

Proposed  
**EMINENT DOMAIN CODE**  
With Comments

General Assembly of the Commonwealth of Pennsylvania  
**Joint State Government Commission**  
Harrisburg, Pennsylvania  
1985

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The Joint State Government Commission was created by act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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# Joint State Government Commission, 1985-86

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# Eminent Domain Law

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JOINT STATE GOVERNMENT COMMISSION

ROOM 108 - FINANCE BUILDING  
HARRISBURG 17120

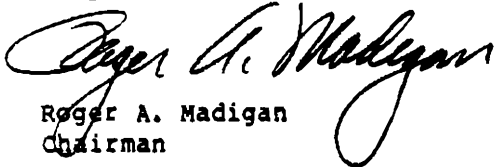
December 1985

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Task Force on Eminent Domain Law. Chaired by Senator David J. Brightbill, the task force has directed the codification of the Eminent Domain Code with revisions into Title 26 of the Pennsylvania Consolidated Statutes. This proposed codification has been introduced in the Senate by members of the task force. The report includes the proposed legislation, source notes, comments where substantive revisions are recommended and a cross reference table to facilitate comparison with existing law.

The Commission wishes to express its appreciation to the members of the advisory committee, under the leadership of David McNeil Olds, for sharing their time and expertise. The Commission also wishes to express its gratitude to Alexander V. Sarcione, Assistant Chief Counsel, Real Property Division of the Department of Transportation for his invaluable assistance.

Respectfully submitted,

  
Roger A. Madigan  
Chairman



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## Summary of Recommendations

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The Task Force and Advisory Committee on Eminent Domain Law recommend the enactment of legislation which would:

- Consolidate eminent domain law into Title 26 of the Pennsylvania Consolidated Statutes.
- Broaden the application of the code to cover all public utility condemnations (§ 102).
- Make compensation for delay payable at an annual interest rate equal to the annual Index of Long-Term United States Government Bond Yields compounded annually (§ 713).
- Increase the limitation on reimbursement of appraisal, attorney and engineering fees from \$500 to \$1,000 and increase the limitation on business dislocation damages from \$10,000 to \$25,000 (§§ 710 and 901(b)(3)).
- Permit a condemnee to prove as special damages loss of rentals (§ 712).
- Broaden the class of homeowners eligible for displacement payments (§ 902(a)(2)).
- Revise certain criteria for determining right to and extent of damages (§§ 103 (definitions of "condemn" and "displaced person"), 702, 705, 706 and 901(b)).
- Modify provisions relating to preliminary objections, possession or right of entry of condemnor and revocation of condemnation proceedings to incorporate case law and structural and procedural improvements (§§ 306, 307, 308, 309 and 504(d)).
- Streamline provisions dealing with petitions for appointment of viewers, service of the petition and notice of views and hearings to provide a more time efficient, less confusing and more certain procedure (§§ 502 and 504(b) and (c)).

- Expand the right of appeal from a decision of the viewers and limit the right to withdraw an appeal (§ 516).
- Provide for expedited appeals from certain orders dismissing preliminary objections to a declaration of taking (42 Pa.C.S. § 702.1).
- Establish a uniform six-year statute of limitation for actions under the code (42 Pa.C.S. §§ 5526, 5527 and 5530).

## I. Introduction

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The General Assembly of Pennsylvania in 1980 Senate Resolution 107 directs the Joint State Government Commission to review the act of June 22, 1964 (Sp. Sess., P.L. 84, No. 6), known as the Eminent Domain Code and codify it with appropriate revisions into the Pennsylvania Consolidated Statutes. Pursuant to the authorizing resolution, the Commission appointed a task force chaired, from 1981 through 1982, by Senator Philip Price and since 1983 by Senator David J. Brightbill. To assist the task force, the Commission reactivated its Advisory Committee on Eminent Domain Law chaired by David McNeil Olds. Originally formed in 1960, the committee performed a major role in preparing the codification enacted in 1964 and the comprehensive 1971 amendments (act of December 29, 1971 (P.L. 635, No. 169)). Two members of the advisory committee, Chairman Olds and John P. Dolman, have served since 1960, while five members, Reuben E. Cohen, Thomas J. Dempsey, Lawrence A. Rizzo, Daniel R. Sherzer and David S. Winston, have served since 1970.

In order to comply with the resolution's mandate to codify the code into the Pennsylvania Consolidated Statutes, the task force and advisory committee directed the staff of the Joint State Government

Commission to prepare a draft that incorporated the code into Title 26 of the Pennsylvania Consolidated Statutes. The draft was put in a form consistent with the editorial practices and format of the Pennsylvania Consolidated Statutes which necessitated some editorial changes and section renumbering.

In fashioning this proposed legislation, the task force and advisory committee conducted a section by section review of the draft and examined other relevant Pennsylvania statutory law, Pennsylvania and federal court decisions, Attorney General opinions and provisions of the Uniform Eminent Domain Code. As a result of this study, the task force and advisory committee recommend the substantive revision of 15 sections, the addition of one section (§ 712) and the incorporation of the act of December 6, 1972 (P.L. 1410, No. 304), known as the "Housing Replacement Authorization Act." (See appendix A).

In addition to codifying the 1964 code into Title 26 of the Pennsylvania Consolidated Statutes, the proposed legislation contains several amendments to Title 42 of the Pennsylvania Consolidated Statutes (Judiciary and judicial procedure). A new section 702.1 is added to provide for expedited appeals from certain orders dismissing preliminary objections to a declaration of taking. Also, sections 5526, 5527 and 5530 are amended to provide a six-year statute of limitation for actions under the Eminent Domain Code.

In order to provide ample opportunity for courts, lawyers and public agencies to familiarize themselves with the new section numbering and the substantive changes, the legislation takes effect 180 days after enactment and, with one important exception, applies to all condemnations effected on or after the effective date. The provisions of section 713 relating to the rate of interest for compensation for delay apply to all periods of time thereafter with respect to condemnations effected prior to the effective date.

Part II of this report provides a legislative history of the Eminent Domain Code since its enactment in 1964, and Part III sets forth the proposed legislation with source notes for each section and, where pertinent, official comments of the Advisory Committee on Eminent Domain Law. The table contained in appendix A cross references existing law with proposed Title 26 indicating those provisions substantively revised or omitted. Appendix B provides a replication of the 1964 Comments and 1971 Comments and Notes contained in the Joint State Government Commission's 1964 report, 1964 Report-Eminent Domain Code and 1972 report, Eminent Domain Code as Amended with Comments and Notes.



## II. Legislative History

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In December 1972, the Joint State Government Commission issued its report, Eminent Domain Code as Amended with Comments and Notes, the introduction to which read:

### INTRODUCTION

The Eminent Domain Code, as enacted in 1964, was the culmination of two years of intensive and thorough research conducted by the Joint State Government Commission Task Force on Eminent Domain Law, ably assisted by an advisory committee of experts representing diverse governmental and public interests in the law of eminent domain.

The task force, appointed pursuant to 1959 House Concurrent Resolution No. 59 (Serial No. 64), began its work in June 1960 under the co-chairmanship of (then) Senator Raymond P. Shafer and Representative George X. Schwartz. Realizing that the task force and Commission staff--under the direction of Counsel and Director Guy W. Davis, Esquire--would benefit from the experience and knowledge of recognized experts, the task force recommended to the Executive Committee the appointment of an advisory committee, which was subsequently appointed and supplemented from time to time. Initial chairman was B. Graeme Prazier, Jr., Esquire, who served from 1961 to 1969. He was succeeded by David McNeil Olds, Esquire, who served from 1969 to 1972. . . .

In September 1962 the Joint State Government Commission issued and distributed for critical review and recommendations a preliminary report entitled, "Proposed Eminent Domain Law of 1963." A revised draft of the proposed code was introduced in the 1963 Session of the General Assembly as House Bill No. 683.

Although the bill passed the House with amendments (Printer's No. 1689), sufficient time was not available for final action in the Senate before the session's adjournment. The code was included in the Governor's call as a subject for consideration during the Special Session of 1964. After undergoing various amendments, the legislation passed both houses unanimously and was approved by the Governor on June 22, 1964 as Act No. 6.

In 1965, recognizing the significant changes in Pennsylvania law brought about by the 1964 Code and its continuing importance to Pennsylvanians faced with the public's need for highways, municipal redevelopment, enlarged institutions and other capital improvements requiring the condemnation of their homes, farms and businesses, the Executive Committee, acting under legislative resolution, authorized the continuance of the advisory committee to work with its appointed representatives to review proposed amendments and initiate improvements to the Code.

As a result of the work of this group, an omnibus bill (House Bill 2275, Pr. No. 3047) incorporating recommended changes to the Code was introduced under the sponsorship of Representatives Fineman, Lee and J. F. Clarke on December 8, 1965, but was not enacted into law. Again in 1966 and 1967 revisions to the Code were introduced but legislative action was not completed. The Code was, however, amended in 1967 to exclude flood damage in determining the market value of condemned property.

In 1969 recommendations of the advisory group were incorporated into House Bill 367, Pr. No. 429, under the sponsorship of Representatives Fineman, Butera, Prendergast, Englehart, Bonetto, Gelfand, Kaufman and Schmitt. This bill was approved by the Governor on December 5, 1969, P.L. 316, Act No. 137.

In the same session, amendments were made to the Code incorporating provisions previously added in 1968 to the State Highway Law of 1945, June 1, P.L. 1242, Act No. 428. The Federal Highway Act of 1968 had required reimbursement of relocation costs for persons displaced as a result of acquisition of property by the Department of Highways for highway purposes. The 1969 amendments to the Code were



designed to consolidate all the laws relating to eminent domain within the purview of the Code. As amended, the Code made available to all condemnees the benefits previously available only to persons displaced for highways.

During 1969 and 1970, the advisory committee was aware of pending Congressional action to enlarge benefits payable under federally funded projects. This legislation, which required State legislative implementation to maximize the Commonwealth's participation in available Federal monies, culminated in the enactment by Congress of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, Stat. 1894, effective January 2, 1971.

The Federal relocation act expanded the traditional concept of "just compensation" for the loss of real estate to encompass payment of damages and the provision of services to persons previously not entitled under Pennsylvania law. This concept had been initiated in Pennsylvania by the 1968 amendments to the State Highway Law which in turn had been suggested by Federal legislation of the same year.

The 1971 Federal act made available up to \$25,000 in Federal financial assistance per condemnation to any State agency receiving Federal funds and authorized by State law to pay benefits and provide services conforming to Federal standards and minimums. This provision applied to all condemnations occurring after January 2, 1971 and before July 1, 1972. Thereafter, Federal financial participation would be based on the Federal-to-State funding ratio of the program or project involved.

Concurrent with the consideration of this Federal legislation, the advisory committee undertook the drafting of the necessary legislation to enable the affected agencies of the Commonwealth to qualify for the full Federal participation.

. . . the advisory committee in May 1971 completed comprehensive drafts of implementing legislation incorporating Federal law, subsequent amendments and changes in the Pennsylvania law, and improvements suggested since the 1969 enactments.

These drafts were introduced in 1971 as House Bill 1095, Pr. No. 1220 (amending the Eminent Domain Code to provide the basic implementing legislation to the Federal act and revisions and changes to the Code); House Bill 1096, Pr. No. 1221 (providing for payments to persons not eligible for payments under the Eminent Domain Code); and House Bill 1630, Pr. No. 2013 (authorizing condemnors to acquire, construct or contract for the construction of replacement housing for displaced persons in cases where replacement housing is not available).

House Bills 1095 and 1096 were introduced on June 2, 1971 and finally enacted on December 29, 1971, P.L. 635 and 646, Acts Nos. 169 and 170 respectively. House Bill 1630, introduced on November 8, 1971, was enacted on December 6, 1972, Act No. 304. . . .

It should be noted that--unlike the Federal legislation--the sections of Act No. 169 complying with the requirements of the Federal law are not limited solely to condemnors receiving Federal participation funds. The advisory committee recognized the undesirability of a double standard--Federal and State--for the payment of damages and benefits and recommended as a minimum the payment of the same damages and benefits to all. . . .

Since the comprehensive 1971 amendments, nine additional amendments affecting the code have been enacted. The following chronologically summarizes those amendments. References are to the 1964 code. For section numbering under proposed Title 26, see appendix A.

First, the act of September 1, 1972 (1st Sp. Sess., P.L. 2017, No. 3), amended section 602 to include highway projects within the provisions relating to property damaged by floods. Section 602, as amended by the act of September 27, 1973 (P.L. 249, No. 71), broadened the coverage of the provision dealing with damages by floods, provided

for limited interest takings in the case of property damaged by the floods of September 1971 and June 1972 and defined certain mobile homes as real property.

Sections 504 and 510 were amended by the act of October 7, 1975 (P.L. 368, No. 103), to provide that first class counties may appoint an alternate viewer.

The Judiciary Act Repealer Act, April 28, 1978 (P.L. 202, No. 53), repealed in whole or in part provisions of the code as follows:

Code section	Subject	Disposition (42 Pa.C.S.)
401, 1st sentence	jurisdiction	931
510, 1st sentence (in part)	powers of viewers	102, 327
515, 1st & 4th sentences (in part)	appeals, time of taking	102, 5571(b)
519	costs of proceedings	1726
524	limitation period	5526(4)
525	Supreme Court power to promulgate rules	1722(a)(1)
801	board of viewers	2141, 2142
802	appointment of board members, vacancies	2141, 2142
803 (in part)	qualifications	1722(a)(2), 2142
804	oath	3151
805	compensation	3154(b)
806 (in part)	viewers' hearings, facilities	1722(a)(1), 3722, 3725
808	clerks and stenos	2143, 3722

