

#36.60

11/25/69

Memorandum 69-148

Subject: Study 36.60 - Condemnation (Relocation Assistance)

At the September 1969 meeting, the Commission directed the staff to prepare a tentative recommendation relating to relocation assistance and reimbursement based on Assembly Bill 1191 (enacted as Government Code Sections 7260-7272) but with certain modifications. That is, the statute was to be made applicable to all acquirers of property for public use where the power of eminent domain was or could have been exercised and reimbursement for actual and reasonable moving expenses was to be made mandatory and subject to judicial review. Attached to this memorandum is a tentative recommendation which complies with this directive. At the January 1970 meeting, the Commission should go over this recommendation carefully, section by section, making any further necessary or desirable changes. After the meeting, we hope to be able to distribute the recommendation for comment with a view towards submission of the final recommendation to the 1971 Legislature.

Before reviewing the individual sections, we should note again that this recommendation is designed only to take a relatively modest step towards realizing reimbursement of all displaced persons for the more serious and significant expenses caused by their dislocation. To accomplish this in a practical and politically feasible manner, the statute was not completely redrafted and the recommendation makes only those changes that are absolutely necessary. However, the existing statute is really just a copy of the federal model. Moreover, it does not require, but merely authorizes, payment of moving expenses. Perhaps, for these reasons, the statute is not excessively

detailed and the Commission may wish to undertake more extensive drafting changes in an attempt to make the statute more precise and certain. The danger is that the more drafting changes that are made, the more it will appear that major substantive changes are being made, and the more opposition is likely to be engendered.

Turning to the statute itself, as noted above, the staff has simply amended existing Sections 7260-7272 of the Government Code. This chapter is now located in a grab-bag, miscellaneous division of the Government Code. Ultimately, we think these provisions should be incorporated in a comprehensive codification, treating all aspects of eminent domain. However, for the time being, we believe these provisions are best left where they are though we raise the issue for the Commission's consideration.

Section 7260. Subdivisions (a) and (b) have been added and amended to make this chapter applicable to all "acquirers," i.e., every person or entity, private or public, who acquires property for a public use and who exercises or could have exercised the power of eminent domain to make such acquisition. These definitions are substantively almost identical to the existing ones, except, of course, they now apply throughout the state and to all entities, including the Department of Public Works. It might be noted that the definition of acquirer incorporates an objective standard with respect to the power of eminent domain. That is, the acquirer need only have the power; it need not exercise or even threaten to exercise it. Thus, the chapter will be applicable even to completely voluntary purchases. However, in such situations, it should be simple enough to negotiate either a waiver of the moving expense provisions or an allocation of a portion of the purchase price to moving expense.

Subdivision (h) has been deleted, but its substance is incorporated in the new subdivision (a). Probably the term "public use" could be completely eliminated from the statute without any significant change in meaning. Thus, subdivision (a) could be further amended to read:

(a) "Acquirer" means any person, association, corporation, public utility, or public entity that acquires real property or any interest therein ~~for-public-use~~ and exercises or could have exercised the right of eminent domain to acquire such property ~~for-such-use~~ .

Since the power of eminent domain can only be exercised to acquire property for a public use, the amended subdivision would still be conditioned upon acquisition for a public use, but the chapter would always apply when a potential threat of condemnation existed. Nevertheless, the elimination of the words "public use" here and elsewhere in the chapter may give the appearance of something more than the elimination of a redundancy and might, therefore, not be worth the trouble.

Finally, it should be noted that the term "person" is not defined although it is used in several definitions; it seems to refer to "a natural person" without regard to his status, e.g., receiver, executor, and the like. The omission is probably not serious and seems to have caused no problems to date.

There are further "definitional" problems, but these are discussed below in connection with other issues.

Section 7261. This section merely authorizes the giving of relocation advisory assistance. Apart from being made applicable to all acquirers, no substantive change was made although the staff could not resist making a few editorial changes (improvements?).

Section 7262. This section contains certainly the most critical change of the recommendation. Subdivision (a) now requires an "acquirer" to

"compensate a displaced person for his actual and reasonable expense in moving himself, family, business, or farm operation, including moving personal property." Subdivisions (b) and (c) provide certain alternatives generally available at the election of the displaced person. The change from a discretionary to a mandatory provision raises two major problems.

The first of these problems is the absence of any guidelines as to what constitutes "reasonable expense in moving" oneself. This clearly includes something more than the mere moving of personal property but how much more? The current administrative guidelines for the Department of Public Works when acquiring property for a state or federal-aid highway are set forth in subdivision (j) of Section 1430 and in Section 1432, starting at page 1 of the attached Exhibit I. Very generally, these guidelines provide reimbursement (1) for all the expenses of moving personal property, and (2) costs of temporary storage of property and temporary lodging and transportation of persons, but only upon a showing of necessity and with the advance approval of the Department. Reimbursement is also subject to a 50-mile travel limit. Not included are such items as loss or damage to property and brokers' commissions. If no change is made in the recommendation, presumably these rules would continue to be applied (see Section 7268), subject to judicial review and interpretation.

Alternatively, the statute could be made more explicit, perhaps as follows. Subdivision (a) of Section 7262 could be amended to provide:

(a) As a part of the cost of acquisition of real property, an acquirer shall compensate a displaced person for all his actual and reasonable moving expenses.

Subdivision (i) could be added to Section 7260, providing:

(i) "Moving expense" means the cost of dismantling, disconnecting, crating, loading, insuring, temporarily storing, transporting, unloading, and reinstalling 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 installation in, such structure.

(2) The cost to move or to replace property for which compensation was paid in the acquisition.

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

Subdivision (i) would be practically identical in substance to the existing rules. The limitation of "reasonable" in subdivision (a) would perhaps embrace the following limitations, but the Commission may wish to specifically provide that reimbursement for moving expenses should be subject to the following limitations:

(a) Total reimbursement shall not exceed the value of the property moved.

(b) Reimbursement for the transportation element of moving expense shall be provided for only the first 50 miles traveled. If the person moving desires that the property be moved a greater distance, he shall bear the additional mileage costs himself. However, packing, unpacking, and other costs of moving shall be borne by the acquirer no matter how far the property is moved, for these expenses must be incurred whether the property is relocated within the same general area or not.

The second major ambiguity is in the definition of "displaced person." The statutory definition (subdivision (c) of Section 7260) contains no time limitations or even a cause-in-fact relationship. Under existing law, these ambiguities are again cured by the administrative rules. See subdivision (b) of Section 1430. Again, if no change is made in the Commission's recommendation, these rules would presumably be continued. Alternatively, subdivision (c) could be amended to provide:

(c) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired by an acquirer,

(1) as a result of the acquisition of such real property; 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 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 chapter, and also provided that the property is not subsequently occupied by another eligible person, prior to acquisition by the acquirer.

This amendment would be identical to existing rules; it would require that the displaced person move because of the acquisition and would provide compensation only for the displaced person last in time.

Subdivision (b) of Section 7262 should present no great problems. The subdivision becomes mandatory for the acquirer on the election of the displaced person, but the payments are so modest that it does not seem likely that this subdivision will prove burdensome. Essentially, this subdivision does no more than provide fixed payments that seem to very closely approximate actual moving expense payments but with the advantage to both parties of avoiding a good bit of administrative red tape.

Subdivision (c) presents an entirely different situation. The staff believes these provisions are unsound. It should be noted that this subdivision also provides in lieu payments. However, in sharp contrast to subdivision (b), instead of providing another method for arriving at moving

expense, subdivision (c) substitutes a loss of business payment for a moving expense payment, forcing the displaced business to choose really between two distinct and different items of damage. In any case, where the displaced business has both substantial moving expenses and a significant loss of patronage, the best it can do is minimize its losses by selecting payment for whichever loss is larger. However, even this option is not always available. The in lieu payment is limited to the lesser of \$5000 or one year's net earnings; therefore, lost profits in excess of these figures will not be recovered. Moreover, no payment shall be made to a business under this subdivision

unless the acquirer 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.

Accordingly, even in the best of circumstances, the acquirer appears to retain a good bit of discretion as to whether to make payment under this subdivision. (This is not, however, true of farm operations. In fact, here the subdivision seems to be, if anything, too liberal. That is, any farm operation qualifies and can elect payment under this subdivision, without regard to the cost or distance of its move or lost profits. Thus, if its moving expenses are minimal and its "average annual net earnings" are relatively high, a farm operation can secure a windfall, simply because the "in lieu" payment does not even attempt to approximate the cost of moving.)

