

#36.60

9/24/70

Memorandum 70-101

Subject: Study 36.60 - Condemnation (Relocation Assistance)

SUMMARY

The Commission is asked to review, revise, if necessary, and approve for submission to the 1971 Legislature the attached recommendation relating to relocation assistance.

This recommendation provides a uniform, comprehensive statute applicable whenever and wherever property in California is acquired for a public use and the right of eminent domain is or could have been acquired to make such acquisition. Reimbursement of actual and reasonable moving expenses is made mandatory (Section 7262). Compensation for loss of business or farm income (Sections 7262.1, 7262.2), supplementary payments for owners and tenants of dwellings (Sections 7263, 7264) and for owners of property affected by airport improvements (Section 7265), and reimbursement of owners of dwellings for refinancing costs (Section 7266) are authorized, at the discretion of the acquirer.

Since the September 1970 meeting, we have learned that AB 277 has been enacted, making Government Code Sections 7260-7271 applicable to all public entities except the Department of Public Works. Accordingly, the task of making these provisions applicable to all acquirers is reduced mostly to a general clean-up. The major change presently effected by the recommendation will be to make payment of moving expenses mandatory. Also since September, at the Commission's direction, the staff has revised the recommendation to add Section 7266 authorizing payment of refinancing costs and Section 7272 permitting deviation from the provisions of this recommendation where required to meet federal requirements for federally-financed projects. The Commission should consider whether Section 7266

(refinancing costs) should be made mandatory. Finally, the Commission has previously determined that it would be desirable to submit a relocation assistance bill at the 1971 legislative session. The question remaining is whether the entire recommendation is satisfactory in form.

BACKGROUND

The basic recommendation was reviewed by the Commission prior to distribution for comment, and the relatively few comments we received were reviewed at the September 1970 meeting. Although a few public entities (cities) were opposed in principle to the mandatory payment of moving expenses, no significant changes were suggested in the manner of implementing this or the other provisions. However, a final, detailed examination of the recommendation by the Commission was deferred pending receipt of specific written comments from the Department of Public Works. Attached to this memorandum is a letter from Bob Carlson (Exhibit I), advising us that the Department believes that there is no pressing need for the changes suggested by the recommendation but further advising that the Department would apparently have no objection to the recommendation as presently drafted. The staff accordingly hopes that, at the October 1970 meeting, we can carefully review this recommendation section by section and secure its approval as a final recommendation to the 1971 Legislature. We wish to emphasize that this recommendation makes only those changes which the staff believes to be absolutely essential to secure a uniform statute providing mandatory payment of moving expenses. There are some weaknesses in the chapter which we discuss below. However, in view of the pending federal legislation, and the fact that we will certainly be reviewing this matter again as one aspect of compensation under the comprehensive condemnation statute, we believe that we should concentrate on the essentials now and let the details pass.

Section 7260. Old Section 7260 is to be repealed; however, its definitions are for the most part continued in new Sections 7260 through 7260.9. New Section 7260 defines "acquirer" to include any person or entity, public or private, which acquires property for a use for which it exercises or

could have exercised the right of eminent domain. This combines the substance of subdivisions (a) and (h) of former Section 7260. However, the section is now broadened to cover the Department of Public Works, public utilities throughout California, and educational institutions.

Section 7260.1. Section 7260.1 defines "affected property" and is identical to subdivision (g) of former Section 7260. This definition is important only in connection with Section 7265 which we will discuss below.

Section 7260.2. Section 7260.2 defines "business," and is identical to subdivision (e) of former Section 7260.

Section 7260.3. Section 7260.3 defines "displaced person." Subdivision (b) of former Section 7260 merely read:

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

However, both the regulations implementing this section and paragraph (3) of Section 511 of the Federal-Aid Highway Act of 1968 upon which this provision was based contain the following qualifying phrases:

(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, which is subsequently acquired.

The staff believes that these phrases are helpful and have accordingly incorporated them in Section 7260.3.

There exists further detail that could be borrowed from the regulations and incorporated into the statute. On the one hand, this would make the statute clearer and more certain. It would also help prevent an attempt by an acquirer to avoid the impact of the statute by adopting narrow regulatory definitions of persons eligible for payment. On the other hand, we run the risk of making the section too rigid and incorporating standards that do not comply with changing federal requirements. The staff believes that the section is adequate for our present purposes and suggests no further changes.

Section 7260.4. Section 7260.4 defines "educational institution," a new term used in Section 7260. The definition is identical to that set forth in Code of Civil Procedure Section 1238(2). (This is the section which authorizes condemnation in behalf of buildings and grounds for the use of such institutions.)

Section 7260.5. Section 7260.5 defines "family" and is identical to subdivision (d) of former Section 7260.

Section 7260.6. Section 7260.6 defines "farm operation" and is identical to subdivision (f) of former Section 7260.

Section 7260.7. Section 7260.7 defines "individual" and is identical to subdivision (c) of former Section 7260.

Section 7260.8. Section 7260.8 defines "moving expense." This provision will be new to this chapter (it is, however, the same provision that has been previously approved by the Commission). We believe that the guidelines furnished would probably be adopted by regulation even in the absence of the section. (The section itself is based on the present regulations of the Department of Public Works.) However, we think the section is helpful and desirable, even if not absolutely essential.

Section 7260.9. Section 7260.9 defines "public entity." The section eliminates the exception for the Department of Public Works but is otherwise substantively identical to subdivision (a) of former Section 7260.

In earlier versions of this recommendation, we included a definition of "owner." This definition has been deleted. We believe that the definition of this term can be handled adequately by regulation or, if necessary, by a court in the absence of regulation. The term "owner" is used only in sections authorizing payments at the discretion of the acquirer.

Hence, we do not have the same concern noted above in connection with the definition of "displaced person" that an acquirer might narrowly restrict the term to avoid payment. Here, an acquirer may always choose not to compensate "owners" so long as it does not discriminate between owners similarly situated.

Section 7261. Section 7261 merely authorizes the giving of relocation advisory assistance. The recommendation makes no substantive change in this section except to make it applicable to all acquirers.

Section 7262. Section 7262 is amended to require every acquirer to pay actual and reasonable moving expenses as this term is defined in Section 7260.8. The displaced person may elect to accept an in lieu payment fixed by schedule for residences--subdivision (b)--or by mutual agreement with the acquirer for businesses or farms--subdivision (c)--; otherwise, there are no limitations except those stated in Section 7260.8 and those implicit in the adjectives "actual and reasonable."