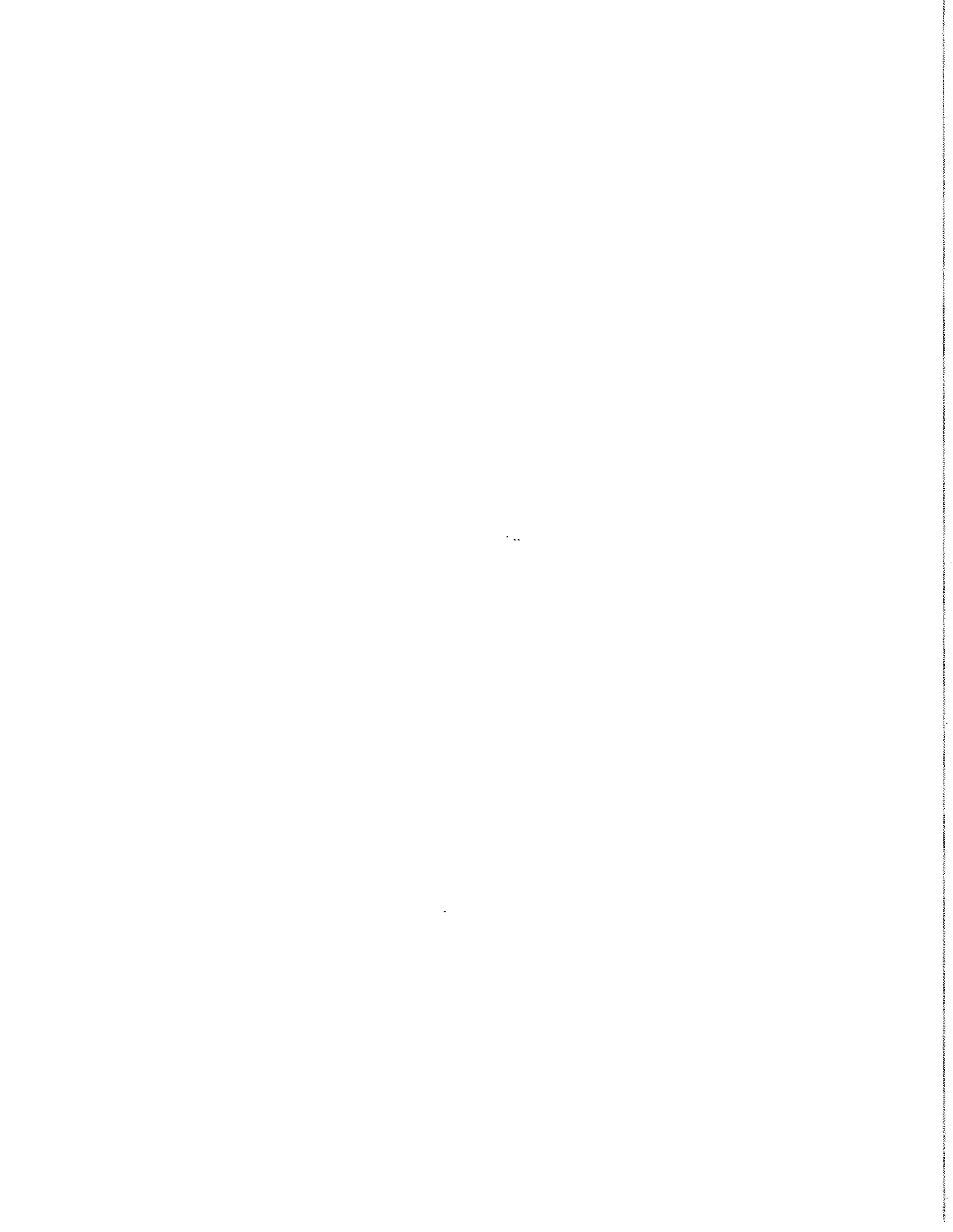
The amendment of July 13, 1979 (P.L. 103, No. 42), added a definition of "natural disaster" in section 201 and broadened the scope of coverage of subsections (c), (d) and (e) of section 602 to include any natural disaster officially declared by the Governor.

Section 410 was amended by the act of July 12, 1980 (P.L. 654, No. 135), to provide that property devoted to agricultural use at the time of condemnation and located outside the corporate boundaries of a first or second class county and not substantially improved may not be disposed of within 12 years after condemnation without first being offered to the condemnee at the same price paid by the condemnor to the condemnee. Also, this amendatory act added definitions of "agricultural commodity" and "agricultural use."

The Commonwealth Attorneys Act, October 15, 1980 (P.L. 950, No. 164), transferred to the Office of General Counsel section 604-A powers and duties of the Attorney General.

The act of February 18, 1982 (P.L. 43, No. 25), amended section 410 by prohibiting a condemnor from conditioning any offer made to a condemnee on payment of additional fees, real estate taxes or payments in lieu of taxes or other costs. This amendatory act also added section 411 to require a condemnor, who acquires property for subterranean excavation or construction and who plans to sell the surface in an unimproved condition, to first offer the property to the original owner at the appraised fair market value at the time of completion of the project.

Finally, the act of May 1, 1982 (P.L. 370, No. 104), repealed section 411 and added section 617.1 which requires a condemnor, who attempts to avoid the payment of monetary just compensation by using a substitute, to reimburse the condemnee for expenses incurred in securing an adjudication that the substitute was not adequate.



ACTS AMENDING THE EMINENT DOMAIN CODE  
(Sp. Sess., P.L. 34, No. 5)  
From 1964 to Present

Citation	Sections
1967, P.L. 460, No. 217	Amended § 602
1969, P.L. 316, No. 137	Amended § 402(b)(4) and (5); added § 402(c) and (d); amended §§ 404, 406(a), 407(a) and (c), 408, 502(a)(1) and (5), 502(b)(1) and (2), (d) and (f); added 502(g); amended §§ 504, 505, 506(b) and 507(a); added 507(b); amended §§ 508, 510, 513, 514, 516(a)(1), 519 and 520(a); added 520(b); amended §§ 522, 608, 609, 610, 703(2), 704 and 801.
1969 P.L. 326, No. 138	Added §§ 615, 616, 617 and 618.
1971, P.L. 118, No. 6	Repealed § 523.
1971, P.L. 635, No. 169	Amended § 201(3) ("condemnor"); added § 201(5) ("acquiring agency"), (6) ("acquisition cost"), (7) ("business"), (8) ("displaced person"), (9) ("farm operation"), (10) ("personal property") and (11) ("program or project"); amended §§ 404, 408, 518(b), 521, 522 and 602; repealed §§ 608, 609, 610, 614, 615, 616, 617 and 618; added §§ 608, 609, 610 and 610.1 and Article VI-A.
1972, P.L. 2017, No. 3	Amended § 602.
1973, P.L. 249, No. 71	Amended § 602.
1975, P.L. 368, No. 103	Amended §§ 504, 510.
1978, P.L. 202, No. 53	Repealed §§ 401 (1st sentence), 510 (1st sentence, in part), 515 (1st and 4th sentences, in part), 519, 524, 525, 801, 802, 803 (in part), 804, 805, 806 (in part) and 808.
1979, P.L. 103, No. 42	Added § 201(12) ("natural disaster"); amended § 602(c), (d) and (e).
1980, P.L. 654, No. 135	Amended § 410(a); added § 410(b).
1980, P.L. 950, No. 164	Power to promulgate regulations in § 604-A transferred to the Office of General Counsel.
1982, P.L. 43, No. 25	Added § 410(b) and designated former subsection(b) as subsection (c); added § 411.
1982, P.L. 370, No. 104	Added § 617.1; repealed § 411.





### III. Proposed Legislation with Sources and Comments

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This part provides the source notes for each section of the proposed legislation, and, where substantive revisions are recommended, the official comments of the Advisory Committee on Eminent Domain Law. For those sections which do not contain any substantive changes, the 1964 comments and 1971 comments and notes apply (see appendix B).



AN ACT

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

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

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

TITLE 26

EMINENT DOMAIN

Chapter

1. General Provisions
3. Procedure to Condemn
5. Procedure for Determining Damages
7. Just Compensation and Measure of Damages
9. Special Damages for Displacement
11. Evidence

CHAPTER 1

GENERAL PROVISIONS

Sec.

101. Short title of title.
102. Application of title.
103. Definitions.

§ 101. Short title of title.

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

Source: Section 101.

§ 102. Application of title.

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

Source: Section 303.

Comment: It is intended that the code shall be the exclusive procedure for all condemnations. The Pennsylvania Rules of Civil Procedure supplement the code only if the code is silent. The public utility exception contained in former section 901 which provided that the code did not apply to "condemnation[s] of rights-of-way or easements for occupation by water, electric, gas, oil and/or petroleum products, telephone or telegraph lines used directly or indirectly in furnishing service to the public[.]" has not been codified. Consequently, the code applies to all public utility condemnations. Also, see comment to section 306.

§ 103. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions

of this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acquiring agency." Any entity, including the Commonwealth, vested with the power of eminent domain by the laws of this Commonwealth.

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

"Business." Any lawful activity, except a farm operation, conducted:

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

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

(3) by a nonprofit organization; or

(4) solely for the purpose of qualification for damages under section 901(a) and (b)(1) and (5) (relating to moving and related expenses of displaced persons) 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 whether or not the display is located on the premises on which any of the above activities are conducted.

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

Comment: The reference to private property is deleted. See City of Chester v. Commonwealth of Pennsylvania, Department of Transportation, 495 Pa. 382, 434 A.2d 695 (1981) with respect to the constitutional entitlement of a political subdivision to receive compensation when its property is condemned by the Commonwealth.

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

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

Comment: See comment to "condemn."

"Court." The court of common pleas.

"Displaced person." Any condemnee or other person not illegally in occupancy of real property on or before the date of acquisition who moves from the real property, moves his personal property from the real property or moves or discontinues a business or farm operation for one of the following reasons:

- (1) The acquisition of the real property, in whole or in part, for a program or project.
- (2) Written notice from the acquiring agency of intent to acquire or order to vacate the real property.
- (3) Solely for the purpose of section 901(a) and (b)(1) and (5) (relating to moving and related expenses of displaced persons), the acquisition or written notice of intent to acquire

or order to vacate the real property on which the person conducts a business or farm operation.

A displaced person shall include a person who was in occupancy of the real property on the date of acquisition notwithstanding the termination or expiration of a lease entered into before or after the acquisition or written notice from the acquiring agency of intent to acquire or order to vacate the real property.

Comment: The last sentence of this definition reverses Hindsley v. Township of Lower Merion, 25 Pa. Commonwealth Ct. 455, 360 A.2d 297 (1976), which ruled that since the Hindsleys, who were tenants in possession of property at the time it was sold to the township, had entered into a lease with the township subsequent to its acquisition of the property, they were not displaced persons upon expiration of the lease.

The phrase "on or before the date of acquisition" contained in the introductory paragraph of the definition ensures that persons who move onto the real property after the date of acquisition are not included as displaced persons. The other changes in the introductory paragraph are of a clarifying nature.

"Farm operation." Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

"Natural disaster." A disaster officially declared as a natural disaster by the Governor.

"Personal property." Any tangible property not considered to be real property for purposes of general damages under the laws of this Commonwealth.

"Program or project." Any program or project undertaken by or for an acquiring agency as to which it has the authority to exercise the power of eminent domain.

Source: Section 201.

### CHAPTER 3 PROCEDURE TO CONDEMN

Sec.

301. Venue.

302. Declaration of taking.

303. Security required.

304. Recording notice of condemnation.

305. Notice to condemnee.

306. Preliminary objections.

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

308. Revocation of condemnation proceedings.

309. Right to enter property prior to condemnation.

310. Abandonment of project.

§ 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.

Source: Section 401.

Comment: The jurisdiction of the court of common pleas over condemnation proceedings is covered by 42 Pa.C.S. § 931 (original jurisdiction and venue).

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

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

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

Source: Subsection (a) derived from section 402(a); subsection (b) derived from section 402(b); subsection (c) derived from first sentence of section 402(c); subsection (d) derived from last sentence of section 402(c); and subsection (e) derived from section 402(d).

### § 303. Security required.

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

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

(c) Insufficient security.--The court, upon preliminary objections of the condemnee under and within the time set forth in section 306(a) (relating to preliminary objections), may require the condemnor to give bond and security as the court deems proper if it

appears to the court that the bond or power of taxation of the  
condemnor is not sufficient security.

Source: Subsection (a) derived from section  
403(a); subsection (b) derived from section  
403(b); and subsection (c) derived from section  
403(c).

§ 304. Recording notice of condemnation.

(a) County of recording.--The condemnor, upon filing its  
declaration of taking, shall on the same day lodge for record a notice  
of the declaration in the office of the recorder of deeds of the  
county in which the property is located. If the property is located  
in two or more counties, the notice shall be recorded in each county.

(b) Notice and recording requirements.--The notice shall specify  
the court term and number of the declaration of taking and the date it  
was filed and shall contain a description or plan of the property  
condemned sufficient for identification and the names of the owners of  
the property interests condemned, as reasonably known to the  
condemnor, and shall be indexed in the deed indices showing the  
condemnee set forth in the notice as grantor and the condemnor as  
grantee. If plans are to be recorded as part of the notice they shall  
be submitted on standard legal size paper. If plans are to be filed  
as part of the notice, they shall be in legible scale and filed in a  
condemnation book or file or microfilmed, with a notation as to the  
condemnation book and page number, file number or microfilm number to  
be made by the recorder on the margin of the notice. Upon the notice

being assigned a book and page number by the recorder of deeds the condemnor shall file with the prothonotary under the caption of the declaration of taking a memorandum of the book and page number in which the notice is recorded.

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

Source: Subsection (a) derived from first and second sentences of section 404; subsection (b) derived from remainder of section 404 except penultimate sentence; and subsection (c) derived from penultimate sentence of section 404.

§ 305. Notice to condemnee.

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

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

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

(1) The caption of the case.

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

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

(4) The name and address of the condemnor.

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

(6) 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.

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

(8) A statement that the condemnee's property has been condemned and a reasonable identification of the property in the case of a total taking and, in the case of a partial taking, a plot plan showing the condemnee's entire property and the area taken.

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

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

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

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

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

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

Source: Subsection (a) derived from section 405(a); subsection (b) derived from section 405(b); subsection (c) derived from section 405(c); subsection (d) derived from section 405(d); and subsection (e) derived from section 405(e).

#### § 306. Preliminary objections.

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

(1) The power or right of the condemnor to appropriate the condemned property unless it has been previously adjudicated.

(2) The sufficiency of the security.

(3) The declaration of taking.

(4) Any other procedure followed by the condemnor.

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

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

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

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

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

(g) Costs, expenses and damages.--If preliminary objections which have the effect of terminating the condemnation are sustained, the condemnee shall be reimbursed by the condemnor for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred and for any damages for losses sustained because of the condemnation proceedings. These costs, expenses and damages shall be assessed by the court unless either party within 30 days after the entry of the order sustaining the preliminary objections demands a



jury trial to determine any damages for losses sustained by the  
condemnee.

Source: Subsection (a) derived from section 406(a) except last sentence; subsection (b) derived from last sentence of section 406(a); subsection (c) derived from section 406(b); subsection (d) derived from section 406(c); subsection (e) derived from section 406(d); subsection (f) derived from section 406(e); and subsection (g), new.

Comment: It is intended that the phrase "unless it has been previously adjudicated" contained in subsection (a)(1) includes issues decided by the Pennsylvania Public Utility Commission in a certificate of necessity proceeding.

The following courses of action would seem to be available to condemnors if they believe that preliminary objections have been filed for the purpose of delay:

- (1) 42 Pa.C.S. § 702.1 (expedited appeals in eminent domain proceedings). (Proposed)
- (2) 42 Pa.C.S. § 726 (extraordinary jurisdiction) and Pa. R.A.P. 3309 (application for extraordinary relief).
- (3) 42 Pa.C.S. Ch. 83, Subch. E (wrongful use of civil proceedings).

Subsection (g) provides a procedure in this section for assessing costs, expenses and damages. Under former section 406, these costs, expenses and damages were assessed as provided in former section 408. Subsection (g) is modeled after former section 408 with two modifications. The court no longer has the discretionary authority to refer the ascertainment and assessment of costs, expenses and damages to viewers, and either party has the right to demand a jury trial to determine damages.

