

#36.60

7/8/75

Memorandum 75-55

Subject: Study 36.60 - Eminent Domain (Relocation Assistance--Private  
Condemnors)

Attached to this memorandum is a staff draft of a tentative recommendation to require payment of relocation expenses in condemnations by private persons. The proposed section, Government Code Section 7275, is modeled after Public Utilities Code Section 600, which provides:

600. A public utility acquiring real property by eminent domain shall provide relocation advisory assistance and shall make any of the payments required of public entities by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

In view of the simplicity of this provision (which has been in effect for 3 years--since July 1, 1972), the staff believes it unnecessary to adopt any more complicated provisions to govern other private condemnors.

For your reference, a copy of the relocation assistance provisions is attached.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

EXHIBIT I

§ 7260

GOVERNMENT CODE

CHAPTER 16. RELOCATION ASSISTANCE [NEW]

Sec.

7260. Definitions.

7261. Relocation advisory assistance by public entity; local offices.

7261.5 Contracts with private entity for services; use of other governmental entities.

7261.6 Central relocation agency; authority to establish; relocation plans of public entity; approval [New].

7262. Compensation for displaced person; amount.

7263. Additional payment to displaced dwelling owner; amount.

7263.5 Lease of condominium deemed purchase [New].

7264. Additional payment to displaced individual or family renters; amount.

7264.5 Comparable replacement housing; use of funds; tax assessment information [New].

7265. Additional payment to contiguous property owner; amount.

7265.3 Payments and advice to person who moves as result of rehabilitation or demolition program [New].

7265.4 Expenses of owner; reimbursement [New].

7266. Review by public entity or relocation appeals board [New].

7267. Guidelines for public entities [New].

7267.1 Acquisition by negotiation; appraisal [New].

7267.2 Just compensation; offer of fair market value; written statement [New].

7267.3 Scheduling construction or development; written notice; time [New].

7267.4 Fair rental value; short-term occupier [New].

7267.5 Coercion to compel agreement on price [New].

7267.6 Condemnation proceedings; institution by public entity instead of by owner [New].

7267.7 Acquisition of entire property; avoidance of uneconomic remnant [New].

7267.8 Rules and regulations of public entities; priority of federal law [New].

7268. Guidelines by commission of housing and community development for payments and relocation assistance; assistance to public entities.

7269. Status of payments; income tax and public assistance.

7269.1 Status of payments; general assistance recipients; rent schedules [New].

7270. Existence of damages on date of enactment of chapter.

7271. Severability.

7272. Protection of owner or occupant; law governing [New].

7272.3 Legislative intent; minimum requirements; federal funds [New].

7272.5 Existent elements of damage [New].

7273. Relocation assistance for displaced persons [New].

7274. Construction of sections 7267 to 7267.7 [New].

§ 7260. Definitions

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.

(b) "Person" means any individual, partnership, corporation, or association.

(c) "Displaced person" means any person who moves from real property, or who moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, by a public entity or by any person having an agreement with or acting on behalf of a public entity, or as the

result of a written order from a public entity to vacate the real property, for public use. This definition shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use.

(d) "Business" means any lawful activity, except a farm operation, conducted primarily:

(1) For the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization; or

(4) Solely for the purpose of Section 7262 for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not such display is located on the premises on which any of the above activities are conducted.

(e) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(f) "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.

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

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

#### **§ 7261. Relocation advisory assistance by public entity; local offices**

(a) A public entity shall provide relocation advisory assistance to any person, business, or farm operation displaced because of the acquisition of real property \* \* \* for public use.

(b) In giving such assistance, the public entity may establish local relocation advisory assistance offices to assist in obtaining replacement facilities for persons, businesses, and farm operations which find that it is necessary to relocate because of the acquisition of real property by the public entity.

(c) Such advisory assistance shall include:

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

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

(3) Assuring that, within a reasonable period of time, prior to displacement, to the extent that it can be reasonably accomplished, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that, in the case of a federally funded project, a waiver may be obtained from the federal government.

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

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

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

(d) The public entity shall coordinate its relocation assistance program with the project work necessitating the displacement and with other planned or proposed activities of other public entities in the community or nearby areas which may affect the implementation of its relocation assistance program.