It is commendable that the present law attempts in some way to reimburse displaced businesses and farms for lost profits; however, commingling this concept with that of reimbursement for moving expense seems undesirable. A better approach would make subdivision (c) a separate section, authorizing

additional supplementary payments similar in this respect to Sections 7263 and 7264. The staff does not know whether an "in lieu" payment with arbitrary, fixed limits can be devised that will generally approximate the experience in moving farms and businesses. Perhaps the Department of Public Works can be helpful in this regard. In any event, the present subdivision seems illogical and unsound.

The suggested new section could authorize lost profits payments, perhaps, as follows:

7262.5. (a) In addition to the payments authorized by Section 7262, the acquirer, as a part of the cost of acquisition, may make a payment to any displaced person who moves or discontinues his business or farm operation. Such payment, not to exceed an amount equal to the average annual net earnings of the business or farm, or five thousand dollars (\$5000), whichever is less, shall be the additional amount which is necessary to reimburse the displaced person for lost profits resulting from the dislocation of the business or farm.

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

(c) 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 being acquired, 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 subdivision, the business or farm operation shall make available its state income tax records and its financial statements and accounting records, for audit for confidential use to determine the payment authorized by this subdivision.

This new section is a significant departure from existing law; however, it is somewhat similar in approach to Senate Bill 1 (Uniform Relocation Assistance and Land Acquisition Policies Act of 1969). See Section 211(c), (d); at page 2, attached Exhibit.II. Senate Bill 1 is still in committee and may

never be enacted in its present form. As it presently reads, it requires additional fixed payments of \$1,000 to farms and up to \$5,000 to certain businesses. This approach would also be a satisfactory alternative. The important matters are to eliminate subdivision (c) of Section 7262 as it exists today and to substitute a workable solution to the loss of business problems.

Section 7263. This section authorizes certain supplementary payments to owners of dwellings. The only change was to make it applicable to all acquirers. It is interesting to note that this section (and the comparable sections in the Department of Public Works statute and Senate Bill 1) is subject to a fixed \$5,000 maximum, while the comparable section in the airport bill has no such limitation. Proper application of the indemnification principle would require making this section mandatory and unlimited, but the staff recommends that no further changes in this section be made.

However, the section does refer to an "owner" of real property. The term is not defined in the statute but again resort may be made to the regulations. Subdivision (o) of Section 1430, at page 3 of Exhibit I provides:

(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.

Here again we are faced with the problem of either relying on the regulations or supplying this definition (or a modified version) in the statute.

Section 7264. This section authorizes certain supplementary payments primarily to tenants but also to owners of dwellings who do not qualify under Section 7263. The section is extremely ambiguous with respect to the amount of the payment under this section. However, it is merely an authorization and the administrative rules presently applicable would presumably continue to apply. These provide in part (see subdivision (b) of Section 1433, at pages 9-10, Exhibit I):

(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 . . . [the equivalent to Section 7263] .

(2) The occupant under tenancy . . . 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 . . . 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

In short, these rules provide payment for the difference between the rent presently paid and that which will be required to be paid. Senate Bill 1

(Section 211(f) at page 3) takes a different approach. It provides, in part, that:

Such payment, not to exceed \$1,500, shall be an amount which . . . when added to 20 per centum of the income of the displaced individual or family during the two-year period immediately preceding displacement, equals the average rental required for a two-year period for a decent, safe, and sanitary dwelling [To the same effect, see 24 C.F.R. § 3.109(b)(2)(1968).]

If the statute were to be made more precise, the staff prefers the latter alternative, although the word "income" would have to be defined. However, to avoid "boat-rocking," it would, perhaps, be better to make only the minimal changes contained in the tentative recommendation. (The same comment would also apply to making any change in the requirements for the replacement housing. However, it seems odd that there should be differences in the language describing these replacements. Compare the last few lines of subdivision (b) of Section 7263 with the last few lines of subdivision (b) of Section 7264.)

Section 7265. This section has nothing to do with relocation expense, rather it authorizes payment to owners of "affected property" for proximity damage. Here again we have merely made the minimal change of making the section applicable to all acquirers. Questions could be raised concerning the requirement of contiguity, eligibility generally, the fixed limit, and the discretionary nature of the section. However, again we feel the important matter is to get the best possible solution to the problems of dislocation and we feel no further attention should be devoted here to this really separate and distinct problem.

Section 7266. This entire section has been repealed and the matters formerly provided for here we have attempted to cover in Section 7268 (see below).

Section 7267. This section has also been repealed. Its substance is contained in Section 7268.

Section 7268. This section essentially continues existing law. The Department of Public Works was formerly exempted from the operation of this chapter. It is included now and we have accordingly permitted it to frame its own rules and regulations. In fact, its present rules for the Division of Highways, which we have referred to above, will probably serve as the model for all acquirers.

You will note that the present section permits each acquirer to frame its own rules. This obviously permits a great deal of flexibility on the one hand, but also uncertainty and inconsistency on the other hand. The staff believes, as suggested above, that the practice in any case will be to follow the state model. However, this could be required by statute, or alternatively, the statute could provide that no rules shall be less favorable to the displaced person than the rules adopted by the Board of Control. The staff, however, believes the section as drafted should work adequately and be most acceptable to all condemnors.

Subdivision (b) has been added to insure that any aggrieved person can obtain an adjudicatory administrative hearing to review determinations of eligibility and the amount of payment. The requirement of a hearing insures judicial review by way of administrative mandamus. Perhaps the next question concerns the scope of review. Two alternatives exist:

(1) Abuse of discretion is established if the court determines that the findings are not supported by the weight of evidence. (independent judgment test)

(2) Abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (substantial evidence test)

If the statute is silent in respect to the applicable test, the staff's very limited research suggests that the latter, more restrictive approach to review applies. This would be analogous to appellate review of ordinary civil cases. Of course, other very different procedures could be substituted that would permit the aggrieved person to have his "day in court." The staff, however, believes that an appropriate balance between making the statute palatable to acquirers and protecting the interests of displaced persons is achieved by the recommendation in its present form.

The remaining changes accomplished by the recommendation are essentially repealers or conforming amendments. As indicated above, we hope at the January meeting that sufficient progress can be made to enable the staff to distribute a revised recommendation for comment after the meeting.

Respectfully submitted,

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EXHIBIT I

TITLE 21 **DIVISION OF HIGHWAYS**
(Register 68, No. 44—11-23-63)

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 156 through 159.6, Streets and Highways Code.

- History:** 1. New Article 6 (Sections 1430 through 1433) filed 7-20-65 as an emergency; effective upon filing (Register 65, No. 18).
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 (e) 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.

Memorandum 69-148

EXHIBIT II

S. 1

UNIFORM RELOCATION ASSISTANCE AND LAND ACQUISITION POLICIES ACT OF 1969

S. 1

A bill to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Land Acquisition Policies Act of 1969".

TITLE I—DEFINITIONS

As used in this Act—

FEDERAL AGENCY

Sec. 101. The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol.

STATE

Sec. 102. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, and any political subdivision thereof.

STATE AGENCY

Sec. 103. The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land

Agency and any State, any public body, agency, or instrumentality of a State or of a political subdivision of a State, or any public agency or instrumentality of two or more States or of two or more political subdivisions of a State or States.

HEAD OF AGENCY

Sec. 104. The term "head of a Federal agency" or "head of a State agency" includes a duly designated delegate of such agency head.

DISPLACED PERSON

Sec. 105. The term "displaced person" means—

(1) any person who is the owner of a business, as defined by section 108 of this Act, and who, on or after the effective date prescribed in section 253(a), (A) moves or discontinues such business or an establishment of such business or (B) moves any outdoor advertising display, as a result of the acquisition or reasonable expectation of acquisition of real property, in whole or in part, by a Federal or State agency;

(2) any person who is the operator of a farm operation which moves from real property or is discontinued on or after the effective date prescribed in section 253(a) as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by a Federal or State agency;

(3) any individual who is the head of a family which moves from real property occupied as a dwelling on or after the effective date prescribed in section 253(a), as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by a Federal or State agency;

(4) any individual, not a member of a family, who moves from real property occupied as a dwelling on or after the effective date prescribed in section 253(a), as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by a Federal or State agency; or

(5) a nonprofit organization which moves from real property on or after the effective date prescribed in section 253(a) as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part by a Federal or State agency, or, any person, not described in paragraph (1), (2), (3), or (4) of this section, who moves his personal property from real property on or after the effective date prescribed in section 253(a) as a result of the acquisition or reasonable expectation of acquisition of such real property, in whole or in part, by a Federal or State agency. Under this paragraph, the term "displaced person" shall not include the owner of personal property on the premises of another under a lease or licensing arrangement where such owner is required pursuant to such lease or license to move such property at his own expense.