Earlier versions of this recommendation also included the following limitations:

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

(2) Reimbursement for the transportation element of moving expense 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.

The staff believes that these limitations could be adopted by regulation by the separate acquirers. Expenses that exceeded these limitations do not seem "reasonable." However, we have eliminated this detail from the

statute because we do not believe it is essential and for the reasons indicated above in the second paragraph under Background.

Subdivision (c) of former Section 7262 provided an in lieu payment in certain circumstances for business and farms. This provision has been replaced by Sections 7262.1 and 7262.2 discussed below.

Section 7262.1. Section 7262.1 authorizes a limited supplementary payment to displaced businesses. Subdivision (c) of former Section 7262 permitted a business which would suffer a loss of patronage to elect to receive a fixed payment in lieu of payment for moving expense. The staff believes that such approach merely confused two distinct elements of damage. Under this recommendation, a business is always reimbursed for its moving expenses; in addition, an acquirer may make an additional supplementary payment to a business which suffers a loss of patronage.

In form, Section 7262.1 is practically identical to former subdivision (c). Inasmuch as payment under this section is discretionary in any case, it hardly seems necessary to state separately the limitations set forth in subdivision (b). Subdivision (b) could therefore be eliminated and subdivision (a) revised to provide:

(a) In addition to the payments provided by Section 7262, as a part of the cost of acquisition, the acquirer may make a payment not to exceed the average annual net earnings of the business or five thousand dollars, whichever is less, to any displaced person who moves or discontinues a business which cannot be relocated without a substantial loss of its existing patronage.

This different language is not essential; however, it does perhaps offer a better drafted section.

Section 7262.2. Section 7262.2 authorizes a limited supplementary payment to displaced farms similar to that discussed immediately above.

It should be noted that the staff has revised this section to make clear that, to be eligible for this payment, a farm operation must show a substantial loss of income. This was not formerly required when the payment served as an in lieu moving expense payment. This should, however, create no conflict with federal requirements for federally financed projects because under the new subdivision (c) of 7262, the acquirer and the displaced operator may still agree to a fixed payment equal to that authorized under the old subdivision (c).

Section 7263. Section 7263 authorizes discretionary supplementary payments to owners of dwellings to help such owners secure substitute housing. We have made no substantial change in this section beyond making it applicable to all acquirers.

Section 7264. Section 7264 authorizes discretionary supplementary payments to owners and tenants of dwellings not eligible for payments under Section 7263 to help such persons secure substitute housing. We have made no substantial change in this section beyond making it applicable to all acquirers.

We note in passing the different maximum limits and slightly different standards for substitute housing set forth in subdivisions (b) of Sections 7263 and 7264. These are continued from existing law. We see no reason why these standards were not made the same originally, or why a discretionary section requires an arbitrary maximum limit, however, in keeping with our purpose here we suggest no change at this time.

Section 7265. Section 7265 authorizes a payment to owners of property contiguous to property acquired for airport purposes for loss in value of their property due to the changed use. This section formerly authorized

such payments when property was acquired for any public use. In 1970, it was restricted to acquisitions for airport purposes. This section does not provide relocation benefits but rather compensation for intangible detriment. Because of its special nature, we believe consideration of the principle expressed and its scope should be deferred until the Commission deals with this aspect of compensation in its comprehensive condemnation statute. We included a statement to this effect in the tentative recommendation. See footnote 10 of the preliminary part. The only change made in this section was to correct an obvious error in the first clause which refers to Section 7261 instead of Section 7262.

Section 7266 (old). Former Section 7266 is repealed and its apparent limitation on the scope of review of the acquirer's decisions whether to compensate is eliminated.

Section 7266 (new). New Section 7266 authorizes a discretionary supplementary payment to reimburse owners of dwellings for refinancing costs. The section is identical in form to Section 158.2 of the Streets and Highways Code except, of course, it is made applicable to all acquirers rather than just the Department of Public Works.

This section is neither as clear nor as generous as it could be and will probably have to be amended eventually to conform to federal requirements. However, Bob Carlson sent us a copy of the proposed comparable section in the pending 1970 Federal-Aid Highway Act. (See Section 121 attached to Exhibit I.) This section (121) has at least as many problems as does Section 158.2. Moreover, the staff believes that it would be desirable to make Section 7266 mandatory; that is, an acquirer should be required to compensate a residential owner for reasonable refinancing costs. It is far easier to state the principle than it is to draft the

section implementing it. However, the staff has drafted a new Section 7266 and explanatory Comment (Exhibit II) that we believe is an improvement over both Section 158.2 (old Section 7266) and the federal model. The Commission should determine at the October meeting whether any section dealing with this problem should be included in our recommendation and, if so, what form this section should take.

Section 7267. Old Section 7267 is repealed. Its substance is incorporated into revised Section 7268.

Section 7268. Section 7268 designates the respective rule-making body for each acquirer. At the Commission's direction, the staff has revised this section to provide a hierarchy of rules to ensure that some body of rules and regulations will always be available.

Section 7272 (old). Old Section 7272 was amended in 1970 to eliminate the former restriction to acquisitions in Los Angeles County. The staff can see no purpose in retaining this section and has accordingly repealed it and used this section number for a new section.

Section 7272 (new). New Section 7272 is added to prevent conflict with federal requirements where acquisitions are made for a federally assisted project. In such circumstances, where application of any provision of this chapter would result in the limitation or denial of federal funds such provision is made inoperative to the extent necessary to secure such funds and, in addition, the acquirer is authorized to comply with federal requirements. This should ensure that a displaced person will get the benefit of the most favorable legislation.

With one exception, the remaining sections in the recommendation are clean-up sections necessary to avoid conflict with the proposed comprehensive scheme. The exception is an "urgency" section which we have added at the end of the recommendation.

Respectfully submitted,

Jack I. Horton
Associate Counsel

DEPARTMENT OF PUBLIC WORKS

LEGAL DIVISION

1120 N STREET, SACRAMENTO 95814



September 16, 1970

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

Dear John:

You have asked for my comments on the relocation assistance study by the Law Revision Commission. As I indicated to you in my previous letter, the Department feels that a uniform statute on relocation assistance is not needed in California at this time because of the pendency before Congress of several bills relating to this same subject.

