

#36

4/4/69

First Supplement to Memorandum 69-55

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

Attached is Assembly Bill No. 1191 which would provide for the payment of moving expenses by all public entities and public utilities. You should consider this bill in connection with the tentative recommendation attached to Memorandum 69-55. The bill is substantially similar to existing law upon which the tentative recommendation is based except for proposed Section 7265 which provides for payments to compensate for the decline in value of property affected by the acquisition and change in use of other property.

Respectfully submitted,

John L. Cook
Junior Counsel

EXHIBIT I

CALIFORNIA LEGISLATURE—1969 REGULAR SESSION

ASSEMBLY BILL

No. 1191

Introduced by Assemblyman Lanterman

March 24, 1969

REFERRED TO COMMITTEE ON GOVERNMENT ADMINISTRATION

An act to add Chapter 16 (commencing with Section 7260) to Division 7 of Title 1 of, and to repeal Part 13 of Division 3 of Title 2 of, the Government Code, to amend Section 33415 of the Health and Safety Code, to add Article 6 (commencing with Section 600) to Chapter 3 of Part 1 of Division 1 of, and to add Article 6.5 (commencing with Section 29070) to, and to repeal Article 9 (commencing with Section 29110) of, Chapter 6 of Part 2 of Division 10 of, the Public Utilities Code, and to add Section 158.1 to the Streets and Highways Code, relating to property acquisitions by public entities and public utilities.

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

1 SECTION 1. Chapter 16 (commencing with Section 7260)
2 is added to Division 7 of Title 1 of the Government Code, to
3 read:

4 CHAPTER 16. RELOCATION ASSISTANCE

5 7260. As used in this chapter:

6 (a) "Public entity" includes the state, the Regents of the
7 University of California, a county, city, city and county, dis-
8 trict, public authority, public agency, and any other political
9 subdivision or public corporation in the state when acquiring
10

LEGISLATIVE COUNSEL'S DIGEST

AB 1191, as introduced, Lanterman (Gov. Adm.). Property acquisitions: compensation: assistance.

Amends, adds, and repeals various secs., Gov.C., H. & S.C., P.U.C., and S. & H.C.

Allows public entities, as defined, and public utilities to give relocation advisory assistance and make payments for moving expenses and relocation costs in connection with acquisition of real property for

1 real property or any interest therein for public use, except the
2 Department of Public Works of this state.

3 (b) "Displaced person" means any individual, family, busi-
4 ness, or farm operation, which moves from real property ac-
5 quired by a public entity for public use.

6 (c) "Individual" means a person who is not a member of a
7 family.

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

11 (e) "Business" means any lawful activity conducted pri-
12 marily for purchase and resale, manufacture, processing or
13 marketing of products, commodities, or other personal prop-
14 erty; or for the sale of services to the public; or by a nonprofit
15 corporation.

16 (f) "Farm operation" means any activity conducted pri-
17 marily for the production of one or more agricultural products
18 or commodities for sale and home use, and customarily pro-
19 ducing such products or commodities in sufficient quantity to
20 be capable of contributing materially to the operator's support.

21 (g) "Affected property" means any real property which
22 actually declines in fair market value because of acquisition
23 by a public entity for public use of other real property and a
24 change in the use of the real property acquired by the public
25 entity.

26 (h) "Public use" means a use for which real property may
27 be acquired by eminent domain.

28 7261. (a) A public entity is authorized to give relocation
29 advisory assistance to any individual, family, business, or farm
30 operation displaced because of the acquisition of real property
31 by that public entity for public use.

32 (b) In giving such assistance, the public entity may estab-
33 lish local relocation advisory assistance offices to assist in ob-
34 taining replacement facilities for individuals, families, and
35 businesses which it is necessary to relocate because of the ac-
36 quisition of real property by the public entity.

37 7262. (a) As a part of the cost of acquisition of real prop-
38 erty for a public use, a public entity may compensate a dis-
39 placed person for his actual and reasonable expense in moving
40 himself, family, business, or farm operation, including moving
41 personal property.

42 (b) Any displaced person who moves from a dwelling who
43 elects to accept payments authorized by this subdivision in lieu
44 of the payments authorized by subdivision (a) of this section

public use. Permits payments for decline in value of property affected
by acquisition and change of use of other property. Authorizes adoption
of rules and regulations for relocation assistance and compensation by
public entities and public utilities. Repeals existing relocation assistance
provisions except those affecting Department of Public Works and com-
munity redevelopment agencies.

