

36.60

3/3/71

First Supplement to Memorandum 71-14

Subject: Study 36.60 - Condemnation Law and Procedure (Relocation Assistance)

This supplement reports recent developments in the state Legislature concerning relocation assistance legislation.

Prior to the February Commission meeting, Assemblyman Moorhead (who gets these materials as a Commission member) had asked the Legislative Counsel to prepare legislation for him based on the staff draft considered at that meeting. He had the bill ready to introduce but decided to wait for further Commission action on the topic when I told him, immediately after the meeting, that the Commission had taken the view that the approach of the draft was not the best one. You will recall that the draft considered at the last meeting adopted the federal language and requirements with only minimum changes except that payment was generally made discretionary rather than mandatory. It was decided at the meeting that relocation assistance payments and advice should be discretionary in nonfederally assisted projects. In addition, it was determined that: (1) The federal language is unclear in some cases and clarification is needed. (2) The federal statute is exceedingly generous in some circumstances and revisions are needed to limit the application of these overly generous provisions in nonfederally assisted projects even though this might require public entities to administer two different programs--one for federally assisted projects and another for nonfederally assisted projects. The view was expressed that the federal statute appeared to be an attempt to provide decent, safe, and sanitary housing to persons who do not now have such housing and that such a program should not be authorized merely as an incident to the acquisition of property for public use. It was thought that, with all the urgent

needs for public funds, it would be poor public policy to enact legislation permitting public entities to pay overly generous relocation payments in projects financed entirely by local funds. (3) The federal statute may permit payments to persons who should not receive them, and the state statute should be written to assure that such persons will not receive payments in projects financed entirely with local funds.

After giving Mr. Moorhead the Commission's thinking on the problem, he decided not to put in the bill he had had drafted. An important reason, I believe, was that he did not want to put in a bill contrary to one the Commission may recommend to the current session.

Shortly after I discussed this matter with Assemblyman Moorhead, I discovered that a bill has been introduced by Mrs. Brathwaite and others to conform the general statute that applies to local public entities to the federal requirements. A copy of the bill--A.B. 533--is attached. The bill places all public entities under the statute, including the State Department of Public Works, and makes payments and services in accord with federal standards mandatory in all cases even where the project is not a federally assisted one. (I was informed by Mrs. Brathwaite's administrative assistant that the payments were made mandatory because it was believed that it makes no sense and is unjust to pay one person, who is displaced by a federally assisted project, according to the federal law and to pay another person, who is displaced by a nonfederally assisted project, nothing or something less.) The bill also authorizes all public utilities to provide the relief required of public entities. Rather than attempting to prepare a new, reorganized statute (like the draft considered at the last meeting), the Brathwaite bill merely amends the existing statute in an attempt to make those few changes essential to

conform to federal law, in addition to a very few other changes. There are a few technical defects in the bill, but we have not made the careful study that would be needed to discover all these defects or to propose revisions that would eliminate them.

I am unable to discover whether Mrs. Brathwaite's bill will have any chance of enactment in its present form. However, since some legislation should be enacted at the current session to permit conformance to federal requirements, it appears that her bill (and the Public Works bill) will be the vehicles that will be used.

Assemblyman Moorhead would like to introduce legislation on this subject. At the same time, the initiative has been taken by the Brathwaite bill which probably will be heard and the issues resolved before any legislation prepared by the Commission could be considered by the legislative committees. It is unfortunate that the Brathwaite bill merely makes a few adjustments to the existing statute rather than provides a clear-cut, well-organized and comprehensive new statute. Nevertheless, the staff believes that the relocation assistance provisions should be included in our comprehensive statute (a matter that can be determined by the Commission at a later time) and these provisions could be reorganized later when they are incorporated into the comprehensive statute.

From what information I could obtain--I talked to representatives of both local and state agencies and some other groups--there does not appear to be support for the approach that the Commission would take to the problem of relocation assistance. This position seems to be based on a reluctance to be subject to two different schemes--one for federal projects and another for nonfederal projects. This position is supported by their belief that

federal assistance is becoming more and more prevalent and, hence, the federal scheme will be required in most situations. The staff has--with little success--attempted to obtain accurate, reliable information on the extent to which state and local projects are federally assisted. It does appear, however, that federal assistance is available for many projects and that the trend is to increase the types of projects for which it is available.