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

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

(b) Tender of possession or right of entry by condemnee.--If within 60 days from the filing of the declaration of taking the condemnor has not paid just compensation as provided in subsection (a), the condemnee may tender possession or right of entry in writing and the condemnor shall then make payment of the just compensation due

the condemnee as estimated by the condemnor. If the condemnor fails to make the payment, the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file the declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate just compensation. The court may, after hearing, enter judgment for the amount of the estimated just compensation.

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

Source: Subsection (a) derived from section 407(a); subsection (b) derived from section 407(b); and subsection (c) derived from section 407(c).

Comment: Subsection (a) provides that a condemnor is entitled to possession or right of entry upon an easement without the payment of or offer to pay estimated just compensation if the condemnor has the right to assess the property

for benefits such as in sewer construction projects. Condemnees are rarely dispossessed in these cases, and the general damages for the loss of the easement are often less than the resulting benefit assessment. Consequently, there is no real need to provide the condemnee with estimated just compensation. Section 308(d) operates to cover reimbursement for any costs, expenses and damages incurred by the condemnee when the property is relinquished.

Subsection (a) also permits a condemnor to obtain a writ of possession not only against a condemnee but also against any person, including a tenant, who refuses to deliver possession or permit right of entry.

Subsection (c) clarifies the pro tanto provision by requiring the court to mold the verdict to deduct the estimated just compensation previously paid by the condemnor.

#### § 308. Revocation of condemnation proceedings.

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

(b) Notice.--Notice of the relinquishment shall be recorded in the office of the recorder of deeds of the county in which the property taken is located, with the condemnor as the grantor and the condemnee as the grantee, and the notice of the relinquishment shall be served on the condemnee in the same manner as provided for service of the declaration of taking.

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

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

(e) Agreement.--The condemnor and the condemnee, without the filing of a declaration of relinquishment, may by agreement effect a revesting of title in the condemnee which agreement shall be properly recorded.

Source: Subsection (a) derived from first sentence of section 408; subsection (b) derived from second sentence of section 408; subsection (c) derived from third sentence of section 408; subsection (d) derived from fourth sentence of section 408; and subsection (e) derived from last sentence of section 408.

Comment: The time limitation for filing a declaration of relinquishment contained in subsection (a) is extended from one year to two years specifically to address problems involved in large projects with greater time lag between design and construction.

The phrase "and not thereafter discharged" contained in the last sentence of subsection (a) clarifies existing law.

The procedure for reimbursement for the condemnee's costs, expenses and damages is provided in section 306(g). See comment to section 306.

§ 309. Right to enter property prior to condemnation.

Prior to the filing of the declaration of taking, the condemnor or its employees or agents shall have the right to enter upon any land or improvement which it has the power to condemn in order to make studies, surveys, tests, soundings and appraisals. However, the owner of the land or the party in whose name the property is assessed shall be notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 306(g) (relating to preliminary objections). The exercise of this right of entry by the condemnor shall neither constitute a condemnation nor be interpreted as a notice of an intent to acquire the real property.

Source: Section 409.

Comment: The last sentence of this section clarifies existing law.

§ 310. Abandonment of project.

(a) Disposition of property.--If a condemnor has condemned a fee and then abandons the purpose for which the property has been

condemned, the condemnor may dispose of it by sale or otherwise. If the property has not been substantially improved, it may not be disposed of within three years after condemnation without first being offered to the condemnee at the same price paid to the condemnee by the condemnor. If the property is not located within the corporate boundaries of a county of the first or second class and has not been substantially improved and was devoted to agricultural use at the time of the condemnation, it may not be disposed of within 12 years after condemnation without first being offered to the condemnee at the same price paid to the condemnee by the condemnor.

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

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

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

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

"Agricultural use." Use of the land for the purpose of producing an agricultural commodity or when devoted to and meeting the requirements and qualifications for payments or other compensation

pursuant to a soil conservation program under an agreement with an agency of the Federal Government. Land containing a farmhouse or other buildings related to farming shall be deemed to be in agricultural use.

Source: Subsection (a) derived from section 410(a) except last sentence; subsection (b) derived from the last sentence of section 410(a); subsection (c) derived from section 410(b); and subsection (d) derived from section 410(c).

## CHAPTER 5

### PROCEDURE FOR DETERMINING DAMAGES

Sec.

- 501. Agreement as to damages.
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- 515. Reports.
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- 521. Liens and distribution of damages.
- 522. Payment into court and distribution.
- § 501. Agreement as to damages.

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

Source: Section 501.

§ 502. Petition for appointment of viewers.

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

(1) A caption designating the condemnee or displaced person as the plaintiff and the condemnor as the defendant.

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

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

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

(5) A brief description of the property acquired.

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

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

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

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

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

Source: Subsection (a) derived from section 502(a) and (b); subsection (b) derived from section 502(c); subsection (c) derived from section 502(e); and subsection (d) derived from section 502(g).

Comment: Former subsections (a) and (b), concerning the content of a petition for viewers by a condemnee and condemnor, are combined in subsection (a) for clarity.

Furthermore, displaced persons are included in subsection (a) as having the right to petition for the appointment of viewers.

More significantly, the petition is captioned in the names of the parties and docketed to a different term and number from that of the declaration of taking. This, without affecting the "in rem" nature of the declaration of taking, eliminates the confusion caused when many individual cases are docketed under the same number, or under the same number as the declaration of taking, and by appellate courts' reporting cases with "in re" captions.

Only one property may be included in the petition for viewers of a condemnee or displaced person under subsection (a). Former subsection (d) which permitted consolidation has not been codified.

Subsection (c) clarifies existing law. It provides a procedure for all damage actions where no declaration of taking has been filed. It is conceptually derived from Section 10, Article I and Section 4, Article X of the Constitution of

Pennsylvania and it applies to claims for actual takings, for de facto takings and for consequential or other special damages allowed under Chapters 7 and 9, where no declaration of taking has been filed.

In order to provide more certainty in the proceeding, subsection (c) provides for court determinations of whether a condemnation has occurred, the condemnation date, if any, and the extent and nature of any property interests condemned. Subsection (c) also requires the condemnor to file a copy of the court order, specifying any property interest condemned, with the appropriate recorder of deeds.

Former subsection (f) has not been codified. See comment to section 504.

#### § 503. View.

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

Source: Section 503.

#### § 504. Appointment of viewers.

(a) General rule.--Upon the filing of a petition for the appointment of viewers, the court, unless preliminary objections to the validity of the condemnation or jurisdiction, warranting delay, are pending, shall promptly appoint three viewers, who shall view the premises, hold hearings and file a report. In counties of the first class, the court may appoint an alternate viewer in addition to the three viewers specifically appointed. The prothonotary shall promptly notify the viewers of their appointment unless a local rule provides

another method of notification. No viewer shall represent a client or testify as an expert witness before the board.

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

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

(d) Preliminary objections.--Any objection to the appointment of viewers may be raised by preliminary objections filed within 30 days after receipt of notice of the appointment of viewers. Objections to the form of the petition or the appointment or the qualifications of the viewers in any proceeding or to the legal sufficiency or factual basis of a petition filed under section 502(c) (relating to petition for appointment of viewers) are waived unless included in preliminary objections. An answer with or without new matter may be filed within 20 days of service of preliminary objections, and a reply to new matter may be filed within 20 days of service of the answer. The court shall determine promptly all preliminary objections and make any orders and decrees as justice requires. If an issue of fact is raised, the court shall conduct an evidentiary hearing or order that

evidence be taken by deposition or otherwise, but in no event shall evidence be taken by the viewers on this issue.

Source: Subsection (a) derived from first paragraph of section 504 and section 803; subsection (b) derived from second paragraph of section 504; subsection (c) derived from third paragraph of section 504; and subsection (d) derived from last paragraph of section 504.

Comment: Subsection (b) obligates the moving party to send to all parties a copy of the petition for the appointment of viewers and a copy of the court order appointing the viewers.

Subsection (c) provides that the viewers shall give at least 30 days written notice of the time and place of all views and hearings.

The time for filing preliminary objections to a petition for appointment of viewers contained in subsection (d) is extended to 30 days. This 30-day time period for filing of preliminary objections is consistent with the corresponding provision in section 306.

Subsection (d) incorporates a mechanism for raising the issue of the legal sufficiency or factual basis of a petition filed under section 502(c). See Jacobs v. Nether Providence Township, 6 Pa. Commonwealth Ct. 594, 297 A.2d 550 (1972).

Subsection (d) also permits an answer to preliminary objections and a reply to any new matter raised in the answer. This recognizes that pleadings following the preliminary objections are necessary in circumstances where there are underlying issues of fact and the petition for appointment of viewers and the preliminary objections have not put them at issue.

The last sentence of this subsection clarifies existing law and prohibits the viewers from taking evidence on an issue of fact.

§ 505. Service of notice of view and hearing.

Notice of the view and hearing shall be served, within or without

this Commonwealth, by any competent adult in the same manner as a civil action or by registered mail, return receipt requested, to the last known address of the condemnee and condemnor. If service cannot be made in the manner provided, then service shall be made by posting a copy of the notice upon a public part of the property and by publication, at the cost of the condemnor, once in a newspaper of general circulation and once in the legal publication, if any, designated by rule or order of court for publication of legal notices, published in the county. Proof of service and the manner of service shall be attached to the viewers' report.

Source: Section 505.

§ 506. Additional condemnees, mortgagees and intervention.

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

(b) Notice.--The viewers shall notify by written notice all persons who are so disclosed as having an interest in the property and all mortgagees of the pendency of the proceedings and of subsequent hearings. If the additional condemnees and mortgagees have not received 20 days notice of the hearing, the viewers shall, upon request, adjourn the hearing to allow notice.

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

Source: Subsection (a) derived from first sentence of section 506(a); subsection (b) derived from second and last sentences of section 506(a); and subsection (c) derived from section 506(b).

§ 507. Joint claims.

(a) Required.--The claims of all the owners of the condemned property, including joint tenants, tenants in common, life tenants, remaindermen, owners of easements or ground rents and all others having an interest in the property and the claims of all tenants, if any, of the property, shall be heard or tried together.

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

(c) Separate hearings.--Claims for special damages under section 901 (relating to moving and related expenses of displaced persons) may be heard or tried separately.

Source: Subsection (a) derived from section 507(a); subsection (b) derived from section 507(a); and subsection (c) derived from section 507(b).



§ 508. Appointment of trustee or guardian ad litem.

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

Source: Section 508.

§ 509. Furnishing of plans to viewers.

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

Source: Section 509.

§ 510. Powers of viewers.

The viewers shall have power to adjourn the proceedings from time to time. Upon request of the viewers or a party, the court which appointed the viewers shall issue a subpoena to testify or to produce books and documents. All the viewers shall act, unless prevented by sickness or other unavoidable cause, but a majority of the viewers may

hear, determine, act upon and report all matters relating to the view for which they were appointed. The provisions of this section shall not be affected by the appointment of an alternate viewer as provided for in section 504 (relating to appointment of viewers).

Source: Section 510.

§ 511. Administrative matters for viewers' hearings.

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

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

Source: Subsection (a) derived from section 806;  
and subsection (b) derived from section 807.

§ 512. Report of viewers.

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

(1) The date of their appointment as viewers.

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

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

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

(5) A schedule of damages awarded and benefits assessed, to and by whom payable, and for which property, separately stated as follows: general damages, moving and removal expenses, business dislocation damages and other items of special damages authorized by this title and the date from which damages for delay shall be calculated.

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

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

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

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

(10) Other matters they deem relevant.

Source: Paragraph (1) derived from section 511(1); paragraph (2) derived from section 511(2); paragraph (3) derived from section 511(3); paragraph (4) derived from section 511(4); paragraph (5) derived from section 511(5); paragraph (6) derived from section 511(6); paragraph (7) derived from section

511(7); paragraph (8) derived from section 511(8); paragraph (9) derived from section 511(9); and paragraph (10) derived from section 511(10).

Comment: Paragraph (4) conforms with section 502(c) which provides that the court determines the date of condemnation where no declaration of taking has been filed.

§ 513. Disagreement.

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

Source: Section 512.

§ 514. Filing of report of viewers.

The viewers shall file their report within 30 days of their final hearing or within 30 days from the filing of the transcription of the stenographic notes of testimony. The transcription shall be filed within 30 days of the final hearing. Ten days before the filing of their report, the viewers shall mail a copy of the report to all parties or their attorneys of record, with notice of the date of the intended filing and that the report shall become final unless an appeal is filed within 30 days from the date the report is filed. Prior to the filing of their report they may correct any errors in the report and give notice to the persons affected.

Source: Section 513.

§ 515. Reports.

The viewers may include in one report one or more properties or

claims under section 901 (relating to moving and related expenses of displaced persons) referred to them under the same or separate petitions if the properties are included in the same declaration of taking. The viewers may file a separate report for expenses and damages under section 901. Each report shall be final as to the property or properties included and subject to separate appeal.

Source: Section 514.

§ 516. Right of appeal.

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

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

(c) Cross appeals.--If a timely appeal is filed by a party, any other party may file an appeal within 15 days of the date on which the first appeal was filed. An appeal may be taken from less than all of an award.

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

Source: Subsection (a) derived from first paragraph of section 515; subsection (b) derived

from second paragraph of section 515; subsection (c) derived from last paragraph of section 515; and subsection (d), new.

Comment: Subsection (c) is patterned after the corresponding Rule of Appellate Procedure (No. 903(b)). Whereas former section 515(c) permitted additional time for filing an appeal by one class of condemnee only, subsection (c) allows additional time for any party interested in filing a cross-appeal. For example, a party who wants to appeal a particular finding of fact or law by the viewers, since the other party has appealed the award, would be permitted to do so. If the finding is not appealed, case law indicates that the finding could not be objected to at the trial. Jennings v. Department of Transportation, 38 Pa. Commonwealth Ct. 206, 395 A.2d 582 (1978), aff'd per curiam, 487 Pa. 49, 408 A.2d 846 (1979).

Subsection (d) codifies the long-standing rule that a party to a condemnation proceeding who appeals an award of the viewers may not withdraw his appeal without the consent of the other parties. See Brown v. Corey and Peterson, 43 Pa. 495 (1863). This subsection reverses the rule announced in Farrington v. Pennsylvania Department of Transportation, 35 Pa. Commonwealth Ct. 373, 387 A.2d 136 (1977), aff'd per curiam, 489 Pa. 400, 414 A.2d 128 (1980). In Farrington, the court allowed the condemnees to withdraw unilaterally their appeal from an award of the viewers where the condemnor did not also appeal.

## § 517. Appeals.

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

- (1) The name of appellant and appellee.
- (2) A brief description or identification of the property involved and the condemnee's interest.
- (3) A reference to the proceedings appealed from and the date of the filing of the viewers' report.

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

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

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

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

Source: Subsection (a) derived from section 516(a); subsection (b) derived from section 516(b); and subsection (c) derived from section 516(c).

§ 518. Disposition of appeal.

All objections, other than to the amount of the award, raised by the appeal shall be determined by the court preliminarily. The court may confirm, modify or change the report or refer it back to the same or other viewers. A decree confirming, modifying or changing the

report constitutes a final order. The amount of damages shall be determined by the court unless a jury trial has been demanded. At the trial of the case, the condemnee shall be the plaintiff and the condemnor shall be the defendant.

