

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 604 Session of
1989

INTRODUCED BY STOUT, ANDREZESKI, MUSTO, PORTERFIELD, REIBMAN AND
LYNCH, FEBRUARY 21, 1989

REFERRED TO STATE GOVERNMENT, FEBRUARY 21, 1989

AN ACT

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

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

9 Section 1. Section 201(5) and (8) of the act of June 22,
10 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code,
11 amended December 29, 1971 (P.L.635, No.169), are amended and the
12 section is amended by adding definitions to read:

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

16 * * *

17 (5) "Acquiring agency" means any entity vested with the
18 power of eminent domain by the laws of the Commonwealth,
19 including the Commonwealth. For purposes of Article VI-A,

1 "acquiring agency" shall also mean an agency or person carrying
2 out a program or project, funded in whole or in part by the
3 Federal Government, which causes a person to be a displaced
4 person.

5 * * *

6 [(8) "Displaced person" means any condemnee or other person
7 not illegally in occupancy of real property who moves or moves
8 his personal property as a result of the acquisition for a
9 program or project of such real property, in whole or in part,
10 or as the result of written notice from the acquiring agency of
11 intent to acquire or order to vacate such real property; and
12 solely for the purpose of subsections (a) and (b)(1) and (b)(4)
13 of section 601-A, as a result of such acquisition or written
14 notice of intent to acquire or order to vacate other real
15 property on which such person conducts a business or farm
16 operation.]

17 (8) "Displaced person"

18 (i) Means:

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

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

25 (II) on which such person is a residential tenant or
26 conducts a small business, a farm operation or a business as
27 defined in section 201(7)(iv) as a direct result of
28 rehabilitation, demolition, or such other displacing activity as
29 may be prescribed by regulation, under a program or project
30 undertaken by an acquiring agency in any case in which the

1 acquiring agency determines that such displacement is permanent.

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

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

10 (II) as a direct result of rehabilitation, demolition, or
11 such other displacing activity as may be prescribed by
12 regulation, of other real property on which such person conducts
13 a business or a farm operation, under a program or project
14 undertaken by an acquiring agency where the acquiring agency
15 determines that such displacement is permanent.

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

20 (ii) Does not include:

21 (A) a person who has been determined, according to criteria
22 established by regulation, to be either unlawfully occupying the
23 displacement dwelling or to have occupied the dwelling for the
24 purpose of obtaining assistance under this act; or

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

1 * * *

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

- 4 (i) decent, safe and sanitary;
5 (ii) adequate in size to accommodate the occupants;
6 (iii) within the financial means of the displaced person;
7 (iv) functionally equivalent;
8 (v) in an area not subject to unreasonable adverse
9 environmental conditions; and
10 (vi) in a location generally not less desirable than the
11 location of the displaced person's dwelling with respect to
12 public utilities, facilities, services and the displaced
13 person's place of employment.

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

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

19 Section 601-A. Moving and Related Expenses of Displaced
20 Persons.--(a) Any displaced person shall be reimbursed for
21 reasonable expenses incurred in moving himself and his family
22 and for the removal, transportation, and reinstallation of
23 personal property.

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

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

1 dislocation allowance of two hundred dollars (\$200)] in
2 accordance with regulations promulgated under this act.

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

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

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

1 [(3) In addition to damages under clauses (1) or (2) of this
2 subsection, damages of not more than ten thousand dollars
3 (\$10,000) nor less than twenty-five hundred dollars (\$2,500), in
4 an amount equal to either (i) forty times the actual monthly
5 rental, in the case of a tenant, or forty times the fair monthly
6 rental value, in the case of owner-occupancy; or (ii) the
7 average annual net earnings, whichever is greater. For the
8 purposes of this subsection, the term "average annual net
9 earnings" means one-half of any net earnings of the business or
10 farm operation before Federal, State, and local income taxes,
11 during the two taxable years immediately preceding the taxable
12 year in which such business or farm operation moves from the
13 real property acquired for such project, and includes any
14 compensation paid by the business or farm operation to the
15 owner, his spouse, or his dependents during such period. The
16 regulations promulgated under section 604-A may designate
17 another period determined to be more equitable for establishing
18 average annual net earnings, provided the designation of such
19 period does not produce a lesser payment than would use of the
20 last two taxable years. In the case of a business, payment shall
21 be made under this subsection only if the business (i) cannot be
22 relocated without a substantial loss of its existing patronage,
23 and (ii) is not a part of a commercial enterprise having at
24 least one other establishment not being acquired by the
25 acquiring agency, which is engaged in the same or similar
26 business.

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

30 (3) Actual reasonable expenses in searching for a

1 replacement business or farm determined in accordance with
2 regulations promulgated under this act.