**§ 2861.5 Contracts with private entity for services; use of other governmental entities**

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under this chapter, a public entity may enter into a contract with any individual, firm, association, or corporation for services in connection with such program, or may carry out its functions under this chapter through any federal, state, or local governmental agency having an established organization for conducting relocation assistance programs. Any public entity may, in carrying out its relocation assistance activities, utilize the services of state or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

**§ 2861.6 Central relocation agency; authority to establish; relocation plans of public entity; approval**

Notwithstanding any other provision of this chapter, any city, county, or city and county may establish a central relocation \* \* \* office to coordinate all relocation activities within the jurisdiction of the local agency. A county relocation \* \* \* office shall have jurisdiction only over those relocation activities which take place within the unincorporated areas of the county. Every public entity within the local agency's jurisdiction (required to do so) shall file the relocation rules and regulations, which it is required to adopt pursuant to Section 7267.8, with the central relocation \* \* \* office and shall file annually its relocation plans by June 1st of each year for the subsequent fiscal year. The central relocation \* \* \* office shall approve or disapprove the public entity's relocation plan by July 1 or the plan will automatically become effective.

If the \* \* \* office disapproves the plan or finds that the plan conflicts in the use of relocation resources with those plans filed by other public entities or that adequate resources are not available in places and at times necessary to meet the relocation needs as set forth in one or more of the plans it shall call a meeting of the public entities concerned as soon as possible. At such meeting the \* \* \* office shall try to resolve such conflicts as exist or insure that adequate relocation resources are developed to meet such needs.

The \* \* \* office may direct modifications of a plan in the case of unresolved conflicts and may extend its approval deadline by 30 days to determine whether such modifications affect such relocation plans. Additional extensions may be granted for periods of 30 days with the consent of all affected parties. Where modification to a relocation plan is directed by the \* \* \* office, the public entity may appeal to the relocation appeals board established pursuant to Section 83417.5 of the Health and Safety Code. If no such relocation appeals board has been established, the public entity may appeal to the legislative body creating the central relocation \* \* \* office.

Approval of a relocation plan will constitute a finding by the \* \* \* office that it has reasonable assurance that adequate relocation resources exist within the requirements of law which will be available at the times required by the plan.

The central relocation \* \* \* office shall coordinate the execution of each public entity's relocation plans and shall share with each public entity making a request the relocation information of all other public entities. The central relocation \* \* \* office may contract with adjoining cities or counties to perform relocation and central relocation services.

State agencies, public entities with displacement of less than 5 percent of the local agency's total local annual displacement based on all relocation plans filed, and public utilities regulated by the Public Utilities Commission with displacement of less than 5 percent of the local agency's total local annual displacement based on all relocation plans filed, shall be exempt from the requirement of approval of their relocation plan prior to its execution. Public utilities regulated by the Public Utilities Commission not otherwise exempted by this paragraph shall also be exempt from such requirement where there is an overriding state interest, as determined by the Director of Housing and Community Development.

A public entity may amend its relocation plan during any fiscal year by filing an amended plan with the central relocation \* \* \* office and obtaining its approval. All amended plans must have approval before execution may occur and the central relocation \* \* \* office shall approve or disapprove amended plans within 30 days or approval will be automatic.

Execution of any relocation plan must be in accordance with the approved relocation plan or the public entity may not displace any persons. Failure to file a relocation plan and obtain approval when required, prior to displacement, may subject the public entity to an order from the central relocation \* \* \* office to desist from any displacement.

**§ 7262. Compensation for displaced person; amount**

(a) As a part of the cost of acquisition of real property for a public use, a public entity shall compensate a displaced person for his:

(1) Actual and reasonable expense in moving himself, family, business, or farm operation, including moving personal property.

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the public entity.

(3) Actual and reasonable expenses in searching for a replacement business or farm.

(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) shall receive a moving expense allowance, determined according to a schedule established by the public entity, not to exceed three hundred dollars (\$300), and in addition a dislocation allowance of two hundred dollars (\$200).

(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), shall receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000). 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, or during such other period as the public entity determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependent during such two-year or such other 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. In the case of an outdoor advertising display, the payment shall be limited to the amount necessary to physically move or replace such display.

(d) Whenever the acquisition of real property used for a business or farm operation causes the person conducting the business or farm operation to move from other real property, or to move his personal property from other real property, such person shall receive payments for moving and related expenses under subdivision (a) or (b) and relocation advisory assistance under Section 7201 for moving from such other property.

(e) Whenever a public entity must pay the cost of moving a displaced person under paragraph 1 of subdivision (a), or subdivision (d) of this section:

(1) The costs of such move shall be exempt from regulation by the Public Utilities Commission.

(2) The public entity may solicit competitive bids from qualified bidders for performance of the work. Bids submitted in response to such solicitations shall be exempt from regulation by the Public Utilities Commission.