Source: Section 517.

§ 519. Allocation of damages.

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

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

Source: Subsection (a) derived from section 518(a); and subsection (b) derived from section 518(b).



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

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

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

Source: Subsection (a) derived from section 520(a); and subsection (b) derived from section 520(b).

§ 521. Liens and distribution of damages.

(a) Liens.--Damages payable to a condemnee under sections 701 (relating to just compensation) through 707 (relating to removal of machinery, equipment or fixtures), 713 (relating to delay compensation), 714 (relating to consequential damages), 715 (relating to damages for vacation of roads) and 901(b)(1) and (2) (relating to moving and related expenses of displaced persons) shall be subject to a lien for all taxes and municipal claims assessed against the property and to all mortgages, judgments and other liens of record

against the property for which the particular damages are payable, existing at the date of the filing of the declaration of taking. The liens shall be paid out of the damages in order of priority before any payment to the condemnee, unless released. In the case of a partial taking or of damages under sections 714 and 715, the lienholder shall be entitled only to an equitable pro rata share of the damages lienable under this section.

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

Source: Subsection (a) derived from first and second paragraphs of section 521; and subsection (b) derived from third and last paragraphs of section 521.

§ 522. Payment into court and distribution.

(a) Payment into court.--Upon refusal to accept payment of the

damages or of the estimated just compensation under section 307 (relating to possession, right of entry and payment of compensation) or if the party entitled thereto cannot be found or if for any other reason the amount cannot be paid to the party entitled thereto, the court upon petition of the condemnor, which shall include a schedule of proposed distribution, may direct payment and costs into court or as the court may direct in full satisfaction. The condemnor shall give 20 days notice of the presentation of the petition, including a copy of the schedule of the proposed distribution, to all parties in interest known to the condemnor in any manner as the court may direct by general rule or special order. If the court is satisfied in a particular case that the condemnor failed to use reasonable diligence in giving notice, the court may, upon petition of any party in interest adversely affected by the failure to give notice, order that compensation for delay in payment be awarded to the party for the period after deposit in court by the condemnor under this section until the time the party in interest has received a distribution of funds under this section.

(b) Distribution.--The court upon petition of any party in interest shall distribute the funds paid under subsection (a) or any funds deposited in court under section 307 to the persons entitled thereto in accordance with the procedure in section 521 (relating to liens and distribution of damages), but if no petition is presented within a period of five years of the date of payment into court, the

court shall order the fund or any balance remaining to be paid to the Commonwealth without escheat. No fee shall be charged against these funds.

Source: Subsection (a) derived from first and second paragraphs of section 522; and subsection (b) derived from last paragraph of section 522.

## CHAPTER 7

### JUST COMPENSATION AND MEASURE OF DAMAGES

#### Sec.

- 701. Just compensation.
- 702. Measure of damages.
- 703. Fair market value.
- 704. Effect of imminence of condemnation.
- 705. Contiguous tracts and unity of use.
- 706. Effect of condemnation use on after value.
- 707. Removal of machinery, equipment or fixtures.
- 708. Expenses incidental to transfer of title.
- 709. Condemnee's costs where no declaration of taking filed.
- 710. Limited reimbursement of appraisal, attorney and engineering fees.
- 711. Payment on account of increased mortgage costs.
- 712. Loss of rentals because of imminence of condemnation.
- 713. Delay compensation.
- 714. Consequential damages.
- 715. Damages for vacation of roads.
- 716. Attempted avoidance of monetary just compensation.

§ 701. Just compensation.

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

Source: Section 601.

§ 702. Measure of damages.

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

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

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

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

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

Source: Subsection (a) derived from section 602(a); subsection (b) derived from section 602(b); subsection (c) derived from section 602(c); and subsection (d) derived from section 602(e).

Comment: Former section 602(d) has not been codified because of a federal reimbursement problem. Former section 602(d), which provides a washout acquisition procedure for disaster victims who repair their own property, creates acquisition costs which the Department of Housing and Urban Development will not recognize since at the time of the acquisition/reconveyance the property would not be "blighted, in need of rehabilitation or preservation or acquired for public use" as required by section 105 of the Housing and Community Development Act of 1974 (42 U.S.C. § 5305).

Subsection (d) extends from three years to five years the applicability of subsection (c).

§ 703. Fair market value.

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

- (1) The present use of the property and its value for that use.
- (2) The highest and best reasonably available use of the property and its value for that use.
- (3) The machinery, equipment and fixtures forming part of the real estate taken.
- (4) Other factors as to which evidence may be offered as provided by Chapter 11 (relating to evidence).

Source: Paragraph (1) derived from section 603(1); paragraph (2) derived from section 603(2); paragraph (3) derived from section 603(3); and paragraph (4) derived from section 603(4).

§ 704. Effect of imminence of condemnation.

Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation, other than that due to physical deterioration of the property within the reasonable control of the condemnee, shall be disregarded in determining fair market value.

Source: Section 604.

§ 705. Contiguous tracts and unity of use.

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

Source: Section 605.

Comment: This section incorporates the "substantial identical ownership" standard found in section 1007 of the Uniform Eminent Domain Code and adopted by the court in Housing Authority of the City of Newark v. Norfolk Realty Company, 71 N.J. 314, 364 A.2d 1052 (1976). This new standard replaces the "owned by one owner" standard of former section 605 and provides the court with more flexibility in reckoning with the different ownership schemes a person may choose to employ. This specifically reverses Sams v. Redevelopment Authority, 431 Pa. 240, 244 A.2d 779 (1968). The court in Sams held that although the same individuals composed the entities involved, the fact that one parcel (condemned) was owned by a partnership and the other parcel (not condemned) by a corporation precluded recovery under former section 605.

§ 706. Effect of condemnation use on after value.

In determining the fair market value of the remaining property after a partial taking, consideration shall be given to the use to which the property condemned is to be put and the damages or benefits specially affecting the remaining property due to its proximity to the improvement for which the property was taken. Consideration shall also be given to any time discount, inconvenience or other effects of the construction period, which would have materially affected the



price which the condemnee would have received had he sold the remaining property to a third party immediately after the date of condemnation but before completion of the improvement. Future damages and general benefits which will affect the entire community beyond the properties directly abutting the property taken shall not be considered in arriving at the after value. Special benefits to the remaining property shall in no event exceed the total damages except in cases where the condemnor is authorized under existing law to make special assessments for benefits.

Source: Section 606.

Comment: The second sentence of this section is derived from the last sentence of the first paragraph of the 1964 Comment to former section 606. It reverses Truck Terminal Realty Company v. Commonwealth, 486 Pa. 16, 403 A.2d 986 (1979), which denied severance damages for temporary interference with access.

§ 707. Removal of machinery, equipment or fixtures.

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

Source: Section 607.

§ 708. Expenses incidental to transfer of title.

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

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

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

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

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

Source: Paragraph (1) derived from section 608(1); paragraph (2) derived from section 608(2); paragraph (3) derived from section 608(3); and paragraph (4) derived from section 608(4).

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

Where proceedings are instituted by a condemnee under section 502(c) (relating to petition for the appointment of viewers), a

judgment awarding compensation to the condemnee for the taking of property shall include reimbursement of reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred.

Source: Section 609.

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

(a) General rule.--The owner of any right, title or interest in real property acquired or injured by an acquiring agency, who is not eligible for reimbursement of fees under section 306(g) (relating to preliminary objections), 308(d) (relating to revocation of condemnation proceedings) or 709 (relating to condemnee's costs where no declaration of taking filed), shall be reimbursed in an amount not to exceed \$1,000 as a payment toward reasonable expenses actually incurred for appraisal, attorney and engineering fees.

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

(c) Appraisal and engineering fees.--The condemnee's attorney of record shall present all evidence of reasonable appraisal or engineering fees recoverable under sections 306(g), 308(d) and 709. The condemnee's attorney of record shall collect all of the fees recovered and transmit them to the appraiser and engineer.

Source: Subsection (a) derived from section 610; subsection (b), new; and subsection (c), new.

Comment: Subsection (a) increases the contribution toward appraisal, attorney and engineering fees to \$1,000.

Subsection (b) provides that in determining reasonable attorney fees the court shall consider all of the circumstances of the case including available time records.

Subsection (c) provides for the expeditious collection and transmission of appraisal and engineering fees.

§ 711. Payment on account of increased mortgage costs.

(a) Reimbursement of owner.--Whenever the acquisition of property by an acquiring agency results in the termination of an installment purchase contract, mortgage or other evidence of debt on the acquired property, requiring the legal or equitable owner to enter into another installment purchase contract, mortgage or other evidence of debt on the property purchased for the same use as the acquired property, a legal or equitable owner who does not qualify for a payment under section 902(a)(2) (relating to replacement housing for homeowners) shall be compensated for any increased interest and other debt service costs which he is required to pay for financing the acquisition of the replacement property.

(b) Determination of amount.--Compensation for any increased interest and other debt service costs shall be equal to the excess in the aggregate interest and other debt service costs of that amount on the principal of the installment purchase contract, mortgage or other evidence of debt on the replacement property which is equal to the

unpaid balance of the installment purchase contract, mortgage or other evidence of debt on the acquired property over the remaining term of the installment purchase contract, mortgage or other evidence of debt on the acquired property reduced to present worth. The discount rate to be used in reducing to present worth shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement property is located. The amount shall be paid only if the acquired property was subject to an installment purchase contract or encumbered by a bona fide mortgage or other evidence of debt secured by the property which was a valid lien on the property for not less than 180 days prior to the initiation of negotiations for the acquisition of the property.

Source: Subsection (a) derived from first sentence of section 610.1; and subsection (b) derived from remainder of section 610.1.

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

The condemnee shall be entitled to receive as special damages compensation for any loss, suffered prior to the date of taking, caused by a reduction of income from rentals which the condemnee establishes was substantially due to the general knowledge of the imminence of condemnation, other than that due to physical deterioration of the property within the reasonable control of the condemnee. This section is applicable only to losses of rental income suffered following a 60-day period subsequent to written notice from the condemnee to the condemnor that losses of rental income are being suffered. Total damages under this section shall not exceed \$10,000.

Source: New.

Comment: This section is intended to rectify a recurring owner/tenant problem. Previously, when a tenant aware of a prospective condemnation moved, the owner was not compensated for the loss of rentals. This section permits the condemnee to prove as special damages certain loss of rentals substantially due to the general knowledge of the imminence of condemnation.

§ 713. Delay compensation.

(a) General rule.--A condemnee or displaced person shall be entitled to delay compensation:

(1) on general damages, including damages payable under sections 714 (relating to consequential damages) and 715 (relating to damages for vacation of roads), from the date of relinquishment of possession of the condemned property or, if possession is not required to effectuate the condemnation, from the date of condemnation; and

(2) on damages payable under sections 708 (relating to expenses incidental to transfer of title), 711 (relating to payment on account of increased mortgage costs) and 712 (relating to loss of rentals because of imminence of condemnation) and Chapter 9 (relating to special damages for displacement) from 60 days after the condemnee or displaced person provides satisfactory documentation to the condemnor that the reimbursable costs or expenses have been incurred by the condemnee or displaced person or that the property qualifies for payment under section 901(b) (relating to moving and related expenses of displaced persons).

(b) When condemnee not entitled.--No compensation for delay shall be payable with respect to funds paid on account or by deposit in court after the date of the payment or deposit or for any time during which preliminary objections filed by the condemnee are pending.

(c) Rate of interest.--Compensation for delay in payment shall be paid on the basis of compound annual interest. The applicable rate of interest for compensation for delay for each calendar year or portion of a calendar year shall be equal to the annual Index of Long-Term United States Government Bond Yields for that year or, when an annual index for a portion of a year has not been published by the Secretary of Banking, the most recently published index. The compensation for delay for each year or portion of a year shall be added to the unpaid damages prior to calculation of the compensation for delay for the succeeding year or portion of a year.

(d) When calculation of delay compensation made.--Compensation for delay shall not be included by the viewers or the court or jury on appeal as part of the award or verdict, but shall at the time of payment of the award or judgment be calculated as provided in subsection (c) and added to the award or verdict. There shall be no further or additional payment of interest on the award or verdict.

(e) Secretary of Banking.--On or before each January 20, the Secretary of Banking shall have published in the Pennsylvania Bulletin the annual Index of Long-Term United States Government Bond Yields for each of the preceding ten years.

Source: Subsection (a), new; subsections (b) and (c) derived from second sentence of section 611; subsection (d) derived from penultimate and ultimate sentence of section 611; and subsection (e), new.

Comment: Subsection (a) expands the class of persons entitled to delay compensation to include displaced persons. Paragraph (a)(2) broadens the scope of the coverage of the section to include special damages. This reverses Redevelopment Authority of the City of Chester v. Swager, 12 Pa. Commonwealth Ct. 437, 316 A.2d 136 (1974) which held that delay compensation is not applicable to business dislocation damages.

Subsection (b) provides that no compensation for delay is payable for any time during which preliminary objections filed by the condemnee are pending.

Subsection (c) provides that compensation for delay shall be paid at an annual interest rate equal to the annual index of Long-Term United States Government Bond Yields. The treasury bond rate of interest is used since it most accurately reflects the rate of return a condemnee would have earned on a financial instrument of comparable risk.

Subsection (c) also provides that compensation for delay shall be compounded annually on a calendar year basis. The concept of compounding is employed as it is the logical extension of the constitutional mandate that a condemnee receive just compensation. The intent is to restore to the condemnee what he, as a prudent investor, would have earned in interest during the period of delay.

The following example is illustrative of the calculations involved in a typical delay compensation situation. The example assumes an award or a verdict of \$50,000 and a compensatory delay period from April 26, 1979, to September 28, 1984.



SAMPLE CALCULATION OF DELAY COMPENSATION

Delay period (1)	Long term treasury bond rate (2)	Annual interest computation (3)			Annual interest (4)	Damages plus delay compensation (5)
4/26/79- 12/31/79	8.74%	249/365 = .682	x 8.74% = 5.96% (.0596)	x \$50,000 = \$2,980	\$52,980	
1/1/80- 12/31/80	10.81	366/366 = 1.00	x 10.81 = 10.81 (.1081)	x 52,980 = 5,727	58,707	
1/1/81- 12/31/81	12.87	365/365 = 1.00	x 12.87 = 12.87 (.1287)	x 58,707 = 7,556	66,263	
1/1/82- 12/31/82	12.23	365/365 = 1.00	x 12.23 = 12.23 (.1223)	x 66,263 = 8,104	74,367	
1/1/83- 12/31/83	10.84	365/365 = 1.00	x 10.84 = 10.84 (.1084)	x 74,367 = 8,061	82,428	
1/1/84- 9/28/84	10.84	272/366 = .743	x 10.84 = 8.06 (.0806)	x 82,428 = 6,644	89,072	

NOTE: Dollar amounts are rounded to nearest dollar.

In order to comply with the mandate of subsection (c) that delay compensation shall be compounded annually on a calendar year basis, note that the applicable multiplicand (\$52,980) for calendar year 1980 is equal to the principal plus accrued interest for calendar year 1979.