BUSINESS

Sec. 106. The term "business" means any lawfully entity conducted primarily (1) for the purchase and resale of products, commodities, or any other personal property; (2) for the manufacture, processing, or marketing of any such property; (3) for the cultivation, processing, and marketing of timber; (4) for the sale of services; or (5) for assisting in the sale, resale, or marketing of products, commodities, personal property, or services by the erection and maintenance of outdoor advertising displays. Such term does not include a farm operation or the business of an investor in acquiring or holding real property for resale for gain.

FARM OPERATION

Sec. 107. The term "farm operation" means any activity conducted solely or primarily for the production for sale or for home use, of one or more agricultural products or commodities other than timber, and customarily

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

FARM OPERATOR

Sec. 108. The term "farm operator" means any owner, part owner, tenant, or sharecropper who operates a farm.

FAMILY

Sec. 109. The term "family" means two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or guardianship.

DISPLACED

Sec. 110. The term "displaced," when used in relation to any person, means any person moved or to be moved from real property on or after the effective date prescribed in section 253(a) as a result of the acquisition or reasonable expectation of acquisition of such property for a public improvement constructed or developed by or with funds provided in whole or in part by the Federal Government.

OWNER AND PERSON

Sec. 111. The terms "owner" and "person" include any individual, or any partnership, corporation, or association, whether organized for profit or not for profit or any Indian tribe, band, or group.

REAL PROPERTY

Sec. 112. The term "real property" as used in this Act shall include land, and any interest in land, including but not limited to, easements, rights-of-way, water rights, and mineral interests.

TITLE II.—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF POLICY

Sec. 201. The purpose of this title is to establish a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property in Federal and federally assisted programs to the end that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Such a policy shall be as uniform as practicable as to (1) relocation payments, (2) advisory assistance, (3) assurance of availability of standard housing, and (4) Federal reimbursement for relocation payments under federally assisted programs.

PART A—FEDERAL PROGRAMS

RELOCATION PAYMENTS

Sec. 211. (a) If the head of any Federal agency acquires real property for public use in a State, he shall make fair and reasonable relocation payments to displaced persons in accordance with the regulations established by the President under section 241 of this Act. Notwithstanding any other provision of this Act, any business, as defined by section 106 of this Act, which is not being displaced, shall be eligible for actual moving expenses with respect to its outdoor advertising displays being moved as a result of the acquisition or reasonable expectation of acquisition of real property, in whole or in part, by a Federal or State agency. No other payment therefore shall be made under subsections (b)–(f) of this section.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive—

(1) a moving expense allowance, determined according to a schedule established in accordance with the President's regulations issued under section 241 of this Act, not to exceed \$300; and

(2) a dislocation allowance of \$100.

(c) (1) In addition to amounts otherwise authorized by this section, the head of the Federal agency shall make a payment to any

displaced person who moves or discontinues his business provided the average annual net earnings of the business are less than \$10,000 per year. This payment shall be in an amount equal to the average annual net earnings of the business, except that such payment shall not be less than \$2,500 nor more than \$5,000. Notwithstanding the preceding sentence, in the case of a displaced person who is sixty years of age or over, this payment shall be in an amount equal to three times the average annual net earnings of the business or \$6,000, whichever is less.

(2) No payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business—

(A) cannot be relocated without a substantial loss of its existing patronage; and

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

(3) For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business moves from the real property acquired, and includes any compensation paid by the business to the owner, his spouse, or his dependents during such two-year period.

(d) (1) In addition to amounts otherwise authorized in this section, the head of the Federal agency shall make a payment to any displaced person who moves or discontinues a farm operation, provided the average annual net earnings of the farm operation are less than \$10,000 per year. This payment shall be in an amount equal to the average annual net earnings of the farm operation, except that such payment shall not be less than \$2,500 nor more than \$5,000. Notwithstanding the preceding sentence, in the case of a displaced person who is sixty years of age or over, this payment shall be in an amount equal to three times the average annual net earnings of the business or \$6,000, whichever is less.

(2) In the case where the entire farm operation is not acquired by such Federal agency, the payment authorized by this subsection shall be made only if the head of such agency determines that the property not acquired is no longer an economic unit.

(3) For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such farm operation moves from the real property acquired, and includes any compensation paid by the farm operation to the owner, his spouse, or his dependents during such two-year period.

(a) (1) In addition to amounts otherwise authorized by this section, the head of the Federal agency shall make a payment to a displaced person who is the owner of real property which is improved by a single-, two-, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment, not to exceed \$5,000, shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a decent, safe, and sanitary dwelling of modest standards adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment. Such payment shall be made only to a displaced owner who purchases another dwelling within one year after the date on which he is required to move from the dwelling acquired for the project.

(2) The Secretary of Housing and Urban Development shall determine the prices prevailing in the locality for dwellings meeting

the requirements of paragraph (7) of this subsection for all agencies making such payments.

(1) In addition to amounts otherwise authorized by this section the head of the Federal agency shall make a payment to any individual or family displaced from a dwelling and not eligible to receive a payment under subsection (e) (1) of this section, provided such dwelling was actually and lawfully occupied by such individual or family for not less than ninety days prior to the initiation of negotiations for acquisition of such property (except that this provision requiring occupation of a dwelling ninety days prior to initiation of negotiations shall not apply to a displaced person within the meaning of section 233 of this Act). Such payment, not to exceed \$1,500, shall be an amount which—

(A) is necessary to make the down payment on the purchase of; or

(B) when added to 20 per centum of the income of the displaced individual or family during the two-year period immediately preceding displacement, equals the average rental required for a two-year period for a decent, safe, and sanitary dwelling of modest standards adequate in the size of accommodate the displaced individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities. A payment made pursuant to subparagraph (B) of this paragraph shall be made only to an individual or family who is unable to secure a dwelling in low-rent housing assisted under the United States Housing Act of 1937, or under a State or local program found by the Secretary of Housing and Urban Development to have the same general purposes as the Federal program under such Act, or a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965.

(2) The Secretary of Housing and Urban Development shall determine the amount of assistance under this subsection according to family size, family or individual income, average rents required, or similar consideration for all agencies making such payments.

(3) No payment received under this section or under section 231 of this Act shall be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

(4) The payments provided for in this section shall be made administratively by the head of the Federal agency acquiring real property, and none of the provisions of this section shall in any way affect any condemnation action or the just compensation to be determined or paid to the landowner in such action.

RELOCATION ASSISTANCE PROGRAMS

SEC. 212. (a) If the head of any Federal agency acquires real property for public use in a State, he shall provide a relocation assistance program for displaced persons which shall offer the services described in subsection (c) of this section. If the head of such agency determines that persons occupying property immediately adjacent to the real property acquired are caused substantial economic injury because of the acquisition of real property for public use, he may offer such persons relocation services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance program required by subsection (a) of this section shall

include such measures, facilities, or services as may be necessary or appropriate in order—

(1) to determine the need, if any, of displaced families, individuals, business concerns, and farm operators for relocation assistance;

(2) to assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment except that the President may prescribe by regulation situations when such assurances may be waived;

(3) to assist owners of displaced businesses, nonprofit organizations, and farm operators in obtaining and becoming established in suitable locations;

(4) to supply information concerning the Federal housing programs, the small business disaster loan program under section 7(b) (3) of the Small Business Act, and other State or Federal programs offering assistance to displaced persons;

(5) to assist in minimizing hardships to displaced persons in adjusting to relocation; and

(6) to assure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

STATES FURNISHING REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE

SEC. 213. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal project to improve a locality, the Federal agency may not accept such property unless the acquiring State agency has made relocation payments, provided relocation assistance, and provided assurance of availability of housing as required in the case of acquisitions of real property by a Federal agency. The State agency shall bear the costs of relocation payments and assistance as a part of the real property acquisition cost, except that the Federal agency having authority over the project shall contribute to the cost of providing such payments and assistance to any person displaced prior to July 1, 1972, an amount not to exceed (1) the first \$25,000 of such cost if the displaced person, at the time of displacement, lives in a State which is contiguous to at least one other State, or (2) the first \$27,500 if the displaced person, at the time of displacement, lives in a State which is not contiguous to any other State.