Vote—Majority; Appropriation—No; Sen. Fin.—Yes; W. & M.—Yes.

1 may receive a moving expense allowance, determined accord-
2 ing to a schedule established by the public entity, not to exceed
3 two hundred dollars (\$200), and in addition a dislocation al-
4 lowance of one hundred dollars (\$100).

5 (c) Any displaced person who moves or discontinues his
6 business or farm operation who elects to accept the payment
7 authorized by this subdivision in lieu of the payment au-
8 thorized by subdivision (a) of this section, may receive a fixed
9 relocation payment in an amount equal to the average annual
10 net earnings of the business or farm operation, or five thousand
11 dollars (\$5,000), whichever is less. In the case of a business, no
12 payment shall be made under this subdivision unless the public
13 entity is satisfied that the business cannot be relocated without
14 a substantial loss of patronage, and is not a part of a com-
15 mercial enterprise having at least one other establishment, not
16 being acquired, which is engaged in the same or similar busi-
17 ness. For purposes of this subdivision, the term "average an-
18 nual net earnings" means one-half of any net earnings of the
19 business; or farm operation, before federal, state, and local
20 income taxes, during the two taxable years immediately pre-
21 ceding the taxable year in which such business or farm opera-
22 tion moves from the real property being acquired, and includes
23 any compensation paid by the business or farm operation to
24 the owner, his spouse, or his dependents during such two-year
25 period. To be eligible for the payment authorized by this sub-
26 division, the business or farm operation shall make available
27 its state income tax records and its financial statements and
28 accounting records, for audit for confidential use to determine
29 the payment authorized by this subdivision.

30 7263. (a) In addition to the payments authorized by Sec-
31 tion 7261, the public entity, as a part of the cost of construc-
32 tion, may make a payment to the owner of real property
33 acquired for public use which is improved with a single or
34 two- or three-family dwelling actually owned and occupied by
35 the owner for not less than one year prior to the first written
36 offer for the acquisition of such property.

37 (b) Such payment, not to exceed five thousand dollars
38 (\$5,000), shall be the amount, if any, which, when added to the
39 acquisition payment, equals the average price required for a
40 comparable dwelling determined, in accordance with standards
41 established by the public entity, to be a decent, safe and sani-
42 tary dwelling adequate to accommodate the displaced owner,
43 reasonably accessible to public services and the condemnee's
44 place of employment, and available on the market.

45 (c) Such payment shall be made only to a displaced owner
46 who purchases and occupies a dwelling that meets standards
47 established by the public entity within one year subsequent to
48 the date on which he is required to move from the dwelling
49 acquired by the public entity.

50 7264. (a) In addition to the payment authorized by Sec-
51 tion 7261, as a part of the cost of acquisition, the public entity
52

1 may make a payment to any individual or family displaced
2 from any dwelling not eligible to receive a payment under
3 Section 7263 which was actually and lawfully occupied by such
4 individual or family for not less than 90 days prior to the first
5 written offer from the public entity for the acquisition of such
6 property.

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

15 7265. (a) In addition to the payment authorized by Sec-
16 tion 7261, as a cost of acquisition, the public entity may make
17 a payment to any affected property owner meeting the require-
18 ments of this section.

19 (b) Such affected property owner shall have owned the
20 property affected by acquisition by the public entity not less
21 than one year prior to the first written offer for acquisition of
22 the acquired property.

23 (c) Such payment, not to exceed five thousand dollars
24 (\$5,000), shall be the amount, if any, which equals the actual
25 decline in the fair market value of the property of the affected
26 property owner caused by the acquisition by the public entity
27 for public use of other real property and a change in the use
28 of such property.

29 (d) The amount, if any, of actual decline in fair market
30 value of affected property shall be determined according to
31 rules and regulations adopted by the public entity pursuant
32 to this chapter. Such rules and regulations shall limit payment
33 under this section only to such circumstances in which the de-
34 cline in fair market value of affected property is reasonably
35 related to objective physical change in the use of acquired
36 property.