As you know AB 277 providing for a uniform relocation assistance law applicable to all public entities was signed by the Governor on September 14 and is now Chapter 983. We believe this law will be sufficient until such time as Congress acts. The Department has no objections to the Law Revision Commission amending Chapter 983 and Government Code Sections 7260 et seq. to make the relocation assistance payments mandatory rather than discretionary to the same extent that the same payments are made mandatory by the Federal-Aid Highway Act of 1968.

For your information I am enclosing a portion of S. 4260, the 1970 Federal-Aid Highway Act introduced by Senator Randolph. Section 121 of the bill provides for differential interest payments for replacement housing. A xeroxed copy of pages 35 and 36 of the bill are enclosed. This statute is similar to Assemblyman Lanterman's bill AB 1630 which will be signed by the Governor shortly.

Mr. John H. DeMouilly
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When the Federal-Aid Highway Act of 1970 is enacted, conforming changes will have to be made in the legislation accomplished by AB 1630. I am also enclosing our draft of rules and regulations to implement AB 1630.

Very truly yours,



ROBERT F. CARLSON
Assistant Chief Counsel

Enclosures

INTEREST PAYMENTS FOR REPLACEMENT HOUSING

Sec. 121. Section 506 of title 23, United States Code is amended by redesignating subsection (b) as subsection (c) and inserting a new subsection (b) as follows:

"(b) In addition to the amounts otherwise authorized by this title, the State agency shall make an interest payment to compensate such owner for any increased rate of interest which such owner is required to pay for financing such replacement dwelling.

"This interest payment shall be computed and allowed only if there was an existing mortgage against the dwelling transferred to the State and such mortgage was a valid lien on said premises for at least one year prior to the institution of negotiations for the acquisition of such property, and if the mortgage for the replacement dwelling bears a higher rate of interest than the interest rate on the mortgage of the transferred dwelling; but, in no event shall such interest on the replacement dwelling be greater than the maximum interest allowable under State law.

"The value of the interest payment shall be the difference in the interest rate existing on the balance of any mortgage on a transferred dwelling and the interest rate on the mortgage of the replacement dwelling for the remainder of the term of any such mortgage on such transferred dwelling reduced to discounted present value.

"The discount rate as above provided shall be the maximum rate of interest permitted to be paid on savings deposits by any mutual savings bank within the State pursuant to the rules and regulations of the Federal Deposit Insurance Corporation."

EXHIBIT II

§ 7266. Supplementary payments to reimburse owners of dwellings for refinancing costs

Sec. 20. Section 7266 is added to the Government Code, to read:

7266. (a) In addition to the payments provided by Section 7262, as a part of the cost of acquisition, an acquirer shall make a payment as provided in this section to the owner of real property which is acquired by the acquirer to compensate the owner for the cost incurred by him to finance the purchase of similar real property.

(b) A payment is required under this section only if:

(1) The property acquired was improved with a single-, two-, or three-family dwelling; and

(2) Such dwelling was owned and actually occupied by the owner for not less than one year prior to the first written offer by the acquirer for the acquisition of such property.

(c) The payment shall equal the smallest amount reduced to present worth by which total interest payments for the new indebtedness exceed the total interest payments for the old indebtedness for a period of seven years following the acquisition.

(d) For the purposes of this section, the term "old indebtedness" means any bona fide and recorded mortgage or deed of trust existing as a valid lien against the acquired property at least one year prior to the first written offer by the acquirer for the acquisition of such property. Total interest payments for the old indebtedness shall be computed by taking into account all of the following:

§ 7266

- (1) The principal amount of the old indebtedness.
- (2) The term of the old indebtedness.
- (3) The interest rate of the old indebtedness not to exceed the maximum interest allowable by law.

(e) For the purposes of this section, the term "new indebtedness" means any bona fide and recorded mortgage or deed of trust existing as a valid lien against the replacement property. Total interest payments for the new indebtedness shall be computed by taking into account all of the following:

- (1) The principal amount of the new indebtedness not to exceed the unpaid principal of the old indebtedness.
- (2) The remaining term of the old indebtedness or the remaining term of the new indebtedness, whichever is less.
- (3) The interest rate of the new indebtedness not to exceed the maximum interest allowable by law.

(f) The present worth of the amount referred to in subdivision (c) shall be computed by discounting such amount at a rate equal to the maximum rate of interest permitted to be paid on savings deposits by any mutual savings bank within this state pursuant to the rules and regulations of the Federal Deposit Insurance Corporation.

(g) An owner who elects to accept the payment authorized by this subdivision in lieu of the payment required by subdivision (c) may receive a fixed payment in an amount determined by agreement acceptable to both the owner and the acquirer.

Comment. Section 7266 requires all acquirers to compensate to the extent indicated for the cost of refinancing the purchase of replacement property where an owner-occupied dwelling is acquired. Under former law, Streets and Highways Code Section 158.2 merely authorized the Department of Public Works to make similar payments in connection with highway acquisitions. In contrast, Section 7266 makes payment mandatory and is applicable to all acquirers.

The amount of such payment is determined pursuant to subdivisions (c) through (f) or may be fixed by mutual agreement pursuant to subdivision (g). The latter procedure provides administrative convenience and permits payment in advance of the owner's replacement of the acquired property. However, subdivision (g) is optional to the owner (with the consent of the acquirer). Thus, in some cases at least, the amount of the payment must be estimated.

Basically, payment is computed by determining the difference between (1) the highest interest payments the owner would have made during the seven-year period following the acquisition under any encumbrance existing as a valid lien on the acquired property and (2) the lowest interest payments he will be required to make under any encumbrance existing as a valid lien on the replacement property and then reducing this difference to its present value using the discount rate provided in subdivision (f). The seven-year limitation is an arbitrary period intended to allow for the probability that an owner would sell anyway, whether or not there had been an acquisition, and for the likelihood of fluctuations in financing rates over such period.

The principal amount, the term, and the interest rate of both the old and the new encumbrances are subject to limitations, and this, together

with the presence of multiple encumbrances, can complicate the actual computations. Following, however, are examples of the results achieved under this section that illustrate how these factors are taken into account.

Example 1. The owner's original dwelling is encumbered by a first mortgage with a remaining balance of \$20,000, payable in 20 years, interest at 6%.

