subsection where such business or farm operation has been located on the prop-

erty less than 90 days immediately preceding the date of the State's first written offer to purchase the property.

History: 1. New section filed 10-1-68 as an emergency; effective upon filing (Register 68, No. 37). For history of former section, see Register 67, No. 24.

2. Amendment filed 11-22-68 as an emergency; designated effective 11-22-68. Certificate of Compliance included (Register 68, No. 44).

1433. Supplementary Relocation Payment. (a) In addition to moving expense payment the Department may make a lump sum supplementary payment not to exceed \$5,000 to eligible displaced owner occupants of 1, 2, or 3-family dwelling units in accordance with the following:

(1) The owner occupant shall have occupied the property taken for more than one year immediately preceding receipt of the Department's first written offer to purchase.

(2) The owner occupant shall purchase and occupy a decent, safe and sanitary dwelling within one year of vacation of the acquired property.

(3) The payment shall be the amount, if any, which, when added to the acquisition payment for the property acquired, shall equal the average price required for a comparable dwelling determined by the Department to be decent, safe, sanitary, adequate to accommodate the displaced owner, and available on the private market.

(4) The Department shall determine the amount of such payments by any reasonable method the Department finds necessary to satisfactorily establish the average price for comparable and available dwellings which are decent, safe and sanitary.

(b) In addition to moving expense payment, the Department may make a lump sum supplementary payment not to exceed \$1,500 to eligible displaced dwelling owners and tenants which do not meet the requirements specified in Subsection (a) of this section and which have occupied the property at least 90 consecutive days immediately preceding the Department's first written offer to purchase, and which occupy a decent, safe and sanitary dwelling within one year of the date of vacation, in accordance with the following:

(1) The owner occupant shall be entitled to a lump sum payment over and above the amount of the acquisition payment which shall equal the difference between 24 times the fair monthly rent of the property acquired, as determined by the Department, and 24 times the monthly amount necessary to rent a comparable, decent, safe and sanitary dwelling which is in an area not generally less desirable in regard to public utilities and public and commercial facilities. Such payment shall not exceed any amount the owner would have received had he been eligible under requirements specified in Subsection (a) of this section.

(2) The occupant under tenancy, including a sleeping room tenant or a mobile home park tenant, shall be entitled to a lump sum payment equal to the difference in 24 times the lesser of the monthly economic rent or the last month's rent prior to vacation, and 24 times the monthly rent necessary to rent a comparable decent, safe and sanitary dwelling or sleeping room or comparable mobile home park site in an area not generally less desirable in regard to public utilities and public and commercial facilities.

(3) Eligibility for, and the amount of, payment which an occupant is entitled to under paragraphs 1 and 2 of this subsection shall be determined by the Department in accordance with local or individual real estate studies or other methods which the Department determines necessary to satisfactorily establish the average monthly rental payment to allow occupancy of a comparable, decent, safe and sanitary dwelling, sleeping room or mobile home site.

(c) A supplementary relocation payment shall not be made unless the Department has established by inspection that the property acquired has been vacated and the replacement dwelling meets decent, safe and sanitary standards. In hardship or unusual circumstances the Department may approve exceptions to this requirement.

(d) A supplementary relocation payment shall not be made unless the displaced person establishes to the satisfaction of the Department that the property taken is his principal or legal place of residence.

History: 1. New section filed 10-1-68 as an emergency; effective upon filing (Register 68, No. 37). For history of former section, see Register 65, No. 21.

2. Certificate of Compliance filed 11-22-68 with amendment filed as an emergency; designated effective 11-22-68 (Register 68, No. 44).

1434. Standards For Decent, Safe, and Sanitary Dwellings.

(a) A decent, safe, and sanitary dwelling is one which meets all of the following minimum requirements:

(1) Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations applicable to the property in question.

(2) Has a continuing and adequate supply of potable safe water.

(3) Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and a sewage disposal system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances, or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.

(4) Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing.

(5) Has a bathroom, well-lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush water closet, all in good working order and properly connected to a sewage disposal system.

(6) Has provision for artificial lighting for each room.

(7) Is structurally sound, in good repair and adequately maintained.

(8) Each building used for dwelling purposes shall have two safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to two means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(9) Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes, and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

(b) Rental of sleeping rooms. The standards for decent, safe, and sanitary housing as applied to the rental of sleeping rooms shall include the minimum requirements contained in paragraph (a), subparagraph (1), (4), (6), (7) and (8) of this section and the following:

(1) At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(2) Lavatory and toilet facilities that provide privacy, including a door that can be locked if such facilities are separate from the room.