Also, note that in calendar year 1984 the applicable rate used is the 1983 rate since this rate would be the rate most recently published.

Subsection (e) directs the Secretary of Banking to publish in the Pennsylvania Bulletin the annual index for each of the preceding ten years.

§ 714. Consequential damages.

All condemnors, including the Commonwealth, shall be liable for damages to property abutting the area of an improvement resulting from

change of grade of a road or highway, permanent interference with access or injury to surface support, whether or not any property is taken.

Source: Section 612.

§ 715. Damages for vacation of roads.

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

Source: Section 613.

§ 716. Attempted avoidance of monetary just compensation.

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

Source: Section 617.1.

## CHAPTER 9

### SPECIAL DAMAGES FOR DISPLACEMENT

#### Sec.

901. Moving and related expenses of displaced persons.

902. Replacement housing for homeowners.

903. Replacement housing for tenants and others.

904. Housing replacement authorization.

905. Regulations.

906. Payments not to be considered as income or resources.

§ 901. Moving and related expenses of displaced persons.

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

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

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

(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.

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

(3) In addition to damages under paragraph (1) or (2), damages of not more than \$25,000 nor less than \$2,500, in an amount equal to the greater of:

(i) forty times the actual monthly rental, in the case of a tenant, or 40 times the fair monthly rental value, in the case of owner-occupancy; or

(ii) the average annual net earnings. The term "average annual net earnings" means one-half of any net

earnings of the business or farm operation before Federal, State and local income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for a project, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during this period. The regulations promulgated under section 905 (relating to regulations) may designate another period determined to be more equitable for establishing average annual net earnings provided the designation of the period does not produce a lesser payment than would use of the last two taxable years.

(4) In the case of a business, payment shall be made under paragraph (3) only if the business cannot be relocated without a substantial loss of profits.

(5) In addition to damages under paragraphs (1) through (4), actual reasonable expenses incurred in searching for a replacement business or farm.

Source: Subsection (a) derived from section 601-A(a); subsection (b)(1) derived from section 601-A(b)(1); subsection (b)(2) derived from section 601-A(b)(2); subsection (b)(3) derived from section 601-A(b)(3) except last sentence; subsection (b)(4) derived from last sentence of section 601-A(b)(3); and subsection (b)(5) derived from section 601-A(b)(4).

Comment: Subsection (b)(1) retains the concept of value in place to determine damages. This is intended to be a more clearly defined formula than the former formula.

The limitation on business dislocation damages contained in subsection (b)(3) is increased to \$25,000.

Subsection (b)(4) provides that payments made to a business under subsection (b)(3) are permitted only if the business cannot be relocated without a substantial loss of profits. This eliminates the notion of "substantial loss of existing patronage" and the other condition of payment contained in former section 601-A(b)(3)(II), specifically that the business is not part of a commercial enterprise having at least one other establishment not being acquired by the acquiring agency which is engaged in the same or similar business.

§ 902. Replacement housing for homeowners.

(a) Additional payments to certain homeowners.--In addition to payments otherwise authorized, the acquiring agency shall make an additional payment not in excess of \$15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property or the receipt of written notice from the acquiring agency of intent to acquire or order to vacate. The additional payment shall include the following elements:

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

employment and available to the displaced person on the private market.

(2) The amount, if any, as provided in this paragraph, which will compensate the displaced person for any increased interest and other debt service costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be equal to:

(i) in those instances where the acquired property at the time of the acquisition was subject to an installment purchase contract, mortgage or other evidence of debt, the excess in the aggregate interest and other debt service costs of that amount on the principal of the installment purchase contract, mortgage or other evidence of debt on the replacement dwelling which is equal to the unpaid balance of the installment purchase contract, mortgage or other evidence of debt on the acquired dwelling over the remaining term of the installment purchase contract, mortgage or other evidence of debt on the acquired dwelling reduced to present worth; or

(ii) in those instances where the acquired property at the time of the acquisition was not subject to an installment purchase contract, mortgage or other evidence of debt, the aggregate interest and other debt service costs of the principal of the installment purchase contract, mortgage or other evidence of debt on the replacement dwelling over a term not to exceed ten years reduced to present worth.

The discount rate to be used in reducing to present worth shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

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

(b) One-year time period for purchase of replacement dwelling.-- The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling, which is decent, safe, sanitary and adequate to accommodate the displaced person, not later than the end of the one-year period beginning on the date on which he receives final payment of his full acquisition cost for the acquired dwelling or on the date on which he moves from the acquired dwelling, whichever is later. Regulations issued under section 905 (relating to regulations) may prescribe situations when the one-year period may be extended.

(c) Right of election.--The person entitled under this section shall have the right to elect the benefits available under section 903 (relating to replacement housing for tenants and others) in lieu of those provided by this section.

Source: Subsection (a)(1) derived from section 602-A(a)(1); subsection (a)(2) derived from section 602-A(a)(2); subsection (a)(3) derived from section 602-A(a)(3); subsection (b) derived from section 602-A(b); and subsection (c) derived from section 602-A(c).



Comment: Subparagraph (1) of subsection (a)(2) expands the class of homeowners eligible for payment under this section to include those homeowners whose property at the time of acquisition was not subject to an installment purchase contract, mortgage or other evidence of debt.

§ 903. Replacement housing for tenants and others.

(a) Payment to certain displaced persons.--In addition to amounts otherwise authorized, an acquiring agency shall make a payment to or for any displaced person displaced from a dwelling not eligible to receive a payment under section 902 (relating to replacement housing for homeowners) which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of the dwelling or the receipt of written notice from the acquiring agency of intent to acquire or order to vacate. The payment shall be either:

(1) the amount determined to be necessary to enable the displaced person to lease for a period not to exceed four years a decent, safe and sanitary dwelling adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment. The amount shall be the additional amount, if any, over the actual rental or fair rental value of the acquired dwelling as determined in accordance with regulations promulgated under section 905 (relating to regulations) but not to exceed \$4,000; or

(2) the amount necessary to enable the person to make a down payment, which is the equity payment in excess of the maximum amount of conventional financing available to the displaced person, plus those expenses described in section 902(a)(3), on the purchase of a decent, safe and sanitary dwelling adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if the amount exceeds \$2,000 the person must equally match this amount in excess of \$2,000 in making the down payment.

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

Source: Subsection (a) derived from section 603-A(a); and subsection (b) derived from section 603-A(b).

§ 904. Housing replacement authorization.

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

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

(1) If comparable replacement sale or rental housing is not available in the neighborhood or community in which a program or project is located and this housing cannot otherwise be made available, as so certified by the county commissioners or, in

cities of the first class, by the city council, the acquiring agency may purchase, construct, reconstruct or otherwise provide replacement housing by use of funds authorized for the program or project. For this purpose, the acquiring agency may exercise its power of eminent domain to acquire property in fee simple or any lesser estate as it deems advisable.

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

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

(c) Planning and other preliminary expenses for replacement housing.--In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons, any governmental acquiring agency may make loans and grants to nonprofit, limited dividend or cooperative organizations or public bodies for necessary and reasonable expenses, prior to construction, for planning and obtaining mortgage financing for the rehabilitation or construction

of housing for these displaced persons. These loans and grants shall be made prior to the availability of financing for items such as preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, legal, appraisal and organizational fees, site acquisition, application and mortgage commitment fees, construction loan fees and discounts and similar items. Loans to an organization established for profit shall bear interest at market rate determined by the acquiring agency. All other loans and grants shall be without interest. The acquiring agency shall require repayment of loans and grants made under this section, under any terms and conditions it requires, upon completion of the project or sooner. However, except in the case of a loan to an organization established for profit, the acquiring agency may cancel any part or all of a loan and may cancel the repayment provisions of a grant if it determines that a permanent loan to finance the rehabilitation or the construction of the housing cannot be obtained in an amount adequate for repayment of the loan.

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

Source: The act of December 6, 1972 (P.L. 1410, NO. 304), known as the "Housing Replacement Authorization Act" (35 P.S. § 1525 et seq.).

§ 905. Regulations.

The General Counsel shall promulgate rules and regulations necessary to assure that:

- (1) The payments authorized by this chapter shall be made in a manner which is fair and reasonable and as uniform as practicable.
- (2) A displaced person who makes proper application for a payment authorized for that person by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance.
- (3) Any person aggrieved by a determination as to eligibility for a payment authorized by this chapter or the amount of a payment may elect to have his application reviewed by the head of the acquiring agency.
- (4) Each displaced person shall receive the maximum payments authorized by this chapter.
- (5) Each acquiring agency may obtain the maximum Federal reimbursement for relocation payment and assistance costs authorized by any Federal law.

Source: Paragraph (1) derived from section 604-A(1); paragraph (2) derived from section 604-A(2); paragraph (3) derived from section 604-A(3); paragraph (4) derived from section 604-A(4); and paragraph (5) derived from section 604-A(5).

Comment: For the purpose of this section, the Attorney General is replaced by the General Counsel pursuant to the act of October 15, 1980 (P.L. 950, No. 164), known as the "Commonwealth Attorneys Act" (71 P.S. § 732-101 et seq.).

§ 906. Payments not to be considered as income or resources.

No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any State law or for the purposes of the State or local personal income or wage tax laws, corporation tax laws or other tax laws. No payments under this chapter except those provided for in section 901(b) (relating to moving and related expenses of displaced persons) shall be subject to attachment or execution at law or in equity.

Source: Section 605-A.

## CHAPTER 11

### EVIDENCE

Sec.

- 1101. Viewers' hearing.
- 1102. Condemnor's evidence before viewers.
- 1103. Trial in court on appeal.
- 1104. Competency of condemnee as witness.
- 1105. Evidence generally.
- 1106. Use of condemned property.

§ 1101. Viewers' hearing.

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

Source: Section 701.

§ 1102. Condemnor's evidence before viewers.

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

Source: Section 702.

§ 1103. Trial in court on appeal.

At the trial in court on appeal:

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

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

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

Source: Paragraph (1) derived from section 703(1); paragraph (2) derived from section 703(2); and paragraph (3) derived from section 703(3).

§ 1104. Competency of condemnee as witness.

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

Source: Section 704.

§ 1105. Evidence generally.

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

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

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

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



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

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

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

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

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

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

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

(6) If otherwise qualified, a valuation expert shall not be disqualified by reason of not having made sales of property or not having examined the condemned property prior to the condemnation provided he can show he has acquired knowledge of its condition at the time of the condemnation.

Source: Paragraph (1) derived from section 705(1); paragraph (2) derived from section 705(2); paragraph (3) derived from section 705(3); paragraph (4) derived from section 705(4); paragraph (5) derived from section 705(5); and paragraph (6) derived from section 705(6).

**§ 1106. Use of condemned property.**

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

Source: Section 706.

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

§ 702.1. Expedited appeals in eminent domain proceedings.

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

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

§ 5526. Five year limitation.

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

- (1) An action for revival of a judgment lien on real property.
- (2) An action for specific performance of a contract for sale of real property or for damages for noncompliance therewith.
- (3) An action to enforce any equity of redemption or any implied or resulting trust as to real property.
- [(4) A proceeding in inverse condemnation, if property has been injured but no part thereof has been taken, or if the condemnor has made payment in accordance with section 407(a) or (b) (relating to possession and payment of compensation) of the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the "Eminent Domain Code."]

§ 5527. Six year limitation.

(a) Eminent domain.--

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

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

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

§ 5530. Twenty-one year limitation.

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

(1) An action for the possession of real property.

(2) An action for the payment of any ground rent, annuity or other charge upon real property, or any part or portion thereof.

If this paragraph shall operate to bar any payment of such a rent, annuity or charge, the rent, annuity or charge to which the payment relates shall be extinguished and no further action may be commenced with respect to subsequent payments.

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

\* \* \*

§ 6121. Eminent domain matters.

Eminent domain matters shall be governed by the provisions of (Article VII (relating to evidence) of the act of June 22, 1964 (Sp. Sess., P.L. 84, No. 6), known as the "Eminent Domain Code,") Chapter 11 of Title 26 (relating to evidence) in addition to the provisions of this chapter.

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

§ 1505. Donation of land by political subdivisions.

It shall be lawful for any county, city, borough, town or township to acquire by purchase or by gift, or by the right of eminent domain, any land for the use of the Pennsylvania National Guard, and to convey such lands so acquired to the Commonwealth of Pennsylvania. The

proceedings for the condemnation of lands under the provisions of this chapter and for the assessment of damages for the property taken, injured or destroyed shall be taken in the same manner as is now provided by [the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the "Eminent Domain Code."] Title 26 (relating to eminent domain).

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

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

Section 2003(e)(2)(i)(B) and (7) (except as much as reads:

"Revenue from any sale of land acquired with motor license funds shall be deposited in the Motor License Fund.") of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.

Act of April 17, 1929 (P.L. 531, No. 234), entitled "An act authorizing the courts of common pleas to direct the filing by corporations of bonds to the Commonwealth, to secure payment of damages for the taking of lands, waters, materials, or other property or rights, or for injury thereto, in cases where there is a disputed, doubtful, or defective title, or where any party interested is absent, unknown, not of full age, of unsound mind, or is an unincorporated association, or, from any cause, cannot be bargained with or be served with notice or tendered a bond within the county, and to appoint guardians ad litem or trustees for such persons."

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

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

(b) Section 322(H) of the act of May 5, 1933 (P.L. 364, No. 106), known as the Business Corporation Law, is repealed insofar as it is inconsistent with this act.

