

36.60

2/20/70

Memorandum 70-17

Subject: Study 36.60 - Condemnation (Relocation Assistance)

Attached to this memorandum are two copies of the revised tentative recommendation relating to relocation assistance. The staff has made some minor editorial revisions, but only those substantive changes directed by the Commission at the February 1970 meeting have been made. Accordingly, new or revised definitions of "acquirer," "displaced person," "educational institution," "moving expenses," and "owner" are found in new Sections 7260, 7260.3, 7260.4, 7260.8, and 7260.9, respectively. Subdivisions (a) and (c) of Section 7262 have been substantially revised. Subdivision (a) now provides a 50-mile distance limitation on reimbursement for moving expense; subdivision (c) now authorizes the acquirer and a displaced business or farm to negotiate an in lieu payment. Sections 7262.1 and 7262.2 have been added to provide discretionary authority to make supplementary payments for losses caused by the displacement of businesses or farms. Subdivision (b) of Section 7268 relating to administrative hearings has been deleted.

The staff asks that you make any suggested revisions on one copy of the recommendation and return this copy to us at the March meeting. At that meeting, we will make any further required changes (perhaps by that time, the Department of Public Works will have given us the benefit of their more detailed review), and we hope to be able then to secure the Commission's approval to distribute for comment a tentative recommendation relating to this subject.

Respectfully submitted,

Jack I. Horton
Associate Counsel

DEPARTMENT OF PUBLIC WORKS

LEGAL DIVISION

1120 N STREET, SACRAMENTO 95814



March 2, 1970

Mr. John H. DeMouly
Executive Secretary
California Law Revision Commission
Stanford University
Stanford, California 94305

Dear John:

You have asked the Department of Public Works to comment in detail on the tentative recommendation relating to relocation assistance revised as of February 20, 1970. As I indicated to you in our telephone conversation of last week, I do not believe it would be advisable to detail our comments on each section of the Commission's recommended legislation because of the pendency of legislation before the House Public Works Committee. As you know, the House Public Works Committee has been conducting hearings on S. 1, H.R. 14898 and related bills dealing with relocation assistance. The general purpose of this legislation is to establish uniform law with regard to the payment of relocation assistance for both federal and federally aided programs. The Department of Public Works has no objection to uniform legislation nor has an objection to an extension of the relocation assistance provisions of the Federal Aid Highway Act of 1968 to all federal agencies and to other federal aid programs. However, we do feel that the approach that should be taken by Congress in the drafting of legislation is to pattern any uniform law after the Federal Aid Highway Act of 1968.

Until there is uniform legislation at the federal level, it would be premature for California to enact its own uniform legislation. Since the relocation assistance provision of the Federal Aid Highway Act of 1968 will be mandatory on the states by July 1, 1970, we have no objection to California legislation being mandatory to the same extent that the federal legislation is also mandatory.

Mr. John H. DeMouilly
March 2, 1970
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For your information I am enclosing the following:

1. Relocation assistance package which includes the rules and regulations of the Department of Public Works and right of way procedures in the handling of our relocation assistance program.
2. Analysis of S. 1 and related relocation assistance bills.
3. Statement of the Department of Public Works on S. 1, H.R. 14898 and related bills.

It is suggested that the Commission delay the distribution of its tentative recommendation on relocation assistance until such time as the House Public Works Committee has completed its hearings and uniform federal legislation is enacted into law.

Best personal regards,


ROBERT F. CARLSON
Assistant Chief Counsel

Enclosures

STATEMENT
OF THE
STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC WORKS
ON
S. 1 AND H.R. 14898 AND RELATED BILLS
BEFORE THE
PUBLIC WORKS COMMITTEE, HOUSE OF REPRESENTATIVES
UNITED STATES CONGRESS

February 24, 1970

STATEMENT
OF THE
STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC WORKS
ON
S. 1 AND H.R. 14898 AND RELATED BILLS
BEFORE THE
PUBLIC WORKS COMMITTEE, HOUSE OF REPRESENTATIVES
UNITED STATES CONGRESS

The Department of Public Works of the State of California appreciates the opportunity to present to the House Public Works Committee its view and comments on the numerous bills now pending before the Committee dealing with relocation assistance. The relocation assistance problem has been of deep concern to the Legislature and the administration in California for many years. We are concerned not only in providing the finest of highway facilities possible, but also in fair treatment to our citizens and property owners whose property is needed for these vital public works projects. Consideration must be given to these persons not only in the route adoption and design stages of the highway projects, but also during the right of way acquisition process. We are dealing with people who not only have to pay for the highway project but who also have to bear the burden of giving up their properties and relocating themselves, their families, their businesses and farms. One of California's goals in this regard is that no individual should be displaced by a state highway project unless replacement housing is reasonably available. This philosophy governs California's right of way acquisition program.

