

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 630 Session of
1999

INTRODUCED BY BRIGHTBILL, MUSTO, SALVATORE, PICCOLA, WHITE,
EARLL, THOMPSON, LEMMOND, CORMAN AND SLOCUM, MARCH 22, 1999

REFERRED TO STATE GOVERNMENT, MARCH 22, 1999

AN ACT

1 Amending Titles 26 (Eminent Domain), 42 (Judiciary and Judicial
2 Procedure) and 51 (Military Affairs) of the Pennsylvania
3 Consolidated Statutes, adding provisions relating to eminent
4 domain; and making repeals.

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

7 Section 1. Title 26 of the Pennsylvania Consolidated
8 Statutes is amended by adding chapters to read:

9 TITLE 26

10 EMINENT DOMAIN

11 Chapter

12 1. General Provisions

13 3. Procedure to Condemn

14 5. Procedure for Determining Damages

15 7. Just Compensation and Measure of Damages

16 9. Special Damages for Displacement

17 11. Evidence

18 CHAPTER 1

1 GENERAL PROVISIONS

2 Sec.

3 101. Short title of title.

4 102. Application of title.

5 103. Definitions.

6 § 101. Short title of title.

7 This title shall be known and may be cited as the Eminent
8 Domain Code.

9 § 102. Application of title.

10 This title provides a complete and exclusive procedure and
11 law to govern all condemnations of property for public purposes
12 and the assessment of damages. Nothing in this title shall
13 affect the jurisdiction or power of the Pennsylvania Public
14 Utility Commission or any statute providing for the assessment
15 of benefits for public improvements on the properties benefited.
16 Nothing in this title shall enlarge or diminish the power of
17 condemnation given by law to any condemnor.

18 § 103. Definitions.

19 Subject to additional definitions contained in subsequent
20 provisions of this title which are applicable to specific
21 provisions of this title, the following words and phrases when
22 used in this title shall have the meanings given to them in this
23 section unless the context clearly indicates otherwise:

24 "Acquiring agency." Any entity, including the Commonwealth,
25 vested with the power of eminent domain by the laws of this
26 Commonwealth. This definition is subject to section 901
27 (relating to definitions).

28 "Acquisition cost." General damages or, in the event of
29 amicable acquisition, the price paid by the acquiring agency.

30 "Business." Any lawful activity, except a farm operation,

1 conducted:

2 (1) primarily for the purchase, sale, lease or rental of
3 personal or real property or for the manufacture, processing
4 or marketing of products, commodities or any other personal
5 property;

6 (2) primarily for the sale of services to the public; or

7 (3) by a nonprofit organization.

8 This definition is subject to section 902(a)(2) (relating to
9 moving and related expenses of displaced persons).

10 "Comparable replacement dwelling." A dwelling that is:

11 (1) Decent, safe and sanitary.

12 (2) Adequate in size to accommodate the occupants.

13 (3) Within the financial means of the displaced person.

14 (4) Functionally equivalent.

15 (5) In an area not subject to unreasonable adverse
16 environmental conditions.

17 (6) In a location generally not less desirable than the
18 location of the displaced person's dwelling with respect to
19 public utilities, facilities, services and the displaced
20 person's place of employment.

21 "Condemn." To take, injure or destroy property by authority
22 of law for a public purpose.

23 "Condemnee." The owner of a property interest taken, injured
24 or destroyed. The term does not include a mortgagee, judgment
25 creditor or other lienholder.

26 "Condemnor." The acquiring agency, including the
27 Commonwealth, that takes, injures or destroys property by
28 authority of law for a public purpose.

29 "Court." The court of common pleas.

30 "Displaced person."

1 (1) Except as set forth in paragraph (2) or (3), any of
2 the following:

3 (i) A condemnee or other person that moves from real
4 property or moves personal property from real property:

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

9 (B) on which such person is a residential tenant
10 or conducts a small business, a farm operation or a
11 "business" as defined in section 902(a)(2) (relating
12 to moving and related expenses of displaced persons)
13 as a direct result of rehabilitation, demolition or
14 other displacing activity for a program or project
15 undertaken by an acquiring agency if the displacement
16 is permanent.

17 (ii) A person that was in occupancy of the real
18 property on or before the date of acquisition,
19 notwithstanding the termination or expiration of a lease
20 entered into before or after the event giving rise to the
21 displacement.

22 (2) The term does not include any of the following:

23 (i) A person that unlawfully occupies the
24 displacement dwelling or occupied the dwelling for the
25 purpose of obtaining assistance under this title.

26 (ii) In any case in which the acquiring agency
27 acquires real property for a program or project, a
28 person, other than a person that was an occupant of the
29 property at the time it was acquired, that occupies the
30 property on a rental basis for a short term or a period

PROCEDURE TO CONDEMN

Sec.

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§ 301. Venue.

All condemnation proceedings shall be brought in the court of the county in which the property is located or, if the property is located in two or more counties, in the court of any one of the counties. Where the property is located in two or more counties and a proceeding is commenced in the court of one of the counties, all subsequent proceedings regarding the same property shall be brought in the same county.

§ 302. Declaration of taking.

(a) Condemnation and passage of title.--Condemnation under the power of condemnation given by law to a condemnor shall be effected only by the filing in court of a declaration of taking with the security required under section 303(a) (relating to security required). The title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of the filing, and the condemnor shall be entitled to possession under section 307 (relating to possession, right of entry and payment of compensation).

(b) Contents.--The declaration of taking shall be in writing and executed by the condemnor and shall be captioned as a proceeding in rem and contain the following:

(1) The name and address of the condemnor.

(2) A specific reference to the statute and section under which the condemnation is authorized.

(3) A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when the action was taken and the place where the record may be examined.

(4) A brief description of the purpose of the condemnation.

(5) A description of the property condemned, sufficient for identification, specifying the municipal corporation and the county or counties where the property taken is located, a reference to the place of recording in the office of the recorder of deeds of plans showing the property condemned or a statement that plans showing the property condemned are on the same day being lodged for record or filed in the office of the recorder of deeds in the county in accordance with section 304 (relating to recording notice of condemnation).

(6) A statement of the nature of the title acquired, if any.

(7) A statement specifying where a plan showing the condemned property may be inspected in the county in which the property taken is located.

(8) A statement of how just compensation has been made or secured.

(c) More than one property included in declaration.--The condemnor may include in one declaration of taking any or all of

1 the properties specified in the action by which the declaration
2 of taking was authorized.

3 (d) Fee.--The prothonotary shall charge one fee for filing
4 each declaration of taking, which shall be the same regardless
5 of the number of properties or condemnees included.

6 (e) Filing.--The condemnor shall file within one year of the
7 action authorizing the declaration of taking a declaration of
8 taking covering all properties included in the authorization not
9 otherwise acquired by the condemnor within this time.

10 § 303. Security required.

11 (a) Bond.--Except as provided in subsection (b), every
12 condemnor shall give security to effect the condemnation by
13 filing with the declaration of taking its bond, without surety,
14 to the Commonwealth for the use of the owner of the property
15 interests condemned, the condition of which shall be that the
16 condemnor shall pay the damages determined by law.

17 (b) Pledge of tax revenues.--Where a condemnor has the power
18 of taxation, it shall not be required to file a bond with the
19 declaration of taking. The funds raised or authorized by law to
20 be raised by the power of taxation of the condemnor shall be
21 deemed pledged and are made security for the payment of the
22 damages determined by law.

23 (c) Insufficient security.--The court, upon preliminary
24 objections of the condemnee under and within the time set forth
25 in section 306(a) (relating to preliminary objections), may
26 require the condemnor to give bond and security as the court
27 deems proper if it appears to the court that the bond or power
28 of taxation of the condemnor is not sufficient security.

29 § 304. Recording notice of condemnation.

30 (a) County of recording.--The condemnor, upon filing its

1 declaration of taking, shall on the same day lodge for record a
2 notice of the declaration in the office of the recorder of deeds
3 of the county in which the property is located. If the property
4 is located in two or more counties, the notice shall be recorded
5 in each county.

6 (b) Notice and recording requirements.--The notice shall
7 specify the court term and number of the declaration of taking
8 and the date it was filed and shall contain a description or
9 plan of the property condemned sufficient for identification and
10 the names of the owners of the property interests condemned, as
11 reasonably known to the condemnor, and shall be indexed in the
12 deed indices showing the condemnee set forth in the notice as
13 grantor and the condemnor as grantee. If plans are to be
14 recorded as part of the notice, they shall be submitted on
15 standard legal size paper. If plans are to be filed as part of
16 the notice, they shall be in legible scale and filed in a
17 condemnation book or file or microfilmed, with a notation as to
18 the condemnation book and page number, file number or microfilm
19 number to be made by the recorder on the margin of the notice.
20 Upon the notice being assigned a book and page number by the
21 recorder of deeds the condemnor shall file with the prothonotary
22 under the caption of the declaration of taking a memorandum of
23 the book and page number in which the notice is recorded.

24 (c) Fees.--The recorder shall receive as a fee for recording
25 each notice the sum of \$5 plus \$1 for each page recorded after
26 the first and for filing plans \$2.50 for each page or sheet of
27 plan filed and 25¢ for each name indexed.

28 § 305. Notice to condemnee.