(c) The Department may approve exceptions to the standards in this section where unusual conditions exist.

April 2, 1969

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION
TENTATIVE RECOMMENDATION
relating to

RELOCATION ASSISTANCE AND REIMBURSEMENT FOR MOVING EXPENSES WHEN
PROPERTY IS ACQUIRED FOR PUBLIC USE

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

NOTE: COMMENTS OF INTERESTED PERSONS AND ORGANIZATIONS MUST BE IN THE HANDS OF THE COMMISSION NOT LATER THAN AUGUST 4, 1969, IN ORDER THAT THEY MAY BE CONSIDERED BEFORE THE COMMISSION'S RECOMMENDATION ON THIS SUBJECT IS SENT TO THE PRINTER.

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

TENTATIVE
RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION
relating to
RELOCATION ASSISTANCE AND REIMBURSEMENT FOR MOVING EXPENSES WHEN
PROPERTY IS ACQUIRED FOR PUBLIC USE

The California Constitution provides that private property shall not be taken for public use without "just compensation" having first been made. However, the decisions implementing this provision provide that the person whose land is taken for public use is entitled to be paid only for its market value. As a result, except where provided by statute, no compensation is provided for the expense of moving to another location when land is taken for public use.

Failure to compensate for moving expenses and provide other relocation assistance where private property is taken for a public use has engendered considerable controversy in recent years resulting in a flood of legislation, at both the state and federal levels, attempting to remedy this hiatus in condemnation law. The problem certainly has been recognized in California, for legislation authorizing reimbursement for moving expenses was enacted in 1965, 1966, 1967, and 1968. Several bills relating to this topic have been introduced in 1969. Part of the reason for this deluge in California is that, to date, legislative solutions have been piecemeal--applying only to particular condemnors for particular purposes. The lack of uniformity in the provisions for relocation assistance and aid has created some bitterness and disillusionment in the large urban areas where

several different projects by different governmental agencies were in operation at the same time.¹

There is no justification for this disarray. Now that the principle of providing relocation payments for persons involuntarily displaced by acquisitions for public use has become firmly established, the only question remaining is whether the principle should be uniformly applied to all acquirers of property for public use. The Commission has reconsidered the question in connection with its comprehensive study of eminent domain law and has concluded that relocation assistance and reimbursement for moving expenses should be provided whenever private property is acquired for public use. The reasons for such compensation do not vary with the identity of the acquirer or the particular purpose of the acquisition.

Every person displaced by the acquisition of private property for public use should be reimbursed for the actual reasonable moving expenses incurred as a result of the acquisition. Inasmuch as this expense must be incurred because the property is taken for the public's benefit, the public should bear the burden. The assumption of this burden by every acquirer of private property for public use would more nearly and uniformly effectuate the constitutional objective of "just compensation." The purpose of this bill is to more nearly attain this objective by making the law relating to the payment of moving and relocation expenses applicable to all acquirers of private property for public use. This recommendation is based substantially on

¹ Highway Relocation Assistance Study, 90th Cong., 1st Sess. (Committee on Public Works) at 78.

existing provisions applicable only to particular public entities for particular purposes.

Accordingly, the Commission recommends:

1. That any person or business displaced by the acquisition of private property for public use should be entitled to reimbursement for the actual and reasonable moving expenses incurred as a result of the acquisition.

2. That in lieu of actual reasonable moving expenses, a displaced person may elect to receive reimbursement according to a graduated schedule. It is anticipated that this provision will alleviate many collateral problems, such as documentation of actual expenses, as well as minimize administrative expenses in administering this program.

3. That all acquirers of private property for public use be authorized to make such additional payments (limited in amount) to displaced persons as may be necessary to enable them to obtain substitute housing. This provision is necessary in part because an award based on the fair market value does not necessarily take into account the replacement value of the property taken.