California was the first state to actually fully implement the relocation assistance provisions of the Federal Aid Highway Act of 1968. On September 23, 1968, at the request of Governor Reagan, our Legislature enacted "The California's Highway Relocation Assistance Act" as an urgency measure to comply with the aims and objectives of the federal law. Also in 1968, the State of California enacted what has been sometimes referred to as the "Ralph Bill", a replacement housing development law. Governor Reagan in recommending this law intended to accomplish the objective of developing replacement housing which is decent, safe and sanitary and functionally equivalent to housing eliminated by highway construction. This California law is limited only to low income families whose properties are located in economically depressed areas. This legislation was enacted because studies of the impact of highway programs on low income areas such as Watts in Los Angeles County and San Ysidro in San Diego County indicated that decent, safe and sanitary housing for low income individuals and families was not available in sufficient quantity for the numbers of individuals and families to be displaced by the highway projects. Normal market activity provides adequate housing for families in the middle income bracket but a totally inadequate housing supply is being produced today for low income families to meet the exigencies of new freeway construction in urban areas. In fact the removal of large volumes of housing occupied by low

income families and individuals tends to place a premium on the remaining available housing thus driving up prices of available housing, and putting the remaining housing beyond the reach of low income displaced persons or families.

The California Governor and Legislature intended by its replacement housing law to interrupt this inflationary cycle by the production of additional housing units for low income families and individuals. The production of this housing is done through utilization and cooperation of individuals in the private sector, (1) by use of their building talents and capabilities, (2) by providing interim financing for construction and (3) by utilizing the benefits of the federal aid highway act as a direct development contribution rather than as a payment to the displaced individual. The most important aspect of providing replacement housing is the establishment of a sufficient lead time for persons displaced by freeway construction to have replacement housing immediately available to them in order not to impose a hardship upon these people and at the same time not interfere with the orderly process in planning, designing and construction of vitally needed freeways. More will be said on this subject when we dwell on the bills in detail.

S. 1 and H. R. 14898 approach the problem of drafting uniform relocation legislation from opposite points of view. First, we would like to point out that the Department of Public Works of the State of California has no objection to the extension of the relocation assistance provisions of the Federal Aid Highway Act of 1968 to all federal agencies and to other federal aid

programs. However, we feel that the approach that should be taken by the Congress is to pattern any uniform law in this area after the most recent legislation in this field, the Federal Aid Highway Act of 1968. This is particularly important in the federal aid area where the states will be required to enact implementing legislation. We believe the approach should be taken that would build on the existing statutory law rather than developing entirely new approaches which may not meet the problems and which will cause the states to drastically amend already implemented laws and procedures.

California prefers the approach taken by H. R. 14898.

California has two major concerns with regard to the bills now pending before this Committee. This concern is limited to (1) those areas in which S. 1 drastically departs from and limits the relocation assistance provisions of the Federal Aid Highway Act of 1968 and (2) to those provisions which the state highway departments will be unable to effectively carry out because of unnecessary involvement of federal agencies.

We have read the preliminary statements of the Chairman of the Legal Affairs Committee and the Chairman of the Right-of-Way Committee of the American Association of State Highway Officials and generally endorse the points made in their presentations.

The most crucial aspect of S. 1 and the one which may have the most profound effect on the highway program is its failure to contain a provision which would protect highway

projects from endless litigation and delays. The present Federal Aid Highway Act contains provisions which, in effect, require that, within a reasonable time prior to displacement, there will be available decent, safe and sanitary dwellings to the extent that can reasonably be accomplished. S. 1 contains a similar requirement without the phrase which we have underlined. We strongly believe that such a clause is necessary to prevent continuous legal proceedings and the stopping of right-of-way acquisitions for highway construction.