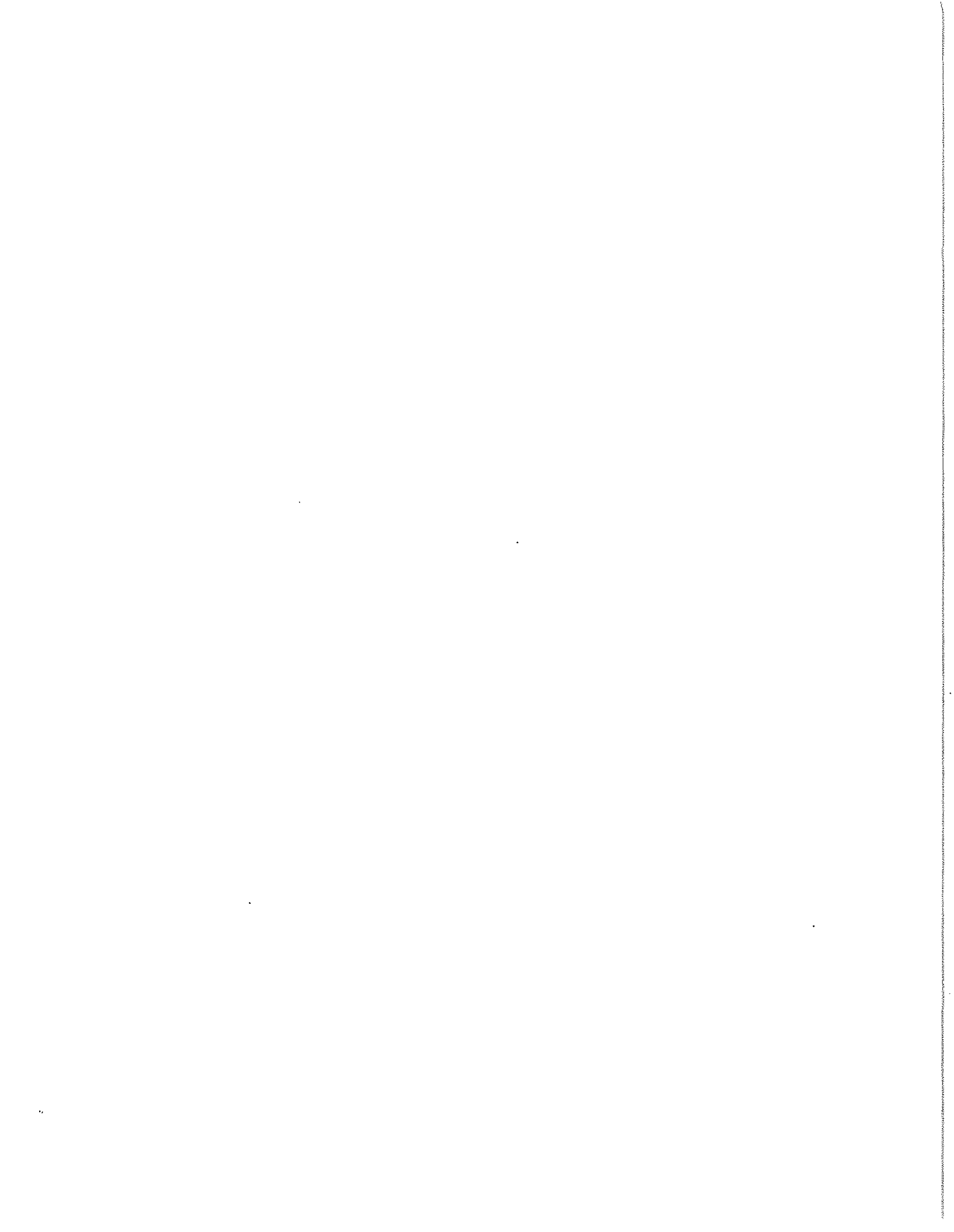
(c) Nothing in this act shall repeal, modify or supplant the following act except as to the measure of damages prescribed by 26 Pa.C.S. Ch. 7 of this act:

Articles XXVII, XXVIII and XXIX of the act of July 28, 1953 (P.L. 23, No. 230), known as the Second Class County Code, as they are applicable to procedures in the court of common pleas with respect to bridges, viaducts, culverts and roads.

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

Section 6. This act shall apply to all condemnations effected on or after the effective date of this act. However, the provisions of 26 Pa.C.S. § 713 relating to the rate of interest for compensation for delay shall apply to all periods of time thereafter with respect to condemnations effected prior to the effective date of this act. The amendments to 42 Pa.C.S. §§ 5526, 5527 and 5530 shall apply only to causes of action which accrue after the effective date of this act.

Section 7. This act shall take effect in 180 days.





## Appendix A

COMPARATIVE STATUTE TABLE  
PROPOSED TITLE 26  
PENNSYLVANIA CONSOLIDATED STATUTES

Eminent Domain Code of 1964	Purdon's Title 26	Pa.C.S. Title 26
Section	Section	Section
101	1-101	101
201	1-201	103*
301	1-301	***
302	1-302	***
303	1-303	102
401	1-401	301
402(a)	1-402(a)	302(a)
402(b)	1-402(b)	302(b)
402(c) (first sentence)	1-402(c) (first sentence)	302(c)
402(c) (last sentence)	1-402(c) (last sentence)	302(d)
402(d)	1-402(d)	302(e)
403(a)	1-403(a)	303(a)
403(b)	1-403(b)	303(b)
403(c)	1-403(c)	303(c)
404 (first and second sentences)	1-404 (first and second sentences)	304(a)
404 (remainder of section except penultimate sentence)	1-404 (remainder of section except penultimate sentence)	304(b)
404 (penultimate sentence)	1-404 (penultimate sentence)	304(c)
405(a)	1-405(a)	305(a)
405(b)	1-405(b)	305(b)
405(c)	1-405(c)	305(c)
405(d)	1-405(d)	305(d)
405(e)	1-405(e)	305(e)
406(a) (except last sentence)	1-406(a) (except last sentence)	306(a)

\*Provision added or substantively revised.

\*\*\*Provision omitted as unnecessary.

Comparative Statute Table--continued

Eminent Domain Code of 1964	Purdon's Title 26	Pa.C.S. Title 26
Section	Section	Section
406(a) (last sentence)	1-406(a) (last sentence)	306(b)
406(b)	1-406(b)	306(c)
406(c)	1-406(c)	306(d)
406(d)	1-406(d)	306(e)
406(e)	1-406(e)	306(f)*
--	--	306(g)*
407(a)	1-407(a)	307(a)*
407(b)	1-407(b)	307(b)
407(c)	1-407(c)	307(c)*
408 (first sentence)	1-408 (first sentence)	308(a)*
408 (second sentence)	1-408 (second sentence)	308(b)
408 (third sentence)	1-408 (third sentence)	308(c)
408 (fourth sentence)	1-408 (fourth sentence)	308(d)*
408 (fifth sentence)	1-408 (fifth sentence)	**
408 (last sentence)	1-408 (last sentence)	308(e)
409	1-409	309
410(a) (except last sentence)	1-410(a) (except last sentence)	310(a)
410(a) (last sentence)	1-410(a) (last sentence)	310(b)
410(b)	1-410(b)	310(c)
410(c)	1-410(c)	310(d)
501	1-501	501
502(a)	1-502(a)	502(a)*
502(b)	1-502(b)	502(a)*
502(c)	1-502(c)	502(b)
502(d)	1-502(d)	**
502(e)	1-502(e)	502(c)*
502(f)	1-502(f)	**
502(g)	1-502(g)	502(d)
503	1-503	503
504 (first paragraph)	1-504 (first paragraph)	504(a)
504 (second paragraph)	1-504 (second paragraph)	504(b)*
504 (third paragraph)	1-504 (third paragraph)	504(c)*
504 (last paragraph)	1-504 (last paragraph)	504(d)*
505	1-505	505

\*Provision added or substantively revised.

\*\*Provision omitted because of revisions.

Comparative Statute Table--continued

Eminent Domain Code of 1964	Purdon's Title 26	Pa.C.S. Title 26
Section	Section	Section
506(a) (first sentence)	1-506(a) (first sentence)	506(a)
506(a) (second and last sentences)	1-506 (second and last sentences)	506(b)
506(b)	1-506(b)	506(c)
507(a)	1-507(a)	507(a) and (b)
507(b)	1-507(b)	507(c)
508	1-508	508
509	1-509	509
510	1-510	510
511(1)	1-511(1)	512(1)
511(2)	1-511(2)	512(2)
511(3)	1-511(3)	512(3)
511(4)	1-511(4)	512(4)*
511(5)	1-511(5)	512(5)
511(6)	1-511(6)	512(6)
511(7)	1-511(7)	512(7)
511(8)	1-511(8)	512(8)
511(9)	1-511(9)	512(9)
511(10)	1-511(10)	512(10)
512	1-512	513
513	1-513	514
514	1-514	515
515 (first paragraph)	1-515 (first paragraph)	516(a)
515 (second paragraph)	1-515 (second paragraph)	516(b)
515 (last paragraph)	1-515 (last paragraph)	516(c)*
--	--	516(d)*
516(a)	1-516(a)	517(a)
516(b)	1-516(b)	517(b)
516(c)	1-516(c)	517(c)
517	1-517	518
518(a)	1-518(a)	519(a)
518(b)	1-518(b)	519(b)
520(a)	1-520(a)	520(a)
520(b)	1-520(b)	520(b)
521 (first and second paragraphs)	1-521 (first and second paragraphs)	521(a)

\*Provision added or substantively revised.

Comparative Statute Table--continued

Eminent Domain Code of 1964	Purdon's Title 26	Pa.C.S. Title 26
Section	Section	Section
521 (third and last paragraphs)	1-521 (third and last paragraphs)	521(b)
522 (first and second paragraphs)	1-522 (first and second paragraphs)	522(a)
522 (last paragraph)	1-522 (last paragraph)	522(b)
601	1-601	701
602(a)	1-602(a)	702(a)
602(b)	1-602(b)	702(b)
602(c)	1-602(c)	702(c)
602(d)	1-602(d)	**
602(e)	1-602(e)	702(d)*
603(1)	1-603(1)	703(1)
603(2)	1-603(2)	703(2)
603(3)	1-603(3)	703(3)
603(4)	1-603(4)	703(4)
604	1-604	704
605	1-605	705*
606	1-606	706*
607	1-607	707
608(1)	1-608(1)	708(1)
608(2)	1-608(2)	708(2)
608(3)	1-608(3)	708(3)
608(4)	1-608(4)	708(4)
609	1-609	709
610	1-610	710(a)*
--	--	710(b)*
--	--	710(c)*
610.1 (first sentence)	1-610.1 (first sentence)	711(a)
610.1 (remainder of section)	1-610.1 (remainder of section)	711(b)
--	--	712*
611 (first sentence)	1-611 (first sentence)	**
--	--	713(a)*
611 (second sentence)	1-611 (second sentence)	713(b)* and (c)*
611 (penultimate and ultimate sentences)	1-611 (penultimate and ultimate sentences)	713(d)

\*Provision added or substantively revised.

\*\*Provision omitted because of revisions.

Comparative Statute Table--continued

Eminent Domain Code of 1964	Purdon's Title 26	Pa.C.S. Title 26
Section	Section	Section
--	--	713(e)*
612	1-612	714
613	1-613	715
617.1	1-617.1	716
601-A(a)	1-601-A(a)	901(a)
601-A(b)(1)	1-601-A(b)(1)	901(b)(1)*
601-A(b)(2)	1-601-A(b)(2)	901(b)(2)
601-A(b)(3) (except last sentence)	1-601-A(b)(3) (except last sentence)	901(b)(3)*
601-A(b)(3) (last sentence)	1-601-A(b)(3) (last sentence)	901(b)(4)*
601-A(b)(4)	1-601-A(b)(4)	901(b)(5)
602-A(a)(1)	1-602-A(a)(1)	902(a)(1)
602-A(a)(2)	1-602-A(a)(2)	902(a)(2)*
602-A(a)(3)	1-602-A(a)(3)	903(a)(3)
602-A(b)	1-602-A(b)	902(b)
602-A(c)	1-602-A(c)	902(c)
603-A(a)	1-603-A(a)	903(a)
603-A(b)	1-603-A(b)	903(b)
604-A(1)	1-604-A(1)	905(1)
604-A(2)	1-604-A(2)	905(2)
604-A(3)	1-604-A(3)	905(3)
604-A(4)	1-604-A(4)	905(4)
604-A(5)	1-604-A(5)	905(5)
605-A	1-605-A	906
606-A	1-606-A	***
701	1-701	1101
702	1-702	1102
703(1)	1-703(1)	1103(1)
703(2)	1-703(2)	1103(2)
703(3)	1-703(3)	1103(3)
704	1-704	1104
705(1)	1-705(1)	1105(1)
705(2)	1-705(2)	1105(2)
705(3)	1-705(3)	1105(3)

\*Provision added or substantively revised.  
 \*\*\*Provision omitted as unnecessary.

Comparative Statute Table--continued

Eminent Domain Code of 1964	Purdon's Title 26	Pa.C.S. Title 26
Section	Section	Section
705(4)	1-705(4)	1105(4)
705(5)	1-705(5)	1105(5)
705(6)	1-705(6)	1105(6)
706	1-706	1106
803	1-803	504(a) (last sentence)
806	1-806	511(a)
807	1-807	511(b)
901	1-901	**
902	1-902	***
903	1-903	***

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

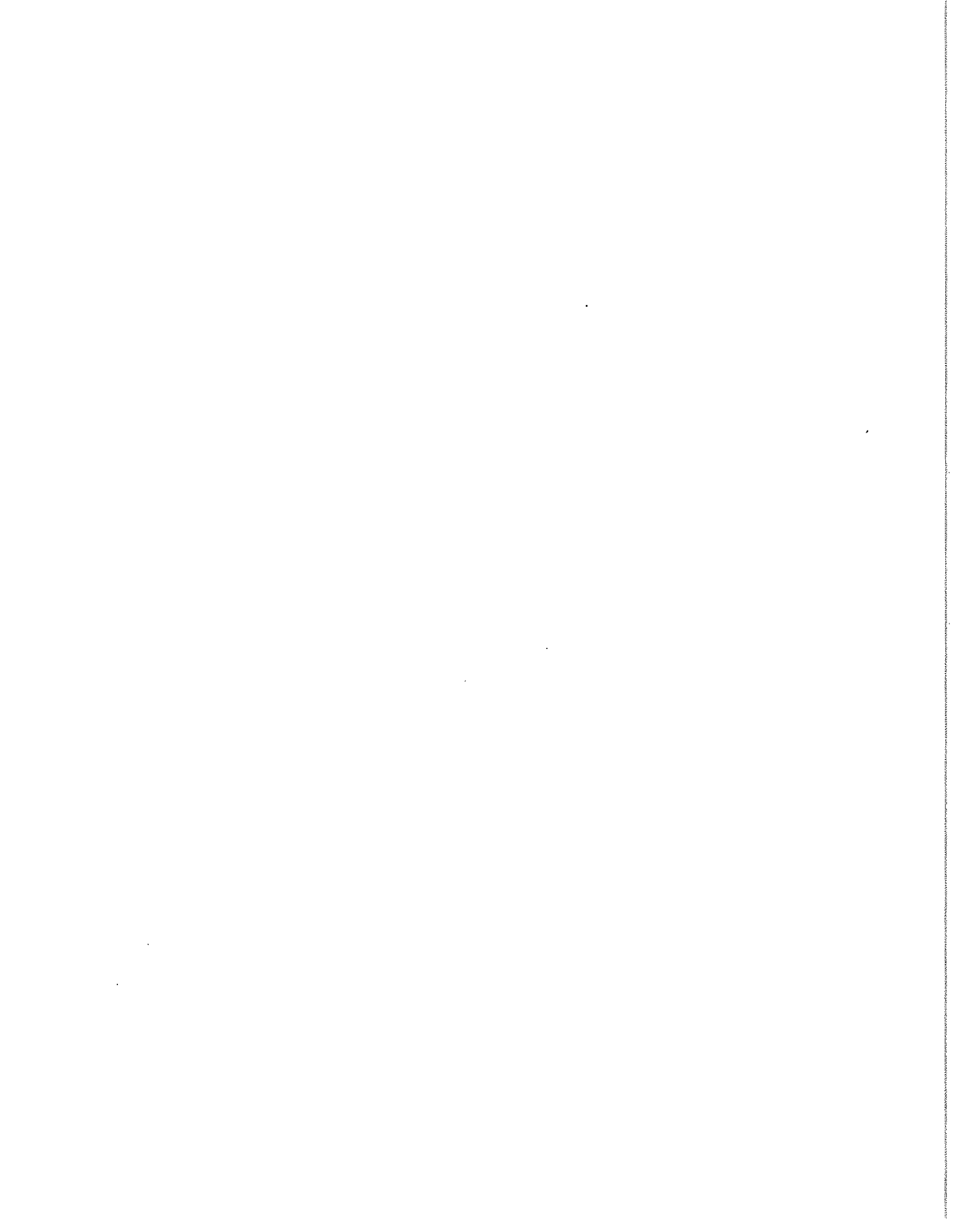
	Purdon's Title 35	Pa.C.S. Title 26
Section	Section	Section
1	1525	904(a)
2	1526	***
3(a)	1527(a)	904(b)(1)
3(b)	1527(b)	904(b)(2)
3(c)	1527(c)	904(b)(3)
4	1528	904(c)
5	1529	904(d)
6	--	***

\*\*Provision omitted because of revisions.  
\*\*\*Provision omitted as unnecessary.