4. That all acquirers of private property for public use be authorized to give relocation advisory assistance to persons displaced by the acquisition. Such advisory assistance could help minimize the hardships of relocation.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to add Chapter 1.5 (commencing with Section 1270.01) to Title 7 of Part 3 of the Code of Civil Procedure, to repeal Chapter 1 (commencing with Section 15950) of Part 13 of Division 3 of the Government Code, to repeal Article 9 (commencing with Section 29110) of Chapter 6 of Part 2 of Division 10 of the Public Utilities Code, to repeal Article 3.5 (commencing with Section 156) of Chapter 1 of Division 1 of the Streets and Highways Code, to repeal Sections 33415, 34014, and 34330 of the Health and Safety Code, relating to the payment of compensation and damages and the provision of relocation assistance when property is acquired for public use.

The people of the State of California do enact as follows:

Section 1. Chapter 1.5 (commencing with Section 1270.01) is added to Title 7 of Part 3 of the Code of Civil Procedure, to read:

CHAPTER 1.5. RELOCATION ASSISTANCE AND REIMBURSEMENT FOR
MOVING EXPENSES WHEN PROPERTY IS ACQUIRED FOR PUBLIC USE

Section 1270.01. Definitions

1270.01. As used in this chapter:

(a) "Acquirer" means a person who acquires real property for public use.

(b) "Displaced person" means:

(1) Any person who is the owner of a business or the operator of a farm operation which moves from real property or is discontinued as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by an acquirer;

(2) Any individual who is the head of a family which moves from real property occupied as a dwelling, as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by an acquirer, or which moves from such dwelling as a result of the acquisition or reasonable expectation of acquisition of other real property, in whole or in part, by an acquirer, on which such family conducts a business or farm operation;

(3) Any individual, not a member of a family, who moves from real property occupied as a dwelling, as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by an acquirer, or who moves from such dwelling as a result of the acquisition or reasonable expectation of acquisition of other real property, in whole or in part, by an acquirer, on which such individual conducts a business or farm operation.

(c) "Person" includes an individual, corporation, association, partnership, joint venture, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, the state,

or a city, county, city and county, district, public authority, public agency, or any department, agency, or instrumentality of the state or of any governmental subdivision in the state.

(d) "Real property" includes land, and any interest in land, including but not limited to easements, rights of way, water rights, and mineral rights.

(e) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(f) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(g) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship.

(h) "Moving expense" means the cost of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading, and reinstalling of personal property, including service charges in connection with effecting such reinstallations, and necessary temporary lodging and transportation of eligible persons. Moving expense does not include:

(1) Any addition, improvement, alteration, or other physical change in or to any structure in connection with effecting removal from, or reinstallation in, such structure.

(2) The cost of construction or improvement at the new location to replace property for which compensation was paid in the acquisition.

(3) Any loss of, or damage to, personal property.

(4) The expense incurred in moving trade fixtures.

(5) Any payment for moving personal property where such property is purchased as part of the acquisition.

(6) Any costs for transportation in excess of the transportation costs for the first fifty (50) miles.

Comment. Section 1270.01 provides the definitions of several terms as used in this chapter. Subdivision (a) defines "acquirer" to mean any person, agency, or corporation authorized to acquire real property for public use. This provision is based on a previous Law Revision Commission recommendation. See Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property is Acquired for Public Use, 3 Cal. L. Revision Comm'n Reports C-1 (1961). Under prior law, only a limited number of public entities were authorized to pay moving expenses. See Govt. Code § 15950; Health & Saf. Code §§ 33415, 34014, 34330; Pub. Util. Code §§ 29110, 29111; Sts. & Hwys. Code §§ 156, 157. See also Health & Saf. Code § 33135 ("relocation assistance").

Subdivision (b) follows and clarifies prior law. Compare Govt. Code § 15950; Pub. Util. Code § 29110; Sts. & Hwys. Code § 156. As defined in subdivision (b), a displaced person may be either the owner or the lessee of the real property. This continues prior law. See Govt. Code § 15950; Pub. Util. Code § 29110; Sts. & Hwys. Code § 156. However, under subdivision (b), a displaced person is one who moves from real

property as the result either of the acquisition or the reasonable expectation of acquisition of such real property, in whole or in part. Prior law required that the property be subsequently acquired. Govt. Code § 15951; Pub. Util. Code § 29111; Sts. & Hwys. Code § 156. Also under subdivision (b), a displaced person may be a person who moves from his dwelling as a result of the acquisition or reasonable expectation of acquisition of real property on which such person conducts a business or farm operation. This covers the situation where the dwelling remains habitable but is no longer useful to the farmer or business owner because he is required to work elsewhere.