The matter of enforcing a state's assurance that replacement housing is available should be handled on an administrative basis by the federal agency responsible for administering the program. The administering agency should take constructive steps to require compliance with these assurances and to see that the state highway program is so managed that sufficient lead time is provided between the commencement of right of way process and the actual construction so that every person or family that is displaced will have the opportunity to move to comparable decent, safe and sanitary replacement housing.

Proper administration of this program can eliminate such problems and provide 100 percent compliance with the assurances.

On the other hand, there could be situations where the present wording of this section in S. 1 could be used as a device to harass, delay and thwart the construction of a needed freeway even though decent, safe and sanitary dwellings are available. Displaced persons could easily make unsupportable

contentions that available dwellings do not meet their personal preference with regard to public utilities, public and commercial facilities, or rents or prices are not within their means. Such unfounded contentions could cause some states to be unable to meet the target date of 1975 for the completion of the Interstate System. It is essential that the above underlined words be included in any uniform legislation in order to permit the highway program to move forward without undue delay.

Another important area of concern to California is Section 211(e)(2) of S. 1. This section gives the Secretary of Housing and Urban Development the authority and responsibility to determine the prices for dwellings prevailing in the locality in order to arrive at the administrative bonus payment to residential property owners and tenants.

State departments involved in the actual acquisition process are in a better position to determine the average price for decent, safe and sanitary dwelling as a part of its right of way appraisal process. The average price determination has to be made with reference to the specific locality of the dwelling at the time it is being acquired. A determination by the Secretary of the average price for decent, safe and sanitary dwelling for every locality at the time of each acquisition will unnecessarily duplicate and undoubtedly delay the determination of the relocation assistance payment and thereby work an added hardship on the displacee. Further, no replacement payment could be made by a state until the Secretary has made a final determination. We believe the state agency responsible for determining the

acquisition payment for the property should also make the determination of the average price of a relocation dwelling in order to arrive at the relocation assistance payment. Another federal agency should not be injected into the already lengthy process of highway right of way acquisition. The current procedures of the Bureau of Public Roads are adequate and workable. These procedures assure fair and equitable treatment and should be continued in any uniform statute.

There are several provisions in S. 1 which, if enacted into law, would require those states which have enacted legislation implementing the Federal Aid Highway Act of 1968 to cut back and to limit payments presently authorized by statute. We doubt that the California Legislature would cut back on relocation payments presently allowed. Such cutbacks would require the states to the extent of the cutback to fund them entirely without federal reimbursement. This is particularly oppressive to state legislatures when it was at the statutory directive of the Federal Aid Highway Act of 1968 that the states enacted their laws with such limitations.

For example, the payments to business and farm operators in Section 211(c) and (d) is limited to those businesses and farm operators whose average net earnings are less than \$10,000.00 per year. Present federal aid highway law and state law contains no such limitation. Section 231(c) of S. 1 limits the amount of federal participation in relocation assistance payment that is now provided in the Federal Aid Highway Act of 1968. Section 504 presently provides that the federal share of the first \$25,000.00

of such payments shall be 100 percent, and where payments exceed \$25,000.00 the federal share shall be according to the apportionment formula for the system on which the property was acquired. S. 1 limits the maximum federal contribution and participation to the first \$25,000.00 for persons displaced prior to July 1, 1972. No provision is made for federal participation in the payments in excess of \$25,000.00 or the federal contribution for such payments after July 1, 1972.

California legislation was enacted without a maximum monetary limitation on relocation assistance payments. It would be very difficult indeed for us to now ask our Legislature to enact legislation which would provide a maximum payment to displaced persons. California legislation was enacted upon the representation and with the implied assurance that there would be participation by the federal government for payments in excess of \$25,000.00.

There are other provisions of S. 1 where we have comments and suggested changes. These are included in the more detailed statement which we have presented to the Committee counsel.