He replaces this with a dwelling encumbered by a first mortgage with a remaining balance of \$18,000, payable in 20 years, interest at 8% and a second mortgage with a remaining balance of \$3,000, payable in 10 years, interest at 9%.

His payment should equal the present value of:

- (1) 2% (8% minus 6%) on \$18,000 for 7 years; plus
- (2) 3% (9% minus 6%) on \$2,000 for 7 years.

It should be noted that payment is limited to a seven-year period, to the smallest possible interest differential, and to the principal amount of the original encumbrance.

Example 2. The same original financing as in Example 1, but the replacement dwelling is encumbered by a first mortgage with a remaining balance of \$18,000, payable in 20 years, interest at 8%, and a second mortgage with a remaining balance of \$3,000, payable in 5 years, interest at 9%.

His payment should equal the present value of:

- (1) 2% (8% minus 6%) on \$18,000 for 7 years; plus
- (2) 3% (9% minus 6%) on \$2,000 for the first 5 years.

It should be noted that here, after 5 years, the total indebtedness on the replacement dwelling is less than the principal amount of the mortgage on the original dwelling and payment is limited accordingly.

Example 3. The owner's original dwelling is encumbered by a first mortgage with a remaining balance of \$20,000, payable in 20 years, interest at 6%, and a second mortgage with a remaining balance of \$3,000, payable in 4 years, interest at 7%.

He replaces this with a dwelling encumbered by a first mortgage with a remaining balance of \$21,000, payable in 25 years, interest at 9%, and a second mortgage with a remaining balance of \$4,000, payable in 3 years, interest at 10%.

His payment should equal the present value of:

- (1) 2% (9% minus 7%) on \$3,000 for the first 3 years; plus
- (2) 3% (9% minus 6% and 10% minus 7%) on \$20,000 for the first 3 years; plus
- (3) 2% (9% minus 7%) on \$3,000 for the fourth year; plus
- (4) 3% (9% minus 6%) on \$18,000 [\$21,000 minus \$3,000] for the fourth year; plus
- (5) 3% (9% minus 6%) on \$20,000 for the last three years.

It should be noted here that payment is limited not only by the smallest possible interest differential but also by the shortest terms on the old and new encumbrances.

Example 4. The owner's original dwelling is encumbered by a first mortgage with a remaining balance of \$20,000, payable in 20 years, interest at 6%, and a second mortgage with a remaining balance of \$3,000, payable in 3 years, interest at 7%.

He replaces this with a dwelling encumbered by a first mortgage with a remaining balance of \$12,000, payable in 10 years, interest at 6%, and a second mortgage with a remaining balance of \$13,000, payable in 10 years, interest at 9%.

His payment should equal the present value of:

- (1) 2% (9% minus 7%) on \$3,000 for the first 3 years; plus
- (2) 3% (9% minus 6%) on \$8,000 [\$23,000 minus (\$12,000 plus \$3,000)] for the first 3 years; plus
- (3) 3% (9% minus 6%) on \$8,000 [\$20,000 minus \$12,000] for the last 4 years.

Example 5. Same facts as in Example 4, except the first mortgage on the replacement dwelling is payable in 5 years.

His payment should equal the present value of:

- (1) 2% (9% minus 7%) on \$3,000 for the first 3 years; plus
- (2) 3% (9% minus 6%) on \$8,000 [\$23,000 minus (\$12,000 plus \$3,000)] for the first 3 years; plus
- (3) 3% (9% minus 6%) on \$8,000 [\$20,000 minus \$12,000] for years 4 and 5; plus
- (4) 3% (9% minus 6%) on \$13,000 for last 2 years.

It should be noted here that the acquirer gets the benefit of the favorable financing that the owner is able to obtain on the replacement housing, but only for the length of time for which it lasts.

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October 2, 1970

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Re: Memorandum 70-101 and
Tentative Recommendation
— Relocation Assistance,
Proposed \$7262.1

Gentlemen:

The Commission is by now aware of my views concern-
ing compensability of business losses. I understand that
reprints of my article entitled "When is 'Property' Not
'Property Itself', etc.", 6 Cal. Western L.R. 57 (1969),
have been supplied to Commission members by the staff,
and I will therefore not reiterate my views here; they

are fully articulated in that article.*/ I would however, strongly urge that instead of the utterly inadequate palliative contained in proposed §7262.1, the Commission recommend legislation which would permit businessmen damaged by condemnation to prove and recover their actual losses in the judicial proceeding in which their just compensation is determined.

*/ It bears emphasis that I have lots of company among legal commentators who un-animously agree that the present rules of non-compensability of business losses are arbitrary, unjust and indefensible. See Aloi and Goldberg, "A Reexamination of Value, Good Will and Business Losses in Eminent Domain," 53 Cornell L.R. 604 (1968); Note, "Eminent Domain Valuation in an Age of Redevelopment: Incidental Losses", 67 Yale L. J. 61 (1957); Note, "Just Compensation for the Small Businessman", 2 Columbia Jour. of Law and Soc. Problems 144 (1966); Spies and McCoid, "Recovery of Consequential Damages in Eminent Domain", 48 VA L.R. 437 (1962); Note, "The Unsoundness of California Noncompensability Rule as Applied to Business Losses in Condemnation Cases", 20 Hastings L. J. 675 (1969); Slavitt, "More Inequities and Injustices of Condemnation Acquisitions", 43 Conn. Bar Jour. 89 (1969). Also see State v. Saugen (1969), 169 NW2d 37, where the Supreme Court of Minnesota awarded compensation for going concern value where the business could not be relocated (the opinion collects additional law review commentaries). Finally, see "Relocation: Unequal Treatment of People and Businesses Displaced by Governments", Advisory Commission of Intergovernmental Relations, Jan. 1965, pp. 1-10, and Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs, House Comm. on Public Works, 88th Cong., 2d Sess. (1964), pp. 57-58, 107-111, 113-116. In spite of extended research on this point, I have found no recent commentaries defending the present rules.

Putting such fundamental failings of the proposed legislation aside, proposed §7262.1 of the above Recommendation contains two serious deficiencies.

First, the supplementary payment should be mandatory, not permissive. As now proposed §7262.1 guarantees nothing by way of relief to the displaced businessman, no matter what damage he may have suffered.