Accordingly, it is suggested that the Commission merely review with care the provisions of the federal bill relating to relocation assistance so that the members will be aware of its provisions and can take them into account when we work on other areas, such as compensation for loss of business, good will, and the like.

I have made several contacts with representatives of local public entities in an effort to persuade them to have representatives present at our meetings. This would help to avoid some of the problems that have occurred with respect to the moving expense recommendation. Moreover, I think that the experience on this particular matter demonstrates the need to follow, with rare exceptions, the procedures we have generally used: (1) develop a tentative recommendation, taking into account the views of representatives who attend our meetings; (2) distribute the tentative recommendation widely for comment; and (3) revise it in light of the comments before submitting it to the Legislature. The experience also suggests the value of having our legislative members attend our meetings from time to time so the Commission has the benefit of their insight as to what legislation may be politically feasible.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

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Introduced by Assemblymen Brathwaite, Beverly, and Pierson

February 16, 1971

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REFERRED TO COMMITTEE ON URBAN DEVELOPMENT AND HOUSING

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*An act to amend Sections 7260, 7261, 7262, 7263, 7264, 7265, and 7267 of, to add Section 7264.5 to, and to repeal Section 7272 of, the Government Code, to amend Section 33415 of, and to repeal Section 33414 of, the Health and Safety Code, to amend Section 600 of the Public Utilities Code, and to repeal Article 3.5 (commencing with Section 156) of Chapter 1 of Division 1 of the Streets and Highways Code, relating to property acquisitions by public entities and public utilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 533, as introduced, Brathwaite (Urban Dev. & H.). Property acquisitions: relocation assistance.

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

Includes Department of Public Works within definition of "public entity."

Requires, rather than authorizes, public entities to provide relocation advisory assistance and to make additional specified payments to displaced persons. Specifies what advisory assistance shall include.

Increases allowable moving expense allowance from \$200 to \$300 and dislocation allowance from \$100 to \$200.

Specifies that the owner of a displaced business or farm operation, in lieu of receiving the above moving expense allowance and dislocation allowance, may receive a relocation payment equal to the average net earnings of the business or farm operation, but not be less than \$2,500 nor more than \$10,000.

Increases from \$5,000 to \$15,000 the additional payment that may be made to an owner of an acquired dwelling to enable him to acquire a comparable replacement dwelling. Specifies additional factors to be considered in determining such a payment. Decrease from one year to 180 days the period during which the owner must have actually owned and occupied the dwelling to be eligible for such payment.

Increases from \$1,500 to \$4,000 the additional payment that may be made to a displaced person to aid him to lease for four years, rather than two years, decent, safe, and sanitary dwelling, or to acquire such a dwelling.

Requires public entities to use funds authorized for the project for which the real property is being acquired for replacement housing, if no such housing is otherwise available.

Increases from \$5,000 to \$15,000 the payment that may be made for a decline in fair market value of property immediately contiguous to property acquired for airport purposes. Decreases from one year to 180 days the period during which the owner, to be eligible for such payment, must have owned the property prior to initiation of negotiation to acquire, rather than prior to first written offer for, the acquired property.

Makes above provisions applicable to all redevelopment agencies, rather than only to those redevelopment agencies acquiring real property in a county with a population of 4,000,000 or more.

Authorizes all public utilities acquiring real property by eminent domain, rather than only those public utilities so acquiring real property in a county with a population of 4,000,000 or more, to make above payments.

Vote—Majority; Appropriation—No; Fiscal Committee—Yes.

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

1 SECTION 1. Section 7260 of the Government Code is  
2 amended to read:

3 7260. As used in this chapter:

4 (a) "Public entity" includes the state, the Regents of the  
5 University of California, a county, city, city and county, dis-  
6 trict, public authority, public agency, and any other political  
7 subdivision or public corporation in the state when acquiring  
8 real property, or any interest therein, in any city or county  
9 for public use; ~~except the Department of Public Works of this~~  
10 ~~state.~~

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

14 (c) "Individual" means a person who is not a member of a  
15 family.

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

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

24 (f) "Farm operation" means any activity conducted pri-  
25 marily for the production of one or more agricultural products  
26 or commodities for sale and home use, and customarily pro-

1 ducing such products or commodities in sufficient quantity to  
2 be capable of contributing materially to the operator's support.

3 (g) "Affected property" means any real property which  
4 actually declines in fair market value because of acquisition  
5 by a public entity for public use of other real property and a  
6 change in the use of the real property acquired by the public  
7 entity.

