

No. 169

AN ACT

HB 1095

Amending the act of June 22, 1964 (P.L.84), entitled "An act to codify, amend, revise and consolidate the laws relating to eminent domain," adding and changing definitions, variously revising and changing the provisions thereof, providing for the payment of special damages to persons defined as displaced persons, and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 201, act of June 22, 1964 (P.L.84), known as the "Eminent Domain Code," is amended to read:

Section 201. Definitions.—The following words, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Condemn" means to take, injure or destroy private property by authority of law for a public purpose.

(2) "Condemnee" means the owner of a property interest taken, injured or destroyed, but does not include a mortgagee, judgment creditor or other lienholder.

(3) "Condemnor" means the [entity] *acquiring agency*, including the Commonwealth of Pennsylvania, taking, injuring or destroying private property under authority of law for a public purpose.

(4) "Court" means the court of common pleas.

(5) "*Acquiring agency*" means any entity vested with the power of eminent domain by the laws of the Commonwealth, including the Commonwealth.

(6) "*Acquisition cost*" means general damages, or in the event of amicable acquisition, the price paid by the acquiring agency in lieu thereof.

(7) "*Business*" means any lawful activity, excepting a farm operation, conducted primarily:

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

(ii) for the sale of services to the public;

(iii) by a nonprofit organization; or

(iv) solely for the purpose of qualification for damages under subsections (a) and (b) (1) and (b) (4) of section 601-A, 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 or displays whether or not such displays are located on the premises on which any of the above activities are conducted.

(8) *“Displaced person” means any condemnee or other person not illegally in occupancy of real property who moves or moves his personal property as a result of the acquisition for a program or project of such real property, in whole or in part, or as the result of written notice from the acquiring agency of intent to acquire or order to vacate such real property; and solely for the purpose of subsections (a) and (b) (1) and (b) (4) of section 601-A, as a result of such acquisition or written notice of intent to acquire or order to vacate other real property on which such person conducts a business or farm operation.*

(9) *“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.*

(10) *“Personal property” means any tangible property not considered to be real property for purposes of general damages under the laws of the Commonwealth.*

(11) *“Program or project” means any program or project undertaken by or for an acquiring agency as to which it has the authority to exercise the power of eminent domain.*

Section 2. Sections 404 and 408 of the act, amended December 5, 1969 (P.L.316), are amended to read:

Section 404. Recording Notice of Condemnation.—The condemnor, upon filing its declaration of taking, shall on the same day lodge for record a notice thereof in the office of the recorder of deeds of the county in which the property is located. If the property is located in two or more counties, the notice shall be recorded in all such counties. The notice shall specify the court term and number of the declaration of taking and the date it was filed, and shall contain a description or plan of the property condemned sufficient for the identification thereof and the names of the owners of the property interests condemned, as reasonably known to the condemnor, and shall be indexed in the deed indices showing the condemnee set forth in the notice as grantor and the condemnor as grantee. If plans are to be recorded as part of the notice they shall be submitted on standard legal size paper. **[If plans are to be filed as part of the notice they shall be in legible scale, and filed in a condemnation book, with a notation as to the condemnation book or file or microfilm and page number, file number or microfilm number to be made by the recorder on the margin of the notice.]** ~~*If plans are to be filed as part of the notice they shall be in legible scale and filed in a condemnation book or file or microfilmed, with a notation as to the condemnation book and page number, file number or microfilm number to be made by the recorder on the margin of the notice.*~~ The recorder shall receive as a fee for recording each notice the sum of five dollars (\$5) plus one dollar (\$1) for each page recorded after

the first, and for filing plans two dollars and fifty cents (\$2.50) for each page or sheet of plan filed and twenty-five cents (25¢) for each name indexed. Upon the notice being assigned a book and page number by the recorder of deeds the condemnor shall file with the prothonotary under the caption of the declaration of taking a memorandum of the book and page number in which the notice is recorded.

Section 408. Revocation of Condemnation Proceedings.—The condemnor, by filing a declaration of relinquishment in court within one year from the filing of the declaration of taking, and before having made the payment provided for in section 407 (a) or (b), or as to which the condemnee has not tendered possession of the condemned property as provided in section 407, may relinquish all or any part of the property condemned that it has not taken actual possession of for use in the improvement, whereupon title shall revert in the condemnee as of the date of the filing of the declaration of taking, and all mortgages and other liens existing as of such date shall be reinstated. Notice of said relinquishment shall be recorded in the office of the recorder of deeds of the county in which the property taken is located, with the condemnor as the grantor and the condemnee as the grantee, and the notice of said relinquishment shall be served on the condemnee in the same manner as provided for service of the declaration of taking. The fees payable to the recorder for recording the notice of relinquishment shall be in the same amounts as provided in section 404 for the recording of notices of condemnation. Where condemned property is relinquished, the condemnee shall be **[entitled to the damages sustained by him including costs, expenses and reasonable attorney's fees and such] reimbursed by the condemnor for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred because of the condemnation proceedings. Such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the condemnee, whose award shall be subject to appeal as provided in this act. The condemnor and the condemnee, without the filing of a declaration of relinquishment as provided herein, may by agreement effect a reversion of title in the condemnee, which agreement shall be properly recorded.**