The definition of person in subdivision (c) is based on a prior Law Revision Commission recommendation. See Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property is Acquired for Public Use, 3 Cal. L. Revision Comm'n Reports C-1 (1961).

The definition of real property in subdivision (d) is based on S.L. 91st Cong., 1st Sess. and is designed to insure applicability of this chapter regardless of whether the entire fee or some lesser interest is acquired.

The definitions of "business," "farm operation," and "family" are based on Section 156 of the Streets and Highways Code.

Subdivision (h) is added to identify the recurrent items for which reimbursement under Section 1270.03 is or is not available. It is based on prior law. See Cal. Admin. Code, Title 21, §§ 1430(j), 1432(a)(2). See also Govt. Code § 15950(e); Pub. Util. Code § 29110(d). This definition excludes certain costs of moving, e.g., the cost of locating substitute housing or a new business location, broker's commissions, increased interest on mortgage loans, and the cost of lost production and other incidental business losses.

Section 1270.03. Actual Moving Expenses

1270.03. As a part of the cost of acquisition, an acquirer shall compensate a displaced person for the actual and reasonable moving expenses incurred in moving himself, his family, his business, or his farm operation, including personal property.

Comment. Section 1270.03 provides that all acquirers must compensate displaced persons for their actual reasonable moving expenses. Prior law merely authorized some acquirers to pay moving expenses. See Govt. Code § 15950; Health & Saf. Code §§ 33135, 34014, 34330; Pub. Util. Code § 29110; Sts. & Hwys. Code § 156. The test for compensability of moving expenses--actual and reasonable--is based on prior law. Sts. & Hwys. Code § 157(a). Cf. Govt. Code § 15951 (reasonable and necessary); Pub. Util. Code § 29111 (reasonable and necessary); Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property is Acquired for Public Use, 3 Cal. L. Revision Comm'n Reports C-1 (1961)(actual and necessary). Compensation for moving expenses under this section is required only to the extent that the moving expenses are actually incurred and reasonable in amount and it is reasonable to move from (1) the parcel acquired, (2) the remainder, if any, or (3) from a dwelling if other real property on which the displaced person conducts a business or farm operation is acquired in whole or in part. What is encompassed by the term "moving expense " is indicated in Section 1270.01(h). Payments in lieu of the payments required by this section are provided in Sections 1270.05 and 1270.07. These latter sections are applicable only at the option of the displaced person.

Section 1270.05. Business and Farm Operation in Lieu of Moving Expenses

1270.05. (a) In lieu of the payment provided by Section 1270.03, a displaced person who moves or discontinues his business or farm operation may elect to receive a relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars (\$5,000), whichever is lesser.

(b) In the case of a business, no payment shall be made under this section unless the acquirer is satisfied that the business cannot be relocated without substantial loss of its existing patronage.

(c) As used in this section, "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal, state, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two-year period.

(d) To be eligible for the payment authorized by this section, the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit for confidential use to determine the payment authorized by this subdivision.

Comment. Under Section 1270.05, a business owner or farm operator may elect to receive either reimbursement under Section 1270.03 or a fixed payment under this section. Prior law merely authorized such

§ 1270.05

payments. Sts. & Hwys. Code § 157(c). Section 1270.05 recognizes the economic impact of displacement and provides a method of compensating these losses quickly and with a minimum of administrative expense. The section is, however, limited in the amount payable and by the requirement that there be a substantial loss of patronage. Prior law also provided that a business which was part of a commercial enterprise having at least one other establishment engaged in the same or similar business was not eligible for the in lieu payment provided by this section. Sts. & Hwys. Code § 157(c). The section is based on prior law. See Sts. & Hwys. Code § 157(c).

Section 1270.07. Dwelling in Lieu of Moving Expenses

1270.07. In lieu of the payments provided by Section 1270.03, a displaced person who moves from a dwelling may elect to receive:

(a) A moving expense allowance, determined according to a schedule established by the Board of Control, not to exceed two hundred dollars (\$200); and

(b) A dislocation allowance of one hundred dollars (\$100).

Comment. Under Section 1270.07, any displaced person who moves from a dwelling may, at his option, elect to receive either reimbursement for his actual and reasonable moving expenses under Section 1270.03 or reimbursement under this section. The sections are, however, mutually exclusive. The moving expense allowance is intended to reimburse the displaced person for moving expenses without documentation of actual expenses; the dislocation allowance is intended to reimburse the displaced person for loss of property and other out-of-pocket costs without documentation. The section is based on prior law authorizing the payments now required by this section. See Sts. & Hwys. Code § 157(b); Cal. Admin. Code, Tit. 21, § 1432(b)(2).