Moreover, §7262.1 as now proposed lends itself to coercive uses. For example, what is to prevent the condemnor from threatening a businessman-condemnee who won't accept condemnor's offer, with denial of benefits under §7262.1?*/

Besides, what are the standards which the acquirer must observe in deciding whether it will or will not grant the §7262.1 benefits to a particular condemnee or a class of condemnees? This inquiry alone probably renders the section unconstitutional. The legislature may not delegate its functions to other governmental bodies without clearly

*/ At p. 6 of the tentative recommendation the Commission expressly - and correctly - recognizes that "administrative discretion with respect to this issue [moving costs] is a potential source of abuse". Isn't the same true of "administrative discretion" when applied to supplementary payments under §7262.1?

spelling out the standards upon which the delegated authority is to be exercised.*/ §7262.1 appears to be deficient in this regard.

Finally, subsection (c) contains a major lapse which in many cases would nullify the benefits of §7262.1, particularly for small businesses - the very businesses most in need of such benefits. As you may recall from discussions at recent meetings, it is often the practice of condemnors to acquire residential properties in the project area first. Thus, where there is a neighborhood shopping center or other neighborhood-oriented business, it starts experiencing a decline in earnings as soon as the homes in the neighborhood start being acquired. The acquisition process may take years. Thus, by the time the provisions of §7262.1 (c) are invoked, the "two taxable years immediately preceding the taxable year in which the business moves" provide a distorted picture of the "average annual net earnings."

*/ See Knudsen Creamery Co. v. Brock (1951) 37 C2d 485, 492-493 [7]; Kuqler v. Yocum (1968) 69 C2d 371, 375-376.

Under such a procedure, the condemnor get to depress the "average annual net earnings" during the critical period, and then make a supplementary payment based on such depressed earnings. This, of course, is grossly unfair, particularly to the smallest, family-operated businesses.

The larger and more successful businesses, even after the depressing effect on their earnings by the pre-condemnation blight, will likely clear over \$5,000 per year, and thus still get the statutory benefit. The marginal mom-and-pop operations, however, will often have their none-too-high normal earnings depressed below \$5,000. In some cases such operations are actually forced out of business by the declining trade and may have no earnings during one or possibly both of the critical years.

Since §7262.1 is presumably designed to provide relief primarily to these small businesses,*/ it ought to be redrafted so as to provide real relief as of right, not an illusion of relief operative only at the unbridled discretion of a faceless bureaucrat. As it is, the \$5,000

*/ Obviously, in the case of a successful business, \$5,000 will not approach its average annual earnings, and as to such a business §7262.1 is in the nature of offering a band-aid to cure a machete chop.

limitation is grossly unrealistic these days (if my memory serves me, that is barely above the governmentally enshrined poverty level).

Accordingly, if the Commission is bound and determined to turn its back on the real needs of displaced businesses, and intends to recommend §7262.1, that section should be redrafted:

(a) To make it mandatory rather than permissive,

(b) To provide that where the "average annual net earnings" are depressed below their normal level by the pendency of the acquisition, they be correspondingly adjusted upwards, and

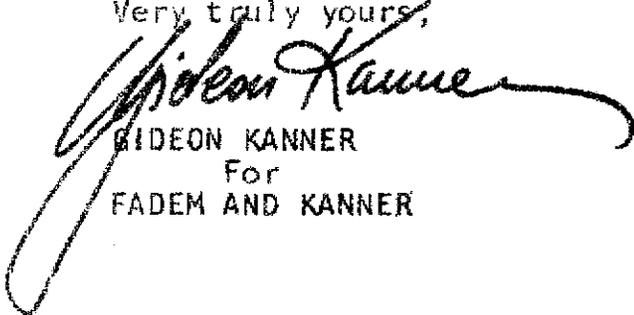
(c) To increase the maximum payment to not less than \$10,000.*/ With all due respect, the proposed \$5,000 maximum is, in the context of today's inflationary economy, ridiculously inadequate.

*/ The Commission comment should in addition exhort the Legislature to reconsider any such amount in light of changing future economic conditions.

California Law Revision Commission
October 2, 1970
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Best of all, the whole idea of niggardly and
grudgingly limited compensation to displaced businesses
should be scrapped and replaced with the recognition of
an owner's right to litigate and prove his actual damages
in judicial proceedings which determine his just compensa-
tion.

Very truly yours,



GIDEON KANNER
For
FADEM AND KANNER

GK:bt

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

CONDEMNATION LAW AND PROCEDURE

Relocation Assistance

CALIFORNIA LAW REVISION COMMISSION
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Important Note: 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, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised.

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

NOTE

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

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TENTATIVE
RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION
relating to
CONDEMNATION LAW AND PROCEDURE
Relocation Assistance

Traditional judicial interpretations of the constitutional provision¹ that private property shall not be taken for public use without "just compensation" having first been made have required only that the person whose land is taken for public use be paid its market value.² Accordingly, recent efforts to obtain additional compensation for the various and many expenses of moving to another location following acquisition for a public use have been addressed to the legislatures. In response to these pressures, legislation has been enacted at both the federal³ and state⁴ levels in an attempt to remedy the situation.

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1. Cal. Const., Art. I, § 14.
 2. See, e.g., *Los Gatos v. Sund*, 234 Cal. App.2d 24, 27, 44 Cal. Rptr. 181, 183 (1965), quoting *Monongahela Nav. Co. v. United States*, 148 U.S. 312, (1892); *Pacific Gas & Elec. Co. v. Chubb*, 24 Cal. App. 265, 267, 141 P. 36, (1914) (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).
 3. See, e.g., 23 U.S.C.A. §§ 501-511 (Federal-Aid Highway Act of 1968).
 4. Until 1970, separate statutes covering relocation assistance and reimbursement for moving expense applied to (1) public entities except the State Department of Public Works (see Cal. Stats. 1969, Ch. 1489, § 1 (former Govt. Code § 7260)) and public utilities (see Pub. Util. Code § 600 (Cal. Stats. 1969, Ch. 1489, § 3)) acquiring property in Los Angeles County; (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 (see Cal. Stats. 1965, Ch. 1650, amended by Cal. Stats. 1968, Ch. 1436 (formerly Govt. Code §§ 15950-15956)); (3) redevelopment agencies (see Health & Saf. Code §§ 33135, 33415, 34014);

In California, a major step towards a uniform, comprehensive scheme for relocation assistance was taken in 1970 when Chapter 16 of Division 7 of Title 1 of the Government Code was amended to be made applicable to all public entities acquiring property in California except the State Department of Public Works.⁵ Chapter 16 is patterned after the Federal-Aid Highway Act of 1968.⁶ It provides 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 compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property."⁷ In place of actual expenses, the displaced person may generally

(4) housing authorities (see Health & Saf. Code § 34330); (5) any public entity acquiring property for airport expansion and development (see Pub. Util. Code §§ 21690.5-21690.17 (Cal. Stats. 1969, Ch. 1228, § 1)); (6) the San Francisco Bay Area Rapid Transit District (see Pub. Util. Code §§ 29110-29117); and (7) the State Department of Public Works when acquiring property for state or federal-aid highways (see Sts. & Hwys. Code §§ 156-159.6).