29 (a) Written notice.--Within 30 days after the filing of the
30 declaration of taking, the condemnor shall give written notice

1 of the filing to the condemnee, to any mortgagee of record, and
2 to any lienholder of record.

3 (b) Service.--The notice shall be served within or without
4 this Commonwealth, by any competent adult, in the same manner as
5 in a civil action or by registered mail to the last known
6 address of the person being served. If service cannot be made in
7 this manner, then service shall be made by posting a copy of the
8 notice upon the most public part of the property and by
9 publication of a copy of the notice, omitting the plot plan
10 required by subsection (c)(8), one time each in one newspaper of
11 general circulation and the legal journal, if any, published in
12 the county.

13 (c) Contents.--The notice to be given the condemnee shall
14 state:

15 (1) The caption of the case.

16 (2) The date of filing of the declaration of taking and
17 the court term and number.

18 (3) The name of the condemnee to whom it is directed.

19 (4) The name and address of the condemnor.

20 (5) A specific reference to the statute and section
21 under which the condemnation action is authorized.

22 (6) A specific reference to the action, whether by
23 ordinance, resolution or otherwise, by which the declaration
24 of taking was authorized, including the date when the action
25 was taken and the place where the record may be examined.

26 (7) A brief description of the purpose of the
27 condemnation.

28 (8) A statement that the condemnee's property has been
29 condemned and a reasonable identification of the property in
30 the case of a total taking and, in the case of a partial

1 taking, a plot plan showing the condemnee's entire property
2 and the area taken.

3 (9) A statement of the nature of the title acquired.

4 (10) A statement specifying where a plan showing the
5 condemned property may be inspected in the county in which
6 the property taken is located.

7 (11) A statement of how just compensation has been made
8 or secured.

9 (12) A statement that, if the condemnee wishes to
10 challenge the power or the right of the condemnor to
11 appropriate the condemned property, the sufficiency of the
12 security, the procedure followed by the condemnor or the
13 declaration of taking, he shall file preliminary objections
14 within 30 days after being served with notice of
15 condemnation.

16 (d) Compliance.--Service of a copy of the declaration of
17 taking, together with the information and notice required by
18 subsection (c)(2), (8) and (12), shall constitute compliance
19 with the notice requirements of this section.

20 (e) Proof of service.--The condemnor shall file proof of
21 service of the notice.

22 § 306. Preliminary objections.

23 (a) Filing and exclusive method of challenging certain
24 matters.--Within 30 days after being served with notice of
25 condemnation, the condemnee may file preliminary objections to
26 the declaration of taking. The court upon cause shown may extend
27 the time for filing preliminary objections. Preliminary
28 objections shall be limited to and shall be the exclusive method
29 of challenging:

30 (1) The power or right of the condemnor to appropriate

1 the condemned property unless it has been previously
2 adjudicated.

3 (2) The sufficiency of the security.

4 (3) The declaration of taking.

5 (4) Any other procedure followed by the condemnor.

6 (b) Waiver.--Failure to raise by preliminary objections the
7 issues listed in subsection (a) shall constitute a waiver.

8 (c) Grounds to be stated.--Preliminary objections shall
9 state specifically the grounds relied on.

10 (d) When raised.--All preliminary objections shall be raised
11 at one time and in one pleading. They may be inconsistent.

12 (e) Service.--The condemnee shall serve a copy of the
13 preliminary objections on the condemnor within 72 hours after
14 filing them.

15 (f) Disposition.--The court shall determine promptly all
16 preliminary objections and make preliminary and final orders and
17 decrees as justice shall require, including the revesting of
18 title. If an issue of fact is raised, the court shall take
19 evidence by depositions or otherwise. The court may allow
20 amendment or direct the filing of a more specific declaration of
21 taking.

22 (g) Costs and expenses.--If preliminary objections which
23 have the effect of terminating the condemnation are sustained,
24 the condemnee shall be reimbursed by the condemnor for
25 reasonable appraisal, attorney and engineering fees and other
26 costs and expenses actually incurred because of the condemnation
27 proceedings. Costs and expenses under this subsection shall be
28 assessed by the court.

29 § 307. Possession, right of entry and payment of compensation.

30 (a) Possession or right of entry of condemnor.--

1 (1) The condemnor, after the expiration of the time for
2 filing preliminary objections by the condemnee to the
3 declaration of taking, shall be entitled to possession or
4 right of entry upon payment of, or a written offer to pay to
5 the condemnee, the amount of just compensation as estimated
6 by the condemnor. However, the condemnor shall be entitled to
7 possession or right of entry upon an easement without the
8 payment of or offer to pay the estimated just compensation if
9 the condemnor has the right to assess the property for
10 benefits. If a condemnee or any other person then refuses to
11 deliver possession or permit right of entry, the prothonotary
12 upon praecipe of the condemnor shall issue a rule, returnable
13 in five days after service upon the condemnee or the other
14 person, to show cause why a writ of possession should not
15 issue. The court, unless preliminary objections warranting
16 delay are pending, may issue a writ of possession conditioned
17 except as provided in this subsection upon payment to the
18 condemnee or into court of the estimated just compensation
19 and on any other terms as the court may direct.

20 (2) A court may issue a writ of possession to a
21 condemnor prior to the disposition of preliminary objections:

22 (i) If it is finally determined that a condemnation
23 is invalid in a case in which preliminary objections
24 challenge the validity of a right-of-way or easement for
25 occupation by a utility, the affected owners may recover
26 damages for injuries sustained by taking possession under
27 this paragraph and are entitled to appropriate equitable
28 relief.

29 (ii) If it is finally determined that any other
30 condemnation is invalid after the granting of possession

1 under this paragraph, the affected owners may recover
2 costs and expenses under section 306(g) and are entitled
3 to disposition under section 306(f).

4 (b) Tender of possession or right of entry by condemnee.--If
5 within 60 days from the filing of the declaration of taking the
6 condemnor has not paid just compensation as provided in
7 subsection (a), the condemnee may tender possession or right of
8 entry in writing and the condemnor shall then make payment of
9 the just compensation due the condemnee as estimated by the
10 condemnor. If the condemnor fails to make the payment, the
11 court, upon petition of the condemnee, may compel the condemnor
12 to file a declaration of estimated just compensation or, if the
13 condemnor fails or refuses to file the declaration, may at the
14 cost of the condemnor appoint an impartial expert appraiser to
15 estimate just compensation. The court may, after hearing, enter
16 judgment for the amount of the estimated just compensation.

17 (c) Compensation without prejudice.--The compensation paid
18 under subsections (a) and (b) shall be without prejudice to the
19 rights of either the condemnor or the condemnee to proceed to a
20 final determination of the just compensation, and any payments
21 made shall be considered only as payments pro tanto of the just
22 compensation as finally determined. Following the rendition of
23 the verdict, the court shall mold the verdict to deduct the
24 estimated just compensation previously paid by the condemnor.
25 However, in no event shall the condemnee be compelled to pay
26 back to the condemnor the compensation paid under subsection (a)
27 or (b), even if the amount of just compensation as finally
28 determined is less than the compensation paid.

29 § 308. Revocation of condemnation proceedings.

30 (a) Declaration of relinquishment.--The condemnor, by filing

1 a declaration of relinquishment in court within two years from
2 the filing of the declaration of taking and before having made
3 the payment provided in section 307(a) or (b) (relating to
4 possession, right of entry and payment of compensation) or as to
5 which the condemnee has not tendered possession of the condemned
6 property as provided in section 307, may relinquish all or any
7 part of the property condemned that it has not taken actual
8 possession of for use in the improvement. The title shall then
9 revert in the condemnee as of the date of the filing of the
10 declaration of taking and all mortgages and other liens existing
11 as of that date and not thereafter discharged shall be
12 reinstated.

13 (b) Notice.--Notice of the relinquishment shall be recorded
14 in the office of the recorder of deeds of the county in which
15 the property taken is located, with the condemnor as the grantor
16 and the condemnee as the grantee, and the notice of the
17 relinquishment shall be served on the condemnee, any mortgagee
18 of record and any lienholder of record in the same manner as
19 provided for service of the declaration of taking.

20 (c) Fees.--The fees payable to the recorder for recording
21 the notice of relinquishment shall be in the same amounts as
22 provided in section 304(c) (relating to recording notice of
23 condemnation).

24 (d) Costs and expenses.--Where condemned property is
25 relinquished, the condemnee shall be reimbursed by the condemnor
26 for reasonable costs and expenses as provided in section 306(g)
27 (relating to preliminary objections).

28 (e) Agreement.--The condemnor and the condemnee, without the
29 filing of a declaration of relinquishment, may by agreement
30 effect a revesting of title in the condemnee which agreement

1 shall be properly recorded.

2 § 309. Right to enter property prior to condemnation.

3 Prior to the filing of the declaration of taking, the
4 condemnor or its employees or agents shall have the right to
5 enter upon any land or improvement which it has the power to
6 condemn in order to make studies, surveys, tests, soundings and
7 appraisals. However, the owner of the land or the party in whose
8 name the property is assessed shall be notified ten days prior
9 to entry on the property. Any actual damages sustained by the
10 owner of a property interest in the property entered upon by the
11 condemnor shall be paid by the condemnor. Damages shall be
12 assessed by the court, or the court may refer the matter to
13 viewers to ascertain and assess the damages sustained by the
14 condemnee. The exercise of this right of entry by the condemnor
15 shall neither constitute a condemnation nor be interpreted as a
16 notice of an intent to acquire the real property.