Section 1270.09. Supplementary Payments for Owners of Dwellings

1270.09. (a) In addition to the payments provided by Sections 1270.03 or 1270.07, an acquirer, as a part of the cost of acquisition, may make a supplementary payment to any displaced person who is the owner of real property which is improved with a single-, two-, or three-family dwelling, actually owned and occupied by the owner for not less than one year prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed five thousand dollars (\$5,000), shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the acquirer, to be a decent, safe, and sanitary dwelling, adequate to accomodate the displaced owner, reasonably accessible to public services and place of employment and available on the market.

(c) Such payment shall be made only to a displaced owner who purchases and occupies a dwelling that meets standards established by the acquirer within one year subsequent to the date on which he is required to move from the dwelling acquired for the project.

Comment. Section 1270.09 authorizes, but does not require, the acquirer to make the payments provided. Such provision recognizes that compensation, based on the fair market value of a home, does not necessarily enable the displaced person to obtain substitute housing. This section is based on prior law. See Sts. & Hwys. Code § 157.5.

Section 1270.11. Supplementary Payments to Individuals or Families Not Eligible Under Section 1270.09

1270.11. (a) In addition to the payments provided by Sections 1270.03 or 1270.07, an acquirer, as a part of the cost of acquisition, may make a supplementary payment to any displaced person who is an individual or family not eligible to receive a payment under Section 1270.09, if such individual or family actually and lawfully occupied the dwelling for not less than 90 days prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed one thousand five hundred dollars (\$1,500), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two years, or to make the downpayment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accomodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

Comment. Section 1270.11 authorizes, but does not require, the acquirer to make the payments provided. The provision is analogous to Section 1270.09 and recognizes that some acquisitions may displace tenants who will not be able to find substitute housing at a rental they are able to afford. The section is based on prior law. See Sts. & Hwys. Code § 158.

Section 1270.13. Authority to Give Relocation Advisory Assistance

1270.13. An acquirer is authorized to give relocation advisory assistance to any displaced person. In giving such assistance, the acquirer may establish a local relocation advisory assistance office to assist in obtaining replacement facilities for displaced persons.

Comment. Section 1270.13 permits acquirers to develop and administer relocation assistance programs. Relocation advisory assistance can include determining the relocation needs of displaced persons, providing information and services to help minimize hardships caused by relocation, and assisting businessmen and farmers in obtaining and becoming established in suitable business locations or replacement farms. This section is based on prior law. See Health & Saf. Code §§ 33135, 33352, 33411, 33414, 37110; Pub. Util. Code § 29117; Sts. & Hwys. Code § 156.5.

§ 1270.15

Section 1270.15. Rules and Regulations

1270.15. (a) The Board of Control shall adopt rules and regulations to carry out the provisions of this chapter. Such rules and regulations shall include provisions relating to:

- (1) A moving expense schedule as provided in Section 1270.07(a).
- (2) A procedure to assure prompt payment of moving expenses.
- (3) Standards for determining the eligibility of displaced persons for the moving and relocation assistance payments.

(4) The time within which a displaced person must submit an application for moving and relocation assistance payments provided by this chapter.

(5) A procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed.

(6) Promotion of uniform and effective administration of relocation advisory assistance programs for displaced persons.

(b) Every acquirer other than the Board of Control may adopt rules and regulations to carry out the provisions of this chapter, but such rules and regulations shall not be less favorable to the displaced person than the rules and regulations adopted by the Board of Control.

Comment. Section 1270.15 is based on prior law. See Pub. Util. Code § 29116; Sts. & Hwys. Code § 159.

§ 1270.17

Section 1270.17. Payments in Addition to Compensation for Property Acquired

1270.17. The payments provided by this chapter are independent of and in addition to compensation for the real property acquired.

Comment. Section 1270.17 recognizes that the concept of fair market value correctly interpreted does not include moving and relocation expenses. See Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property is Acquired for Public Use, 3 Cal. L. Revision Comm'n Reports, C-1, C-11 (1961); Note, Compensation for Moving Expenses of Personal Property in Eminent Domain Proceedings, 20 Hastings L. J. 749 (1969).

