

No. 1989-2

## AN ACT

HB 254

Amending the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), entitled "An act to codify, amend, revise and consolidate the laws relating to eminent domain," further providing for the definition of "displaced person," for moving and related expenses of displaced persons, for replacement housing and for issuance of regulations.

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

Section 1. Section 201(5) and (8) of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, amended December 29, 1971 (P.L.635, No.169), are amended and the section is amended by adding definitions 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:

\* \* \*

(5) "Acquiring agency" means any entity vested with the power of eminent domain by the laws of the Commonwealth, including the Commonwealth. *For purposes of Article VI-A, "acquiring agency" shall also include other agencies or persons which are carrying out a program or project to the extent that they cause a person to become a displaced person.*

\* \* \*

[(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.]

(8) "Displaced person"

(i) Means:

(A) Any condemnee or other person who moves from real property or moves his personal property from real property:

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for a program or project undertaken by an acquiring agency; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation or a business as defined in section 201(7)(iv) as a direct result of rehabilitation, demolition or such other displacing activity under a program or project undertaken by an acquiring agency in any case in which the displacement is permanent.

**(B) Solely for the purpose of section 601-A(a)(1) and (2) of this act, any person who moves from real property or moves his personal property:**

**(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by an acquiring agency; or**

**(II) as a direct result of rehabilitation, demolition or other displacing activity of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by an acquiring agency where the displacement is permanent.**

**(C) A person who was in occupancy of the real property on or before the date of acquisition notwithstanding the termination or expiration of a lease entered into before or after the event giving rise to the displacement.**

**(ii) Does not include:**

**(A) a person who unlawfully occupies the displacement dwelling or occupied the dwelling for the purpose of obtaining assistance under this act; or**

**(B) in any case in which the acquiring agency acquires property for a program or project, a person (other than a person who was an occupant of such property at the time it was acquired) who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.**

**\* \* \***

**(13) "Comparable replacement dwelling" means a dwelling that is:**

**(i) decent, safe and sanitary;**

**(ii) adequate in size to accommodate the occupants;**

**(iii) within the financial means of the displaced person;**

**(iv) functionally equivalent;**

**(v) in an area not subject to unreasonable adverse environmental conditions; and**

**(vi) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.**

**(14) "Small business" means a business having not more than five hundred employes working at the site being acquired or permanently displaced by a program or project.**

Section 2. Sections 601-A, 602-A, 603-A and 604-A, added December 29, 1971 (P.L.635, No.169), are amended to read:

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

(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 *and* dislocation 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)] in accordance with regulations promulgated under this act.**

(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.]**

**(3) Actual reasonable expenses in searching for a replacement business or farm determined in accordance with regulations promulgated under this act.**

**(4) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by regulation, but not to exceed ten thousand dollars (\$10,000).**

**(5) In lieu of damages under subsection (a) and clause (1), (2), (3) or (4) of this subsection, damages in an amount equal to the average annual net earnings but not more than twenty thousand dollars (\$20,000) nor less than one thousand dollars (\$1,000). 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 the business or farm operation moves from the real property acquired for a project, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during this period. The regulations promulgated under section 604-A of this act may designate another period determined to be more equitable for establishing average annual net earnings provided the designation of the period does not produce a lesser payment than would use of the last two taxable years. Payment shall be made only if the business cannot be relocated without a substantial loss of profits. A person whose sole business at a dwelling from which he is displaced is the rental of such property to others shall not qualify for a payment under this clause.**

**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)] twenty-two thousand five hundred dollars (\$22,500) 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 evi-**

dence 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 *immediately* 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. *If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the date on which he received final payment of his full acquisition cost for the acquired dwelling.*

(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) (1) 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] the amount determined to be necessary to enable such displaced person to lease for a period not to exceed [four years] *forty-two months* a [decent, safe, and sanitary] *comparable replacement* 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] *five thousand two hundred fifty dollars (\$5,250).*

(2) *Any person eligible for a payment under clause (1) may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe and sanitary replacement dwelling.*

(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[,] and sanitary[, and adequate to accommodate such displaced person].

Section 604-A. Issuance of Regulations to Implement this Article.—The [Attorney General] *Office of General Counsel* 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 3. If this act is enacted after April 1, 1989, it shall be applied retroactively to April 1, 1989.

Section 4. This act shall take effect immediately.

APPROVED—The 4th day of April, A. D. 1989.

ROBERT P. CASEY