17 § 310. Abandonment of project.

18 (a) Disposition of property.--If a condemnor has condemned a
19 fee and then abandons the purpose for which the property has
20 been condemned, the condemnor may dispose of it by sale or
21 otherwise. If the property has not been substantially improved,
22 it may not be disposed of within three years after condemnation
23 without first being offered to the condemnee at the same price
24 paid to the condemnee by the condemnor. If the property is not
25 located within the corporate boundaries of a county of the first
26 or second class and has not been substantially improved and was
27 devoted to agricultural use at the time of the condemnation, it
28 may not be disposed of within 12 years after condemnation
29 without first being offered to the condemnee at the same price
30 paid to the condemnee by the condemnor.

1 (b) Notice.--The condemnee shall be served with notice of
2 the offer in the same manner as prescribed for the service of
3 notices in section 305(b) (relating to notice to condemnee) and
4 shall have 90 days after receipt of notice to make written
5 acceptance.

6 (c) Certain conditional offers prohibited.--The condemnor
7 may not condition any offer required to be made to a condemnee
8 under subsection (a) on the payment by the condemnee of
9 additional fees, real estate taxes or payments in lieu of taxes
10 or other costs.

11 (d) Definitions.--As used in this section, the following
12 words and phrases shall have the meanings given to them in this
13 subsection:

14 "Agricultural commodity." Any plant and animal products,
15 including Christmas trees, produced in this Commonwealth for
16 commercial purposes.

17 "Agricultural use." Use of the land for the purpose of
18 producing an agricultural commodity or when devoted to and
19 meeting the requirements and qualifications for payments or
20 other compensation pursuant to a soil conservation program under
21 an agreement with an agency of the Federal Government. Land
22 containing a farmhouse or other buildings related to farming
23 shall be deemed to be in agricultural use.

24 CHAPTER 5

25 PROCEDURE FOR DETERMINING DAMAGES

26 Sec.

27 501. Agreement as to damages.

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20 § 501. Agreement as to damages.

21 At any stage of the proceedings, the condemnor and the
22 condemnee may agree upon all or any part or item of the damages
23 and proceed to have those parts or items not agreed upon
24 assessed as provided in this chapter. The condemnor may make
25 payment of any part or item agreed upon.

26 § 502. Petition for appointment of viewers.

27 (a) Contents of petition.--A condemnor, condemnee or
28 displaced person may file a petition requesting the appointment
29 of viewers, setting forth:

30 (1) A caption designating the condemnee or displaced

1 person as the plaintiff and the condemnor as the defendant.

2 (2) The date of the filing of the declaration of taking
3 and whether any preliminary objections have been filed and
4 remain undisposed of.

5 (3) In the case of a petition of a condemnee or
6 displaced person, the name of the condemnor.

7 (4) The names and addresses of all condemnees, displaced
8 persons and mortgagees known to the petitioner to have an
9 interest in the property acquired and the nature of their
10 interest.

11 (5) A brief description of the property acquired.

12 (6) A request for the appointment of viewers to
13 ascertain just compensation.

14 (b) Property included in condemnor's petition.--The
15 condemnor may include in its petition any or all of the property
16 included in the declaration of taking.

17 (c) Condemnation where no declaration of taking has been
18 filed.--An owner of a property interest who asserts that his
19 property interest has been condemned without the filing of a
20 declaration of taking may file a petition for the appointment of
21 viewers substantially in the form provided for in subsection (a)
22 setting forth the factual basis of the petition. The court shall
23 determine whether a condemnation has occurred, and, if the court
24 determines that a condemnation has occurred, the court shall
25 determine the condemnation date and the extent and nature of any
26 property interest condemned. The court shall enter an order
27 specifying any property interest which has been condemned and
28 the date of the condemnation. A copy of the order and any
29 modification shall be filed by the condemnor in the office of
30 the recorder of deeds of the county in which the property is

1 located and shall be indexed in the deed indices showing the
2 condemnee as grantor and the condemnor as grantee.

3 (d) Separate proceedings.--The court, in furtherance of
4 convenience or to avoid prejudice, may, on its own motion or on
5 motion of any party, order separate viewers' proceedings or
6 trial when more than one property has been included in the
7 petition.

8 § 503. View.

9 In every proceeding at least one of the viewers appointed
10 shall be an attorney at law who shall be chairman of the board
11 and who shall attend the view. At least two of the three
12 viewers appointed shall view the property in question.

13 § 504. Appointment of viewers.

14 (a) General rule.--Upon the filing of a petition for the
15 appointment of viewers, the court, unless preliminary objections
16 to the validity of the condemnation or jurisdiction, warranting
17 delay, are pending, shall promptly appoint three viewers, who
18 shall view the premises, hold hearings and file a report. In
19 counties of the first class, the court may appoint an alternate
20 viewer in addition to the three viewers specifically appointed.
21 The prothonotary shall promptly notify the viewers of their
22 appointment unless a local rule provides another method of
23 notification. No viewer shall represent a client or testify as
24 an expert witness before the board.

25 (b) Service of petition for the appointment of viewers and
26 order appointing viewers.--The petitioners shall promptly send
27 to all other parties by registered mail, return receipt
28 requested, a certified true copy of the petition for the
29 appointment of viewers and a copy of the court order appointing
30 the viewers if an order has been entered. A copy of the petition

1 and order, if entered, shall also be mailed to all mortgagees
2 and other lienholders of record.

3 (c) Notice of views and hearings.--The viewers shall give
4 notice of the time and place of all views and hearings. This
5 notice shall be given to all parties by not less than 30 days
6 written notice by registered mail, return receipt requested.

7 (d) Preliminary objections.--Any objection to the
8 appointment of viewers may be raised by preliminary objections
9 filed within 30 days after receipt of notice of the appointment
10 of viewers. Objections to the form of the petition or the
11 appointment or the qualifications of the viewers in any
12 proceeding or to the legal sufficiency or factual basis of a
13 petition filed under section 502(c) (relating to petition for
14 appointment of viewers) are waived unless included in
15 preliminary objections. An answer with or without new matter may
16 be filed within 20 days of service of preliminary objections,
17 and a reply to new matter may be filed within 20 days of service
18 of the answer. The court shall determine promptly all
19 preliminary objections and make any orders and decrees as
20 justice requires. If an issue of fact is raised, the court shall
21 conduct an evidentiary hearing or order that evidence be taken
22 by deposition or otherwise, but in no event shall evidence be
23 taken by the viewers on this issue.

24 § 505. Service of notice of view and hearing.

25 Notice of the view and hearing shall be served, within or
26 without this Commonwealth, by any competent adult in the same
27 manner as a civil action or by registered mail, return receipt
28 requested, to the last known address of the condemnee and
29 condemnor. If service cannot be made in the manner provided,
30 then service shall be made by posting a copy of the notice upon

1 a public part of the property and by publication, at the cost of
2 the condemnor, once in a newspaper of general circulation and
3 once in the legal publication, if any, designated by rule or
4 order of court for publication of legal notices, published in
5 the county. Proof of service and the manner of service shall be
6 attached to the viewers' report.

7 § 506. Additional condemnees, mortgagees and intervention.

8 (a) Identification.--The condemnee, at or before the hearing
9 at which his claim is presented, shall furnish the viewers and
10 the condemnor with the names and addresses of all other
11 condemnees known to the condemnee to have an interest in his
12 property and the nature of their interests and the names and
13 addresses of all mortgagees and lienholders of record known to
14 the condemnee.

15 (b) Notice.--The viewers shall notify by written notice all
16 persons whose names are furnished under subsection (a) of the
17 pendency of the proceedings and of subsequent hearings. If these
18 persons have not received 20 days' notice of the hearing, the
19 viewers shall, upon request, adjourn the hearing to allow
20 notice.

21 (c) Intervention.--The court may permit a mortgagee,
22 judgment creditor or other lienholder to intervene in the
23 proceedings where his interest is not adequately protected, but
24 he shall not be a party to the proceedings unless he has
25 intervened.

26 § 507. Joint claims.

27 (a) Required.--The claims of all the owners of the condemned
28 property, including joint tenants, tenants in common, life
29 tenants, remaindermen, owners of easements or ground rents and
30 all others having an interest in the property and the claims of

1 all tenants, if any, of the property, shall be heard or tried
2 together.

3 (b) Apportionment of damages.--The award of the viewers or
4 the verdict on appeal from the viewers shall, first, fix the
5 total amount of damages for the property and, second, apportion
6 the total amount of damages between or among the several
7 claimants entitled to damages.

8 (c) Separate hearings.--Claims for special damages under
9 section 902 (relating to moving and related expenses of
10 displaced persons) may be heard or tried separately.

11 § 508. Appointment of trustee or guardian ad litem.

12 The court on its own motion may, or on petition of any party
13 in interest shall, appoint a trustee ad litem or guardian ad
14 litem, as may be appropriate, in accordance with general rules.

15 § 509. Furnishing of plans to viewers.