We should like to conclude our statement with a very important and crucial problem and a proposal to remedy it. It is a situation which has been brought about by the present-day nationwide economic situation and is predominately a problem in the highway program. As you know, the construction of a highway requires the acquisition of many parcels of properties from one distant point to another. All of the parcels must be acquired before the project can be commenced. California has experienced resistance from some home owners and other property owners in the acquisition of these parcels because of the loss of favorable financing. Property owners who are being displaced are being

faced with the economic situation that requires them to obtain financing for a replacement dwelling at interest rates much higher than that being paid on the acquired dwelling. California believes that this is unfair and that the property owner should not have to bear the burden of this loss because of the economic circumstances prevailing when his property is acquired.

We believe that in the highway acquisition field an additional payment should be made to such property owners computed on the basis of a schedule which relates to (1) the increase in the interest rate, (2) the remaining term of the original mortgage, and (3) the amount of the unpaid balance on the old mortgage. Such payment should also take into account the average length of time that property owners own their property and should be paid only when the owner has acquired his new residence. Such a payment should be administered at the discretion of the acquiring agency when financing conditions are such that the prevailing interest rate is substantially higher than the mortgage interest rates on the existing loans.

Governor Reagan intends to request the California Legislature to pioneer legislation to resolve this pressing hardship and inequity, and legislation will probably be introduced at the State level next week on this subject. We strongly urge that this Committee and the Congress make this problem a part of its consideration of the relocation assistance law and provide for federal participation in reimbursement for this badly needed type of payment.

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.

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. Accordingly, recent efforts to obtain additional compensation for the various and many expenses of moving to another location have been addressed to the Legislature, and, in response to these pressures, legislation has been enacted in California and many other states in an attempt to remedy the situation.

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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"). This constitutional interpretation probably is 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).
 2. 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

The legislation enacted in California has been piecemeal. 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.¹¹ The ones enacted earlier are generally less detailed 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, 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
acquired.¹⁸ Finally, authorization for advisory assistance is provided,¹⁹
the appropriate rule-making body is designated,²⁰ and the scope of review
receives mention.²¹

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 when 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. A uniform, ~~comprehensive~~ statute applicable whenever property is acquired for public use would eliminate the confusion that exists today, simplify the law, and, most important, provide fair and equitable treatment for all citizens of the 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 is 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 shows that the burden of payment is not excessive.

Accordingly, the Commission recommends that, with some significant modifications, the present statute (Government Code Sections 7260-7272) providing relocation assistance to persons displaced by the acquisition of

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.

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 acquisitions of property for public use. Although other payments should remain discretionary, a displaced person should be entitled to recover as a matter of right for his actual and reasonable expense in moving himself, family, business, or farm operation; or in lieu thereof, he should be permitted to elect to receive fixed payments according to a graduated schedule. Making payment of out-of-pocket moving expenses mandatory will require certain revisions of Sections 7260-7272 and these are included in the recommended legislation.

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, to add Sections 7260, 7260.1, 7260.2, 7260.3, 7260.4, 7260.5, 7260.6, 7260.7, 7260.8, 7260.9, 7260.10, 7262.1, and 7262.2 to, 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 (repealed)

Section 1. Section 7260 of the Government Code is repealed.

~~7260.--As used in this chapter:~~

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

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

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

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

Comment. Section 7260 formerly defined terms used in this chapter. However, the significant substantive changes accomplished by the new definition of "acquirer" (see new Section 7260) and the amended definition of "public entity" (see Section 7260.10), have required the amendment or addition of several other definitions to provide greater statutory specificity. Accordingly, former Section 7260 has been repealed and the applicable definitions are now set forth in Sections 7260 through 7260.10. See Sections 7260-7260.10 and the Comments thereto.

§ 7260. Definition: "acquirer"

Sec. 2. Section 7260 is added to the Government Code, to read:

7260. "Acquirer" means any public entity, public utility, or educational institution 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.

Comment. Sections 7260, 7260.4 ("educational institution"), and 7260.10 ("public entity") have been added 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" now embraces every entity, private or public, and the term "public entity" now refers to every kind of independent political or governmental entity in the state. See Section 7260.10 and the Comment thereto. 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 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.,

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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.

§ 7260.1. Definition: "affected property"

Sec. 3. Section 7260.1 is added to the Government Code, to read:

7260.1. "Affected property" means any real property which actually declines in fair market value because of acquisition by an acquirer of other real property and a change in the use of the real property acquired by the acquirer.

