

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 574 Session of
1995

INTRODUCED BY BOYES, GEIST, PETRONE, MERRY, TRELLO, JAMES,
GANNON, FLICK, FICHTER, L. I. COHEN, CLARK, BAKER, ROBERTS,
RAYMOND, BUNT, MARKOSEK, HENNESSEY, CIVERA, YOUNGBLOOD AND
BROWNE, FEBRUARY 2, 1995

REFERRED TO COMMITTEE ON TRANSPORTATION, FEBRUARY 2, 1995

AN ACT

1 Amending the act of June 1, 1945 (P.L.1242, No.428), entitled
2 "An act relating to roads, streets, highways and bridges;
3 amending, revising, consolidating and changing the laws
4 administered by the Secretary of Highways and by the
5 Department of Highways relating thereto," providing for
6 compensation for businesses suffering loss of patronage due
7 to highway construction or maintenance; and further providing
8 for detours.

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

11 Section 1. The act of June 1, 1945 (P.L.1242, No.428), known
12 as the State Highway Law, is amended by adding a section to
13 read:

14 Section 223. Compensation for Businesses Suffering Loss of
15 Patronage.--(a) The prompt and equitable compensation of
16 businesses having suffered a measurable loss in earnings because
17 of reduced or curtailed traffic flow due to State highway or
18 bridge construction or improvement projects is necessary to
19 insure that a few individuals do not suffer disproportionate
20 injuries as a result of projects designed for the benefit of the

1 public as a whole. Compensation for such loss shall be made to
2 all businesses meeting the eligibility criteria set forth in
3 this section. Payment of such compensation shall be deemed to
4 constitute "costs and expenses incident" to the construction,
5 renovation, maintenance and repair of and safety on public
6 highways and bridges in accordance with section 11(a) of Article
7 VIII of the Constitution of the Commonwealth of Pennsylvania.

8 (b) Any business concern, including the operation of a
9 family farm, or nonprofit organization, that (1) suffers and can
10 document at least a twenty-five per centum decrease in gross
11 receipts during the period that normal traffic flow is altered
12 or curtailed due to a State highway or bridge construction or
13 improvement project, as measured against the average gross
14 receipts realized by the business in the same time period during
15 the three prior calendar years, and (2) demonstrates that such
16 decrease in gross receipts is directly attributable to the
17 altered or curtailed traffic flow, may petition the department
18 for compensation from State highway funds computed in accordance
19 with subsection (c) of this section. The petition shall be filed
20 within one hundred eighty days of the completion of the project
21 and must contain such certified financial information as the
22 department may prescribe in order to determine if the foregoing
23 requirements have been met.

24 (c) If the threshold requirements in subsection (b) of this
25 section have been met, compensation shall be made to the
26 petitioner in an amount equal to the net earnings loss suffered
27 by the business during the time the construction or improvement
28 project necessitated altering or curtailing traffic flow. For
29 purposes of this subsection, "net earnings loss" shall be equal
30 to the difference between net earnings for the period during

1 which traffic flow was altered or curtailed and the average net
2 earnings realized in the same time period during the three prior
3 calendar years. The department must be satisfied that the
4 earnings loss is directly attributable to the altered or
5 curtailed traffic flow or compensation may not be made. In
6 computing the "net earnings loss," the department shall have the
7 right to inspect and review such financial records of the
8 business as it deems necessary to accurately compute the amount
9 of compensation. The department shall make its determination of
10 eligibility, as well as the determination as to amount of
11 compensation, within sixty days of receipt of the petition.

12 (d) In the event a petitioner is aggrieved by a decision of
13 the department, either as to determination of eligibility, or as
14 to the amount of compensation, an appeal shall be allowed to the
15 Board of Claims. An appeal must be filed with the board within
16 thirty days of the department's decision. The decision of the
17 Board of Claims shall be final.

18 (e) The department shall have the power to promulgate such
19 rules and regulations as it deems necessary and appropriate to
20 implement the provisions of this section.

21 (f) This section shall apply to State highway and bridge
22 construction and improvement projects commenced after July 1,
23 1995.

24 (g) The remedy afforded by this section shall constitute the
25 sole and exclusive avenue of redress for business loss incurred
26 as a direct result of highway and bridge construction and
27 improvement projects. The enactment of this section shall not be
28 construed to give rise to any cause of action against the
29 Commonwealth for such losses.

30 (h) For purposes of this section, "business" means any

1 lawful activity conducted primarily: (1) for the purchase, sale,
2 lease or rental of personal or real property, or for the
3 manufacture, processing or marketing of products, commodities or
4 any other personal property; (2) for the sale of services to the
5 public; or (3) by a non-profit organization.

6 Section 2. Section 423 of the act is amended to read:

7 Section 423. Detours.--When any State highway shall be
8 closed, it shall be the duty of the department to immediately
9 designate or lay out a detour, on which it shall erect or cause
10 to be created and maintained, while such detour is in use,
11 legible signs at each public road intersection throughout its
12 entire length, indicating the direction to the main highway.
13 Signs must be placed so as to conspicuously indicate the points
14 at which it is necessary for traffic to leave the closed
15 highway, and shall plainly mark the most direct practicable
16 route to be followed, indicating the road to be followed by the
17 detoured traffic at all road crossings and forks. During the
18 period when such detour is in use, it shall be the duty of the
19 department to maintain such detour in safe and passable
20 condition. It shall also be the duty of the department to remove
21 all detour signs immediately upon the opening for traffic of the
22 highway originally closed. The department shall, as soon as
23 possible, repair the road designated as a detour, and place same
24 in a condition at least equal to its condition when designated
25 as a detour. Whenever necessary in the creation of a detour, the
26 department may enter into agreement with the owners of private
27 lands, covering the acquisition of right of way privileges over
28 private property for the period when the main highway shall be
29 closed to traffic. In case no agreement satisfactory to the
30 parties can be reached, the department may proceed with the

1 construction of the same, and either the department or the owner
2 of the property occupied may petition the court for the
3 appointment of viewers to ascertain the damages, if any, in the
4 same manner as provided by Article III of this act.

5 Section 3. This act shall take effect immediately.