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

10 (i) "Mortgage" means such classes of liens as are commonly  
11 given to secure advances on, or the unpaid purchase price of,  
12 real property, together with the credit instruments, if any,  
13 secured thereby.

14 Sec. 2. Section 7261 of the Government Code is amended  
15 to read:

16 7261. (a) A public entity is authorized to give shall pro-  
17 vide relocation advisory assistance to any individual, family,  
18 business, or farm operation displaced because of the acqui-  
19 sition of real property by that public entity for public use.

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

25 (c) Such advisory assistance shall include:

26 (1) Determining the need, if any, of displaced persons for  
27 relocation assistance.

28 (2) Providing current and continuing information on the  
29 availability, prices, and rentals of comparable decent, safe,  
30 and sanitary housing for displaced persons, and of comparable  
31 commercial properties and locations for displaced businesses.

32 (3) Assuring that, within a reasonable period of time, prior  
33 to displacement, there will be available in areas not generally  
34 less desirable in regard to public utilities and public and com-  
35 mercial facilities, and at rents or prices within the financial  
36 means of the families and individuals displaced, decent, safe,  
37 and sanitary dwelling, equal in number to the number of, and  
38 available to, such displaced persons who require such dwellings  
39 and reasonably accessible to their places of employment.

40 (4) Assisting a displaced person displaced from his business  
41 or farm operation in obtaining and becoming established in a  
42 suitable replacement location.

43 (5) Supplying information concerning federal and state  
44 housing programs, disaster loan programs, and other federal  
45 or state programs offering assistance to displaced persons.

46 (6) Providing other advisory services to displaced persons  
47 in order to minimize hardships to such persons.

48 Sec. 3. Section 7262 of the Government Code is amended  
49 to read:

50 7262. (a) As a part of the cost of acquisition of real prop-  
51 erty for a public use, a public entity may shall compensate a  
52 displaced person for his actual and reasonable expense in mov-

1 ing himself, family, business, or farm operation, including  
2 moving personal property.

3 (b) Any displaced person who moves from a dwelling who  
4 elects to accept payments authorized by this subdivision in lieu  
5 of the payments authorized by subdivision (a) of this section  
6 ~~may~~ shall receive a moving expense allowance, determined  
7 according to a schedule established by the public entity, not  
8 to exceed ~~two~~ three hundred dollars ~~(\$200)~~ (\$300), and in  
9 addition a dislocation allowance of ~~one~~ two hundred dollars  
10 ~~(\$100)~~ (\$200).

11 (c) Any displaced person who moves or discontinues his  
12 business or farm operation who elects to accept the payment  
13 authorized by this subdivision in lieu of the payment au-  
14 thorized by subdivision (a) of this section, ~~may~~ shall receive a  
15 fixed relocation payment in an amount equal to the average  
16 annual net earnings of the business or farm operation, ~~or five~~  
17 ~~thousand dollars (\$5,000), whichever is less except that such~~  
18 ~~payment shall not be less than two thousand five hundred dol-~~  
19 ~~lars (\$2,500) nor more than ten thousand dollars (\$10,000).~~  
20 In the case of a business, no payment shall be made under this  
21 subdivision, unless the public entity is satisfied that the busi-  
22 ness cannot be relocated without a substantial loss of pa-  
23 tronage; and is not a part of a commercial enterprise having  
24 at least one other establishment; not being acquired, which is  
25 engaged in the same or similar business. For purposes of this  
26 subdivision, the term "average annual net earnings" means  
27 one-half of any net earnings of the business, or farm operation,  
28 before federal, state, and local income taxes, during the two  
29 taxable years immediately preceding the taxable year in which  
30 such business or farm operation moves from the real property  
31 being acquired, ~~or during such other period as the public en-~~  
32 ~~entity determines to be more equitable for establishing such~~  
33 ~~earnings, and includes any compensation paid by the business~~  
34 ~~or farm operation to the owner, his spouse, or his dependents~~  
35 ~~during such two-year or such other period. To be eligible for~~  
36 ~~the payment authorized by this subdivision, the business or~~  
37 ~~farm operation shall make available its state income tax rec-~~  
38 ~~ords, and its financial statements and accounting records, for~~  
39 ~~audit for confidential use to determine the payment author-~~  
40 ~~ized by this subdivision.~~

41 Sec. 4. Section 7263 of the Government Code is amended  
42 to read:

43 7263. (a) In addition to the payments ~~authorized~~ required  
44 by Section ~~7264~~ 7262, the public entity, as a part of the cost  
45 of construction, ~~may~~ shall make a payment to the owner of  
46 real property acquired for public use which is improved with  
47 a ~~single- or two- or three-family~~ dwelling actually owned and  
48 occupied by the owner for not less than ~~one year~~ 180 days  
49 prior to the ~~first written offer~~ initiation of negotiation for the  
50 acquisition of such property.