Section 3. Subsection (b) of section 518 and the first paragraph of section 521 of the act are amended to read:

Section 518. Severance and Special Damages; Allocation.— * * *

(b) The jury, or the court, in a trial without a jury, shall make specific findings as to the portion of the verdict allocated to general damages, moving and removal expenses, business dislocation damages and other items of special damages authorized by this act, **except reasonable appraisal, attorney and engineering fees recoverable under sections 406 (e), 408, 609 and 610, which shall be determined by the court in an appropriate case.**

Section 521. Distribution of Damages; Liens.—Damages payable to a condemnee under **[any provision] sections 601 through 607, 611, 612 and 613, inclusive, and clauses (1) and (2) of subsection (b) of section 601-A** of this act shall be subject to a lien for all taxes and municipal claims assessed against and all mortgages, judgments and other liens of record against the property for which the particular damages are payable, existing at the date of the filing of the declaration of taking, and said liens shall be paid out of the damages in order of priority before any payment thereof to the condemnee, unless released.

In the case of a partial taking, or of damages under sections 612 and 613, the lienholder shall be entitled only to an equitable pro rata share of the damages lienable under this section.

* * *

Section 4. Section 522 of the act, amended December 5, 1969 (P.L.316), is amended to read:

Section 522. Payment into Court; Distribution.—Upon refusal to accept payment of the damages, or of the estimated just compensation under section 407, or if the party entitled thereto cannot be found, or if for any other reason the same cannot be paid to the party entitled thereto, the court upon petition of the condemnor which shall include a schedule of proposed distribution, may direct payment thereof and costs into court or as the court may direct in full satisfaction thereof.

The condemnor shall give twenty days notice of the presentation of such petition, including a copy of the schedule of the proposed distribution, to all parties in interest known to condemnor, in such manner as the court may by general rule or special order direct. If the court shall be satisfied in a particular case that condemnor failed to use reasonable diligence in giving notice, the court may upon petition of any party in interest adversely affected by the failure to give notice order that compensation for delay in payment be awarded to such party for the period after deposit in court by the condemnor under this section until such time as such party in interest shall have received a distribution of funds under this section.

The court thereafter upon petition of any party in interest shall distribute such funds or any funds deposited in court under section 407 to the persons entitled thereto in accordance with the procedure in section 521, but if no petition is presented within a period of five years of the date of payment into court, the court shall order the fund or any balance remaining to be paid to the Commonwealth without escheat. No fee shall be charged against these funds.

Section 5. Section 602 of the act, amended October 19, 1967 (P.L.460), is amended to read:

Section 602. Measure of Damages.—Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as

unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this [article] code.

In case of the condemnation of property in connection with any urban development or redevelopment project, which property is damaged by subsidence due to failure of surface support resulting from the existence of mine tunnels or passageways under the said property, or by reason of fires occurring in said mine tunnels or passageways or of burning coal refuse banks, the damage resulting from such subsidence or underground fires or burning coal refuse banks shall be excluded in determining the fair market value of the condemnee's entire property interest therein immediately before the condemnation.

In case of the condemnation of property in connection with any flood control project which property is damaged by floods, the damage resulting therefrom shall be excluded in determining fair market value of the condemnee's entire property interest therein immediately before the condemnation; provided such damage has occurred within three years of the date of taking and during the ownership of the property by the condemnee. The damage resulting from floods to be excluded shall include only actual physical damage to the property for which the condemnee has not received any compensation or reimbursement.

Section 6. Sections 608, 609, 610, 614, 615, 616, 617 and 618 of the act are repealed.

Section 7. The act is amended by adding sections to read:

Section 608. Expenses Incidental to Transfer of Title.—Any acquiring agency shall, on the date of payment of the purchase price of amicably acquired real property or of payment or tender of estimated just compensation in a condemnation proceeding to acquire real property, whichever is the earlier, or as soon thereafter as is practicable, reimburse the owner for expenses he necessarily incurred for:

(1) Recording fees, transfer taxes and similar expenses incidental to conveying such real property to the acquiring agency;

(2) Penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property;

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier; and

(4) The pro rata portion of water and sewer charges paid to a taxing entity or a municipal authority allocable to a period subsequent to the effective date of possession of such real property by the acquiring agency.