§ 1270.19

Section 1270.19

1270.19. Nothing contained in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of damages not in existence on the date of the enactment of this chapter.

Comment. Section 1270.19 provides that the payments provided by this chapter are in addition to and independent of the payment of just compensation required by Article I, Section 14 of the California Constitution. See Central Pac. R. R. v. Pearson, 35 Cal. 247 (1868); Los Gatos v. Sund, 234 Cal. App.2d 24, 44 Cal Rptr. 181 (1965); La Mesa v. Tweed & Gambrell Mill, 146 Cal. App.2d 762, 304 P.2d 803 (1956); Los Angeles County v. Signal Realty Co., 86 Cal. App. 704, 261 Pac. 536 (1927). This section is based on prior law. Sts. & Hwys. Code § 159.5.

§ 1270.21

Section 1270.21. Payments Not Considered as Income

1270.21. No payment received by a displaced person under this article shall be considered as income for the purposes of the Personal Income Tax Law or the Bank and Corporation Tax Law, nor shall such payment be considered as income or resources to any recipient of public assistance and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code.

Comment. Section 1270.21 is based on prior law. See Sts. & Hwys. Code § 159.3.

§ 1270.23

Section 1270.23. Effect of Federal Reimbursement on Payments

1270.23. Nothing in this chapter shall prohibit an acquirer from providing any additional relocation assistance, and such assistance is hereby authorized, in accordance with applicable federal statutes or regulations in conjunction with federally assisted acquisitions.

Comment. Section 1270.23 is necessary to avoid inconsistency with particular federal statutes and regulations providing for federal reimbursement for moving and relocation expenses paid as a part of the cost of construction of federally financed or federally aided programs. See Mich. Stats. Ann. § 8.2.4(3) (Supp. 1968).

Sec. 2. Chapter 1 (commencing with Section 15950) of Part 13 of Division 3 of the Government Code is repealed.

Comment. Chapter 1, consisting of Sections 15950-15956 of the Government Code, is superseded by Chapter 1.5 (commencing with Section 1270.01) of Title 7 of Part 3 of the Code of Civil Procedure.

Note. The sections repealed read as follows:

§ 15950. Definitions

As used in this chapter:

(a) "State agency" means the Department of Water Resources when acquiring real property or any interest therein for public use with funds from the California Water Resources Development Bond Fund, the Department of Parks and Recreation when making such an acquisition with funds from the State Beach, Park, Recreational, and Historical Facilities Fund, or the Trustees of the California State Colleges or the Regents of the University of California when making such an acquisition from any fund appropriated after September 1, 1968 for such acquisition.

(b) "Eligible person" means any individual, family, business concern, farm or nonprofit organization to be displaced by a state construction project.

(c) "Construction project" means the acquisition of real property or any interest therein for public use by a state agency designated in subdivision (a) from the applicable fund designated in subdivision (a).

(d) "Public use" means a use for which property may be acquired by eminent domain.

(e) "Moving expenses" means the packing, loading, transportation, unloading and unpacking of personal property.

§ 15951. Compensation of eligible persons

As a part of the cost of a construction project, a state agency may compensate eligible persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such project.

§ 15952. Conditions for payment

The payment of moving expenses shall be made to eligible persons in accordance with the provisions of this chapter and such rules and regulations as shall be adopted by the * * * Board of Control.

§ 15953. Limitation of compensation to individuals

Payment of moving expenses shall not exceed two hundred dollars (\$200) in the case of an individual or family.

§ 15954. Limitation of compensation to concerns and organizations

Payment for moving expenses shall not exceed three thousand dollars (\$3,000) in the case of a business concern, farm or nonprofit organization.

§ 15955. Transportation expenses, limitation

In the case of a business concern, farm or nonprofit organization the allowable expenses for transportation shall not exceed the cost of moving fifty (50) miles from the point from which such business concern, farm or nonprofit organization is being displaced.

§ 15956. Rules and regulations as to payment of moving expenses

The * * * Board of Control is authorized to adopt rules and regulations to implement the payment of moving expenses as authorized by this chapter. Such rules and regulations may include provisions authorizing payments made to individuals and families of fixed amounts not to exceed two hundred dollars (\$200) in lieu of their respective reasonable and necessary moving expenses.

Sec. 3. Article 9 (commencing with Section 29110) of Chapter 6 of Part 2 of Division 10 of the Public Utilities Code is repealed.