PART B—FEDERALLY ASSISTED PROGRAMS RELOCATION PAYMENTS AND ASSISTANCE; ASSURANCE OF AVAILABILITY OF HOUSING

SEC. 231. (a) Notwithstanding any other provision of law, on and after the effective date of this section, no grant to, or contract or agreement with a State agency, under which Federal financial assistance will be available to pay all or part of the cost of (1) the acquisition of real property, (2) a public improvement for which real property is to be acquired, or (3) a program which will otherwise result in the displacement of persons may be approved by the head of the Federal agency responsible for the administration of such Federal financial assistance unless such State agency has entered into an agreement with the head of such Federal agency to provide to displaced persons for moves from such real property—

(1) fair and reasonable relocation payments in the same amounts and under the same terms and conditions as are required to

be made by a Federal agency by section 211 (a), including actual moving expenses for moving outdoor advertising displays, of this title and in accordance with regulations established by the President under section 241 of this title;

(2) relocation payments in the same amounts and under the same terms and conditions as are required to be made by a Federal agency by section 211 (b), (c), (d), (e) (2), and (f) of this title;

(3) relocation assistance programs offering the services described in section 212(c) of this title;

(4) a feasible method for the temporary relocation of families and individuals displaced from the property acquired, and assurance that within a reasonable period of time prior to displacement, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment; and

(5) a payment for owner-occupants under the same terms and conditions as are required to be made by Federal agencies by subsection 211(e) (1) of this Act, except that no such payment shall be required or included as a project cost under subsection 211(c) if the owner-occupant receives a payment required by the State law of eminent domain which is determined by the head of the Federal agency to have substantially the same purpose and effect as subsection 211(e) (1) and to be part of the cost of the project for which Federal financial assistance is available.

(b) As a condition to further assistance to a State agency for (1) part or all of the cost of real property acquisition, (2) part or all of the cost of a public improvement for which real property is to be acquired, or (3) a program which will otherwise result in the displacement of families and individuals, the head of the Federal agency shall require, within a reasonable time prior to actual displacement, satisfactory assurance by the State agency that decent, safe, and sanitary dwellings as required by subsection 231 (a) (4) are available for the relocation of such individual or family.

(c) The cost to a State agency of providing the payments and services described in subsection (a) of this section may be included as part of the cost of the project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and services in the same manner and to the same extent as with respect to other project costs. Notwithstanding any other law, the Federal agency providing such assistance shall contribute, to the cost of providing such payments to any person displaced prior to July 1, 1972, an amount not to exceed (1) the first \$25,000 of such cost if the displaced person, at the time of displacement, lives in a State which is contiguous to at least one other State, or (2) the first \$27,500 if the displaced person, at the time of displacement, lives in a State which is not contiguous to any other State. Any funds appropriated or otherwise available to a Federal agency for assistance to State agencies for such projects shall be available also for obligation and expenditure to carry out the provisions of this subsection. In order to receive the assistance authorized by this subsection, no State agency need agree to make any relocation payment in excess of (1) \$25,000 to a displaced person if, at the time of displacement, the person lives in a State which is contiguous to at least one other State, or (2) \$27,500 to a displaced person if, at the time of displacement, the

person lives in a State which is not contiguous to any other State.

(d) In order to prevent unnecessary expenses and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, any agreement by a State agency under subsection (a) of this section shall provide that such agency may make relocation payments or provide relocation assistance or otherwise carry out its functions under this title by utilizing the facilities, personnel, and services of any other State agency having an established organization for conducting relocation assistance programs.

(e) Any grant to, or contract or agreement with a State agency executed before the effective date of this section, under which Federal financial assistance is available to pay the cost in connection with the acquisition of real property, or of the improvement for which such property is acquired, may be amended to include the terms and conditions required by subsection (a) of this section.

(f) If the head of a Federal agency determines that it is necessary for the expeditious completion of a public improvement for which a State agency has entered into agreement, as described in subsection (a) of this section, to make relocation payments to displaced persons, or to provide the funds necessary to meet the requirements of section 321(b)(1) of this Act, he may advance to the State agency the Federal share of such relocation payments and an amount necessary to make the required payments under section 321(b)(1). Upon determination by the head of such Federal agency that any part of the funds advanced to a State agency under this subsection are no longer required, the amount which he determines not to be required shall be repaid upon demand. Any sum advanced and not repaid on demand shall be deducted from sums otherwise available to such State agency from Federal sources.

(g) The provisions of this section shall not be applicable to any situation which comes within the provisions of the first sentence of paragraph (b) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415 (b)).

DISPLACEMENT BY CERTAIN PROGRAMS RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING ACT OF 1949, AS AMENDED, AND TITLE I OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966

Sec. 232. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to be a displaced person.

DISPLACEMENT BY CERTAIN OTHER PROGRAMS

Sec. 233. Notwithstanding any other provisions of this title, a person—

(1) who moves or discontinues his business, moves other personal property, or moves from his dwelling on or after January 1, 1968, and before the effective date prescribed in section 253(a), as the result of the contemplated demolition of structures or the construction of improvements on real property acquired, in whole or in part, by a Federal agency; and

(2) who has lived on, or conducted a business on, such real property for at least one year prior to the date of enactment of this Act;

may be considered a displaced person, for purposes of sections 221 and 212 of this title, by the head of the agency acquiring the real property if—

(A) the head of the agency determines that such person has suffered undue hardship as the result of displacement from the real property; and

(B) the Federal Government acquired and held such property for at least 6 years prior to the effective date prescribed in section 253(a).

PART C—AUTHORITY OF THE PRESIDENT

Sec. 241. (a) To carry out the provisions of title II of this Act, the President is authorized to make such rules and regulations as he may determine to be necessary to assure—

(1) that relocation payments authorized by section 211 shall be fair and reasonable and as uniform as practicable;

(2) that a displaced person entitled to a relocation payment under section 211(a) shall be reimbursed for or paid—

(A) his reasonable and necessary expenses in moving himself, his family, his business, farm operation, or other personal property, and for his reasonable and necessary expenses in searching for a replacement property;

(B) if he disposes of personal property on moving his business or farm operation and replaces such property at the new location at a price exceeding any sum received from disposing of such property, the amount of the difference between such prices not to exceed the estimated cost of moving the property or its market value, whichever is less; and

(C) such other expenses authorized by section 211(a) as may be provided for in regulations issued under this section;

(3) that a displaced person who makes proper application for a relocation payment authorized for such person by this title shall be paid promptly after a move or, in certain hardship cases, the President may, by regulation, authorize advance payment of certain relocation costs;

(4) that any person aggrieved by a determination as to eligibility for a relocation payment authorized by this title, or the amount of a payment, may have his application reviewed by the head of the Federal agency; and

(5) that a displaced person shall have a reasonable time in which to apply for a relocation payment authorized by this title.

(b) The President may, by regulation, establish a limitation on the amount of a relocation payment authorized by section 211 (a) with due consideration for the declaration of policy of this title and the provisions of subsection (a) of this section and section 211(c).

(c) In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the President is authorized to require that any Federal agency make relocation payments or provide relocation services, or otherwise carry out its functions under this title, by utilizing the facilities, personnel, and services of any other Federal agency, or by entering into appropriate contracts or agreements with any State agency having an established organization for conducting relocation assistance programs.

(d) The President may make such other rules and regulations consistent with the provision of this title as he deems necessary or appropriate to carry out this title.

PART D—GENERAL PROVISIONS

SEVERABILITY

Sec. 251. If any provision of this title, or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of the provi-

ston to other persons or circumstances shall not be affected thereby.

REPEAL

Sec. 252. (a) The following laws and parts of laws are hereby repealed:

(1) the Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234);

(2) paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473);

(3) section 2680 of title 10, United States Code;

(4) section 133 of title 23, United States Code;

(5) section 7(b) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1605(b));

(6) section 105(c) of the Housing Act of 1949 (42 U.S.C. 1455(c));

(7) section 114 of the Housing Act of 1949 (42 U.S.C. 1455);

(8) paragraph (7)(b)(III) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415(7)(b)(III));

(9) paragraph (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415(8)), except the first sentence of such paragraph;

(10) section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074);

(11) section 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307);

(12) chapter 5 of title 23, United States Code; and

(13) sections 32 and 33 of the Federal Aid Highway Act of 1958 (Public Law 90-495).