Section 609. Condemnee's Costs Where No Declaration of Taking Filed.—Where proceedings are instituted by a condemnee under section 502 (e), a judgment awarding compensation to the condemnee for the

taking of property shall include reimbursement of reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred.

Section 610. Limited Reimbursement of Appraisal, Attorney and Engineering Fees.—*The owner of any right, title, or interest in real property acquired or injured by an acquiring agency, who is not eligible for reimbursement of such fees under sections 406 (e), 408 or 609 of this act, shall be reimbursed in an amount not to exceed five hundred dollars (\$500) as a payment toward reasonable expenses actually incurred for appraisal, attorney and engineering fees.*

Section 610.1. Payment on Account of Increased Mortgage Costs.—*Whenever the acquisition of property by an acquiring agency results in the termination of an installment purchase contract, mortgage or other evidence of debt on the acquired property, thereby requiring the legal or equitable owner to enter into another installment purchase contract, mortgage or other evidence of debt on the property purchased for the same use as the acquired property, a legal or equitable owner who does not qualify for a payment under section 1602-A (a) (2) shall be compensated for any increased interest and other debt service costs, which he is required to pay for financing the acquisition of the replacement property. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount on the principal of the installment purchase contract, mortgage or other evidence of debt on the replacement property which is equal to the unpaid balance of the installment purchase contract, mortgage or other evidence of debt on the acquired property over the remaining term of the installment purchase contract, mortgage or other evidence of debt on the acquired property 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 property is located. Such amount shall be paid only if the acquired property was subject to an installment purchase contract or encumbered by a bona fide mortgage or other evidence of debt secured by the property which was a valid lien on such property for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such property.*

Section 8. The act is amended by adding after Article VI an article and sections to read:

ARTICLE VI-A
Special Damages for Displacement

Section 601-A. Moving and Related Expenses of Displaced Persons.

¹“601-A” in original.

—(a) Any displaced person shall be reimbursed for reasonable expenses incurred in moving himself and his family and for the removal, transportation, and reinstallation of personal property.

(1) Receipts therefor shall be prima facie evidence of incurred reasonable moving expenses.

(2) Any displaced person who is displaced from a dwelling may elect to receive, in lieu of reimbursement of incurred moving expenses, a moving expense allowance, determined according to a schedule established by the acquiring agency, not to exceed three hundred dollars (\$300), and a dislocation allowance of two hundred dollars (\$200).

(b) Any displaced person who is displaced from his place of business or from his farm operation shall be entitled, in addition to any payment received under subsection (a) of this section, to damages for dislocation of such business or farm operation as follows:

(1) Actual direct losses with reference to personal property, but not to exceed the greater of (i) the reasonable expenses which would have been required to relocate such personal property, or (ii) the value in place of such personal property as cannot be moved without substantially destroying or diminishing its value, whether because of the unavailability of a comparable site for relocation or otherwise, or without substantially destroying or diminishing its utility in the relocated business or farm operation.

(2) In lieu of the damages provided in clause (1) hereof, at the option of the displaced person, an amount not to exceed ten thousand dollars (\$10,000) to be determined by taking fifty per cent of the difference if any, between the original cost of the personal property to the displaced person or the replacement cost of equivalent property at the time of sale, whichever is lower, and the net proceeds obtained by the displaced person at a commercially reasonable private or public sale. If this option is selected, the displaced person shall give the acquiring agency not less than sixty days notice in writing of his intention to seek damages under this option. The displaced person shall not, directly or indirectly, purchase any of the personal property at private sale. Inventory shall be paid for under this option only if the business is not relocated.

(3) In addition to damages under clauses (1) or (2) of this subsection, damages of not more than ten thousand dollars (\$10,000) nor less than twenty-five hundred dollars (\$2,500), in an amount equal to either (i) forty times the actual monthly rental, in the case of a tenant, or forty times the fair monthly rental value, in the case of owner-occupancy; or (ii) the average annual net earnings, whichever is greater. For the purposes of this subsection, 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 period. The regulations promulgated under section 604-A may designate another period determined to be more equitable for establishing average annual net earnings, provided the designation of such period does not produce a lesser payment than would use of the last two taxable years. In the case of a business, payment shall be made under this subsection only if the business (i) cannot be relocated without a substantial loss of its existing patronage, and (ii) is not a part of a commercial enterprise having at least one other establishment not being acquired by the acquiring agency, which is engaged in the same or similar business.

(4) In addition to damages under clauses (1) or (2) and (3) of this subsection, actual reasonable expenses incurred in searching for a replacement business or farm.