Comment. Article 9, consisting of Sections 29110-29117 of the Public Utilities Code, is superseded by Chapter 1.5 (commencing with Section 1270.01) of Title 7 of Part 3 of the Code of Civil Procedure.

Note. The sections repealed read as follows:

§ 29110. Definitions

As used in this article:

- (a) "Eligible person" means any individual, family, business concern, farm, or nonprofit organization to be displaced by a district construction project.
- (b) "Construction project" means the acquisition of real property or any interest therein for public use by the district.
- (c) "Public use" means a use for which property may be acquired by eminent domain.
- (d) "Moving expenses" means the packing, loading, transportation, unloading, and unpacking of personal property.

§ 29111. Compensation for moving expenses

As a part of the cost of a construction project, the district shall compensate eligible persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such project.

§ 29112. Manner of payment

The payment of moving expenses shall be made to eligible persons in accordance with the provisions of this article and such rules and regulations as shall be adopted by the district.

§ 29113. Maximum payment to individual or family

Payment of moving expenses shall not exceed two hundred dollars (\$200) in the case of an individual or family.

§ 29114. Maximum payment to business concern, farm or nonprofit organization

Payment for moving expenses shall not exceed three thousand dollars (\$3,000) in the case of a business concern, farm, or nonprofit organization.

§ 29115. Transportation expenses for business concern; farm or nonprofit organization; limitation

In the case of a business concern, farm, or nonprofit organization, the allowable expenses for transportation shall not exceed the cost of moving fifty (50) miles from the point from which such business concern, farm, or nonprofit organization is being displaced.

§ 29116. Rules and regulations

The district is authorized to adopt rules and regulations to implement the payment of moving expenses as authorized by this article. Such rules and regulations may include provisions authorizing payments made to individuals and families of fixed amounts not to exceed two hundred dollars (\$200) in lieu of their respective reasonable and necessary moving expenses.

§ 29117. Relocation advisory assistance

The district is authorized to give relocation advisory assistance to any family displaced because of acquisition or clearance of rights-of-way for a construction project.

Sec. 4. Article 3.5 (commencing with Section 156) of Chapter 1 of Division 1 of the Streets and Highways Code is repealed.

Comment. Article 3.5, consisting of Sections 156-159.6 of the Streets and Highways Code, is superseded by Chapter 1.5 (commencing with Section 1270.01) of Title 7 of Division 3 of the Code of Civil Procedure.

Note. The sections repealed read as follows:

§ 156. Definitions

As used in this article:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§ 156.5 Authority to give assistance; establishment of local relocation advisory assistance office

(a) The department is authorized to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the state highway system or federal-aid systems.

(b) In giving such assistance, the department may establish a local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right-of-way for any project on the state highway system or federal-aid system.

§ 157. Compensation of displaced persons

(a) As a part of the cost of construction the department may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subdivision in lieu of the payments authorized by subdivision (a) of this section may receive a moving expense allowance, determined according to a schedule established by the department, not to exceed two hundred dollars (\$200) and in addition a dislocation allowance of one hundred dollars (\$100).

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payments authorized by this subdivision in lieu of the payment authorized by subdivision (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars (\$5,000), whichever is lesser. In the case of a business, no payment shall be made under this subdivision unless the department is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one other establishment, not being acquired, which is engaged in the same or similar business.

For purposes of this subdivision, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal, state and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two-year period. To be eligible for the payment authorized by this subdivision the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit for confidential use to determine the payment authorized by this subdivision.

§ 157.5 Additional payments to owners of real property improved by single, two- or three-family dwellings

(a) In addition to the payments authorized by Section 157, the department, as a part of the cost of construction, may make a payment to the owner of real property acquired for a project on the state highway system or the federal-aid system, which is improved with a single, two- or three-family dwelling, actually owned and occupied by the owner for not less than one year prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed five thousand dollars (\$5,000), shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the department, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market.

(c) Such payment shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the department, within one year subsequent to the date on which he is required to move from the dwelling acquired for the project.

§ 158. Additional payments to individuals or families displaced and not eligible under section 157.5

(a) In addition to the payment authorized by Section 157, as a part of the cost of construction, the department may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under Section 157.5, which dwelling was actually and lawfully occupied by such individual or family for not less than 90 days prior to first written offer for the acquisition of such property.