16 The condemnor shall furnish the viewers at or before the view
17 with a plan showing the entire property involved, the
18 improvements, the extent and nature of the condemnation and any
19 other physical data, including grades, as may be necessary for
20 the proper determination of just compensation. If, in the
21 opinion of the viewers, the plans are insufficient, they may
22 require the submission of supplemental plans. Copies of the
23 plans shall be furnished at the same time, without cost, to the
24 condemnee upon written request. If the condemnor does not
25 furnish a plan or the condemnor's plans are insufficient, the
26 court, on application of the condemnee, may charge to the
27 condemnor, as costs, reasonable expenses for plans furnished by
28 the condemnee.

29 § 510. Powers of viewers.

30 The viewers shall have power to adjourn the proceedings from

1 time to time. Upon request of the viewers or a party, the court
2 which appointed the viewers shall issue a subpoena to testify or
3 to produce books and documents. All the viewers shall act,
4 unless prevented by sickness or other unavoidable cause, but a
5 majority of the viewers may hear, determine, act upon and report
6 all matters relating to the view for which they were appointed.
7 The provisions of this section shall not be affected by the
8 appointment of an alternate viewer as provided for in section
9 504 (relating to appointment of viewers).

10 § 511. Administrative matters for viewers' hearings.

11 (a) Facilities.--All viewers' hearings shall be held
12 publicly in a suitable place within the county designated by the
13 court.

14 (b) Stenographic notes.--Whenever in the opinion of the
15 viewers it is desirable, accurate stenographic notes of hearings
16 shall be taken, and copies of the notes shall be furnished to
17 the parties interested when desired upon payment of a sum fixed
18 by the rules and regulations of the respective court.

19 § 512. Report of viewers.

20 The viewers shall file a report which shall include in brief
21 and concise paragraph form:

22 (1) The date of their appointment as viewers.

23 (2) A reference to the notices of the time and place of
24 view and hearing with proof of service of notices, which
25 shall be attached to the report.

26 (3) A copy of the plan showing the extent of the taking
27 or injury upon which the viewers' award is predicated and a
28 statement of the nature of the interest condemned.

29 (4) The date of the filing of the declaration of taking.

30 (5) A schedule of damages awarded and benefits assessed,

1 to and by whom payable, and for which property, separately
2 stated as follows: general damages, moving and removal
3 expenses, business dislocation damages and other items of
4 special damages authorized by this title and the date from
5 which damages for delay shall be calculated.

6 (6) In the case of a partial taking, a statement as to
7 the amount of the general damages attributable as severance
8 damages to the part of the property not taken, if the
9 apportionment has been requested in writing by the condemnee.

10 (7) Where there are several interests in the condemned
11 property, a statement of the total amount of damages and the
12 distribution between or among the several claimants.

13 (8) Whether there are other claimants to any interest or
14 estate in the property condemned and the viewers'
15 determination of the extent, if any, of each interest in the
16 property and in the award.

17 (9) Their rulings on any written requests for findings
18 of fact and conclusions of law submitted to them.

19 (10) Other matters they deem relevant.

20 § 513. Disagreement.

21 If a majority of the viewers do not agree on a decision,
22 three new viewers shall be appointed by the court upon
23 application of any interested party.

24 § 514. Filing of report of viewers.

25 The viewers shall file their report within 30 days of their
26 final hearing or within 30 days from the filing of the
27 transcription of the stenographic notes of testimony. The
28 transcription shall be filed within 30 days of the final
29 hearing. Ten days before the filing of their report, the viewers
30 shall mail a copy of the report to all parties or their

1 attorneys of record, with notice of the date of the intended
2 filing and that the report shall become final unless an appeal
3 is filed within 30 days from the date the report is filed. Prior
4 to the filing of their report, the viewers may correct any
5 errors in the report and give notice to the persons affected. A
6 copy of the report, when filed, shall also be mailed to all
7 mortgagees of record and other lienholders of record.

8 § 515. Reports.

9 The viewers may include in one report one or more properties
10 or claims under section 902 (relating to moving and related
11 expenses of displaced persons) referred to them under the same
12 or separate petitions if the properties are included in the same
13 declaration of taking. The viewers may file a separate report
14 for expenses and damages under section 902. Each report shall be
15 final as to the property or properties included and subject to
16 separate appeal.

17 § 516. Right of appeal.

18 (a) General rule.--Any party aggrieved by the decision of
19 the viewers may appeal to the court. The appeal shall raise all
20 objections of law or fact to the viewers' report. The appeal
21 shall be signed by the appellant or his attorney or his agent,
22 and no verification shall be required. Any award of damages or
23 assessment of benefits, as the case may be, as to which no
24 appeal is taken shall become final as of course and shall
25 constitute a final judgment.

26 (b) Consolidation.--The court, on its own motion or on
27 application of any party in interest, may consolidate separate
28 appeals involving only common questions of law as one
29 proceeding.

30 (c) Cross appeals.--If a timely appeal is filed by a party,

1 any other party may file an appeal within 15 days of the date on
2 which the first appeal was filed. An appeal may be taken from
3 less than all of an award.

4 (d) Withdrawal.--No appeal may be withdrawn without the
5 consent of all parties.

6 § 517. Appeals.

7 (a) Contents.--The appeal shall set forth:

8 (1) The name of appellant and appellee.

9 (2) A brief description or identification of the
10 property involved and the condemnee's interest.

11 (3) A reference to the proceedings appealed from and the
12 date of the filing of the viewers' report.

13 (4) Objections, if any, to the viewers' report, other
14 than to the amount of the award.

15 (5) A demand for jury trial, if desired. If the
16 appellant desires a jury trial, he shall at the time of
17 filing the appeal endorse the appeal or file separately a
18 written demand for jury trial, signed by him or counsel. If
19 no demand for jury trial is made by the appellant, any other
20 party may file a written demand for jury trial within 15 days
21 after being served with a copy of the appeal. If no party
22 makes a demand for a jury trial as provided in this section,
23 the right to jury trial shall be deemed to have been waived,
24 and the court shall try the case without a jury.

25 (b) Service.--The appellant shall serve a copy of the appeal
26 on all other parties within five days after filing the appeal.
27 Proof of service of a copy of the appeal shall be filed by the
28 appellant.

29 (c) Other pleadings not required.--No other pleadings shall
30 be required and the cause shall be deemed at issue.

1 § 518. Disposition of appeal.

2 All objections, other than to the amount of the award, raised
3 by the appeal shall be determined by the court preliminarily.
4 The court may confirm, modify or change the report or refer it
5 back to the same or other viewers. A decree confirming,
6 modifying or changing the report constitutes a final order. The
7 amount of damages shall be determined by the court unless a jury
8 trial has been demanded. At the trial of the case, the
9 condemnee shall be the plaintiff and the condemnor shall be the
10 defendant.

11 § 519. Allocation of damages.

12 (a) Severance damages.--Upon appeal from an award of
13 viewers, the court, upon the request of the plaintiff, shall,
14 after the jury or the court, if the trial is without jury, has
15 returned its general verdict, make a specific finding and
16 allocation of the amount of the general verdict attributable to
17 severance damages to the part of the property not taken.

18 (b) Other damages.--The jury, or the court in a trial
19 without a jury, shall make specific findings as to the portion
20 of the verdict allocated to general damages, moving and removal
21 expenses, business dislocation damages and other items of
22 special damages authorized by this title, except reasonable
23 appraisal, attorney and engineering fees recoverable under
24 sections 306 (relating to preliminary objections), 308 (relating
25 to revocation of condemnation proceedings), 709 (relating to
26 condemnee's costs where no declaration of taking filed) and 710
27 (relating to limited reimbursement of appraisal, attorney and
28 engineering fees), which shall be determined by the court in an
29 appropriate case.

30 § 520. Waiver of viewers' proceedings and termination by

1 stipulation.

2 (a) Waiver of viewers' proceedings.--The condemnor and
3 condemnee may, by written agreement filed with and approved by
4 the court, waive proceedings before viewers and proceed directly
5 to the court on agreed issues of law or fact. The proceedings
6 shall then be the same as on appeal from a report of viewers.

7 (b) Termination by stipulation.--At any time after filing of
8 a petition for the appointment of viewers, the parties may, by
9 stipulation filed with the prothonotary, terminate the viewers'
10 proceedings as to all or part of the properties involved and
11 stipulate that judgment may be entered for the amount of damages
12 agreed on for each property interest covered by the stipulation.
13 A copy of the stipulation shall be filed with the viewers.

14 § 521. Liens and distribution of damages.

15 (a) Liens.--Damages payable to a condemnee under sections
16 701 (relating to just compensation) through 707 (relating to
17 removal of machinery, equipment or fixtures), 713 (relating to
18 delay compensation), 714 (relating to consequential damages),
19 715 (relating to damages for vacation of roads) and 902(b)(1)
20 and (2) (relating to moving and related expenses of displaced
21 persons) shall be subject to a lien for all taxes and municipal
22 claims assessed against the property and to all mortgages,
23 judgments and other liens of record against the property for
24 which the particular damages are payable, existing at the date
25 of the filing of the declaration of taking. The liens shall be
26 paid out of the damages in order of priority before any payment
27 to the condemnee, unless released. In the case of a partial
28 taking or of damages under sections 714 and 715, the lienholder
29 shall be entitled only to an equitable pro rata share of the
30 damages lienable under this section.