37 7266. Any person aggrieved by a determination as to eligi-
38 bility for a payment authorized by this chapter, or the amount
39 of a payment, may have his application reviewed by the public
40 entity, and the decision of the public entity shall be final.

41 7267. Payments under the provisions of this chapter shall
42 be made to eligible persons in accordance with such rules and
43 regulations as shall be adopted by the State Board of Control
44 for property acquisitions by a state agency, or the governing
45 body of any other public entity, for property acquisitions by
46 such entity. Payments made in relation to property acquisition
47 for roads and streets by public entities other than the state
48 shall be made in accordance with the provisions of Article 3.5
49 (commencing with Section 156) of Chapter 1 of Division 1 of
50 the Streets and Highways Code and such rules and regulations
51 as shall be adopted by the State Department of Public Works.

1 7268. The State Board of Control is authorized to adopt
2 rules and regulations to implement payments under this chap-
3 ter by state agencies. The governing bodies of other public
4 entities are authorized to adopt rules and regulations to imple-
5 ment payments under this chapter by such entities.

6 7269. No payment received by any person under this chap-
7 ter shall be considered as income for the purposes of the Per-
8 sonal Income Tax Law, Part 10 (commencing with Section
9 17001) of Division 2 of the Revenue and Taxation Code, or
10 the Bank and Corporation Tax Law, Part 11 (commencing
11 with Section 23001) of Division 2 of the Revenue and Taxation
12 Code, nor shall such payments be considered as income or re-
13 sources to any recipient of public assistance and such payments
14 shall not be deducted from the amount of aid to which the
15 recipient would otherwise be entitled under Part 3 (commenc-
16 ing with Section 11000) of Division 9 of the Welfare and Insti-
17 tutions Code.

18 7270. Nothing contained in this chapter shall be construed
19 as creating in any condemnation proceedings brought under
20 the power of eminent domain any element of damages not in
21 existence on the date of enactment of this chapter.

22 7271. If any provision of this chapter or the application
23 thereof to any person or circumstances is held invalid, such
24 invalidity shall not affect other provisions or applications of
25 this chapter which can be given effect without the invalid pro-
26 vision or application, and to this end the provisions of this
27 chapter are severable.

28 Sec. 2. Part 13 (commencing with Section 15950) of Divi-
29 sion 3 of Title 2 of the Government Code is repealed.

30 Sec. 3. Section 33415 of the Health and Safety Code is
31 amended to read:

32 33415. An agency may make relocation payments to or with
33 respect to persons (including families, business concerns and
34 others) displaced by a redevelopment project, for moving ex-
35 penses and losses of property for which reimbursement or com-
36 pensation is not otherwise made, may make any of the pay-
37 ments authorized by Chapter 16 (commencing with Section
38 7260) of Division 7 of Title 1 of the Government Code, includ-
39 ing the making of such payments financed by the federal
40 government.

41 Sec. 4. Article 6 (commencing with Section 600) is added
42 to Chapter 3 of Part 1 of Division 1 of the Public Utilities
43 Code, to read:

44
45 Article 6. Relocation Assistance

46
47 600. A public utility acquiring real property by eminent
48 domain is authorized to give relocation advisory assistance and
49 to make any of the payments authorized by Chapter 16 (com-
50 mencing with Section 7260) of Division 7 of Title 1 of the
51 Government Code. For the purposes of this section, a public

1 utility shall be considered to be a "public entity" other than a
2 state agency, as defined by Section 7260 of the Government
3 Code.

4 Sec. 5. Article 6.5 (commencing with Section 29070) is
5 added to Chapter 6 of Part 2 of Division 10 of the Public
6 Utilities Code, to read:

7
8 Article 6.5. Relocation Assistance
9

10 29070. The district is authorized to give relocation advisory
11 assistance and make any of the payments authorized by Chap-
12 ter 16 (commencing with Section 7260) of Division 7 of Title 1
13 of the Government Code. For the purposes of this section the
14 district shall be considered to be a "public entity" other than
15 a state agency, as defined by Section 7260 of the Government
16 Code.

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

20 Sec. 7. Section 158.1 is added to the Streets and Highways
21 Code, to read:

22 158.1. In addition to the payment authorized by Section
23 157, as a part of the cost of construction the department may
24 make a payment to any individual, family, business or farm
25 operation pursuant to the provisions of Section 7265 of the
26 Government Code, in accordance with such rules and regula-
27 tions as the department shall adopt relating to such payments.