(b) Such payment, not to exceed one thousand five hundred dollars (\$1,500), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two years, or to make the downpayment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

§ 158.5 Review by director; conclusiveness of decision

Any displaced person aggrieved by a determination as to eligibility for a payment authorized by this article, or the amount of a payment, may have his application reviewed by the director whose decision shall be final.

§ 159. Rules and regulations

The department is authorized to adopt rules and regulations to implement this article, and such other rules and regulations relating to highway relocation assistance as may be necessary or desirable under federal laws and the rules and regulations promulgated thereunder. Such rules and regulations shall include provisions relating to:

- (a) A moving expense allowance, as provided in subdivision (b) of Section 157, for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed two hundred dollars (\$200);
- (b) The standards for decent, safe, and sanitary dwellings;
- (c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the director; and
- (d) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments and the amounts thereof.

§ 159.3 Payments as not considered income

No payment received by a displaced person under this article shall be considered as income for the purposes of the Personal Income Tax Law or the Bank and Corporation Tax Law, nor shall such payments be considered as income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code.

§ 159.5 Construction; condemnation proceedings

Nothing contained in this statute shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of this article.

§ 159.6 Short title

This article shall be known as the California Legislature Highway Relocation Assistance Act of 1968.

§ 33415

Sec. 5. Section 33415 of the Health and Safety Code is amended to read:

33415. An agency may make ~~relocation~~ payments to or with respect to persons (including families, business concerns and others) displaced by a redevelopment project, for ~~moving-expenses~~ and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

Comment. The provision in Section 33415 relating to the payment of relocation payments for moving expenses has been superseded by Chapter 1.5 (commencing with Section 1270.01) of Title 7 of Division 3 of the Code of Civil Procedure.

§ 34014

Sec. 6. Section 34014 of the Health and Safety Code is amended to read:

34014. Property in a disaster area may be acquired by a redevelopment agency under this part and the agency may demolish and remove any structures on the property, pay all costs related to the acquisition, demolition, or removal, including any administrative ~~ex-relocation~~ expenses and assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this part without the necessity of meeting any condition precedent to such activities prescribed by the Community Redevelopment Law. Property acquired under this part may be acquired in any manner permitted by the Community Redevelopment Law.

Comment. The provision in Section 34014 relating to the payment of relocation expenses has been superseded by Chapter 1.5. (commencing with Section 1270.01) of Title 7 of Division 3 of the Code of Civil Procedure.

§ 34330

Sec. 7. Section 34330 of the Health and Safety Code is amended to read:

34330. An authority shall have the power to:

(a) Assist in relocating in suitable housing accommodations at rentals within their means persons of low income who have been or will be deprived of dwellings within areas or buildings which have been or will be cleared or demolished. In connection with any project, an authority shall maintain or provide for the maintenance of tenant placement service in which there shall be recorded lists of untenanted, suitable dwellings available to persons of low income and shall furnish such information to such persons. An authority shall from time to time make studies and surveys of dwelling units which may become unoccupied and available to persons of low income and shall also make arrangements with owners and lessors of such dwellings for registration thereof with the tenant placement service. ~~In connection with any project, an authority may pay so much of the necessary cost of removal of persons of low income, and of business or commercial tenants, from the area or buildings to be cleared for the development of the project to suitable locations in such cases and in such amounts as may be approved by the authority. Removal costs so paid by an authority~~ Moving and relocation expenses paid by an authority pursuant to Chapter 1 (commencing with Section 1270.01) of Title 7 of Division 3 of the Code of Civil Procedure shall be included in the project cost.

(b) Exercise the powers set forth in subdivision (a), in connection with the relocation of persons of low income who are displaced by any public or private improvement within its area of operation. The financing of such relocation activities by an authority shall be arranged by contract with the public or private agency undertaking the improvement which makes such relocation necessary.

(c) Admit to a dwelling in any project of the authority any person or persons residing in an area or building to be cleared or demolished as described in subdivision (a) or (b), if the probable aggregate annual income of such person or persons does not exceed the income limit for continued occupancy established by the authority for the dwelling to which such person or persons is admitted.

§ 34330

Comment. The provision in Section 34330 relating to the payment of the removal costs of persons and businesses has been superseded by **Chapter 1.5.** (commencing with Section 1270.01) of Title 7 of Division 3 of the Code of Civil Procedure.

Sec. 8. This act shall become operative on July 1, 1971.