1 (b) Distribution of damages.--It is the obligation of the
2 condemnor to distribute the damages properly. If the condemnor
3 is unable to determine proper distribution of the damages, it
4 may, without payment into court, petition the court to
5 distribute the damages and shall furnish the court with a
6 schedule of proposed distribution. Notice of the filing of the
7 petition and schedule of proposed distribution shall be given to
8 all condemnees, mortgagees, judgment creditors and other
9 lienholders, as shown in the proposed schedule, in any manner as
10 the court may direct by general rule or special order. The court
11 may hear the matter or may appoint a master to hear and report
12 or may order any issue tried by the court and jury as may appear
13 proper under all the circumstances. The court shall then enter
14 an order of distribution of the fund.

15 § 522. Payment into court and distribution.

16 (a) Payment into court.--Upon refusal to accept payment of
17 the damages or of the estimated just compensation under section
18 307 (relating to possession, right of entry and payment of
19 compensation) or if the party entitled thereto cannot be found
20 or if for any other reason the amount cannot be paid to the
21 party entitled thereto, the court upon petition of the
22 condemnor, which shall include a schedule of proposed
23 distribution, may direct payment and costs into court or as the
24 court may direct in full satisfaction. The condemnor shall give
25 20 days' notice of the presentation of the petition, including a
26 copy of the schedule of the proposed distribution, to all
27 parties in interest known to the condemnor in any manner as the
28 court may direct by general rule or special order. If the court
29 is satisfied in a particular case that the condemnor failed to
30 use reasonable diligence in giving notice, the court may, upon

1 petition of any party in interest adversely affected by the
2 failure to give notice, order that compensation for delay in
3 payment be awarded to the party for the period after deposit in
4 court by the condemnor under this section until the time the
5 party in interest has received a distribution of funds under
6 this section.

7 (b) Distribution.--The court upon petition of any party in
8 interest shall distribute the funds paid under subsection (a) or
9 any funds deposited in court under section 307 to the persons
10 entitled thereto in accordance with the procedure in section 521
11 (relating to liens and distribution of damages), but, if no
12 petition is presented within a period of five years of the date
13 of payment into court, the court shall order the fund or any
14 balance remaining to be paid to the Commonwealth without
15 escheat. No fee shall be charged against these funds.

16 CHAPTER 7

17 JUST COMPENSATION AND MEASURE OF DAMAGES

18 Sec.

19 701. Just compensation.

20 702. Measure of damages.

21 703. Fair market value.

22 704. Effect of imminence of condemnation.

23 705. Contiguous tracts and unity of use.

24 706. Effect of condemnation use on after value.

25 707. Removal of machinery, equipment or fixtures.

26 708. Expenses incidental to transfer of title.

27 709. Condemnee's costs where no declaration of taking filed.

28 710. Limited reimbursement of appraisal, attorney and
29 engineering fees.

30 711. Payment on account of increased mortgage costs.

1 712. Loss of rentals because of imminence of condemnation.

2 713. Delay compensation.

3 714. Consequential damages.

4 715. Damages for vacation of roads.

5 716. Attempted avoidance of monetary just compensation.

6 § 701. Just compensation.

7 The condemnee shall be entitled to just compensation for the
8 taking, injury or destruction of his property, determined as set
9 forth in this chapter.

10 § 702. Measure of damages.

11 (a) Just compensation.--Just compensation shall consist of
12 the difference between the fair market value of the condemnee's
13 entire property interest immediately before the condemnation and
14 as unaffected by the condemnation and the fair market value of
15 his property interest remaining immediately after the
16 condemnation and as affected by the condemnation and any other
17 damages as provided in this title.

18 (b) Urban development or redevelopment condemnation.--In the
19 case of the condemnation of property in connection with any
20 urban development or redevelopment project, which property is
21 damaged by subsidence due to failure of surface support
22 resulting from the existence of mine tunnels or passageways
23 under the property or by reason of fires occurring in mine
24 tunnels or passageways or of burning coal refuse banks, the
25 damage resulting from this subsidence or underground fires or
26 burning coal refuse banks shall be excluded in determining the
27 fair market value of the condemnee's entire property interest
28 immediately before the condemnation.

29 (c) Value of property damaged by natural disaster.--In the
30 case of the condemnation of property in connection with any

1 program or project which property is damaged by any natural
2 disaster, the damage resulting from the natural disaster shall
3 be excluded in determining fair market value of the condemnee's
4 entire property interest immediately before the condemnation.

5 (d) Applicability of natural disaster provisions.--

6 Subsection (c) is applicable only where the damage resulting
7 from the natural disaster has occurred within five years prior
8 to the initiation of negotiations for or notice of intent to
9 acquire or order to vacate the property and during the ownership
10 of the property by the condemnee. The damage to be excluded
11 shall include only actual physical damage to the property for
12 which the condemnee has not received any compensation or
13 reimbursement.

14 § 703. Fair market value.

15 Fair market value shall be the price which would be agreed to
16 by a willing and informed seller and buyer, taking into
17 consideration, but not limited to, the following factors:

18 (1) The present use of the property and its value for
19 that use.

20 (2) The highest and best reasonably available use of the
21 property and its value for that use.

22 (3) The machinery, equipment and fixtures forming part
23 of the real estate taken.

24 (4) Other factors as to which evidence may be offered as
25 provided by Chapter 11 (relating to evidence).

26 § 704. Effect of imminence of condemnation.

27 Any change in the fair market value prior to the date of
28 condemnation which the condemnor or condemnee establishes was
29 substantially due to the general knowledge of the imminence of
30 condemnation, other than that due to physical deterioration of

1 the property within the reasonable control of the condemnee,
2 shall be disregarded in determining fair market value.

3 § 705. Contiguous tracts and unity of use.

4 Where all or a part of several contiguous tracts in
5 substantially identical ownership is condemned or a part of
6 several noncontiguous tracts in substantially identical
7 ownership which are used together for a unified purpose is
8 condemned, damages shall be assessed as if the tracts were one
9 parcel.

10 § 706. Effect of condemnation use on after value.

11 In determining the fair market value of the remaining
12 property after a partial taking, consideration shall be given to
13 the use to which the property condemned is to be put and the
14 damages or benefits specially affecting the remaining property
15 due to its proximity to the improvement for which the property
16 was taken. Future damages and general benefits which will affect
17 the entire community beyond the properties directly abutting the
18 property taken shall not be considered in arriving at the after
19 value. Special benefits to the remaining property shall in no
20 event exceed the total damages except in cases where the
21 condemnor is authorized under existing law to make special
22 assessments for benefits.

23 § 707. Removal of machinery, equipment or fixtures.

24 In the event the condemnor does not require for its use
25 machinery, equipment or fixtures forming part of the real
26 estate, it shall so notify the condemnee. The condemnee may
27 within 30 days of the notice elect to remove the machinery,
28 equipment or fixtures unless the time is extended by the
29 condemnor. If the condemnee so elects, the damages shall be
30 reduced by the fair market value of the machinery, equipment or

1 fixtures severed from the real estate.

2 § 708. Expenses incidental to transfer of title.

3 Any acquiring agency shall, on the date of payment of the
4 purchase price of amicably acquired real property or of payment
5 or tender of estimated just compensation in a condemnation
6 proceeding to acquire real property, whichever is earlier or as
7 soon as is practicable, reimburse the owner for expenses he
8 necessarily incurred for:

9 (1) Recording fees, transfer taxes and similar expenses
10 incidental to conveying the real property to the acquiring
11 agency.

12 (2) Penalty costs for prepayment for any preexisting
13 recorded mortgage entered into in good faith encumbering the
14 real property.

15 (3) The pro rata portion of real property taxes paid
16 which are allocable to a period subsequent to the date of
17 vesting title in the acquiring agency or the effective date
18 of possession of the real property by the acquiring agency,
19 whichever is earlier.

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

24 § 709. Condemnee's costs where no declaration of taking filed.

25 Where proceedings are instituted by a condemnee under section
26 502(c) (relating to petition for appointment of viewers), a
27 judgment awarding compensation to the condemnee for the taking
28 of property shall include reimbursement of reasonable appraisal,
29 attorney and engineering fees and other costs and expenses
30 actually incurred.

1 § 710. Limited reimbursement of appraisal, attorney and
2 engineering fees.

3 (a) General rule.--The owner of any right, title or interest
4 in real property acquired or injured by an acquiring agency, who
5 is not eligible for reimbursement of fees under section 306(g)
6 (relating to preliminary objections), 308(d) (relating to
7 revocation of condemnation proceedings) or 709 (relating to
8 condemnee's costs where no declaration of taking filed), shall
9 be reimbursed in an amount not to exceed \$2,500 as a payment
10 toward reasonable expenses actually incurred for appraisal,
11 attorney and engineering fees.

12 (b) Attorney fees.--In determining reasonable attorney fees
13 under sections 306(g), 308(d) and 709, the court shall consider
14 all of the circumstances of the case, including, but not limited
15 to, time records if available.

16 § 711. Payment on account of increased mortgage costs.