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section.

EFFECTIVE DATE

Sec. 253. (a) Except as provided in subsection (b), this title and the amendments made by this title shall become effective one hundred and eighty days after the date of its enactment.

(b) Sections 231, 232, and 252 (a) (4), (5), (6), (7), (8), (9), (10), and (11) shall take effect on July 1, 1971, except that commencing one hundred and eighty days after enactment, the provisions of sections 231 and 232 shall be applicable with respect to any grant to or contract or agreement with a State agency to the extent it is able under its laws to comply with such sections and the provisions of Federal law governing relocation payments and assistance otherwise applicable to grants to or contracts or agreements with such agency shall be superseded by this title.

FUND AVAILABILITY

Sec. 254. Funds appropriated or otherwise available to any Federal agency for the acquisition of real property or any interest therein shall be available also for obligation and expenditure to carry out the provisions of this title.

#36.60

November 28, 1969

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

CONDEMNATION LAW AND PROCEDURE

Relocation Assistance

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

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

CONDEMNATION LAW AND PROCEDURE

Relocation Assistance

Article I, Section 14 of the California Constitution provides that private property shall not be taken for public use without "just compensation" having first been made. However, the judicial decisions implementing this provision have generally followed the traditional approach and required only that the person whose land is taken for public use be paid its market value.¹ Accordingly, recent efforts to obtain additional compensation for the various and many expenses of moving to another location have been redirected to the Legislature, and, in response to these pressures, legislation has been enacted attempting to remedy the situation.²

1. See, e.g., *Los Gatos v. Sund*, 234 Cal. App.2d 24, 27, 44 Cal. Rptr. 181, (1965), quoting *Monongahela Navigation Co. v. United States*, 148 U.S. 312, () ; *Pacific Gas & Elec. Co. v. Chubb*, 24 Cal. App. 265, 267, 141 P. 36, () (The constitutional mandate requires only compensation "for the property, and not to the owner").
2. The constitutional interpretation referred to in footnote 1 is probably in accord with that of a majority of states today. See 4 P. Nichols, *The Law of Eminent Domain* § 14.2471(2) (4th ed. 1962). Such an interpretation, however, prevents full indemnification in many situations. Perhaps as a consequence, several states, in addition to California, have in recent years enacted statutes providing compensation for moving expenses. See, e.g., *Mass. Gen. Laws Ann.*, Ch. 79, § 6 A (Supp. 1967) (mandatory; reasonable compensation for moving expenses within the commonwealth, not to exceed \$3,000 from business property, \$200 from residential property); *Minn. Stat.* § 117.20(8b) (1965) (discretionary; damages for moving expense, not to exceed \$3,000 from nonresidential property, \$200 from residential property); *Pa. Stat. Ann.*, Tit. 26, § 610 (Supp. 1967) (mandatory; damages for reasonable moving expense, not to exceed \$25,000 from business property, \$500 from residential property, in no event to exceed the value

These legislative solutions have, however, been piecemeal--applying diverse remedies to only certain condemners for particular purposes. Thus, separate statutes covering relocation assistance and reimbursement for moving expense apply to: (1) all public entities³ and public utilities⁴ acquiring property in Los Angeles County, except the State Department of Public Works; (2) the State Department of Water Resources, the State Department of Parks and Recreation, the Trustees of the California State Colleges, and the Regents of the University of California;⁵ (3) redevelopment agencies;⁶ (4) housing authorities;⁷ (5) any public entity acquiring property for airport expansion and development;⁸ (6) the San Francisco Bay Area Rapid Transit District;⁹ and (7) the State Department of Public Works when acquiring property for state or federal-aid highways.¹⁰ No two of these statutes are exactly alike; however, the ones enacted earlier were generally less detailed¹¹ and sometimes set

of the property moved; receipts prima facie evidence); Neb. Rev. Stat. § 76-710.01 (Supp. 1965)(mandatory; damages shall include "reasonable cost of any necessary removal of personal property . . ."; no other limits); Wash. Rev. Code Ann. § 8.25.040 (Rev. Supp. 1967)(mandatory; reasonable removal costs, not to exceed \$10,000 from business property, \$500 from residential property and not more than 100 miles from point of displacement); Wis. Stat. Ann. § 32.19(2)(1964)(mandatory; removal costs, not to exceed \$2,000 from nonresidential property, \$150 from residential property).

3. See Govt. Code §§ 7260-7271 (Cal. Stats. 1969, Ch. 1489, § 1).
4. See Pub. Util. Code § 600 (Cal. Stats. 1969, Ch. 1489, § 3).
5. See Govt. Code §§ 15950-15956.
6. See Health & Saf. Code §§ 33135, 33415, 34014.
7. See Health & Saf. Code § 34330.
8. See Pub. Util. Code §§ 21690.5-21690.17 (Cal. Stats. 1969, Ch. 1228, § 1).
9. See Pub. Util. Code §§ 29110-29117.
10. See Sts. & Hwys. Code §§ 156-159.6.
11. See, e.g., Health & Saf. Code §§ 33135, 33415.

arbitrary limits on the payment of even the actual out-of-pocket cost of
moving personal property.¹²

The more recent and more widely applicable statutes¹³ are patterned
after the Federal-Aid Highway Act of 1968.¹⁴ These statutes provide that,
as a part of the cost of acquisition of real property for a public use or
construction of a public project, the appropriate "public entity may compen-
sate a displaced person for his actual and reasonable expense in moving
himself, family, business or farm operation, including moving personal
property."¹⁵ In place of actual expenses, the displaced person may generally
elect to receive limited in lieu payments.¹⁶ In addition to moving expenses,

12. See Govt. Code §§ 15953, 15954; Pub. Util. Code §§ 29113, 29114 (payment of moving expenses not to exceed "\$200 in the case of an individual or family", "\$3000 in the case of a business concern, farm or nonprofit organization.").

13. See statutes cited in notes 3, 8, and 10 supra.

14. See 23 U.S.C.A. §§ 501-511. The provisions pertaining to relocation assistance by the State Department of Public Works when acquiring property for state or federal-aid highways were rather clearly enacted in response to the federal legislation to enable the state to qualify for federal aid. These provisions accordingly conformed to the federal standards. The subsequent legislation applying in Los Angeles County and to entities acquiring property for airport expansion and development seems simply to have followed the line of least resistance and largely copied the highway example.

15. See, e.g., Govt. Code § 7262(a):

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

16. See, e.g., Govt. Code § 7262(b), (c):

(b) Any displaced person who moves from a dwelling who elects to accept 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 public entity, not to exceed two hundred dollars (\$200), and in addition a dislocation allowance of one hundred dollars (\$100).

the entity is authorized to make limited supplementary payments to certain owners and tenants of residential property to enable them to obtain dwellings

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment 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 less. In the case of a business, no payment shall be made under this subdivision unless the public entity 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 being acquired, 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 shall make available its state income tax records and its financial statements and accounting records, for audit for confidential use to determine the payment authorized by this subdivision.

comparable to those they were compelled to leave,¹⁷ as well as limited payments to owners of property which is contiguous to property acquired

17. See, e.g., Govt. Code §§ 7263, 7264:

7263. (a) In addition to the payments authorized by Section 7261, the public entity, as a part of the cost of construction, may make a payment to the owner of real property acquired for public use which is improved with a single- or 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 public entity, to be a decent, safe and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and the condemnee's 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 public entity within one year subsequent to the date on which he is required to move from the dwelling acquired by the public entity.

7264. (a) In addition to the payment authorized by Section 7261, as a part of the cost of acquisition, the public entity may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under Section 7263 which was actually and lawfully occupied by such individual or family for not less than 90 days prior to the first written offer from the public entity 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.

and which declines in market value due to the change in use of the property
18 acquired. Finally, authorization for advisory assistance is provided,
19 the appropriate rule-making body is designated,
20 and the scope of review
21 receives mention.

Although significant progress has been made in providing relocation assistance for persons involuntarily displaced by acquisitions for public use, at least two steps remain to be taken. First, the principle of reimbursement should be uniformly applied to all acquirers of property for public

18. See, e.g., Govt. Code § 7265:

7265. (a) In addition to the payment authorized by Section 7261, as a cost of acquisition, the public entity may make a payment to any affected property owner meeting the requirements of this section.

(b) Such affected property is immediately contiguous to property acquired for a public use and the owner shall have owned the property affected by acquisition by the public entity not less than one year prior to the first written offer for acquisition of the acquired property.