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

7 (5) In lieu of damages under subsection (a) and clause (1),
8 (2), (3) or (4) of this subsection, damages in an amount equal
9 to the average annual net earnings but not more than twenty
10 thousand dollars (\$20,000) nor less than one thousand dollars
11 (\$1,000). The term "average annual net earnings" means one-half
12 of any net earnings of the business or farm operation before
13 Federal, State and local income taxes during the two taxable
14 years immediately preceding the taxable year in which the
15 business or farm operation moves from the real property acquired
16 for a project, and includes any compensation paid by the
17 business or farm operation to the owner, his spouse or his
18 dependents during this period. The regulations promulgated under
19 section 604-A of this act may designate another period
20 determined to be more equitable for establishing average annual
21 net earnings provided the designation of the period does not
22 produce a lesser payment than would use of the last two taxable
23 years. Payment shall be made only if the business cannot be
24 relocated without a substantial loss of profits. A person whose
25 sole business at a dwelling from which he is displaced is the
26 rental of such property to others shall not qualify for a
27 payment under this clause.

28 Section 602-A. Replacement Housing for Homeowners.--(a) In
29 addition to payments otherwise authorized, the acquiring agency
30 shall make an additional payment not in excess of [fifteen

1 thousand dollars (\$15,000)] twenty-two thousand five hundred
2 dollars (\$22,500) to any displaced person who is displaced from
3 a dwelling actually owned and occupied by such displaced person
4 for not less than one hundred eighty days prior to the
5 initiation of negotiations for the acquisition of the property
6 or the receipt of written notice from the acquiring agency of
7 intent to acquire or order to vacate. Such additional payment
8 shall include the following elements:

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

16 (2) The amount, if any, [as hereinafter provided,] which
17 will compensate such displaced person for any increased interest
18 and other debt service costs, which such person is required to
19 pay for financing the acquisition of any such comparable
20 replacement dwelling. [Such amount shall be equal to the excess
21 in the aggregate interest and other debt service costs of that
22 amount on the principal of the installment purchase contract,
23 mortgage or other evidence of debt on the replacement dwelling
24 which is equal to the unpaid balance of the installment purchase
25 contract, mortgage or other evidence of debt on the acquired
26 dwelling over the remaining term of the installment purchase
27 contract, mortgage or other evidence of debt on the acquired
28 dwelling reduced to discounted present value. The discount rate
29 shall be the prevailing interest rate paid on savings deposits
30 by commercial banks in the general area in which the replacement

1 dwelling is located.] Such amount shall be paid only if the
2 acquired dwelling was subject to an installment purchase
3 contract or encumbered by a bona fide installment purchase
4 contract, mortgage or other evidence of debt secured by the
5 dwelling which was a valid lien on such dwelling for not less
6 than one hundred eighty days immediately prior to the initiation
7 of negotiations for the acquisition of such dwelling.

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

13 (b) The additional payment authorized by this section shall
14 be made only to such a displaced person who purchases and
15 occupies a replacement dwelling, which is decent, safe,
16 sanitary, and adequate to accommodate such displaced person, not
17 later than the end of the one-year period beginning on the date
18 on which he receives final payment of his full acquisition cost
19 for the acquired dwelling, or on the date on which he moves from
20 the acquired dwelling, whichever is the later date. Regulations
21 issued pursuant to section 604-A may prescribe situations when
22 such one-year period may be extended. If the period is extended,
23 the payment under this section shall be based on the costs of
24 relocating the person to a comparable replacement dwelling
25 within one year of the date on which he received final payment
26 of his full acquisition cost for the acquired dwelling.

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

30 Section 603-A. Replacement Housing for Tenants and Others.--

1 (a) (1) In addition to amounts otherwise authorized, an
2 acquiring agency shall make a payment to or for any displaced
3 person displaced from a dwelling not eligible to receive a
4 payment under section 602-A which dwelling was actually and
5 lawfully occupied by such displaced person for not less than
6 ninety days prior to the initiation of negotiations for
7 acquisition of such dwelling or the receipt of written notice
8 from the acquiring agency of intent to acquire or order to
9 vacate. Such payment shall be [either:

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

21 (2) The amount necessary to enable such person to make a
22 down payment, which shall mean the equity payment in excess of
23 the maximum amount of conventional financing available to such
24 displaced person, plus those expenses described in section 602-
25 A(a)(3), on the purchase of a decent, safe, and sanitary
26 dwelling adequate to accommodate such person in areas not
27 generally less desirable in regard to public utilities and
28 public and commercial facilities, but not to exceed four
29 thousand dollars (\$4,000), except that if such amount exceeds
30 two thousand dollars (\$2,000) such person must equally match

1 such amount in excess of two thousand dollars (\$2,000) in making
2 the down payment] five thousand two hundred fifty dollars
3 (\$5,250).

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

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

12 Section 604-A. Issuance of Regulations to Implement this
13 Article.--The [Attorney General] Office of General Counsel shall
14 promulgate such rules and regulations as may be necessary to
15 assure:

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

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

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

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

29 (5) That each acquiring agency may obtain the maximum
30 Federal reimbursement for relocation payment and assistance

1 costs authorized by any Federal law.

2 Section 3. If this act is enacted after April 1, 1989, it
3 shall be applied retroactively to April 1, 1989.

4 Section 4. This act shall take effect as follows:

5 (1) Section 2 (section 601-A(2)) shall take effect on
6 the effective date of the regulations promulgated by the
7 Office of General Counsel under section 2 (section 604-A).

8 (2) The remainder of this act shall take effect
9 immediately.