- H -

**§ 7263. Additional payment to displaced dwelling owner; amount**

(a) In addition to the payments \* \* \* required by \* \* \* Section 7262, the public entity, as a part of the cost of \* \* \* acquisition, shall make a payment to the owner of real property acquired for public use which is improved with a \* \* \* dwelling actually owned and occupied by the owner for not less than \* \* \* 180 days prior to the \* \* \* initiation of negotiation for the acquisition of such property.

(b) Such payment, not to exceed \* \* \* fifteen thousand dollars (\$15,000), shall be based on the following factors:

(1) The amount, if any, which, when added to the acquisition payment, equals the \* \* \* reasonable cost of a comparable replacement 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 \* \* \* displaced person's place of employment, and available on the market.

(2) The amount, if any, which will compensate the displaced owner for any increased interest costs which he is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

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

(c) Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling that meets standards established by the public entity within one year subsequent to the date on which he \* \* \* moves from the dwelling acquired by the public entity or the date on which he receives from the public entity final payment of all costs of the dwelling acquired by the public entity, whichever is the later date.

**§ 7263.5 Lease of condominium deemed purchase**

For purposes of Section 7263, the leasing of a condominium for a 99-year period, or for a term which exceeds the life expectancy of the displaced person as determined from the most recent life tables in Vital Statistics of the United States, as published by the Public Health Service of the Department of Health, Education, and Welfare, shall be deemed a purchase of the condominium.

**§ 7264. Additional payment to displaced individual or family renters; amount**

(a) In addition to the \* \* \* payments required by \* \* \* Section 7262, as a part of the cost of acquisition, the public entity \* \* \* shall make a payment to any \* \* \* displaced person displaced from any dwelling not eligible to receive a payment under Section 7263 which was actually and lawfully occupied by such \* \* \* person for not less than 90 days prior to the \* \* \* initiation of negotiation by the public entity for the acquisition of such property.

(b) Such payment, not to exceed \* \* \* four thousand dollars (\$4,000), shall be the additional amount which is necessary to enable such \* \* \* person to lease or rent for a period not to exceed \* \* \* four years, or to make the downpayment on the purchase of, a decent, safe, and sanitary dwelling of standards adequate to accommodate such \* \* \* person in areas not generally less desirable in regard to public utilities and public and commercial facilities.

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

**§ 7264.5 Comparable replacement housing; use of funds; tax assessment information**

(a) If comparable replacement housing is not available and the public entity determines that such housing cannot otherwise be made available, the public entity shall use funds authorized for the project for which the real property, or interest thereof, is being acquired to provide such housing.

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

(c) For purposes of determining the applicability of subdivision (a), the public entity is hereby designated as a duly authorized administrative body of the state for the purposes of subdivision (c) of Section 408 of the Revenue and Taxation Code.

**§ 7265. Additional payment to contiguous property owner; amount**

(a) In addition to the \* \* \* payments required by \* \* \* Section 7262, as a cost of acquisition, the public entity \* \* \* shall 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 \* \* \* 180 days prior to the \* \* \* initiation of negotiation for acquisition of the acquired property.

(c) Such payment, not to exceed \* \* \* fifteen thousand dollars (\$15,000), 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.

**§ 7265.3 Payments and advice to person who moves as result of rehabilitation or demolition program**

A public entity may make payments in the amounts prescribed in this chapter, and may provide advisory assistance under this chapter, to a person who moves from a dwelling, or who moves or discontinues his business, as a result of a rehabilitation or demolition program, or enforcement of building codes, by the public entity.

**§ 7265.4 Expenses of owner; reimbursement**

In addition to the payments required by Section 7262, as a cost of acquisition, the public entity, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the public entity deems fair and reasonable, for expenses the owner necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the public entity.

**§ 7266. Review by public entity or relocation appeals board**

(a) If a relocation appeals board has been established pursuant to Section 33417.5 of the Health and Safety Code, a city by ordinance may designate the board to hear appeals from all public entities, except those state agencies which have an appeal process, on the eligibility for, or the amount of, a payment authorized by this chapter.

(b) Any person aggrieved by a determination as to eligibility for, or the amount of, a payment authorized by this chapter may have the application reviewed by the public entity or by the relocation appeals board if authorized under subdivision (a). The review of a determination by a community redevelopment agency may only be made by a relocation appeals board established pursuant to Section 33417.5 of the Health and Safety Code.

**§ 7267. Guidelines for public entities**

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, be guided by the provisions of Sections 7267.1 to 7267.7, inclusive.