Section 602-A. Replacement Housing for Homeowners.—(a) In addition to payments otherwise authorized, the acquiring agency shall make an additional payment not in excess of fifteen thousand dollars (\$15,000) to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the property or the receipt of written notice from the acquiring agency of intent to acquire or order to vacate. Such additional payment shall include the following elements:

(1) The amount, if any, which, when added to the acquisition cost of the acquired dwelling, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and his place of employment and available to such displaced person on the private market.

(2) The amount, if any, as hereinafter provided, which will compensate such displaced person for any increased interest and other debt service costs, which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount on the principal of the installment purchase contract, mortgage or other evidence of debt on the replacement dwelling which is equal to the unpaid balance of the installment purchase contract, mortgage or other evidence of debt on the acquired dwelling over the remaining term of the installment purchase contract, mortgage or other evidence of debt 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. Such amount shall be paid only if the acquired dwelling was subject to

an installment purchase contract or encumbered by a bona fide installment purchase contract, mortgage or other evidence of debt secured by the dwelling which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling.

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording and attorney fees, real property transfer taxes, and other closing and related costs incident to the purchase and financing of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling, which is decent, safe, sanitary, and adequate to accommodate such displaced person, not later than the end of the one-year period beginning on the date on which he receives final payment of his full acquisition cost for the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. Regulations issued pursuant to section 604-A may prescribe situations when such one-year period may be extended.

(c) The person entitled under this section shall have the right to elect the benefits available under section 603-A in lieu of those provided by this section.

Section 603-A. Replacement Housing for Tenants and Others.—(a) In addition to amounts otherwise authorized, an acquiring agency shall make a payment to or for any displaced person displaced from a dwelling not eligible to receive a payment under section 602-A which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling or the receipt of written notice from the acquiring agency of intent to acquire or order to vacate. Such payment shall be either:

(1) The amount determined to be necessary to enable such displaced person to lease for a period not to exceed four years a decent, safe, and sanitary dwelling adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment. Such amount shall be the additional amount, if any, over the actual rental or fair rental value of the acquired dwelling as determined in accordance with regulations promulgated under section 604-A but not to exceed four thousand dollars (\$4,000); or

(2) The amount necessary to enable such person to make a down payment, which shall mean the equity payment in excess of the maximum amount of conventional financing available to such displaced person, plus those expenses described in section 602-A (a) (3), on the purchase of a decent, safe, and sanitary dwelling adequate to

accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars (\$4,000), except that if such amount exceeds two thousand dollars (\$2,000) such person must equally match such amount in excess of two thousand dollars (\$2,000) in making the down payment.

(b) The additional payment authorized by this section shall be made only to such a displaced person who occupies a replacement dwelling which is decent, safe, sanitary, and adequate to accommodate such displaced person.

Section 604-A. Issuance of Regulations to Implement this Article.—The Attorney General shall promulgate such rules and regulations as may be necessary to assure:

(1) That the payments authorized by this article shall be made in a manner which is fair and reasonable, and as uniform as practicable;

(2) That a displaced person who makes proper application for a payment authorized for such person by this article shall be paid promptly after a move or, in hardship cases, be paid in advance;

(3) That any person aggrieved by a determination as to eligibility for a payment authorized by this article, or the amount of a payment, may elect to have his application reviewed by the head of the acquiring agency or his designee;

(4) That each displaced person shall receive the maximum payments authorized by this article; and

(5) That each acquiring agency may obtain the maximum Federal reimbursement for relocation payment and assistance costs authorized by any Federal law.

Section 605-A. Payments Not to be Considered as Income or Resources.—No payment received by a displaced person under this article shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any State law, or for the purposes of the State or local personal income or wage tax laws, corporation tax laws, or other tax laws. No payments under this article except those provided for in section 601-A (b) shall be subject to attachment or execution at law or in equity.

Section 606-A. Rights of Certain Displaced Persons Defined.—The provisions of this Article VI-A of this amending act shall apply to all persons who have become displaced persons on or after January 2, 1971 without regard to any final disposition heretofore made of any claim for special damages for displacement: Provided, however, That anyone displaced on or after January 2, 1971 and prior to the effective date of this Article VI-A and this amending act, shall be entitled to the greater of any item of special damages for displacement as provided in this Article VI-A or as provided in any prior law.

Section 9. Section 902 of the act is amended by adding a clause to read:

Section 902. Specific Repeals.—The following acts and parts of acts are repealed absolutely:

* * *

(23) Sections 304.1 through 304.7, act of June 1, 1945 (P.L.1242), known as the "State Highway Law."

Section 10. All acts or parts of acts, general, special and local are repealed in so far as they are inconsistent with the provisions of this amending act.

Section 11. This act shall take effect immediately.

APPROVED—The 29th day of December, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 169.



Secretary of the Commonwealth.