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

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

19. See, e.g., Govt. Code § 7261.

20. See, e.g., Govt. Code § 7267.

21. See, e.g., Govt. Code § 7266.

use. Second, reimbursement should be mandatory; that is, payment of at least the actual and reasonable expense of moving should be not merely authorized but required of every potential condemnor.

With respect to the first point, there is no excuse for perpetuating the existing disarray of overlapping and potentially conflicting provisions. Why should one set of rules apply to an agency acquiring property in Los Angeles County and no rules or a different set apply to the very same agency when acquiring property elsewhere in the state? Why should one set of rules apply to an entity acquiring property for airport development or expansion and no rules or a different set apply to an entity acquiring property for some different form of public transportation or other public use? The existing situation seems to be a product of episodic development-- legislative reaction to separate, distinct stimuli occurring over a period of time. There is no valid reason why provisions for relocation assistance and reimbursement for moving expenses should vary with the identity of the acquirer or the particular purpose of the acquisition; and a uniform, comprehensive statute applicable whenever property is acquired for public use should be enacted. Such a statute would eliminate the confusion that exists today, simplify the law, and, most important, provide fair and equitable treatment for all the citizens of this state.

As to the second point, every person displaced by the acquisition of property for public use should be entitled as a matter of right to reimbursement for at least the actual and reasonable expenses of moving incurred as a result of the acquisition. Administrative discretion with respect to this issue can only be a potential source of abuse. Bearing in mind that these are actual, out-of-pocket costs, incurred because property is acquired for public use, the issue simply becomes who should bear this burden: the

displaced individual, family, or business forced to relocate or the segment of the public benefiting from the acquisition. Framed in these terms, the answer is clear. It is a time-honored maxim of jurisprudence that "he who takes the benefit must bear the burden."²² To avoid this conclusion, it might be suggested that moving expenses are too conjectural or too expensive to be compensable. However, again we are dealing here with actual, fixed out-of-pocket expenses and it seems clear that these can be ascertained with reasonable certainty.²³ Indeed, theoretically, there is no issue of expense, but simply one of allocation. The net cost to society is the same whether these expenses are borne by the individual or by the benefited public. Proper accounting and better decision-making, however, require that all the costs attributable to a project be considered in determining whether to undertake it. Finally, although existing law is generally discretionary in form, the administrative practice appears to have been to treat payment as mandatory, and the experience seems to show that the burden of payment is not excessive.

Accordingly, the Commission recommends:

1. That, with the modifications indicated, the present statute (Government Code Sections 7260-7272) providing relocation assistance to persons

22. Civil Code § 3521.

23. See, e.g., *Los Gatos v. Sund*, 234 Cal. App.2d 24, 28, 44 Cal. Rptr. 181, (1965). Moreover, the actual expenses of moving will often be subject to the limits afforded by the rate schedules fixed by the Public Utilities Commission. One very important exception would exist since displaced persons would also often be entitled to elect to receive in lieu payments fixed without regard to actual expenses. However, these in lieu payments are so limited and subject to such administrative control that it seems doubtful that they will ever greatly exceed actual expenses, and the savings in administration should more than offset any discrepancies.

displaced by the acquisition of property in Los Angeles County for a public use by any public entity, agency, or utility (except the Department of Public Works) be made applicable throughout the state and to all "acquirers."

2. That, although other payments should remain discretionary, all acquirers should be required to compensate a displaced person for his actual and reasonable expense in moving himself, family, business, or farm operation; or in lieu thereof, the latter should be permitted to elect to receive fixed payments according to a graduated schedule or, in certain circumstances, according to the past net earnings of his business.

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

An act to amend Sections 7260, 7261, 7262, 7263, 7264, 7265, and 7268 of, and to repeal Sections 7266, 7267, and 7272, Chapter 1 (commencing with Section 15950) of Part 13 of Division 3 of, the Government Code, to amend Sections 33135, 33415, 34014, and 34330 of the Health and Safety Code, to repeal Article 6 (commencing with Section 600) of Chapter 3 of Part 1 of Division 1 of, Article 4.5 (commencing with Section 21690.5) of Chapter 4 of Part 1 of Division 9 of, and 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, relating to property acquisitions for public use.

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

§ 7260. Definitions

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

7260. As used in this chapter:

(a) "Acquirer" means any person, association, corporation, public utility, or public entity which acquires real property or any interest therein for public use and exercises or could have exercised the right of eminent domain to acquire such property for such use.

~~(a) (b) "Public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state when-acquiring-real-property-or-any interest-therein,-in-a-county-having-a-population-of-more-than-four million-persons,-for-public-use,-except-the-Department-of-Public-Works of-this-state .~~

~~(b) (c) "Displaced person" means any individual, family, business, or farm operation, which moves from real property acquired by public entity-for-public-use an acquirer .~~

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

~~(d) (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.~~

~~(e) (f) "Business" means any lawful activity conducted primarily for 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)~~ (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.

~~(g)~~ (h) "Affected property" means any real property which actually declines in fair market value because of acquisition by a ~~public entity~~ for public use ~~an acquirer~~ of other real property and a change in the use of the real property acquired by the ~~public entity~~ acquirer .

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

Comment. Section 7260 merely defines terms used in this chapter. However, significant substantive changes in the chapter have been accomplished by changes made in these definitions. Subdivision (a) has been added and subdivision (b) has been amended to make this chapter applicable whenever and wherever property is acquired for a public use and the right of eminent domain is or could have been exercised to make such acquisition. The term "acquirer" is added to embrace every person or entity, private or public, and the term "public entity" now refers to every kind of independent political or governmental entity in the state. See Govt. Code § 811.2. Formerly, this chapter applied only to public entities, excluding the State Department of Public Works, and public utilities, which acquired property in Los Angeles County. See Cal. Stats. 1969, Ch. 1489, §§ 1, 3. Various other statutes dealt with relocation assistance by specific entities in limited situations. See, e.g., Cal. Stats. 1965, Ch. 1650, amended Cal. Stats. 1968, Ch. 1436 (formerly Govt. Code §§ 15950-15956) (Department of Water Resources, Department of Parks and

§ 7260

Recreation, Trustees of the California State Colleges, and Regents of the University of California); Health & Saf. Code §§ 33135, 33415, 34014 (redevelopment agencies); Health & Saf. Code § 34330 (housing authorities); Cal. Stats. 1969, Ch. 1228, § 1 (formerly Pub. Util. Code §§ 21690.5-21690.17) (any public entity acquiring property for airport expansion and development); Cal. Stats. 1966, 1st. Ex. Sess., Ch. 165 (formerly Pub. Util. Code §§ 29110-29117)(San Francisco Bay Area Rapid Transit District); Cal. Stats. 1968, 1st. Ex. Sess., Ch. 3, § 3, amended Cal. Stats. 1969, Ch. 1489, § 4 (formerly Sts. & Hwys. Code §§ 156-159.6)(Department of Public Works when acquiring property for state or federal-aid highways). However, no general comprehensive statute relating to relocation assistance existed.

Former subdivision (h) of Section 7260 is deleted, but its substance is included in the definition of "acquirer."

§ 7261. Authority to give relocation advisory assistance

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

7261. (a) ~~A public entity~~ An acquirer is authorized to give relocation advisory assistance to any individual, family, business, or farm operation displaced because of the acquisition of real property by that ~~public entity for public use~~ acquirer. (b) In giving such assistance, the ~~public entity~~ acquirer may establish local relocation advisory assistance offices to assist in obtaining replacement facilities for such individuals, families, and businesses ~~which it is necessary to relocate because of the acquisition of real property by the public entity.~~

Comment. Section 7261 is amended to grant authority to all "acquirers" to provide relocation advisory assistance. See Comment to Section 7260. This section ~~formerly~~ applied only to public entities acquiring property in Los Angeles County. See Cal. Stats. 1969, Ch. 1489, § 1. Similar or identical authority was granted to certain other entities. See Health & Saf. Code §§ 33135 (redevelopment agencies), 34330 (housing authorities); Cal. Stats. 1969, Ch. 1489, § 3 (formerly Pub. Util. Code § 600)(public utility acquiring property in Los Angeles County); Cal. Stats. 1969, Ch. 1228, § 1 (formerly Pub. Util. Code §§ 21690.10, 21690.11)(public entity acquiring property for airport expansion and development); Cal. Stats. 1966, 1st. Ex. Sess., Ch. 165 (formerly Pub. Util. Code § 29117)(San Francisco Bay Area Rapid Transit District); Cal. Stats. 1968, 1st. Ex. Sess., Ch. 3, § 3 (formerly Sts. & Hwys. Code § 156.5)(Department of Public Works when acquiring for state or federal-aid highways). However, no general authority for all "acquirers" appears to have existed.