Comparative Statute Table--continued

Miscellaneous statutes	Purdon's Title	Pa.C.S. Title 26
Section	Section	Section
Act of April 29, 1874 (P.L. 73, No. 32), § 41	15 P.S. §§ 3021-3023	**
Act of April 9, 1929 (P.L. 177, No. 175) § 2003(e)(2)(i)(B)	71 P.S. § 513(e)(2)(i)(B)	306
Act of April 9, 1929 (P.L. 177, No. 175) § 2003(e)(7) (except as much as reads: "Revenue from any sale of land acquired with motor license funds shall be deposited in the Motor License Fund.")	71 P.S. § 513(e)(7)	310
Act of April 17, 1929 (P.L. 531, No.234), § 1	15 P.S. § 115	**
§ 2	15 P.S. § 116	**

\*\*provision omitted because of revisions.

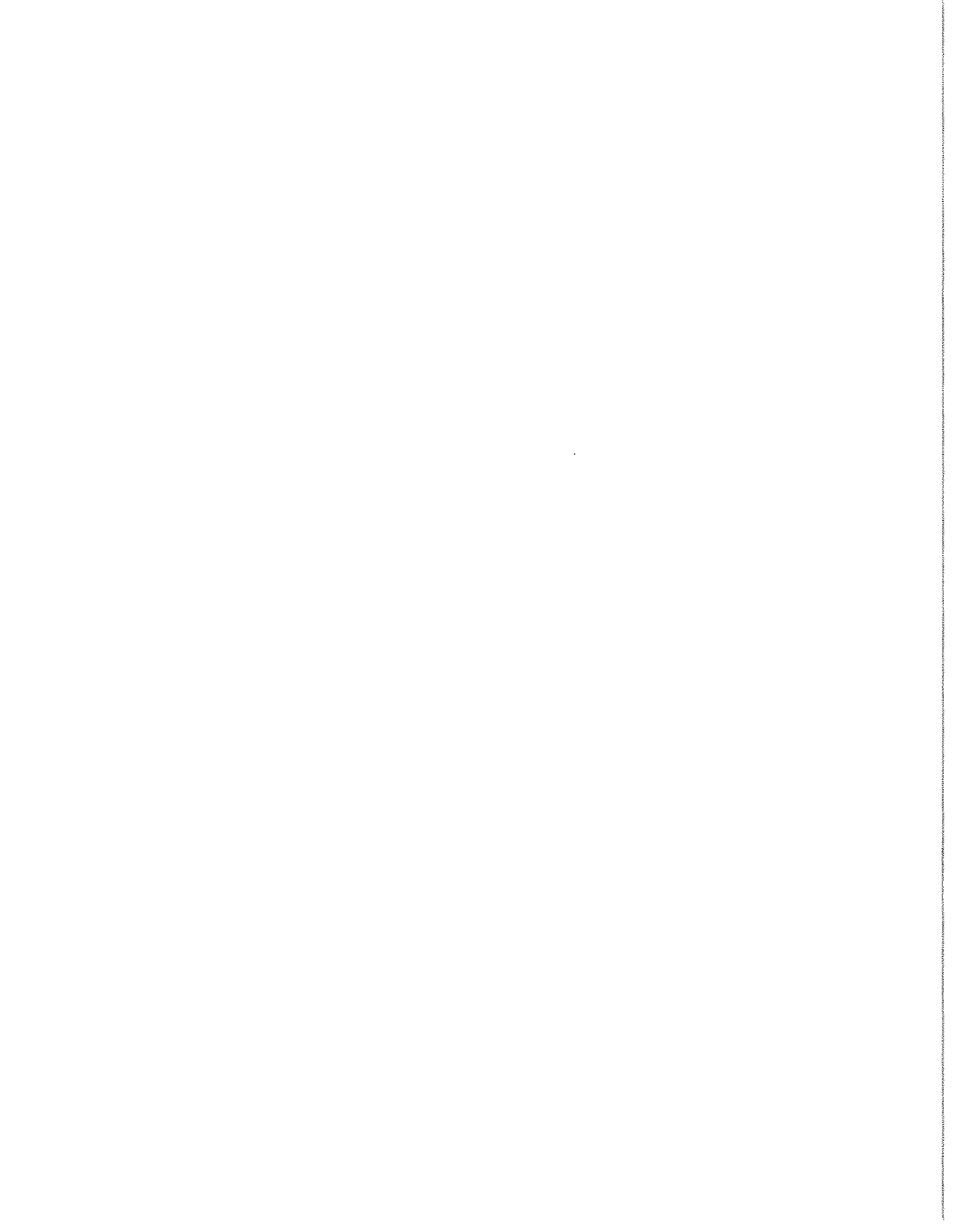




## Appendix B

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This appendix provides the 1964 Comments and 1971 Comments and Notes to the Eminent Domain Code as contained in the Joint State Government Commission's 1964 report, 1964 Report-Eminent Domain Code and 1972 report, Eminent Domain Code as Amended with Comments and Notes. These comments and notes must be read in concert with the 1985 Official Comments of the Advisory Committee on Eminent Domain Law (see Part III of this report). Section number references are from the act of June 22, 1964 (Sp. Sess., P.L. 84, No. 6), known as the "Eminent Domain Code." For the section references of proposed Title 26, see appendix A.



## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 201. Definitions.

#### "Condemn"

1964 Comment: This language is suggested by the Pennsylvania Constitution [Article X, §1].

#### "Condemnee"

1964 Comment: Mortgagees, judgment creditors and lienholders have been excluded from the definition since, under this act, they do not have such an interest in the property as to be considered condemnees. This is in accord with existing law. It is intended by this definition to include tenants, purchasers under agreements of sale and holders of options as condemnees.

Note: Also see "displaced person," clause (8), *infra*. The authorization for a mortgagee to intervene with court permission was extended in 1969 to include a judgment creditor or other lienholder. See Section 506(b), *infra*.

#### "Condemnor"

1964 Comment: The definition of condemnor is intended to include the Commonwealth and all of its agencies and instrumentalities and all the various municipalities, public bodies, authorities, corporations and individuals with the power to condemn property.

Note: Also see "acquiring agency," clause (5), *infra*.

#### "Acquiring agency"

1971 Comment: Acquiring agency is used throughout Article VI-A and in Sections 608, 610 and 610.1 to clarify that the special damages provided therein are payable whether property is condemned or acquired amicably in lieu of condemnation. An acquiring agency becomes a condemnor upon the exercise of its power of condemnation. See "condemnor," clause (3), *supra*.

#### "Acquisition cost"

1971 Comment: Acquisition cost—used to compute the replacement housing payment in subsection (a)(11) of Section 602-A—is the full amount of damages attributable to fair market value as set forth in Section 603.

#### "Business"

1971 Comment: This definition is taken without substantive change from the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law No. 91-646, §101(7); 42 U.S.C. 4601(7).

#### "Displaced person"

1971 Comment: To qualify as a displaced person under this definition, one must be in legal occupancy of the property at the time it is acquired or have moved after receiving from the acquiring agency either written notice of its intent to acquire the property or order to vacate it. In addition, one can qualify as a displaced person for certain enumerated purposes if he moves from his dwelling because his business or farm is acquired and he wishes to relocate his dwelling as well as his business or farm. This definition derives from the Federal act, 42 U.S.C. 4601(b).

#### "Farm operation"

1971 Comment: This term is taken verbatim from the Federal act, 42 U.S.C. 4601(8). Under the definition, a farm which does not contribute materially to the operator's support does not qualify as a "farm operation."

#### "Personal property"

1971 Comment: Property converted to real estate under the doctrine in *Singer v. Redevelopment Authority of Oil City*, 137 Pa. 53 (1970), is not personal property under this definition.

### Section 301. Severability.

1964 Comment: The inclusion of a severability section is necessary in view of the language of the court in *Willcox v. Penn. Mutual Life Insurance Co.*, 357 Pa. 581 (1947).

### Section 302. Effective Date.

Note: The amendatory Act of 1969, December 5, P.L. 316, Act No. 137, took effect . . . immediately and [applied] to all condemnations effected thereafter except that the provisions of sections 502, 504, 506, 507, 508, 510, 513, 514, 516, 520, 522, 703(2) and 704 of the Eminent Domain Code as [therein amended applied] to all steps taken subsequent to the effective date of the [1969] act in all condemnation proceedings in which the condemnation was effected prior to the effective date of the [1969] act."

The amendatory Act of 1971, December 29, P.L. 635, Act No. 169, took effect immediately and is thus applicable to all condemnations on or after that date. For its retroactive applicability to certain displaced persons under Article VI-A, see Section 606-A, *infra*.

### Section 401. Jurisdiction and Venue.

1964 Comment (in part): This section gives the court of common pleas exclusive jurisdiction of all condemnation cases. . . . The purpose of this section is to make the law uniform in the matter of jurisdiction.

Insofar as concerns venue, this section is generally in accord with existing law under which the court of common pleas of the county where the condemned property is located has jurisdiction. This section does, however, change existing law in this regard as to condemnation by a water supply district under The Water Supply District Law, 1931, May 29, P.L. 215, Art. 1, §1 [53 P.S. §3001], which provides that: ". . . the court of common pleas of the county wherein reside the greater number of consumers and other patrons to be supplied with water by the district . . ." has jurisdiction when the district condemns.

It is not intended by this section to affect jurisdiction and venue of courts as established under interstate compacts which in many cases provide for jurisdiction and venue of eminent domain cases in the Court of Common Pleas of Dauphin County. See, for example, the Act of 1919, May 8, P.L. 148, §4 (36 P.S. §3274).

Note: With regard to jurisdiction and venue under interstate compacts, the former authority of the Dauphin County Court of Common Pleas has been transferred to the Commonwealth Court. See, for example, Section 508(a)(20) of the Appellate Court Jurisdiction Act of 1970, July 31, P.L. 673, Act No. 223 (17 P.S. §211.508(a)(20)).

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 402. Condemnation; Passage of Title; Declaration of Taking.

**1964 Comment:** This section changes existing law and represents a distinct trend away from the former concept of condemnation in Pennsylvania, which has always been concerned with the property interest of the person rather than with the property. In other words, condemnation under this provision is now a proceeding in rem. This section also introduces a new concept in the procedure which a condemnor must follow in order to take property. Under this new procedure the condemnor must file a *declaration of taking* in court in order to condemn. Generally, the section was derived from the Federal *declaration of taking* procedure, Feb. 26, 1931, c.307, §1, Stat. 1121. (40 USCA §258a).

This section is not intended to enlarge or abridge the power of condemnation presently possessed by any condemnor, nor to change the method by which it proceeds to authorize a condemnation, such as by ordinance, resolution, or otherwise. However, this section is intended to specifically provide that the actual condemnation is effectuated only by the filing in court of the *declaration of taking* pursuant to the required action by the condemnor to provide for the condemnation, and that the date of condemnation shall in all cases be the date of filing of the *declaration of taking*.

Where there is an injury without a taking, such as a change of grade, it is intended that a *declaration of taking* be filed with a plan showing the abutting properties. If the condemnor does not file a *declaration of taking*, the condemnor may proceed under Section 502(e).

Subsection (b)(6) is derived from Rule 71A of the Federal Rules of Civil Procedure, added April 30, 1951 (28 USCA 71A).

Subsection (b)(8) is new. Where the condemnor has taxing power, it must state in the *declaration of taking* that it has taxing power which is security for just compensation. Where the condemnor does not have taxing power, it must file a bond with the *declaration of taking*, and state in the declaration that just compensation is secured by a bond. See Section 403 relating to security.

This section also changes existing law by eliminating the requirement that the condemnor try to agree with the owners as to damages.

**Note:** Section 402 was amended by the Act of 1969, December 5, P.L. 316, Act No. 137, to delete in subsection (b)(4) the requirement of a description of the need for a condemnation and to add in subsection (b)(5) two alternate methods of identifying the condemned property. The 1969 act also added subsections (c) and (d).

### Section 403. Security Required.

#### (a) Bond.

**1964 Comment:** This subsection changes existing law. Generally, under existing law when a condemnor is required to give security, the condemnor must tender a bond to the owner and if the bond is not accepted by the owner, the condemnor must file it in court and have it approved. See, e.g., The First Class Township Code, 1931, June 21, P.L. 1206, Art. XIX, §1903, as reenacted and amended (53 P.S. §36903), and as to corporations, the Act of 1874, April 29, P.L. 73, §11, as amended (15 P.S. §3022). It is intended by this subsection to eliminate the necessity of tendering a bond to the condemnor and obtaining court approval thereof; the condemnor merely files an open end bond with the *declaration of taking*. If the condemnor desires to challenge the bond, he may file preliminary objections thereto after being served with notice. See Sections 405 and 406. It is intended by this subsection that the bond filed shall be an open end bond.

#### (b) Power of Taxation.

**1964 Comment:** This subsection broadens existing law by exempting all condemnors having the power of taxation from entering security. Under existing law, for example, cities are not required to give bond for security and their taxing power is made security for damages (1927, May 4, P.L. 728, No. 377, §1 [since repealed]), but boroughs (1927, May 4, P.L. 519, Art. XIV, §1103, as reenacted and amended [since repealed]) are required to give security before possession is taken. There is no logical reason why there should be any distinction in this regard between the various condemnors having the power of taxation. Where, under existing law, a municipality is required to file a bond it need give only its own bond without surety. (See The Borough Code, *supra*, §1103 [since repealed].)

\*For comparable sections under proposed Title 26 see Appendix A.

#### (c) Insufficient Security.

**1964 Comment:** This subsection is necessary in view of the fact that under subsection (a) the security which is given with the *declaration of taking* is merely the bond of the condemnor without surety, and under subsection (b) no bond is required if the condemnor has the power of taxation. This subsection authorizes the condemnor to challenge the sufficiency of the bond or the surety where there is a surety, or the power of taxation where the condemnor contends that the condemnor is not financially strong.