**§ 7267.1 Acquisition by negotiation; appraisal**

(a) The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during his inspection of the property.

**§ 7267.2 Just compensation; offer of fair market value; written statement**

Before the initiation of negotiations for real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the public entity's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, will be disregarded in determining the compensation for the property. The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

**§ 7267.3 Scheduling construction or development; written notice; time**

The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90 days' written notice from the public entity of the date by which such move is required.

**§ 7267.4 Fair rental value; short-term occupier**

If the public entity permits an owner or tenant to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the public entity on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

**§ 7267.5 Coercion to compel agreement on price**

In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

**§ 7267.6 Condemnation proceedings; institution by public entity instead of by owner**

If any interest in real property is to be acquired by exercise of the power of eminent domain, the public entity shall institute formal condemnation proceedings. No public entity shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

**§ 7267.7 Acquisition of entire property; avoidance of uneconomic remnant**

If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the public entity shall offer to and may acquire the entire property if the owner so desires.



**§ 7267.8 Rules and regulations of public entities; priority of federal law**

\* \* \* (a) All public entities shall adopt rules and regulations to implement payments and to administer relocation assistance under the provisions of this chapter \* \* \*. Such rules and regulations shall be in conformity with the guidelines adopted by the Commission of Housing and Community Development pursuant to Section 7268. Such rules and regulations shall, to the fullest extent possible, also be consistent as to federal and nonfederal projects.

(b) Notwithstanding the provisions of subdivision (a), with respect to a federally funded project, a public entity shall make relocation assistance payments and provide relocation advisory assistance as required under federal law.

**§ 7268. Guidelines by commission of housing and community development for payments and relocation assistance; assistance to public entities**

\* \* \* (a) The Commission of Housing and Community Development shall adopt guidelines for the implementation of payments under this chapter and for the uniform administration of relocation assistance by public entities carrying out the provisions of this chapter.

(b) The Commission of Housing and Community Development shall, to the fullest extent possible, conform such guidelines to the Presidential Guidelines promulgated by the executive office of the President of the United States, Office of Management and Budget, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646),<sup>1</sup> and the rules and regulations promulgated pursuant thereto.

(c) Such guidelines shall provide that the payments and assistance required of a public entity under this chapter shall be administered in a manner that is fair and reasonable and as uniform as practicable. The guidelines shall also provide that the payments shall be made as promptly as possible or, in hardship cases, in advance. In addition, such guidelines shall provide a reasonable mileage limitation in determining the actual and reasonable expense in moving a business for purposes of Section 7262.

(d) In adopting such guidelines the Commission of Housing and Community Development shall consult with the public entities carrying out the provisions of this chapter.

(e) The Department of Housing and Community Development shall provide consulting and technical assistance to public entities in drafting and amending rules and regulations to implement payments and to administer relocation assistance under this chapter.

**§ 7269. Status of payments; income tax and public assistance**

No payment received by any person under this chapter shall be considered as income for the purposes of the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, 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 \* \* \* any other provisions of law.

**§ 7269.1 Status of payments; general assistance recipients; rent schedules**

Where a recipient of relocation benefits payments under federal or state law is also a general assistance recipient under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code and two or more rent schedules apply to the recipient, the highest shall prevail and any excess amount over lower rent schedule shall not be counted as income or resources for general assistance purposes under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

**§ 7270. Existence of damages on date of enactment of chapter**

Nothing contained in this chapter 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 chapter.

**§ 7271. Severability**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**§ 7272. Protection of owner or occupant; law governing**

If under any other provision of law of this state the owner or occupant of real property acquired by a public entity for public use is given greater protection than is provided by Sections 7265.3 to 7267.3, inclusive, the public entity shall also comply with such other provision of law.

**§ 7272.3 Legislative intent; minimum requirements; federal funds**

It is the intent of the Legislature, by this chapter, to establish minimum requirements for relocation assistance payments by public entities. This chapter shall not be construed to limit any other authority which a public entity may have to make other relocation assistance payments, or to make any relocation assistance payment in an amount which exceeds the maximum amount for such payment authorized by this chapter.

Any public entity may, also, make any other relocation assistance payment, or may make any relocation assistance payment in an amount which exceeds the maximum amount for such payment authorized by this chapter, if the making of such payment, or the payment in such amount, is required under federal law to secure federal funds.

**§ 7272.5 Existent elements of damage**

Nothing contained in this article shall be construed as creating in any condemnation proceeding brought under the power of eminent domain, any element of damages not in existence on the date the public entity commences to make payments under the provisions of this article as amended by the act which enacted this section at the 1971 Regular Session of the Legislature.