§ 7262. Payment of moving expenses

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

7262. (a) As a part of the cost of acquisition of real property ~~for a public use, a public entity may~~ an acquirer shall 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 payments authorized by this subdivision in lieu of the payments ~~authorized~~ required by subdivision (a) of this section may at his election receive a moving expense allowance, determined according to a schedule established by the ~~public entity~~ acquirer, 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 payment authorized by this subdivision in lieu of the payment ~~authorized~~ required 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 less. In the case of a business, no payment shall be made under this subdivision unless the ~~public entity~~ acquirer 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 being acquired, 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 shall make available its state income tax records and its financial statements and accounting records, for audit for confidential use to determine the payment authorized by this subdivision.

Comment. Section 7262 is amended to make payment of moving expenses by all acquirers mandatory. Section 7262 was formerly discretionary and applied only to public entities and public utilities acquiring property in Los Angeles County. See Cal. Stats. 1969, Ch. 1489, §§ 1, 3. Identical discretionary provisions applied to public entities acquiring property for airport expansion and development (see Cal. Stats. 1969, Ch. 1228, § 1--formerly Pub. Util. Code § 21690.12) and to the Department of Public Works when acquiring property for state and federal-aid highways (see Cal. Stats. 1968, 1st. Ex. Sess., Ch. 3, § 3--formerly Sts. & Hwys. Code § 157). Similar discretionary authority was granted to a few other state agencies in certain situations, to redevelopment agencies, and to housing authorities. See Cal. Stats. 1965, Ch. 1650; amended Cal. Stats. 1968, Ch. 1436 (formerly Govt. Code §§ 15950, 15951) (Department of Water Resources, Department of Parks and Recreation, Trustees of the State Colleges, and Regents of the University of California); Health &

Saf. Code §§ 33135, 33415, 34014 (redevelopment agencies); Health & Saf. Code § 34330 (housing authorities). Finally, although the San Francisco Bay Area Rapid Transit District was subject to a mandatory duty to pay moving expenses, monetary limits circumscribed the obligation. See Cal. Stats. 1966, 1st. Ex. Sess., Ch. 165 (formerly Pub. Util. Code §§ 29111, 29113-29114). No comprehensive statute existed and, for the most part, the decision whether to make payment rested with the particular entity.

Section 7262 is part of a comprehensive statute relating to relocation assistance. Subdivision (a) requires an acquirer to compensate a displaced person for all his actual and reasonable expense in moving himself, his family, his business, or his farm operation. No monetary limits are placed on this obligation. Subdivisions (b) and (c) provide in lieu payments that are limited in amount; however, substitution of such payment is at the option of the displaced person. Accordingly, every displaced person is assured of indemnification for the expenses of moving caused by his displacement.

§ 7263. Supplementary payments to owners of dwellings

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

7263. (a) In addition to the payments authorized by Section ~~7261~~ 7262 , the public-entity acquirer , as a part of the cost of construction, may make a payment to the owner of real property acquired for public use which is improved with a single or 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 public entity acquirer , to be a decent, safe and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and the ~~employee's~~ displaced owner's 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 public-entity acquirer within one year subsequent to the date on which he is required to move from the dwelling acquired by the public entity.

Comment. Section 7263 is amended to grant authority to all "acquirers" to provide supplementary payments to owners of dwellings. See Comment to Section 7260. This section formerly applied only to public entities and

public utilities acquiring property in Los Angeles County. See Cal. Stats. 1969, Ch. 1489, §§ 1, 3. An identical section applied to the Department of Public Works when acquiring property for a ~~state or federal~~-aid highway. Cal. Stats. 1968, 1st. Ex. Sess., Ch. 3, § 3 (formerly Sts. & Hwys. Code § 157.5). A similar section, without dollar limits, applied to a public entity acquiring property for airport expansion and development. Cal. Stats. 1969, Ch. 1228, § 1 (formerly Pub. Util. Code § 21690.13). Finally, authority to make such payments was perhaps implicit in the general authority to make relocation payments granted to redevelopment agencies. Health & Saf. Code § 33415. However, no general authority for all "acquirers" appears to have existed.

§ 7264. Supplementary payments to individuals or families not eligible under Section 7263

Sec. 5. Section 7264 of the Government Code is amended to read:

7264. (a) In addition to the payment authorized by Section ~~7261~~ 7262, as a part of the cost of acquisition, the ~~public-entity~~ acquirer may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under Section 7263 which was actually and lawfully occupied by such individual or family for not less than 90 days prior to the first written offer from the ~~public-entity~~ acquirer 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.

Comment. Section 7264 is amended to grant authority to all "acquirers" to provide supplementary payments to individuals or families not eligible under Section 7263. This section formerly applied only to public entities and public utilities acquiring property in Los Angeles County. See Cal. Stats. 1969, Ch. 1489, §§ 1, 3. Identical sections applied to public entities when acquiring property for airport expansion and development, Cal. Stats. 1969, Ch. 1228, § 1 (formerly Pub. Util. Code § 21690.14), and to the Department of Public Works when acquiring property for state and federal-aid highways. Cal. Stats. 1968, 1st. Ex. Sess., Ch. 3, § 3 (formerly Sta. & Hwys.

§ 7264

Code § 158). Moreover, authority to make such payments was perhaps implicit in the general authority to make relocation payments granted to redevelopment agencies. Health & Saf. Code § 33415. However, no general authority for all "acquirers" appears to have existed.

§ 7265. Payments to owners of "affected property"

Sec. 6. Section 7265 of the Government Code is amended to read:

7265. (a) In addition to the payment authorized by Section ~~7261~~ 7262, as a cost of acquisition, the public-entity acquirer may make a payment to any affected property owner meeting the requirements of this section.

(b) Such affected property is immediately contiguous to property acquired for a public use and the owner shall have owned the property affected by acquisition by the public-entity acquirer not less than one year prior to the first written offer for acquisition of the acquired property.

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

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

Comment. Section 7265 is amended to grant authority to all "acquirers" to provide compensation to owners of "affected property." This section formerly applied only to public entities and public utilities acquiring property in Los Angeles County. See Cal. Stats. 1969, Ch. 1489, §§ 1, 3, 4.

§ 7266

Sec. 7. Section 7266 of the Government Code is repealed.

Comment. See Comment to Section 7268.

Note. The repealed section read as follows:

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

§ 7267

Sec. 8. Section 7267 of the Government Code is repealed.

Comment. See Comment to Section 7268.

Note. The repealed section read as follows:

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

§ 7268

§ 7268. Rules and regulations

Sec. 9. Section 7268 of the Government Code is amended to read:

7268. (a) The State Board of Control is-authorized-to shall
adopt rules and regulations to implement payments and to provide
procedures for reviewing determinations of eligibility and the amount
of payment under this chapter by state agencies except the State
Department of Public Works . The State Department of Public Works and
The the governing bodies of other public-entities-are-authorized-to
acquirers shall adopt rules and regulations to implement-payments
govern their practices and procedures under this chapter by-such
entities .

(b) Such rules and regulations shall require at the election of
any aggrieved person an adjudicatory hearing to review determinations
concerning his eligibility and amount of payment under this chapter.

Comment. Amended Section 7268 combines the substance of Section 7268 and former Section 159 of the Streets and Highways Code, See Cal. Stats. 1969, Ch. 1489, § 1; Cal. Stats. 1968, 1st. Ex. Sess., Ch. 3, § 3. See also Cal. Stats. 1965, Ch. 1650, amended Cal. Stats. 1968, Ch. 1436 (formerly Govt. Code § 15956); Cal. Stats. 1969, Ch. 1228, § 1 (formerly Pub. Util. Code § 21690.16); Cal. Stats. 1966, 1st. Ex. Sess., Ch. 165 (formerly Pub. Util. Code § 29116). This section designates the appropriate rule-making body for each acquirer. The section permits flexibility in rule making by the appropriate entity to fit the needs of its situation. It is anticipated, however, that most entities will pattern their rules and procedures after those adopted by the Board of Control. Former Sections 7266 and 7267 have been

§ 7268

repealed. For the most part, they were simply superfluous. However, the apparent limitation of Section 7266 on the scope of review of administrative determinations under this chapter has been eliminated. The requirement of subdivision (b) that an aggrieved person be entitled to an adjudicatory administrative hearing to review such determinations will also insure final judicial review by way of administrative mandamus.