No two of these statutes were or are exactly alike. The ones enacted earlier were generally less detailed and sometimes set arbitrary limits on the payment of even the actual out-of-pocket cost of moving personal property. In 1970, Number 1 listed above was amended; Number 2 was repealed; Numbers 3 through 7 were not changed and remain in effect.

5. See Cal. Stats. 1970, Ch. 983, § 1, amending Govt. Code § 7260(a). This section and chapter were formerly restricted to public entities acquiring property in Los Angeles County.
6. 23 U.S.C.A. §§ 501-511.
7. See Government Code Section 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.

elect to receive limited in lieu payments.⁸ In addition to moving expenses, the entity is authorized to make limited supplementary payments to certain owners and tenants of residential property to enable them to obtain dwellings

8. See Government Code Section 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).

(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,⁹ as well as limited payments to owners of property which is contiguous to property acquired

9. See Government Code Sections 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.

for airport purposes and which declines in market value due to the use of that property for that purpose.¹⁰ Finally, authorization for advisory assistance is provided,¹¹ the appropriate rule-making body is designated,¹² and the scope of review receives mention.¹³

Although significant progress has been made in providing relocation assistance for persons involuntarily displaced by acquisitions for public use, at

10. See Government Code Section 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 airport purposes 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 airport purposes 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.

Section 7265 obviously does not provide relocation benefits but, in very limited circumstances, provides compensation for intangible detriment caused by the proximity of a public improvement. Because of the special nature of this section, the Commission has deferred consideration of both the principle and scope of this section until the Commission's study of this aspect of condemnation is completed.

11. See Govt. Code § 7261.

12. See Govt. Code § 7267.

13. See Govt. Code § 7266.

least two steps remain to be completed or taken. First, the principle of reimbursement should be uniformly applied to all acquirers of property for public use. Second, as a matter of fairness, reimbursement should be mandatory in certain instances; 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, the principle of uniformity seems to have been established in 1970 by the amendment of Chapter 16 noted above. However, there remain in effect a number of statutes enacted earlier which provide overlapping and potentially conflicting provisions relating to relocation assistance.¹⁴ This situation should be remedied. A single, uniform, comprehensive statute should apply whenever property is acquired for a public use and the person acquiring the property exercises or could have exercised the right of eminent domain to make such acquisition. Such a statute would eliminate any 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 seems clear. Proper accounting and enlightened decision-making require that all the costs attributable to a project be considered in determining whether to undertake it. It

14. See note 4, supra.

might be suggested that moving expenses are too conjectural or too expensive to be compensable. However, we are dealing here with actual, fixed out-of-pocket expenses and it seems clear that these can be ascertained with reasonable certainty.¹⁵ 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. 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 the task be completed of making Government Code Sections 7260 through 7272 applicable to all potential condemnors acquiring property in California for a public use. Although other payments, including compensation for business income losses and for the cost of refinancing residential property, should remain discretionary, a displaced person should be entitled as a matter of right to recover 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 payments fixed according to a graduated schedule or by mutual agreement. Making limited payment of out-of-pocket moving expenses mandatory will require certain revisions of Sections 7260-7272 and these are included in the recommended legislation.¹⁶

15. See, e.g., *Los Gatos v. Sund*, 234 Cal. App.2d 24, 28, 44 Cal. Rptr. 181, 184 (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.

16. The Commission's recommendations are based on the law in effect as of the date of this recommendation. However, the Commission is aware that federal legislation relating to this subject is pending which, if enacted, may require certain conforming changes in these recommendations.

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

An act to amend Sections 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, 7262.1, 7262.2, 7266, and 7272 to, and to repeal Sections 7260, 7266, 7267, and 7272 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 any city or county 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-ether-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 7260.9), 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 7260.9. See Sections 7260-7260.9 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, educational institution, or other person 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 7260.9 ("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 7260.9 and the Comment thereto. Formerly, this chapter applied to almost all public entities, but excluded the State Department of Public Works, as well as public utilities, which acquired property outside of Los Angeles County. See Cal. Stats. 1969, Ch. 1489, §§ 1, 3; Cal. Stats. 1970, Ch. 983, § 1. Various other statutes dealt with relocation assistance by specific entities in limited situations. See, e.g., Health & Saf. Code §§ 33135, 33415, 34014 (redevelopment agencies); Health & Saf. Code § 34330 (housing authorities); Cal. Stats. 1969, Ch. 1228, § 1 (formerly Pub. Util. Code §§ 21690.5-21690.17)(any public entity acquiring property for airport expansion and development); Cal. Stats. 1966, 1st Ex. Sess., Ch. 165 (formerly Pub. Util. Code §§ 29110-29117)(San Francisco Bay Area Rapid Transit District); Cal. Stats. 1968, 1st Ex. Sess., Ch. 3, § 3,

§ 7260

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 completely 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 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.

Comment. Section 7260.1 is identical to subdivision (g) of former Section 7260. See Cal. Stats. 1970, Ch. 983, § 1.

§ 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 is identical to subdivision (e) of former Section 7260. See Cal. Stats. 1970, Ch. 983, § 1.

§ 7260.3

§ 7260.3. Definition: "displaced person"

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

7260.3. "Displaced person" means any individual, family, business, or farm operation which moves from real property acquired by an acquirer as a result of either of the following:

(a) The acquisition of such real property.

(b) The reasonable expectation of acquisition of such real property, which is subsequently acquired.

