

8/28/69

Memorandum 69-98

Subject: Study 36.60 - Condemnation (Relocation Assistance)

Some time ago, the Law Revision Commission determined that, as a matter of policy, there should be a uniform statute governing moving expenses for individuals and businesses and that the right to moving expenses should not depend on the purpose for which the property is taken. For example, the 1968 Federal-Aid Highway Act is limited to highway programs. However, there are a number of bills pending in the present Congress which would extend the same provisions to the other sixteen federal or federally assisted public works agencies. It is anticipated that Senate Bill 1 (the Muskie bill) will be enacted probably within the next year. If the Muskie bill passes, the payment of relocation expenses, in terms of federal programs, will be uniform. This will also result in the requirement that the states provide relocation payments in accordance with federal standards in all federally assisted programs.

The present California statutes are the result of a piecemeal effort to provide moving expenses and they provide no uniform or consistent standards:

(1) Chapter 1 (commencing with Section 15950) of Part 13 of Division 3 of the Government Code--covers the Department of Water Resources when acquiring real property for public use with funds from the California Water Resources Development Bond Fund, the Department of Parks and Recreation when making such an acquisition with funds from the State Beach, Park, Recreational, and Historical Facilities Funds, and the trustees of the California State Colleges or the Regents of the University of California when making such an acquisition. The payments under this statute are limited to \$200 for an individual or

family and \$3,000 for a business. The statute appears to be one that gives the state agency discretion whether or not it wishes to make the payments provided for in the statute. In other words, the statute provides that the agency may compensate eligible persons.

(2) Article 9 (commencing with Section 29110) of Chapter 6 of Part 2 of Division 10 of the Public Utilities Code--San Francisco Bay Area Rapid Transit District. Provides for the payment of relocation expenses subject to a maximum of \$200 in the case of an individual or family and \$3,000 in the case of business. This statute, however, provides that the district shall compensate for moving expenses. Thus, it is not discretionary as to whether such expenses shall be paid as far as the Bay Area Rapid Transit District is concerned.

(3) Article 3.5 (commencing with Section 156) of Chapter 1 of Division 1 of the Streets and Highways Code--State Department of Public Works. This is a comprehensive statute that provides payment for individuals and families not to exceed \$200 plus an additional \$100, \$5,000 for businesses, and a schedule of other payments which are generally in accord with the payments provided in the bill attached to this memorandum as Exhibit I. This is a discretionary statute since the statute provides that the Department may compensate for relocation expenses and further provides that "any displaced person aggrieved by a determination as to eligibility for a payment authorized by this article, or the amount of the payment, may have his application reviewed by the director whose decision shall be final."

(4) Street and Highways Code Sections 135.3-135.7--the State Department of Public Works. This statute permits the State Department of Public Works to provide for replacement housing to replace housing of low-income individuals and families where displaced by a state highway project.

(5) Health and Safety Code Section 33415--redevelopment agency.

Authorizes the making of relocation payments without dollar limits. It does not appear to be mandatory.

(6) Health and Safety Code Section 34014--redevelopment agency.

Authorizes payment of relocation costs without dollar limits in disaster areas when property in a disaster area is acquired by a redevelopment agency.

(7) Health and Safety Code Section 34330--housing authorities. Provides for the payment of relocation expenses without dollar limits and, apparently, is a permissive rather than mandatory statute.

In addition to the statutes listed above, two bills were passed by the Legislature and sent to the Governor for his signature that relate to relocation assistance:

(1) Assembly Bill 1191--reproduced as Exhibit I. This bill permits any public entity in a county having a population of more than four million persons to pay moving expenses in accord with the same general standards that are provided in the statute governing the Department of Public Works. This bill is apparently permissive rather than mandatory and we will be going through the bill in detail in this memorandum later.

(2) Assembly Bill 375--airport relocation and development. This bill provides that public entities, both state and local (except the Department of Public Works), shall pay moving expenses generally in accord with the standards in the Department of Public Works statute. However, this statute is mandatory insofar as the payment of moving expenses is concerned. It is not clear whether the provisions that deal with the payment of the amount necessary to provide the displaced owner with an equivalent housing facility or to acquire a decent housing facility are mandatory or permissive. This bill is reproduced as Exhibit II to this memorandum.

The staff suggests that Assembly Bill 1191 be used as the basis for drafting legislation relating to moving expenses and that the following changes be made in the bill in preparing a comprehensive statute governing all public entities and that this bill would replace all existing statutes governing the payment of relocation expenses but would not supersede the power of the Department of Public Works to provide substitute housing. We recommend that the following changes be made:

- (1) On page 2, delete lines 3-5 and insert "real property or any interest therein for public use."
- (2) On page 3, line 5, strike out "may" and insert "shall".
- (3) On page 3, line 11, strike out "authorized" and insert "required".
- (4) On page 3, line 12, after "may" insert ", at his election,".
- (5) On page 3, lines 18-19, strike out "authorized" and insert "required".
- (6) On page 3, line 19, after "may" insert ", at his election,".
- (7) On page 4, delete lines 48-51.
- (8) On page 5, starting at line 39, delete the rest of the bill.

The remainder of the legislation would repeal all conflicting provisions and would also provide for a section similar to Section 600 on page 6 of Exhibit I to require that public utilities make relocation payments. Actually, the better course might be to define "condemnor" in a way to include all public and private condemnors and make the same statute apply to all of them.

We have reproduced Assembly Bill 375 as Exhibit II because it contains two interesting provisions. The first is Section 21690.8 on page 3 which apparently makes the payment of moving expenses mandatory. The second is the provision for review--Section 21690.15--on page 5.

It is apparent that the various attempts to provide moving expenses are now taking the form of Assembly Bill 1191. The staff amendments would make

the payment of actual moving expenses mandatory to the extent that they are reasonable and necessary. However, for the other types of payments and services, these would be discretionary with the agency. If the Commission approves the bill as revised by the staff, or with other revisions determined by the Commission, we can prepare a tentative recommendation for the next meeting which can be distributed for comment. It is likely that we would be wise to defer submitting a recommendation for a comprehensive moving expense statute until we have completed our work on eminent domain and can include that recommendation in the entire package. There may be offsetting cost benefits to public entities of the package we prepare and this may be a factor that will permit the enactment of a fair and reasonable moving expense statute. It should be noted that efforts to secure enactment of a mandatory, uniform moving expense statute have not been successful. For example, Assembly Bill 1191 initially was an attempt to provide for a comprehensive moving expense statute but ended up being limited to counties having a population of more than four million persons.

Respectfully submitted,

John H. DeMouilly
Executive Secretary