Comment. Section 7260.1 substantially reenacts subdivision (g) of former Section 7260. See Cal. Stats. 1969, Ch. 1489, § 1, p. .

§ 7260.2. Definition: "business"

Sec. 4. Section 7260.2 is added to the Government Code, to read:

7260.2. "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.

Comment. Section 7260.2 substantially reenacts subdivision (e) of former Section 7260. See Cal. Stats. 1969, Ch. 1489, § 1, p. .

§ 7260.3. Definition: "displaced person"

Sec. 5. Section 7260.3 is added to the Government Code, to read:

7260.3. (a) "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.

(b) 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.

Comment. Section 7260.3 has been added to provide the greater statutory specificity required by the expanded scope of this chapter. The section conforms substantially to subdivision (b) of Section 1430, Title 21, of the California Administrative Code. The latter section provides administrative guidance for the Department of Public Works, Division of Highways.

§ 7260.4. Definition: "educational institution"

Sec. 6. Section 7260.4 is added to the Government Code, to read:

7260.4. "Educational institution" means any institution within the State of California which is exempt from taxation under the provisions of Section 1a of Article XIII of the Constitution of the State of California.

Comment. Section 7260.4 defines the term "educational institution" used in Section 7260. The definition conforms with the use of the term in Section 1238(2) of the Code of Civil Procedure.

§ 7260.5. Definition: "family"

Sec. 7. Section 7260.5 is added to the Government Code, to read:

7260.5. "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.

Comment. Section 7260.5 is identical to subdivision (d) of former Section 7260. See Cal. Stats. 1969, Ch. 1489, § 1, p. .

§ 7260.6. Definition: "farm operation"

Sec. 8. Section 7260.6 is added to the Government Code, to read:

7260.6. "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.

Comment. Section 7260.6 is identical to subdivision (f) of former Section 7260. See Cal. Stats. 1969, Ch. 1489, § 1, p. .

§ 7260.7. Definition: "individual"

Sec. 9. Section 7260.7 is added to the Government Code, to read:

7260.7. "Individual" means a person who is not a member of a family.

Comment. Section 7260.7 is identical to subdivision (c) of former Section 7260. See Cal. Stats. 1969, Ch. 1489, § 1, p. .

§ 7260.8. Definition: "moving expense"

Sec. 10. Section 7260.8 is added to the Government Code, to read:

7260.8. (a) "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.

(b) 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.

Comment. Section 7260.8 defines "moving expense" as that term is used in subdivision (a) of Section 7262. The definition conforms substantially to subdivision (j) of Section 1430, Title 21, of the California Administrative Code. The latter section provides administrative guidance for the Department of Public Works, Division of Highways.

§ 7260.9. Definition: "owner"

Sec. 11. Section 7260.9 is added to the Government Code, to read:

7260.9. "Owner" means an individual:

(a) 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.

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

(c) 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.

Comment. Section 7260.9 has been added to provide that greater statutory specificity required by the expanded scope of this chapter. The section conforms to subdivision (c) of Section 1430, Title 21, of the California Administrative Code. The latter section provides administrative guidance for the Department of Public Works, Division of Highways.

§ 7260.10. Definitions: "public entity"

Sec. 12. Section 7260.10 is added to the Government Code, to read:

7260.10. "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.

Comment. Section 7260.10 defines "public entity" as that term is used in Section 7260. Section 7260.10 eliminates the exception of the Department of Public Works and restriction to Los Angeles County provided in subdivision (a) of former Section 7260. See Cal. Stats. 1969, Ch. 1489, § 1, p. .

§ 7261. Authority to give relocation advisory assistance

Sec. 13. 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. 14. 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 moving expense..expenses
~~in-moving-himself,-family,-business,-or-farm-operation,-including-moving~~
~~personal-property.~~ subject to the following limitations:

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

(2) Reimbursement for the transportation element of moving ex-
pense shall be provided for only the first 50 miles traveled. If the
displaced person 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.