Comment. Section 7260.3 is based upon subdivision (b) of former Section 7260. See Cal. Stats. 1970, Ch. 983, § 1. Subdivisions (a) and (b) have been added to help provide the greater statutory specificity required by the expanded scope of this chapter. These subdivisions are based upon subdivision (b) of Section 1430, Title 21, of the California Administrative Code and paragraph (3) of Section 511 of Title 23 of the United States Code (Federal-Aid Highway Act of 1968).

§ 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. 1970, Ch. 983, § 1.

§ 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. 1970, Ch. 983, § 1.

§ 7260.7

§ 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. 1970, Ch. 983, § 1.

§ 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: "public entity"

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

7260.9. "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 7260.9 defines "public entity" as that term is used in Section 7260. Section 7260.9 eliminates the exception of the Department of Public Works but is otherwise substantively identical to subdivision (a) of former Section 7260. See Cal. Stats. 1970, Ch. 983, § 1.

§ 7261. Authority to give relocation advisory assistance

Sec. 12. 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, except the Department of Public Works. See Cal. Stats. 1970, Ch. 983, § 1. Similar or identical overlapping authority was granted to these and 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 single comprehensive grant of authority for all "acquirers" appears to have existed.

§ 7262. Payment of moving expenses

Sec. 13. 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.~~

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

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subdivision in lieu of the payment ~~authorized~~ required by subdivision (a) ~~of this section~~, may receive a fixed relocation payment in an amount 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 formerly applied to most public entities, as well as public utilities acquiring property in Los Angeles County, but was merely discretionary. See Cal. Stats. 1970, Ch. 983, § 1; Cal. Stats. 1969, Ch. 1489, § 3. Identical, overlapping 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 redevelopment agencies and to housing authorities. See 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). However, 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. 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.

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

7262.1. (a) In addition to the payments provided by Section 7262, as a part of the cost of acquisition, the acquirer may make a payment to any displaced person who moves or discontinues his business not to exceed the average annual net earnings of the business or five thousand dollars (\$5,000), 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.

(d) To be eligible for the payment authorized by this section, the business 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 section.

§ 7262.1

Comment. Section 7262.1 authorizes a discretionary supplementary payment to displaced business. Such payment is in addition to the payment of moving expenses under Section 7262 and is intended to meet the different problems of loss of business caused by the displacement of a business. The limitations and requirements set forth here are based on those formerly contained in subdivision (c) of Section 7262.

§ 7262.2. Supplementary payments to displaced farms

Sec. 15. Section 7262.2 is added to the Government Code, to read:

7262.2. (a) In addition to the payments provided by Section 7262, as a part of the cost of acquisition, the acquirer may make a payment not to exceed the average annual net earnings of the farm operation or five thousand dollars (\$5,000), whichever is less, to any displaced person who moves or discontinues a farm operation which cannot be relocated without a substantial loss of income.

(b) 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.

(c) To be eligible for the payment authorized by this section, the 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 7262.2 authorizes a discretionary supplementary payment to displaced farms. Such payment is in addition to the payment of moving expenses under Section 7262 and is intended to meet the different problems of loss of income caused by the disruption of a farm operation. The limitations and the requirements set forth here are based on those formerly contained in subdivision (c) of Section 7262.

§ 7263. Supplementary payments to owners of dwellings

Sec. 16. 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~~ as a part of the cost of ~~construction~~ acquisition , the acquirer 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 not exceed the amount ~~, if any,~~ which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the ~~public entity~~ acquirer , to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and the ~~employee's~~ displaced owner's place of employment, and available on the market.

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

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

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and to public utilities acquiring property in Los Angeles County. See Cal. Stats. 1970, Ch. 983, § 1; Cal. Stats. 1969, Ch. 1489, § 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). However, no single comprehensive grant of authority for all "acquirers" appears to have existed.

Subdivision (b) of Section 7263 has been amended to make clear that a payment under this section may only partially compensate an owner for the difference in value between his former dwelling and the substitute dwelling.

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

Sec. 17. Section 7264 of the Government Code is amended to read:

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

(b) Such payment, not to exceed one thousand five hundred dollars (\$1,500), shall ~~be~~ not exceed 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 to almost all public entities and to public utilities acquiring property in Los Angeles County. See Cal. Stats. 1970, Ch. 983, § 1; Cal. Stats. 1969, Ch. 1489, § 3. An identical section applied 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. Code § 158). However, no single comprehensive grant of authority for all "acquirers" appears to have existed.

§ 7264

Subdivision (b) of Section 7264 has been amended to make clear that a payment under this section may only partially compensate a displaced person for the difference in rent he is required to pay or for a down-payment on substitute property.

§ 7265. Payments to owners of "affected property"

Sec. 18. 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 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 airport purposes 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 airport purposes 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.

Comment. Section 7265 is amended merely to correct the reference to Section 7262. See Recommendation Relating to Condemnation Law and Procedure: Relocation Assistance, 10 Cal. L. Revision Comm'n Reports , n.10 (1971).

§ 7266. (repealed)

Sec. 19. 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.

§ 7266. Supplementary payments to reimburse owners of dwellings for refinancing costs

Sec. 20. Section 7266 is added to the Government Code; to read:

7266. In addition to the payments provided by Section 7262, as a part of the cost of acquisition, an acquirer may make a payment not to exceed three thousand dollars (\$3,000) to the owner of real property improved with a single-, two- or three-family dwelling, which is acquired by the acquirer, for the cost incurred by such owner to finance the purchase of similar real property; provided that, for at least two years prior to the date of the first offer to acquire by the acquirer, such real property was subject to a bona fide and recorded first mortgage or first deed of trust. The computation of such payment shall be based upon a schedule adopted by the acquirer, which schedule shall be computed by taking into account:

(a) The principal amount of the new indebtedness not to exceed the unpaid debt at the time of acquisition.

(b) A term not to exceed seven years or the remaining term of the original first mortgage or first deed of deed of trust at the time of acquisition, whichever is shorter.

(c) An interest rate as determined by the acquirer not to exceed the prevailing interest rate on new Federal Housing Administration insured single-family home loans or Veterans Administration guaranteed home loans.

(d) The present worth of the future payments of increased interest computed at an interest rate determined by the acquirer.