**§ 7273. Relocation assistance for displaced persons**

Funds received pursuant to Sections 2106 and 2107 of the Streets and Highways Code may be expended by \* \* \* any city to \* \* \* provide relocation advisory assistance, and to make relocation assistance payments, to displaced persons \* \* \* displaced because of the construction of city highways or streets.

**§ 7274. Construction of sections 7267 to 7267.7**

Sections 7267 to 7267.7, inclusive, create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

Staff Draft

## TENTATIVE RECOMMENDATION

relating to

## RELOCATION ASSISTANCE BY PRIVATE CONDEMNORS

California's general relocation assistance statute<sup>1</sup> was enacted in 1971<sup>2</sup> primarily to implement the requirements imposed on the state by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970<sup>3</sup> and to more adequately compensate persons whose property is taken for public use. One major purpose of the statute was to assure a uniform policy of relocation assistance to all persons in the state regardless of the acquiring entity.<sup>4</sup>

By its terms, the relocation assistance statute applies only to acquisitions by public entities. But, in California, private persons also may exercise the power of eminent domain to acquire private property for public use.<sup>5</sup>

Of the private condemnors, only privately owned public utilities acquiring real property by eminent domain must comply with relocation assistance provisions applicable to public entities.<sup>6</sup> Such private condemnors as nonprofit hospitals,<sup>7</sup> nonprofit colleges,<sup>8</sup> nonprofit cemeteries,<sup>9</sup> certain nonprofit housing corporations,<sup>10</sup> and mutual water com-

- 
1. Govt. Code §§ 7260-7274.
  2. Cal. Stats. 1971, Ch. 1574.
  3. 42 U.S.C. §§ 4601-4655 (1971).
  4. Comment, Relocation Assistance in California: Legislative Response to the Federal Program, 3 Pac. L.J. 114, 118 (1972).
  5. Civil Code § 1001.
  6. Pub. Util. Code § 600.
  7. The authority of nonprofit hospitals to condemn is in Code of Civil Procedure Section 1238.3.
  8. The authority of nonprofit colleges to condemn is in Civil Code Section 1001 and Code of Civil Procedure Section 1238(2).
  9. The authority of cemeteries to condemn is in Civil Code Section 1001 and Code of Civil Procedure Section 1238(14).
  10. The authority of limited dividend housing corporations to condemn is in Health and Safety Code Section 34875; the authority of land chest corporations to condemn is in Civil Code Section 1001 and Code of Civil Procedure Section 1238(21).

panies<sup>11</sup> are not required to comply with the relocation assistance provisions.

The Law Revision Commission has recommended elsewhere that the condemnation authority of the foregoing private condemnors be continued.<sup>12</sup> The Commission further recommends that with the right of condemnation should go the burdens of compensation and that all private condemnors be required to comply with the relocation assistance provisions imposed on public entities. This will assure that every person in the state whose property is acquired by eminent domain will be treated fairly and equally.

---

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

An act to add Section 7275 to the Government Code, relating to relocation assistance in acquisition by private condemnors.

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

SECTION 1. Section 7275 is added to the Government Code, to read:

7275. A person (other than a public entity or public utility) acquiring real property by eminent domain shall provide relocation advisory assistance and shall make any of the payments required of public entities by this chapter.

Comment. Section 7275 is new. The relocation assistance provisions of Sections 7260-7274 are applicable by their terms only to public entities. Section 7275 extends their application to eminent domain acquisitions by private condemnors other than public utilities. Public utilities are covered by Public Utilities Code Section 600. Private condemnors that would be covered by Section 7275 include nonprofit

- 
11. The authority of mutual water companies to condemn is in Civil Code Section 1001 and Code of Civil Procedure Section 1238(4).
  12. Recommendation Proposing the Eminent Domain Law, 12 Cal. L. Revision Comm'n Reports 1601, 1634-1636 (1974) and Assembly Bill 273 (1975-1976 Reg. Sess.)(amended on Commission request to include nonprofit cemeteries).

hospitals (Health & Saf. Code § 1260), nonprofit colleges (Educ. Code § 30051), nonprofit cemeteries (Health & Saf. Code § 8501), limited dividend housing corporations (Health & Saf. Code § 34875), land chest corporations (Health & Saf. Code § 35167), and mutual water companies (Pub. Util. Code § 2729).

[NOTE: Section references in the Comment assume the enactment of Assembly Bill 278 (1975-76 Reg. Sess.).]