1 (b) Such payment, not to exceed ~~five~~ fifteen thousand  
2 dollars ~~(\$5,000)~~ (\$15,000), shall be ~~the~~ based on the following  
3 factors:

4 (1) The amount, if any, which, when added to the acquisi-  
5 tion payment, equals the ~~average price required for reason-~~  
6 ~~able cost~~ of a comparable replacement dwelling determined,  
7 in accordance with standards established by the public entity,  
8 to be a decent, safe and sanitary dwelling adequate to accom-  
9 modate the displaced owner, reasonably accessible to public  
10 services and the condemnee's place of employment, and avail-  
11 able on the market.

12 (2) The amount, if any, which will compensate the displaced  
13 owner for any increased interest costs which he is required to  
14 pay for financing the acquisition of a comparable replacement  
15 dwelling. The amount shall be paid only if the acquired dwell-  
16 ing was encumbered by a bona fide mortgage which was a  
17 valid lien on such dwelling for not less one 180 days prior to  
18 the initiation of negotiations for the acquisition of such dwell-  
19 ing. The amount shall be equal to the excess in the aggregate  
20 interest and other debt service costs of that amount of the  
21 principal of the mortgage on the replacement dwelling which is  
22 equal to the unpaid balance of the mortgage on the acquired  
23 dwelling, over the remainder term of the mortgage on the  
24 acquired dwelling, reduced to discounted present value. The  
25 discount rate shall be the prevailing interest rate paid on  
26 savings deposits by commercial banks in the general area in  
27 which the replacement dwelling is located.

28 (3) Reasonable expenses incurred by the displaced owner  
29 for evidence of title, recording fees, and other closing costs  
30 incident to the purchase of the replacement dwelling, but not  
31 including prepaid expenses.

32 (c) Such payment shall be made only to a displaced owner  
33 who purchases and occupies a replacement dwelling that meets  
34 standards established by the public entity within one year  
35 subsequent to the date on which he is required to move moves  
36 from the dwelling acquired by the public entity or the date  
37 on which he receives from the public entity final payment of  
38 all costs of the dwelling acquired by the public entity, which-  
39 ever is the later date.

40 SEC. 5. Section 7264 of the Government Code is amended  
41 to read:

42 7264. (a) In addition to the payment authorized by Sec-  
43 tion 7261, as a part of the cost of acquisition, the public entity  
44 ~~may~~ shall make a payment to any individual or family dis-  
45 placed from any dwelling not eligible to receive a payment  
46 under Section 7263 which was actually and lawfully occupied  
47 by such individual or family for not less than 90 days prior  
48 to the first written offer from initiation of negotiation by the  
49 public entity for the acquisition of such property.

50 (b) Such payment, not to exceed one thousand five hundred  
51 dollars ~~(\$1,500)~~ four thousand dollars (\$4,000), shall be the  
52 additional amount which is necessary to enable such individual

1 or family to lease or rent for a period not to exceed ~~two~~ *four*  
 2 years, or to make the downpayment on the purchase of, a  
 3 decent, safe, and sanitary dwelling of standards adequate to  
 4 accommodate such individual or family in areas not generally  
 5 less desirable in regard to public utilities and public and com-  
 6 mercial facilities.

7 *(c) If the payment is to be used as a downpayment for the*  
 8 *acquisition of a decent, safe, and sanitary dwelling of such*  
 9 *standards, the payment shall not exceed two thousand dollars*  
 10 *(\$2,000), unless the amount in excess thereof is equally*  
 11 *matched by the individual or family.*

12 Sec. 6. Section 7264.5 is added to the Government Code, to  
 13 read:

14 7264.5. (a) If comparable replacement housing is not avail-  
 15 able and the public entity determines that such housing can-  
 16 not otherwise be made available, the public entity shall use  
 17 funds authorized for the project for which the real property,  
 18 or interest thereof, is being acquired to provide such housing.