17 (a) Reimbursement of owner.--Whenever the acquisition of
18 property by an acquiring agency results in the termination of an
19 installment purchase contract, mortgage or other evidence of
20 debt on the acquired property, requiring the legal or equitable
21 owner to enter into another installment purchase contract,
22 mortgage or other evidence of debt on the property purchased for
23 the same use as the acquired property, a legal or equitable
24 owner who does not qualify for a payment under section 903(a)(2)
25 (relating to replacement housing for homeowners) shall be
26 compensated for any increased interest and other debt service
27 costs which he is required to pay for financing the acquisition
28 of the replacement property.

29 (b) Determination of amount.--Compensation for any increased
30 interest and other debt service costs shall be equal to the

1 excess in the aggregate interest and other debt service costs of
2 that amount on the principal of the installment purchase
3 contract, mortgage or other evidence of debt on the replacement
4 property which is equal to the unpaid balance of the installment
5 purchase contract, mortgage or other evidence of debt on the
6 acquired property over the remaining term of the installment
7 purchase contract, mortgage or other evidence of debt on the
8 acquired property reduced to present worth. The discount rate to
9 be used in reducing to present worth shall be the prevailing
10 interest rate paid on savings deposits by commercial banks in
11 the general area in which the replacement property is located.
12 The amount shall be paid only if the acquired property was
13 subject to an installment purchase contract or encumbered by a
14 bona fide mortgage or other evidence of debt secured by the
15 property which was a valid lien on the property for not less
16 than 180 days prior to the initiation of negotiations for the
17 acquisition of the property.

18 § 712. Loss of rentals because of imminence of condemnation.

19 The condemnee shall be entitled to receive as special damages
20 compensation for any loss, suffered prior to the date of taking,
21 caused by a reduction of income from rentals which the condemnee
22 establishes was substantially due to the general knowledge of
23 the imminence of condemnation, other than that due to physical
24 deterioration of the property within the reasonable control of
25 the condemnee. This section is applicable only to losses of
26 rental income suffered following a 60-day period subsequent to
27 written notice from the condemnee to the condemnor that losses
28 of rental income are being suffered. Total damages under this
29 section shall not exceed \$20,000.

30 § 713. Delay compensation.

1 (a) General rule.--Compensation for delay in payment shall
2 be paid at an annual rate equal to the prime rate as listed in
3 the first edition of the Wall Street Journal published in the
4 year, plus 1%, not compounded, from:

5 (1) the date of relinquishment of possession of the
6 condemned property by the condemnee; or

7 (2) if possession is not required to effectuate
8 condemnation, the date of condemnation.

9 (b) Exclusion.--

10 (1) No compensation for delay shall be payable with
11 respect to funds paid on account or by deposit in court after
12 the date of the payment or deposit.

13 (2) During the period the condemnee remains in
14 possession after the condemnation:

15 (i) the condemnee shall not be entitled to
16 compensation for delay in payment; and

17 (ii) the condemnor shall not be entitled to rent or
18 other charges for use and occupancy of the condemned
19 property by the condemnee.

20 (c) Award or judgment.--Compensation for delay shall not be
21 included by the viewers or the court or jury on appeal as part
22 of the award or judgment but shall, at the time of payment of
23 the award or judgment, be calculated under subsection (a) and
24 added to the award or judgment. There shall be no further or
25 additional payment of interest on the award or judgment.

26 § 714. Consequential damages.

27 All condemnors, including the Commonwealth, shall be liable
28 for damages to property abutting the area of an improvement
29 resulting from change of grade of a road or highway, permanent
30 interference with access or injury to surface support, whether

1 or not any property is taken.

2 § 715. Damages for vacation of roads.

3 Whenever a public road, street or highway is vacated, the
4 affected owners may recover damages for any injuries sustained,
5 even though no land is actually taken.

6 § 716. Attempted avoidance of monetary just compensation.

7 Where a condemnor attempts to avoid the payment of monetary
8 just compensation to which the condemnee otherwise would be
9 entitled by use of a substitute for monetary compensation and
10 the condemnee incurs expenses, including appraisal, attorney and
11 engineering fees, in securing an adjudication that the
12 substitute is not adequate, the condemnee shall be reimbursed by
13 the condemnor for all these expenses incurred.

14 CHAPTER 9

15 SPECIAL DAMAGES FOR DISPLACEMENT

16 Sec.

17 901. Definitions.

18 902. Moving and related expenses of displaced persons.

19 903. Replacement housing for homeowners.

20 904. Replacement housing for tenants and others.

21 905. Housing replacement authorization.

22 906. Regulations.

23 907. Payments not to be considered as income or resources.

24 § 901. Definitions.

25 The following words and phrases when used in this chapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 "Acquiring agency." The term includes an agency or person
29 that is carrying out a program or project to the extent that the
30 agency or person causes a person to become a displaced person.

1 § 902. Moving and related expenses of displaced persons.

2 (a) Reasonable expenses incurred.--

3 (1) Any displaced person shall be reimbursed for
4 reasonable expenses incurred in moving himself and his family
5 and for the removal, transportation and reinstallation of
6 personal property.

7 (i) Receipts shall be prima facie evidence of
8 incurred reasonable moving expenses.

9 (ii) Any displaced person who is displaced from a
10 dwelling may elect to receive, in lieu of reimbursement
11 of incurred moving expenses, a moving expense and
12 dislocation allowance determined according to a schedule
13 established by the acquiring agency.

14 (2) As used in this subsection, the following words and
15 phrases shall have the meanings given to them in this
16 paragraph:

17 "Business." Includes any lawful activity, except a farm
18 operation, conducted primarily for assisting in the purchase,
19 sale, resale, manufacture, processing, or marketing of
20 products, commodities, personal property or services, by the
21 erection and maintenance of an outdoor advertising display or
22 displays, whether or not the display is located on the
23 premises on which any of these activities are conducted.

24 "Displaced person." Includes any person who moves from
25 real property or moves personal property:

26 (i) as a direct result of a written notice of intent
27 to acquire or the acquisition of other real property, in
28 whole or in part, on which the person conducts a business
29 or farm operation for a program or project undertaken by
30 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 if the displacement is permanent.

(b) Damages for dislocation of business or farm operation.--
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), to damages for
dislocation of his business or farm operation as follows:

(1) Damages equal to the value in place of the personal
property which:

(i) is not moved because of the discontinuance of
the business or farm operation or the unavailability of a
comparable site for relocation; or

(ii) cannot be moved without substantially
destroying or diminishing its utility in the relocated
business or farm operation.

As used in this paragraph, the word "business" includes any
lawful activity, except a farm operation, conducted primarily
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 the
display is located on the premises on which any of these
activities are conducted.

(2) In lieu of the damages provided in paragraph (1), at
the option of the displaced person, an amount not to exceed
\$10,000 to be determined by taking 50% of the difference, if
any, between the original cost of the personal property to

1 the displaced person or the replacement cost of equivalent
2 property at the time of sale, whichever is lower, and the net
3 proceeds obtained by the displaced person at a commercially
4 reasonable private or public sale. If this option is
5 selected, the displaced person shall give the acquiring
6 agency not less than 60 days' notice in writing of his
7 intention to seek damages under this option. The displaced
8 person shall not, directly or indirectly, purchase any of the
9 personal property at private sale. Inventory shall be paid
10 for under this option only if the business is not relocated.

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

13 (4) Actual reasonable expenses necessary to reestablish
14 a displaced farm, nonprofit organization or small business at
15 its new site, but not to exceed \$10,000. As used in this
16 paragraph, the word "business" includes any lawful activity,
17 except a farm operation, conducted primarily for assisting in
18 the purchase, sale, resale, manufacture, processing or
19 marketing of products, commodities, personal property or
20 services, by the erection and maintenance of an outdoor
21 advertising display or displays, whether or not the display
22 is located on the premises on which any of these activities
23 are conducted.

24 (5) In addition to damages under subsection (a) or
25 paragraphs (1), (2), (3) or (4), damages in an amount equal
26 to the average annual net earnings but not more than \$50,000
27 nor less than \$2,500. As used in this paragraph, the term
28 "average annual net earnings" means one-half of any net
29 earnings of the business or farm operation before Federal,
30 State and local income taxes during the two taxable years

1 immediately preceding the taxable year in which the business
2 or farm operation moves from the real property acquired for a
3 project and includes any compensation paid by the business or
4 farm operation to the owner, a spouse or dependents during
5 this period. The regulations promulgated under section 906
6 (relating to regulations) may designate another period
7 determined to be more equitable for establishing average
8 annual net earnings as long as the designated period does not
9 produce a lesser payment than would be produced by use of the
10 last two taxable years. Payment shall be made only if the
11 business cannot be relocated without a substantial loss of
12 profits. A person whose sole business at a dwelling from
13 which he is displaced is the rental of such property to
14 others shall not qualify for a payment under this paragraph.

15 § 903. Replacement housing for homeowners.

16 (a) Additional payments to certain homeowners.--In addition
17 to payments otherwise authorized, the acquiring agency shall
18 make an additional payment not in excess of \$22,500 to any
19 displaced person who is displaced from a dwelling actually owned
20 and occupied by the displaced person for not less than 180 days
21 prior to the initiation of negotiations for the acquisition of
22 the property or the receipt of written notice from the acquiring
23 agency of intent to acquire or order to vacate. The additional
24 payment shall include the following elements:

25 (1) The amount, if any, which, when added to the
26 acquisition cost of the acquired dwelling, equals the
27 reasonable cost of a comparable replacement dwelling which is
28 available to the displaced person on the private market.