(b) Any displaced person who moves from a dwelling who elects
to accept payments authorized by this subdivision in lieu of the pay-
ments ~~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

§ 7262

amount determined by agreement acceptable to both such person and the acquirer. ~~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.~~

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; however, a reasonable distance limitation has been incorporated. Subdivision (b) provides an in lieu payment that is limited in amount; however, substitution of such payment is at the option of the displaced person.

§ 7262

Subdivision (c) of Section 7262 has been substantially amended. This subdivision formerly provided, under certain circumstances, a fixed, arbitrary relocation (loss of business) payment to a displaced person required to move a farm or business. Insofar as the subdivision attempted to reimburse displaced farms or businesses for loss of patronage, profits, and good will, it has been replaced by Sections 7262.1 and 7262.2. Insofar as the subdivision attempted to avoid administrative inconvenience and delay, the amended subdivision now permits a displaced person and an acquirer to negotiate a fixed payment (which may turn out to be either more or less than actual expense) in lieu of the actual and reasonable expenses required to be compensated under subdivision (a). The new approach avoids the impossible task of setting arbitrary advance standards for business and farm moves, but provides an alternate procedure to subdivision (a). It should be noted, however, that subdivision (c) is optional to the displaced person (with the mutual consent of the acquirer). Accordingly, every such person is assured under subdivision (a) of indemnification for his expenses of moving.

§ 7262.1. Supplementary payments to displaced businesses

Sec. 15. Section 7262.1 is added to the Government Code, to read:

7262.1. (a) In addition to the payments provided 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 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.

(b) No payment shall be made under this section unless the acquirer is satisfied that the business:

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

(2) 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.

(c) For purposes of this section, 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.

§ 7262.1

Comment. Section 7262.1 has been added to replace the in lieu payment to displaced businesses formerly authorized by subdivision (c) of Section 7262. In form, this new section is similar to Section 211(c) of the Federal Uniform Relocation Assistance and Land Acquisition Policies Act of 1969 (Senate Bill 1).

§ 7262.2 Supplementary payments to displaced farms

Sec. 16. Section 7262.2 is added to the Government Code, to read:

7262.2. (a) In addition to the payments provided 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 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.

(b) In the case where the entire farm operation is not acquired by such acquirer, the payment authorized by this section shall be made only if the acquirer determines that the property not acquired is no longer an economic unit.

(c) For purposes of this section, 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.

§ 7262.2

Comment. Section 7262.2 has been added to replace the in lieu payment to displaced farms formerly authorized by subdivision (c) of Section 7262. In form, this section is similar to Section 211(d) of the Federal Uniform Relocation Assistance and Land Acquisition Policies Act of 1969 (Senate Bill 1).

§ 7263. Supplementary payments to owners of dwellings

Sec.17. Section 7263 of the Government Code is amended to read:

7263. (a) In addition to the payments ~~authorized~~ provided by Section ~~7261~~ 7262 , the ~~public-entity acquirer~~ , as a part of the cost of ~~construction~~ acquisition , 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~~ 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. 18. Section 7264 of the Government Code is amended to read:

7264. (a) In addition to the payment authorized provided by Section ~~7264~~ 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 Sts. & 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. 19. Section 7265 of the Government Code is amended to read:

7265. (a) In addition to the payment ~~authorized~~ provided by Section ~~7261~~ 7262, as a cost of acquisition, the public-entity acquirer may make a payment to any owner of 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 affected 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. 20. Section 7266 of the Government Code is repealed.

~~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.~~

Comment: See Comment to Section 7268.

Sec. 21. Section 7267 of the Government Code is repealed.

~~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.~~

Comment. See Comment to Section 7268.

§ 7268. Rules and regulations

Sec. 22. Section 7268 of the Government Code is amended to read:

7268. 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 .~~

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 repealed and the apparent limitation of Section 7266 on the scope of review of administrative determinations under this chapter has been eliminated.

§ 7272

Sec. 23. Section 7272 of the Government Code is repealed.

~~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.~~

Comment. See the Comments to Sections 7260 and 7260.10.

Sec. 24. 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.

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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. 25. 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.

Sec. 26. 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. 27. 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.

Sec. 28. 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

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.

Sec. 29. Article 6 (commencing with Section 600) of Chapter 3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

Comment. Article 6 (consisting of only one section--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. 30. 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. 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. 31. 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.

Sec. 32. 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.