April 9, 1969

Memorandum To: California Law Revision Commission

Subject: Proposed Statute Providing Relocation Payments

Since a family forced to move by the public acquisition of its home suffers serious financial losses in addition to whatever it may receive as a condemnation award or negotiated price for the market value of the property taken, the proposed statute is a tremendous step forward in eliminating an unjustifiable burden inflicted solely because of location. The appropriate standard of compensation should be that the displacee is indemnified for all losses caused by the forced move. Moreover, relocation payments should be made on an equal basis to all displacees regardless of the particular public program causing them to move. The proposed statute, while making great advances toward these goals, falls somewhat short in several respects.

1. The dislocation allowance should be offered when actual (\$1270.03) as well as when fixed (\$ 1270.07), moving expenses are claimed since it compensates a different loss. Provision for the fixed \$100 payment should be made under § 1270.03 because of the difficulty of documenting a claim filled with many small items of loss and damage to personal property caused by the forced move.

2. Payments compensating increased housing costs for owners and tenants alike should be made mandatory under §§ 1270.09 and 1270.11. If these remain optional, some agencies will compensate them and some will not, thus leading to exactly the inequalities in treatment of persons similarly situated which this statute was designed to prevent. Requiring compensation of these losses clearly does no harm in cases where no such loss exists, since there would be no loss to compensate.

3. The \$5000 maximum payment limitation under § 1270.09(b) should be removed. This limit does not increase efficient administration since

the actual loss must first be computed and then the limit applied in any event. The limit does not increase accuracy of budget predictions, since the average payment, not the maximum payment, will be used for this purpose. The limit simply means that an actual loss will go uncompensated-- a result highly inconsistent with the goal of saving the displacee from injury.

4. The two-year limitation on payments under § 1270.11 to tenants for rental increases caused by the forced move should be increased to ten years. If this payment is available only when necessary to enable a family to afford equivalent housing, then the two-year limit means that the family will be stranded in housing by definition too expensive for it to afford after the payment runs out. The ten-year limit does not solve this problem, but simply provides time for the family's housing needs to decrease as children leave home or for the family's income to rise to the point where it can afford more expensive housing.

5. Since these payments compensate losses caused by the government, the displacee should be given a legal right to collect them. Therefore, § 1270.15(a)(5) should be changed to guarantee judicial enforcement of this statute, if violations thereof are claimed by the displacee. Agencies will claim that they will administer the statute fully and fairly. In that event, a judicial review provision will be unused (and harmless) on the books. Agencies will claim that a flood of litigation will occur. This will only be true if many claimants' lawyers are convinced that statutory violations have occurred, and in this event, it is proper that courts decide if statutory requirements have been fulfilled.

6. Many other losses are uncompensated under this statute, and serious consideration should be given to compensating them uniformly if

the goal of leaving displacees as well off financially after displacement as they were before is to be fulfilled. A list of losses may be found in Note, The Interest in Rootedness: Family Relocation and an Approach to Full Indemnity, 21 Stanford Law Review 801, at 807-811 (April 1969).

7. A new section should be added to require that the displacing agency may not displace a family until the family has secured or has been offered a replacement dwelling substantially equivalent to its original dwelling at a price or rent (after taking into account the housing cost payments under §§ 1270.09 and 1270.11) no higher than was paid before displacement. A requirement forbidding displacement until adequate housing at affordable rents or prices is available to the displacees before displacement is in force under all major federal programs.

8. The suggested changes apply with full force to A.B. 1191, attached as First Supplement to Memorandum 69-55. This bill, however, makes a contribution in including public utilities within those entities authorized to make relocation payments. A comment should be added to clarify that public utilities are included within § 1270.01(a) "acquirer."

I am glad to have the opportunity to present my views on this important proposal, and would be eager to offer further explanations for the suggestions, if desired. If the twin goals of (a) saving the displacee harmless financially and (b) compensating displacees from all state programs equally under the same statute are fulfilled as they would be if the proposed statute with the recommended changes were adopted, California will be the foremost state in the country in updating the just compensation clause to compensate all government-caused losses resulting from forced displacement.

Respectfully submitted,

Norton Tooby
Stanford Law Review