29 (2) The amount, if any, which will compensate the
30 displaced person for any increased interest and other debt

1 service costs which the person is required to pay for
2 financing the acquisition of any comparable replacement
3 dwelling. The amount shall be paid only if the acquired
4 dwelling was subject to an installment purchase contract or
5 encumbered by a bona fide installment purchase contract,
6 mortgage or other evidence of debt secured by the dwelling
7 which was a valid lien on such dwelling for not less than 180
8 days immediately prior to the initiation of negotiations for
9 the acquisition of such dwelling.

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

15 (b) One-year time period for purchase of replacement
16 dwelling.--The additional payment authorized by this section
17 shall be made only to a displaced person who purchases and
18 occupies a replacement dwelling, which is decent, safe, sanitary
19 and adequate to accommodate the displaced person, not later than
20 the end of the one-year period beginning on the date on which he
21 receives final payment of his full acquisition cost for the
22 acquired dwelling or on the date on which he moves from the
23 acquired dwelling, whichever is later. Regulations issued under
24 section 906 (relating to regulations) may prescribe situations
25 when the one-year period may be extended. If the period is
26 extended, the payment under this section shall be based on the
27 costs of relocating the person to a comparable replacement
28 dwelling within one year of the date on which he received final
29 payment of full acquisition costs for the acquired dwelling.

30 (c) Right of election.--The person entitled under this

1 section shall have the right to elect the benefits available
2 under section 904 (relating to replacement housing for tenants
3 and others) in lieu of those provided by this section.

4 § 904. Replacement housing for tenants and others.

5 (a) Payment to certain displaced persons.--

6 (1) In addition to amounts otherwise authorized, an
7 acquiring agency shall make a payment to or for any displaced
8 person displaced from a dwelling not eligible to receive a
9 payment under section 903 (relating to replacement housing
10 for homeowners), which dwelling was actually and lawfully
11 occupied by the displaced person for not less than 90 days
12 prior to the initiation of negotiations for acquisition of
13 the dwelling or the receipt of written notice from the
14 acquiring agency of intent to acquire or order to vacate. The
15 payment shall be the amount determined to be necessary to
16 enable the displaced person to lease a comparable replacement
17 dwelling for a period not to exceed 42 months. The amount
18 shall be the additional amount, if any, over the actual
19 rental or fair rental value of the acquired dwelling as
20 determined in accordance with regulations promulgated under
21 section 906 (relating to regulations), but not to exceed
22 \$5,250.

23 (2) Any person eligible for a payment under paragraph

24 (1) may elect to apply the payment to a down payment on, and
25 other incidental expenses pursuant to, the purchase of a
26 decent, safe and sanitary replacement dwelling.

27 (b) Condition of payment.--The additional payment authorized
28 by this section shall be made only to a displaced person who
29 occupies a replacement dwelling which is decent, safe and
30 sanitary.

1 § 905. Housing replacement authorization.

2 (a) Short title of section.--This section shall be known and
3 may be cited as the Housing Replacement Authorization Act.

4 (b) Housing replacements by acquiring agency as last
5 resort.--

6 (1) If comparable replacement sale or rental housing is
7 not available in the neighborhood or community in which a
8 program or project is located and this housing cannot
9 otherwise be made available, the acquiring agency may
10 purchase, construct, reconstruct or otherwise provide
11 replacement housing by use of funds authorized for the
12 program or project. For this purpose, the acquiring agency
13 may exercise its power of eminent domain to acquire property
14 in fee simple or any lesser estate as it deems advisable.

15 (2) Replacement housing provided under this section may
16 be sold, leased or otherwise disposed of by the acquiring
17 agency, for or without consideration, to displaced persons or
18 to nonprofit, limited dividend or cooperative organizations
19 or public bodies, on terms and conditions as the acquiring
20 agency deems necessary and proper to effect the relocation of
21 persons displaced by a program or project.

22 (3) The acquiring agency may contract with other public
23 agencies or any person for the financing, planning,
24 acquisition, development, construction, management, sale,
25 lease or other disposition of replacement housing provided
26 under this section.

27 (c) Planning and other preliminary expenses for replacement
28 housing.--In order to encourage and facilitate the construction
29 or rehabilitation of housing to meet the needs of displaced
30 persons, any governmental acquiring agency may make loans and

1 grants to nonprofit, limited dividend or cooperative
2 organizations or public bodies for necessary and reasonable
3 expenses, prior to construction, for planning and obtaining
4 mortgage financing for the rehabilitation or construction of
5 housing for these displaced persons. These loans and grants
6 shall be made prior to the availability of financing for items
7 such as preliminary surveys and analyses of market needs,
8 preliminary site engineering, preliminary architectural fees,
9 legal, appraisal and organizational fees, site acquisition,
10 application and mortgage commitment fees, construction loan fees
11 and discounts and similar items. Loans to an organization
12 established for profit shall bear interest at market rate
13 determined by the acquiring agency. All other loans and grants
14 shall be without interest. The acquiring agency shall require
15 repayment of loans and grants made under this section, under any
16 terms and conditions it requires, upon completion of the project
17 or sooner. However, except in the case of a loan to an
18 organization established for profit, the acquiring agency may
19 cancel any part or all of a loan and may cancel the repayment
20 provisions of a grant if it determines that a permanent loan to
21 finance the rehabilitation or the construction of the housing
22 cannot be obtained in an amount adequate for repayment of the
23 loan.

24 (d) Availability of funds.--Funds, including motor license
25 funds and other special funds, appropriated or otherwise
26 available to any acquiring agency for a program or project,
27 which results in the displacement of any person, shall be
28 available also for obligations and expenditures to carry out the
29 provisions of this section.

30 § 906. Regulations.

1 The General Counsel may promulgate regulations necessary to
2 assure that:

3 (1) The payments authorized by this chapter shall be
4 made in a manner which is fair and reasonable and as uniform
5 as practicable.

6 (2) A displaced person who makes proper application for
7 a payment authorized for that person by this chapter shall be
8 paid promptly after a move or, in hardship cases, be paid in
9 advance.

10 (3) Any person aggrieved by a determination as to
11 eligibility for a payment authorized by this chapter or the
12 amount of a payment may elect to have his application
13 reviewed by the head of the acquiring agency.

14 (4) Each displaced person shall receive the maximum
15 payments authorized by this chapter.

16 (5) Each acquiring agency may obtain the maximum Federal
17 reimbursement for relocation payment and assistance costs
18 authorized by any Federal law.

19 § 907. Payments not to be considered as income or resources.

20 No payment received by a displaced person under this chapter
21 shall be considered as income or resources for the purpose of
22 determining the eligibility or extent of eligibility of any
23 person for assistance under any State law or for the purposes of
24 the State or local personal income or wage tax laws, corporation
25 tax laws or other tax laws. No payments under this chapter
26 except those provided for in section 902(b) (relating to moving
27 and related expenses of displaced persons) shall be subject to
28 attachment or execution at law or in equity.

29 CHAPTER 11

30 EVIDENCE

1 Sec.

2 1101. Viewers' hearing.

3 1102. Condemnor's evidence before viewers.

4 1103. Trial in court on appeal.

5 1104. Competency of condemnee as witness.

6 1105. Evidence generally.

7 1106. Use of condemned property.

8 § 1101. Viewers' hearing.

9 The viewers may hear testimony, receive evidence and make
10 independent investigation as they deem appropriate, without
11 being bound by formal rules of evidence.

12 § 1102. Condemnor's evidence before viewers.

13 The condemnor shall, at the hearing before the viewers,
14 present expert testimony of the amount of damages suffered by
15 the condemnee.

16 § 1103. Trial in court on appeal.

17 At the trial in court on appeal:

18 (1) Either party may, as a matter of right, have the
19 jury or the judge in a trial without a jury view the property
20 involved, notwithstanding that structures have been
21 demolished or the site altered, and the view shall be
22 evidentiary. If the trial is with a jury, the trial judge
23 shall accompany the jury on the view.

24 (2) If any valuation expert who has not previously
25 testified before the viewers is to testify, the party calling
26 him must disclose his name and serve a statement of his
27 valuation of the property before and after the condemnation
28 and his opinion of the highest and best use of the property
29 before the condemnation and of any part remaining after the
30 condemnation on the opposing party at least ten days before

1 the commencement of the trial.

2 (3) The report of the viewers and the amount of their
3 award shall not be admissible as evidence.

4 § 1104. Competency of condemnee as witness.

5 The condemnee or an officer of a corporate condemnee, without
6 further qualification, may testify as to just compensation
7 without compliance with the provisions of section 1103(2)
8 (relating to trial in court on appeal).

9 § 1105. Evidence generally.

10 At the hearing before the viewers or at the trial in court on
11 appeal:

12 (1) A qualified valuation expert may, on direct or
13 cross-examination, state any or all facts and data which he
14 considered in arriving at his opinion, whether or not he has
15 personal knowledge of the facts and data, and his statement
16 of the facts and data and the sources of his information
17 shall be subject to impeachment and rebuttal.

18 (2) A qualified valuation expert may, on direct or
19 cross-examination, testify in detail as to the valuation of
20 the property on a comparable market value, reproduction cost
21 or capitalization basis, which testimony may include, but
22 shall not be limited to, the following:

23 (i) The price and other terms of any sale or
24 contract to sell the condemned property or comparable
25 property made within a reasonable time before or after
26 the date of condemnation.