19 (b) No person shall be required to move from his dwelling  
 20 because of its acquisition by a public *entity*, unless there is  
 21 replacement housing, as described in paragraph (3) of subdivi-  
 22 sion (c) of Section 7261, available to him.

23 Sec. 7. Section 7265 of the Government Code is amended  
 24 to read:

25 7265. (a) In addition to the payment authorized by Sec-  
 26 tion 7261, as a cost of acquisition, the public entity ~~may~~ *shall*  
 27 make a payment to any affected property owner meeting the  
 28 requirements of this section.

29 (b) Such affected property is immediately contiguous to  
 30 property acquired for airport purposes and the owner shall  
 31 have owned the property affected by acquisition by the public  
 32 entity not less than ~~one year~~ *180 days* prior to the ~~first writ-~~  
 33 ~~ten offer initiation of negotiation~~ for acquisition of the ac-  
 34 quired property.

35 (c) Such payment, not to exceed ~~five~~ *fifteen* thousand dollars  
 36 ~~(\$5,000)~~ *(\$15,000)*, shall be the amount, if any, which equals  
 37 the actual decline in the fair market value of the property of  
 38 the affected property owner caused by the acquisition by the  
 39 public entity for airport purposes of other real property and a  
 40 change in the use of such property.

41 (d) The amount, if any, of actual decline in fair market  
 42 value of affected property shall be determined according to  
 43 rules and regulations adopted by the public entity pursuant  
 44 to this chapter. Such rules and regulations shall limit payment  
 45 under this section only to such circumstances in which the de-  
 46 cline in fair market value of affected property is reasonably  
 47 related to objective physical change in the use of acquired  
 48 property.

49 Sec. 8. Section 7267 of the Government Code is amended  
 50 to read:

51 7267. Payments under the provisions of this chapter shall  
 52 be made to eligible persons in accordance with such rules and

1 regulations as shall be adopted by the State Board of Control  
2 for property acquisitions by a state agency, or the governing  
3 body of any other public entity, for property acquisitions by  
4 such entity. Payments made in relation to property acquisition  
5 for roads and streets by public entities other than the state  
6 shall be made in accordance with the provisions of Article 3.5  
7 (commencing with Section 156) of Chapter 1 of Division 1 of  
8 the Streets and Highways Code and such rules and regulations  
9 as shall be adopted by the State Departments of Public Works.

10 SEC. 9. Section 7272 of the Government Code is repealed.  
11 ~~7272.~~ The provisions of this chapter shall apply only to  
12 the provision by public entity of relocation assistance to any  
13 individual, family, business, or farm operation located in a  
14 city or county.

15 SEC. 10. Section 33414 of the Health and Safety Code is  
16 repealed.

17 ~~33414.~~ An agency may operate a rehoming bureau to as-  
18 sist site occupants in obtaining adequate temporary or per-  
19 manent housing. It may incur any necessary expenses for this  
20 purpose.

21 SEC. 11. Section 33415 of the Health and Safety Code is  
22 amended to read:

23 33415. (a) An agency may make relocation payments to  
24 or with respect to persons (including families, business con-  
25 cerns, and others) displaced by a redevelopment project, for  
26 moving expenses and losses of property for which reimburse-  
27 ment or compensation is otherwise made, including the making  
28 of such payments financed by the federal government.

29 (b) An agency in a county having a population of more  
30 than four million persons may make any shall provide reloca-  
31 tion assistance and shall make all of the payments authorized  
32 required by Chapter 16 (commencing with Section 7260) of  
33 Division 7 of Title 1 of the Government Code, including the  
34 making of such payments financed by the federal government.

35 SEC. 12. Section 600 of the Public Utilities Code is  
36 amended to read:

37 600. A public utility acquiring real property in a county  
38 having a population of more than four million persons by  
39 eminent domain is authorized to give provide relocation ad-  
40 visory assistance and to make any of the payments authorized  
41 required of public entities by Chapter 16 (commencing with  
42 Section 7260) of Division 7 of Title 1 of the Government  
43 Code. For the purposes of this section, a public utility shall  
44 be considered to be a "public entity" other than a state agency,  
45 as defined by Section 7260 of the Government Code.

46 SEC. 13. Article 3.5 (commencing with Section 156) of  
47 Chapter 1 of Division 1 of the Streets and Highways Code is  
48 repealed.