Comment. Section 7266 provides authorization for all acquirers to partially compensate owners of residential property for the additional cost of refinancing the purchase of substitute property. The section is based on former Section 158.2 of the Streets and Highways Code which merely authorized the Department of Public Works to make such payments in connection with highway acquisitions. [See AB 1630, 1970 Sess.]

§ 7267. (repealed)

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 . Where an acquirer has not adopted rules and regulations to govern its practices and procedures under this chapter, the rules and regulations adopted by the county in which the property being acquired is located shall apply to the extent they can be applied. If such county has not adopted applicable rules and regulations, the rules and regulations adopted by the State Board of Control shall apply to the extent they can be applied.~~

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

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situation. It is anticipated, however, that most entities will pattern their rules and procedures after those adopted by the Board of Control. The section also makes clear which rules are applicable in the absence of adoption of rules by a particular entity. 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. (repealed)

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-city-or-county.~~

Comment. See the Comments to Sections 7260 and 7260.10.

§ 7272. Conformity to federal requirements for federal aid projects

Sec. 24. Section 7272 is added to the Government Code, to read:

7272. If federal funds will be used to finance a particular project in whole or in part and the appropriate federal agency determines that giving effect to any provision of this chapter would result in limiting or denying federal funds otherwise available for the project, such provision shall become inoperative to the extent that it is not in conformity with federal requirements, and, in such case, the acquirer is authorized to make payments to persons who are or will be injuriously affected by the project in accordance with the federal requirements.

Comment. Section 7272 is added to prevent conflict with federal requirements where acquisitions are made for a federally assisted project. In such circumstances, the acquirer may make payments to persons injuriously affected by the project in conformance with federal requirements if failure to do so would result in the loss of federal funds otherwise available to finance the project. For a somewhat similar provision, see Welfare and Institutions Code Section 11003.

Health and Safety Code § 33135. (conforming amendment)

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.

Health and Safety Code § 33415. (conforming amendment)

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.

Health and Safety Code § 34014. (conforming amendment)

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.

Health and Safety Code § 34330. (conforming amendment)

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.

Public Utilities Code § 600. (repealed)

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.

Public Utilities Code §§ 21690.5-21690.17. (repealed)

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 which provided relocation assistance for persons displaced for airport purposes 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:

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 business 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, 21690.8,
21690.9, 21690.10

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 building required for the administration of an airport; public parking facilities for passenger automobiles; roads within the airport boundaries; and any acquisition of land adjacent to or in the immediate vicinity of a public airport, including any interest therein, or any easement through or any other interest in airspace, for the purpose of assuring that activities and operations conducted thereon will be compatible with normal airport operations.

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

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

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

21690.10. The public entity is authorized to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any state or federal airport project.

§§ 21690.11, 21690.12,
21690.13

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

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

(b) Any displaced person who moves from a dwelling may elect to receive in lieu of his actual and reasonable moving expenses a moving expense allowance, determined according to a schedule established by the public entity not to exceed two hundred dollars (\$200), and in addition a dislocation allowance of one hundred dollars (\$100).

(c) Any displaced person who moves or discontinues his business or farm operation may elect to receive in lieu of his actual and reasonable moving expenses a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars (\$5,000), whichever is lesser. In the case of a business, no payment shall be made under this subdivision unless the public entity is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this subdivision, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal, state and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two-year period. To be eligible for the payment authorized by this subdivision the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit for confidential use to determine the payment authorized by this subdivision.

21690.13. In addition to the payments authorized by Section 21690.12, the public entity, as a part of the cost of construction, may make a payment to the owner of real property acquired for an airport project, which is improved with a single-, two- or three-family dwelling actually owned and operated by the owner for not less than one year prior to the first written offer for the acquisition of such property. Such payment shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the public entity, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market. Such payment shall be made only to the displaced owner who purchases a dwelling, that meets standards established by the public entity, within one year subsequent to the date on which he is required to move from the dwelling acquired for the project.

§§ 21690.14, 21690.15,
21690.16, 21690.17

21690.14. In addition to the payment authorized by Section 21690.12, as a part of the cost of construction, the public entity may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under Section 21690.13, which dwelling was actually and lawfully occupied by such individual or family for not less than 90 days prior to first written offer for the acquisition of such property. Such payment, not to exceed one thousand five hundred dollars (\$1,500), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two years, or to make the downpayment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

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

21690.16. The public entity is authorized to adopt rules and regulations relating to relocation assistance as may be necessary or desirable under state and federal laws and the rules and regulations promulgated thereunder. Such rules and regulations shall include provisions relating to:

(a) A moving expense allowance, as provided in Section 21690.12, subdivision (b), for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed two hundred dollars (\$200);

(b) The standards for decent, safe and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the public entity; and

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

21690.17. No payment received by a displaced person under this act shall be considered as income for the purposes of the Personal Income Tax Law or the Bank and Corporation Tax Law, nor shall such payments be considered as income of resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code.

Public Utilities Code §§ 29110-29117. (repealed)

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, which provided relocation assistance by San Francisco Bay Area Rapid Transit District, 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.

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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.

Streets and Highways Code §§ 156-159.6. (repealed)

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, which provided relocation assistance by the Department of Public Works for federally assisted state highway acquisitions, 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).

(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.

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

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.

158.2. As a part of the cost of construction, the department may make a payment not to exceed three thousand dollars (\$3,000) to the owner of real property improved with a single-, two- or three-family dwelling, which is acquired for a project on the state highway system, for the cost incurred by such owner to finance the purchase of similar real property; provided that, for at least two years prior to the date of the first offer to acquire by the department, such real property was subject to a bona fide and recorded first mortgage or first deed of trust. The computation of such payment shall be based upon a schedule adopted by the department, which schedule shall be computed by taking into account:

(a) The principal amount of the new indebtedness not to exceed the unpaid debt at the time of acquisition.

(b) A term not to exceed seven years or the remaining term of the original first mortgage or first deed of trust at the time of acquisition, whichever is shorter.

(c) An interest rate as determined by the department not to exceed the prevailing interest rate on new Federal Housing Administration insured single-family home loans or Veterans Administration guaranteed home loans.

(d) The present worth of the future payments of increased interest computed at an interest rate determined by the department.

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. 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.

Urgency clause

Sec. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. It is necessary that this act take effect immediately in order to expedite the acquisition of property for public use by providing persons displaced by such acquisitions with adequate relocation assistance.