27 (ii) The rent reserved and other terms of any lease
28 of the condemned property or comparable property which
29 was in effect within a reasonable time before or after
30 the date of condemnation.

1 (iii) The capitalization of the net rental or
2 reasonable net rental value of the condemned property,
3 including reasonable net rental values customarily
4 determined by a percentage or other measurable portion of
5 gross sales or gross income of a business which may
6 reasonably be conducted on the premises, as distinguished
7 from the capitalized value of the income or profits
8 attributable to any business conducted on the premises of
9 the condemned property.

10 (iv) The value of the land together with the cost of
11 replacing or reproducing the existing improvements less
12 depreciation or obsolescence.

13 (v) The cost of adjustments and alterations to any
14 remaining property made necessary or reasonably required
15 by the condemnation.

16 (3) Either party may show the difference between the
17 condition of the property and of the immediate neighborhood
18 at the time of condemnation and at the time of view, either
19 by the viewers or jury.

20 (4) The assessed valuations of property condemned shall
21 not be admissible in evidence for any purpose.

22 (5) A qualified valuation expert may testify that he has
23 relied upon the written report of another expert as to the
24 cost of adjustments and alterations to any remaining property
25 made necessary or reasonably required by the condemnation,
26 but only if a copy of the written report has been furnished
27 to the opposing party ten days in advance of the trial.

28 (6) If otherwise qualified, a valuation expert shall not
29 be disqualified by reason of not having made sales of
30 property or not having examined the condemned property prior

1 to the condemnation provided he can show he has acquired
2 knowledge of its condition at the time of the condemnation.

3 § 1106. Use of condemned property.

4 In arriving at his valuation of the remaining part of the
5 property in a partial condemnation, an expert witness may
6 consider and testify to the use to which the condemned property
7 is intended to be put by the condemnor.

8 Section 2. Title 42 is amended by adding a section to read:

9 § 702.1. Expedited appeals in eminent domain proceedings.

10 When a court in an eminent domain proceeding dismisses
11 preliminary objections to a declaration of taking and is of the
12 opinion that the matters involved are of immediate public
13 importance, it shall, upon request of a party, so state in the
14 order. If an appeal is taken from that order, the appellate
15 court shall give priority to the determination of the issues
16 raised by the appeal.

17 Section 3. Sections 5526(4), 5527, 5530(a)(3) and 6121 of
18 Title 42 are amended to read:

19 § 5526. Five year limitation.

20 The following actions and proceedings must be commenced
21 within five years:

22 * * *

23 [(4) A proceeding in inverse condemnation, if property
24 has been injured but no part thereof has been taken, or if
25 the condemnor has made payment in accordance with section
26 407(a) or (b) (relating to possession and payment of
27 compensation) of the act of June 22, 1964 (Sp.Sess., P.L.84,
28 No.6), known as the "Eminent Domain Code."]

29 § 5527. Six year limitation.

30 (a) Eminent domain.--

1 (1) If a condemnor has filed a declaration of taking, a
2 petition for the appointment of viewers for the assessment of
3 damages under Title 26 (relating to eminent domain) must be
4 filed within six years from the date on which the condemnor
5 first made payment in accordance with 26 Pa.C.S. § 307(a) or
6 (b) (relating to possession, right of entry and payment of
7 compensation). If payment is not required to be made under 26
8 Pa.C.S. § 307(a) to obtain possession, a petition for the
9 appointment of viewers must be filed within six years of the
10 filing of the declaration of taking.

11 (2) If the condemnor has not filed a declaration of
12 taking, a petition for the appointment of viewers for the
13 assessment of damages under Title 26 must be filed within six
14 years from the date on which the asserted taking, injury or
15 destruction of the property occurred or could reasonably have
16 been discovered by the condemnee.

17 (b) Other civil action or proceeding.--Any civil action or
18 proceeding which is neither subject to another limitation
19 specified in this subchapter nor excluded from the application
20 of a period of limitation by section 5531 (relating to no
21 limitation) must be commenced within six years.

22 § 5530. Twenty-one year limitation.

23 (a) General rule.--The following actions and proceedings
24 must be commenced within 21 years:

25 * * *

26 [(3) A proceeding in inverse condemnation, if property
27 has been taken and the condemnor has not made payment in
28 accordance with section 407(a) or (b) (relating to possession
29 and payment of compensation) of the act of June 22, 1964
30 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain

1 Code."]

2 * * *

3 § 6121. Eminent domain matters.

4 Eminent domain matters shall be governed by the provisions of
5 [Article VII (relating to evidence) of the act of June 22, 1964
6 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code,"]
7 26 Pa.C.S. Ch. 11 (relating to evidence) in addition to the
8 provisions of this chapter.

9 Section 4. Section 1505 of Title 51 is amended to read:

10 § 1505. Donation of land by political subdivisions.

11 It shall be lawful for any county, city, borough, town or
12 township to acquire by purchase or by gift, or by the right of
13 eminent domain, any land for the use of the Pennsylvania
14 National Guard, and to convey such lands so acquired to the
15 Commonwealth of Pennsylvania. The proceedings for the
16 condemnation of lands under the provisions of this chapter and
17 for the assessment of damages for the property taken, injured or
18 destroyed shall be taken in the same manner as is now provided
19 by [the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as
20 the "Eminent Domain Code."] Title 26 (relating to eminent
21 domain).

22 Section 5. (a) The following acts and parts of acts are
23 repealed:

24 Section 41 of the act of April 29, 1874 (P.L.73, No.32),
25 entitled "An act to provide for the incorporation and regulation
26 of certain corporations."

27 Section 2003(e)(2)(i)(B) of the act of April 9, 1929
28 (P.L.177, No.175), known as The Administrative Code of 1929.

29 Act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the
30 Eminent Domain Code.

1 Act of December 29, 1971 (P.L.646, No.170), entitled "An act
2 to allow for the provision of relocation assistance and the
3 payment of relocation benefits under federally assisted programs
4 to persons who would not qualify for such payments under the
5 Eminent Domain Code of the Commonwealth of Pennsylvania."

6 Act of December 6, 1972 (P.L.1410, No.304), known as the
7 Housing Replacement Authorization Act.

8 Subject to subsection (b)(2), as much of section 302(a) of
9 the act of December 21, 1988 (P.L.1444, No.177), known as the
10 General Association Act of 1988, as relates to the partial
11 repeal of section 901 of the act of June 22, 1964 (Sp.Sess.,
12 P.L.84, No.6), known as the Eminent Domain Code, as reads as
13 follows: "A court may issue a writ of possession to the
14 condemnor prior to the disposition of preliminary objections
15 which challenge the validity of a condemnation of rights-of-way
16 or easements for occupation by water, electric, gas, oil and/or
17 petroleum products, telephone or telegraph lines used directly
18 or indirectly in furnishing service to the public, and if it
19 shall be determined finally that the condemnation is invalid in
20 whole or in part, the affected owners may recover damages for
21 any injuries sustained thereby and shall be entitled to such
22 equitable relief as may be appropriate in the circumstances."

23 (b) Nothing in this act shall repeal, modify or supplant the
24 following act except as to the measure of damages prescribed by
25 26 Pa.C.S. Ch. 7:

26 (1) Articles XXVII, XXVIII and XXIX of the act of July
27 28, 1953 (P.L.723, No.230), known as the Second Class County
28 Code, as they are applicable to procedures in the court of
29 common pleas with respect to bridges, viaducts, culverts and
30 roads.

1 (2) As much of section 302(a) of the act of December 21,
2 1988 (P.L.1444, No.177), known as the General Association Act
3 of 1988, as relates to the partial repeal of section 901 of
4 the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as
5 the Eminent Domain Code, as reads as follows: "A court may
6 issue a writ of possession to the condemnor prior to the
7 disposition of preliminary objections which challenge the
8 validity of a condemnation of rights-of-way or easements for
9 occupation by water, electric, gas, oil and/or petroleum
10 products, telephone or telegraph lines used directly or
11 indirectly in furnishing service to the public, and if it
12 shall be determined finally that the condemnation is invalid
13 in whole or in part, the affected owners may recover damages
14 for any injuries sustained thereby and shall be entitled to
15 such equitable relief as may be appropriate in the
16 circumstances."

17 (c) The following provisions are saved from repeal:

18 Section 2003(e)(7) of the act of April 9, 1929 (P.L.177,
19 No.175), known as The Administrative Code of 1929.

20 15 Pa.C.S. § 1511(g)(2).

21 (d) All other acts and parts of acts are repealed insofar as
22 they are inconsistent with this act.

23 Section 6. (a) Except as provided in subsection (b) or (c),
24 this act shall apply to all condemnations effected on or after
25 the effective date of this act.

26 (b) The addition of 26 Pa.C.S. § 713(a) shall apply to all
27 periods of time after the effective date of this act with
28 respect to condemnations effected prior to the effective date of
29 this act.

30 (c) The amendments of 42 Pa.C.S. §§ 5526, 5527 and 5530

1 shall apply only to causes of action which accrue after the
2 effective date of this act.

3 Section 7. This act shall take effect in 60 days.