§ 7272

Sec. 10. Section 7272 of the Government Code is repealed.

Comment. See the Comment to Section 7260.

Note. The repealed section read as follows:

7272. The provisions of this chapter shall apply only to the provision by a public entity of relocation assistance to any individual, family, business, or farm operation located in a county having a population of more than four million persons.

Sec. 11. 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 Part 13 of Division 3 of the Government Code, is superseded by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Note. The repealed sections read as follows:

15950. 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. 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. 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.

§§ 15950-15956

15953. Payment of moving expenses shall not exceed two hundred dollars (\$200) in the case of an individual or family.

15954. Payment for moving expenses shall not exceed three thousand dollars (\$3,000) in the case of a business concern, farm or nonprofit organization.

15955. 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. 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.

§ 33135

Sec. 12. Section 33135 of the Health and Safety Code is amended to read:

33135. Upon request from and at the expense of any public body, an agency may, outside any survey area, with the approval of the legislative body, provide (1) relocation assistance to persons displaced by governmental action, and (2) aid and assistance to property owners in connection with rehabilitation loans and grants. Nothing in this section exempts an agency from compliance with the provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Comment. The provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code establish minimum standards of relocation assistance with which all public entities must comply.

§ 33415

Sec. 13. Section 33415 of the Health and Safety Code is amended to read:

33415. (a) 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. Nothing in this section exempts an agency from compliance with the provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

~~(b)--An-agency-in-a-county-having-a-population-of-more-than-four million-persons-may-make-any-of-the-payments-authorized-by-Chapter-16 (commencing-with-Section-7260)-of-Division-7-of-Title-1-of-the-Government-Code,-including-the-making-of-such-payments-financed-by-the federal-government.~~

Comment. The provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code establish minimum standards of relocation assistance with which all public entities must comply.

§ 34014

Sec. 14. 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 or 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. Nothing in this section exempts a redevelopment agency from compliance with the provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Comment. The provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code establish minimum standards of relocation assistance with which all public entities must comply.

§ 34330

Sec. 15. 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 shall be included in the project cost. Nothing in this subdivision exempts an authority from compliance with the provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

(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

§ 34330

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.

Comment. The provisions of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code establish minimum standards of relocation assistance with which all public entities must comply.

§ 600

Sec. 16. Article 6 (commencing with Section 600) of Chapter 3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

Comment. Section 600 is superseded by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Note. The repealed section read as follows:

600. A public utility acquiring real property in a county having a population of more than four million persons by eminent domain is authorized to give relocation advisory assistance and to make any of the payments authorized by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code. For the purposes of this section, a public utility shall be considered to be a "public entity" other than a state agency, as defined by Section 7260 of the Government Code.

Sec. 17. Article 4.5 (commencing with Section 21690.5) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code is repealed.

Comment. Article 4.5 (commencing with Section 21690.5) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code is superseded by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Note. The repealed sections read as followed:

21690.5. This article may be cited as the "California Legislature Airports, Airways and Airport Terminals Development and Relocation Act of 1969."

21690.6. The Legislature hereby finds that the state's airport and airway system is inadequate to meet current and projected growth in aviation and that substantial expansion and improvement of the system is required to meet the demands of interstate and intrastate commerce, the postal service and the national defense. The Legislature finds that users of air transportation are capable of making a greater financial contribution to the expansion and improvement of the system through increased user fees. The Legislature finds, however, that such users should not be required to provide all of the funds necessary for future development of the system, and that revenues obtained from the general taxpayer will continue to be required to pay for the use of such facilities

by the military and for the value to national defense and the general public benefit in having a safe, efficient airport and airway system available and fully operational in the event of war or national emergency. The Legislature also finds that the continued development and expansion of an adequate and up-to-date comprehensive state airport and airway system will require the acquisition of agricultural, residential, commercial, industrial and miscellaneous types of properties for the same; and that many persons and businesses will have to be relocated. The Legislature finds further that it is in the best interests of the people of the State of California to help all those persons forced to relocate when airport expansion and construction requires them to lose their businesses and homes. It is the purpose of this act to provide the means by which adequate compensation and immediate assistance will be provided for relocation and moving expenses and other costs involved in the necessary moving of a business or home to make way for airport expansion and development.

21690.7. (a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for federal, state or local airport expansion and development.

(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 commodities or products in sufficient quantity to be capable of contributing materially to the operator's support.

(f) "Airport expansion and development" means the construction, alteration, improvement, or repair of airport hangars; airport passenger or freight terminal buildings and other buildings required for the administration of an airport; public parking facilities for passenger automobiles; roads within the airport boundaries; and any acquisition of land adjacent to or in the immediate vicinity of a public airport, including any interest therein, or any easement through or any other interest in airspace, for the purpose of assuring that activities and operations conducted thereon will be compatible with normal airport operations.

(g) "Public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state when acquiring real property or any interest therein for airport expansion and development, except the Department of Public Works of this state.

21690.8. The payment of moving expenses shall be made to eligible persons in accordance with the provisions of this act and such rules and regulations as shall be adopted by the public entity.

21690.9. The public entity is authorized to adopt rules and regulations to implement the payment of moving expenses as authorized by this act. Such rules and regulations may include provisions authorizing payments to individuals and families of fixed amounts not to exceed two hundred dollars (\$200) in lieu of their respective reasonable and necessary moving expenses.

21690.10. The public entity 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 state or federal airport project.

§§ 21690.11, 21690.12,
21690.13

21690.11. In giving relocation advisory assistance, the public entity may establish a local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses affected by airport expansion or development.

21690.12. (a) As a part of the cost of construction the public entity may compensate a displaced person for his actual and reasonable expenses in moving himself, family, business or farm operation, including moving personal property.

(b) Any displaced person who moves from a dwelling may elect to receive in lieu of his actual and reasonable moving expenses a moving expense allowance, determined according to a schedule established by the public entity 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 may elect to receive in lieu of his actual and reasonable moving expenses 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 public entity 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 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.

21690.13. In addition to the payments authorized by Section 21690.12, the public entity, as a part of the cost of construction, may make a payment to the owner of real property acquired for an airport project, which is improved with a single-, two- or three-family dwelling actually owned and operated by the owner for not less than one year prior to the first written offer for the acquisition of such property. Such payment 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 public entity, 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. Such payment shall be made only to the displaced owner who purchases a dwelling, that meets standards established by the public entity, within one year subsequent to the date on which he is required to move from the dwelling acquired for the project.

§§ 21690.14, 21690.15,
21690.16, 21690.17

21690.14. In addition to the payment authorized by Section 21690.12, as a part of the cost of construction, the public entity may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under Section 21690.13, 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. 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.

21690.15. Any displaced person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of a payment, may have his application reviewed by the public entity. This review shall include the right to the appointment of an independent appraiser approved by the owner to review the amount of the award under Section 21690.13.

21690.16. The public entity is authorized to adopt rules and regulations relating to relocation assistance as may be necessary or desirable under state and 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 Section 21690.12, subdivision (b), 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 public entity; and

(d) Eligibility for relocation assistance payments and the procedure for claiming such payments and the amounts thereof.

21690.17. No payment received by a displaced person under this act 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 of 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.

§§ 29110-29115

Sec. 18. 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 Chapter 6 of Part 2 of Division 10 of the Public Utilities Code, is superseded by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Note. The repealed sections read as follows:

29110. 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. 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. 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. Payment of moving expenses shall not exceed two hundred dollars (\$200) in the case of an individual or family.

29114. Payment for moving expenses shall not exceed three thousand dollars (\$3,000) in the case of a business concern, farm, or nonprofit organization.

29115. 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, 29117

29116. 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. 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.

§§ 156, 156.5, 157

Sec. 19. 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 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

Note. The repealed sections read as follows:

156. 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. (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. (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).

§§ 157, 157.5, 158

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment 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. (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. (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.

§§ 157-159.3

(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.

158.1. In addition to the payment authorized by Section 157, as a part of the cost of construction the department may, if federal funds are available for reimbursement, make a payment to any individual, family, business or farm operation pursuant to the provisions of Section 7265 of the Government Code, in accordance with such rules and regulations as the department shall adopt relating to such payments.

158.5. 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. 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. 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, 159.6

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