### Section 404. Recording Notice of Condemnation.

**1964 Comment:** This section, which adds another duty on the condemnor, has no counterpart in existing law. Recording is necessary in order to give notice to prospective purchasers from the condemnees. Under existing law the State [Department of Transportation] records a plan, but this recordation is of little, if any, value to title examiners and purchasers. The Third Class City Code, 1931, June 23, P.L. 932, Art. XXVIII, §2801, as reenacted and amended (53 P.S. §37801), requires the city to record its condemnation ordinance and that it be "indexed in the name of the property owner affected thereby."

In those counties which have registry indexes, the condemnor in trying to ascertain the owner, will be acting reasonably if it relies on the ownership as shown in the index.

**1971 Comment:** The 1971 amendment clarifies language added by the Act of 1969, December 5, P.L. 316, Act No. 137.

### Section 405. Notice to Condemnee.

**1964 Comment:** Subsection (a) requires that the condemnor give notice of the condemnation. Under existing law, there is no express provision for written notice of the condemnation with the exception of The Third Class City Code, 1931, June 23, P.L. 932, Art. XXVIII, §2801, as reenacted and amended (53 P.S. §37801), which requires that a copy of the condemnation ordinance be sent by registered mail to each property owner, and the Act of 1855, April 21, P.L. 264, §7 (53 P.S. §16415), relating to the opening of streets in cities of the first class.

Subsection (b) prescribes the manner of giving notice and is in accord with general practice. Where the notice is mailed, the condemnor has the option of using either certified or registered mail.

Subsection (c) provides that the notice must contain generally the same matters which are set forth in the *declaration of taking*. Consequently, where practical to do so, the condemnor, under subsection (d), may comply with subsection (c) by adding to a copy of the *declaration of taking* the additional matters required to be set forth in the notice by subsections (c)(2), (c)(8) and (c)(12) and serving it. In many cases, however, such as where a whole area is condemned and there are many properties and condemnees involved in one *declaration of taking*, it would be burdensome and perhaps confusing to give notice by serving copies of the *declaration of taking* on each condemnor. Accordingly, the condemnor is authorized by this subsection to serve notice on the individual condemnor showing only the property of the condemnor involved in the taking.

For preliminary objections procedure see Section 406 and Comment.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 406. Preliminary Objections.

**1961 Comment:** This section simplifies and clarifies the procedure for challenging a condemnation effectuated by a *declaration of taking* by providing an exclusive method which must be utilized within the prescribed time. Existing law is unclear as to whether the condemnee who wishes to challenge the condemnation must sue in equity. *Frank Mashuda Co. v. County of Allegheny*, 256 F. 2d 211 (1958) (W. D. Pa.); *Enlehart v. Westmoreland Water Co.*, 165 Pa. Superior Ct. 156 (1919); or raise the question in vieweers' proceedings, *Schwab v. Pottstown Borough*, 407 Pa. 531 (1962).

These matters which the condemnee may raise by preliminary objections should be disposed of as soon as possible after the condemnation. Procedurally, it is better to have these matters raised in the condemnation proceeding rather than in a separate suit.

Subsections (b), (c) and (e) were derived from the Pennsylvania Rules of Civil Procedure, Rule 1028, relating to preliminary objections in an action in assumpsit.

Subsection (d) which requires service of the preliminary objections within seventy-two (72) hours after filing was deemed necessary so that the matter could be brought to the attention of the court as quickly as possible.

It is intended by this section to provide, where a *declaration of taking* is filed, that the exclusive method of challenging the condemnation, the sufficiency of the security, the *declaration of taking* and procedure shall be by preliminary objections.

**Note:** See *Faranda Appeal*, 420 Pa. 295 (1966) and *Valley Forge Golf Club v. Upper Merion Twp.*, 422 Pa. 227 (1966), with respect to the legislative intent that the filing of preliminary objections shall be the sole and exclusive remedy available to condemnees to challenge the condemnation. Cf. *Avery v. Commonwealth*, 2 Commonwealth Ct. 105 (1971).

### Section 407. Possession; Entry; Payment of Compensation.

**1961 Comment:** This section changes existing law which generally does not require any payment by the condemnor until final award or judgment and which generally entitles the condemnor to possession upon the filing of security. The purpose of this section is to prevent hardship which occurs in many cases when the condemnor takes possession and the condemnee, who is not satisfied with the offer of the condemnor, must give up possession and relocate elsewhere. In such cases, the condemnee may have difficulty in obtaining other property because of lack of funds.

Right of entry provided for in this section does not mean the precondemnation entry to make surveys, appraisals, etc. What is meant by right of entry in this section is the case, for example, where an easement is condemned and the condemnor actually does not get possession of the property but merely the right to enter for his easement.

Even though the condemnor does not desire immediate possession after the condemnation, the condemnee, who may want to move immediately, has the right under this section, if the condemnor has not asked for possession within sixty days after the filing of the *declaration of taking*, to deliver possession to the condemnor and take the condemnor's estimate of just compensation without prejudice to his right to prosecute his claim for damages. See the Act of 1957, July 10, P.L. 632 [since repealed], which authorizes first class cities to deposit the estimated amount of compensation into court for the use of the person entitled thereto.

If the money is not accepted by the condemnee and is deposited in court, the money may be withdrawn from court in accordance with the provisions of Section 522 of this act.

Payments to condemnees under this section are subject to the provisions set forth in Section 521 for distribution of the damages to the parties entitled thereto.

**Note:** Subsections (a) and (c) were amended by the Act of 1969, December 5, P.L. 316, Act No. 137, to clarify their provisions.

### Section 408. Revocation of Condemnation Proceedings.

**1964 Comment:** This section changes and clarifies existing law, which is somewhat unclear as to when or whether the condemnor may discontinue the proceedings and the condemnation. In *Philadelphia Appeal*, 364 Pa. 71 (1950), the city by ordinance condemned property for a park and later petitioned for vieweers; prior to the vieweers' hearing to fix the value of one of the properties condemned, the city amended its condemnation ordinance by deleting the property in question; the court held that it was too late for the city to abandon or discontinue the proceeding as to this property since the original ordinance actually condemned the property. On the other hand, in *Reinbold v. Commonwealth*, 319 Pa. 33 (1935), the court indicated that the condemnation may be abandoned or discontinued at any time "until the proceedings are ended."

It is intended by this section to clarify existing law by specifically authorizing condemnors to discontinue or abandon the condemnation by filing in court a *declaration of relinquishment* within one year from the date the property was condemned and before possession of the property or the part to be relinquished was tendered or payment made on account thereof. Otherwise the condemnor may not discontinue or abandon the proceeding.

The condemnor must record the *declaration of relinquishment* in order to clear the records, since a notice of condemnation has previously been recorded. See Section 404.

Where the condemnation is abandoned, the condemnee should be compensated for any damages which he sustained since his land has been "tied up". There may have been an entry by the condemnor, etc. In the *Reinbold* case, *supra*, the court, at page 16, stated that the condemnee is entitled to "the amount of costs, expenses and damages expended and suffered by him . . . by reason of the intended condemnation of his land." In *Long v. Commonwealth*, 37 D. & C. 702 (1910), the court allowed the condemnee expenses incurred for plans, photographs, real estate experts and attorney's fees. Expenses incurred for these items would, of course, be recoverable as damages under this section.

See also on this subject the Act of 1891, May 16, P.L. 75, § 7 53 P.S. §10925, which authorizes municipal corporations to discontinue proceedings prior to entry upon, taking, appropriation or injury to property within thirty (30) days after filing of vieweers' report, but the municipality must pay the costs and actual damages, loss or injuries sustained by the owner. A similar provision is in *The Borough Code*, 1927, May 4, P.L. 519, Art. XIV, §1451, as reenacted and amended [since repealed]; *The Third Class City Code*, 1931, June 23, P.L. 932, Art. XXVIII, §2847, as reenacted and amended [33 P.S. §37847]; *The County Code*, 1955, Aug. 9, P.L. 323, §2433 (16 P.S. §2433); *The Second Class County Code*, 1953, July 28, P.L. 723, §2633 (16 P.S. §5633).

Upon relinquishment of the property by the condemnor, title is revested in the condemnee as of the date of the filing of the *declaration of taking*. The property is then in the same position as if there had been no condemnation.

**1971 Comment:** The Act of 1971, December 29, P.L. 635, Act No. 169, substitutes for the term "damages" an explicit mandate for reimbursement of reasonable costs and expenses actually incurred, such as appraisal, attorney and engineering fees. The language describing the costs recoverable under this section is identical to that in Section 609 and is based on the requirements of the Federal act, 42 U.S.C. 4651.

**Note:** that this change also affects recovery under Section 406(e) which refers to Section 408 for the procedure to recover damages.

### Section 409. Right to Enter Property Prior to Condemnation.

**1961 Comment:** This section is derived from existing statutes which authorize condemnors to enter upon any lands in order to make surveys. See the *State Highway Law*, 1945, June 1, P.L. 1242, Art. II, §205 (36 P.S. §670-205), the *Second Class County Code*, 1953, July 28, P.L. 723, Art. XXVI §2603 (16 P.S. §5603). This section broadens the powers of condemnors by authorizing preliminary entry for studies, tests, soundings and appraisals as well as for surveys. The provision making the condemnor liable for any actual damages sustained by the owner by reason of the entry is new. It is intended that the condemnor should pay for any such damages where entry is made.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 410. Abandonment of Project.

**1964 Comment:** Under existing law if the condemnor condemns a fee and then abandons the purpose for which the property was condemned, the condemnor has no reversionary interest in the property. *Starkey v. Philadelphia*, 397 Pa. 512 (1959). This section continues and clarifies existing law in this regard but goes further and sets forth exactly what alternatives are available to the condemnor if the original purpose of condemnation is abandoned. The property must be offered to the condemnor under the conditions specified and only if the condemnor then refuses to repurchase the property can the condemnor otherwise dispose of it.

This section is not intended to restrict a Redevelopment Authority from amending a Redevelopment or Urban Renewal Plan after an area has been acquired, nor to restrict a Redevelopment Authority from selecting alternative developers, all of which actions are done with councilmanic approval. See Urban Redevelopment Law, 1945, May 21, P.L. 991, as amended (35 P.S. §1701, *et seq.*).

### Section 501. Agreement as to Damages.

**1964 Comment:** This section authorizes a condemnor to agree with any condemnor at any stage in the condemnation proceedings as to all or any item of damages, and thereby eliminate the necessity for the continuance or completion of the proceedings as they relate to the item agreed upon. It is intended to make it clear that a condemnor has the authority to compromise and pay any agreed item of damage even though other parts or items have to be litigated.

### Section 502. Petition for the Appointment of Viewers.

**1964 Comment:** It is intended that all proceedings subsequent to the *declaration of taking*, including the petition for viewers, shall be filed at the same court term and number as the *declaration of taking*.

There is now no statutory or rule requirement regulating the form of the petition for viewers, but the suggested averments follow substantially the practice now prevailing throughout the Commonwealth, except that averments as to liens now required by statute are omitted. See, for example, the Act of 1915, April 11, P.L. 122, §1, as amended (since repealed). To this extent, the suggested form of petition departs from present practice as imposed by statutes which require that the petition for the appointment of viewers specify the names and addresses of mortgagees, judgment creditors and lienholders. It is intended that the rights of these parties should be determined at the time of distribution of the fund.

In the caption of the case it is deemed desirable to use an *in rem* designation rather than the names of the parties in order to conform to the *declaration of taking* caption. See Section 402. This represents a distinct change from the condemnation theory in Pennsylvania where the emphasis has been on the property interest of the person rather than on the property itself. The change in emphasis brings Pennsylvania closer to the Federal concept of condemnation.

Mortgagees, judgment creditors and other lienholders are not condemnors and, therefore, have no standing to file a petition for viewers. Under Section 506(b) mortgagees may be permitted to intervene.

Subsection (e) is necessary to cover the situation where there is in fact a compensable injury but the condemnor has not filed a *declaration of taking* with reference thereto. It is intended to cover the case where there is an injury to property not included in the *declaration of taking* or where, as in the case of a change of grade, no *declaration of taking* has been filed. It is not intended to affect the right of the condemnor, under existing law, to challenge the appointment of viewers in such case.

Note: Judgment creditors or other lienholders now may be permitted to intervene in the proceedings. See Section 506(b), *infra*.

### Section 503. View.

**1964 Comment:** The requirement that at least two of the viewers view the property in every case is taken from existing law. See the Act of 1911, June 23, P.L. 1123, §9 (16 P.S. §9485).

The requirement that one attorney view the property is new and deemed desirable.

### Section 504. Appointment of Viewers; Notice; Objections.

**1964 Comment:** This section is a departure from the statutes which require the court in its order of appointment to designate the time of the view and hearings and the return day of the report. Generally, under existing statutes, the view must be held not less than twenty nor more than thirty days after the appointment of viewers. See The County Code, 1955, Aug. 9, P.L. 323, §2108 (16 P.S. §2108); The First Class Township Code, 1931, June 24, P.L. 1206, Art. XIX, §1920, as reenacted and amended (53 P.S. §36920). As for hearings, see the Act of 1911, June 23, P.L. 1123, §6 (16 P.S. §9482). Where the court fixes the return day of the report this necessitates continual applications to the court for extensions, and the fixing of arbitrary time limits interferes with the necessary flexibility of the proceedings. For this reason the fixing of the time for views and hearings is left to the viewers with the caution, however, that they must act promptly. It is contemplated that should the viewers fail to perform their duties promptly, the parties could informally bring this to the attention of the court without the necessity of formal pleadings and this in most cases should be sufficient to remedy any dereliction on the part of the viewers.

### Section 505. Service of Notice of View and Hearing.

**1964 Comment:** This section resolves the conflicting provisions of the various codes and also simplifies the method of service. Section 2114 of The County Code, 1955, Aug. 9, P.L. 323 (16 P.S. §2114), now authorizes notice to be given in the manner provided for service of summons in a personal action, if the parties can be found within the county, or upon an adult person residing on the premises and by publication in all other cases. The county and other political subdivision codes also require that notice of the appointment of the viewers must in all cases be made by publication and posting and apparently under present practice a second notice by publication is required as to those owners who cannot personally be served with notice of the hearing itself. The proposed section does away with the requirement of double publication and requires actual notice without publication where this is possible and where this is not possible by posting the premises and by newspaper publication.

### Section 506. Additional Condemnees; Mortgagees.

**1964 Comment:** There is no counterpart in existing statutory law requiring the condemnor to furnish the viewers with the names and addresses of additional condemnors. The purpose of this section is first, to implement the statutory requirements that the claims of landlord and tenants are to be adjudicated in one proceeding. In addition, other types of interests subject to condemnation should also be tried in one proceeding and disclosed at an early stage of the proceedings and not as under the practice in which the first knowledge of such interests may be disclosed during the hearings. It is intended that the claims of a vendee under an agreement of sale, a tenant with an option to purchase, and the owner of an easement or similar interests should all be joined at the earliest possible moment and their rights adjudicated in one proceeding. The question of whether the additional claimants or condemnors have any interest entitling them to damages should be determined as part of the entire proceeding with the order of evidence left to the discretion of the viewers and their findings as to the matter included in their final report. The burden imposed on the viewers should not be an onerous one and does not extend the scope of the statutory practice which requires the viewers to make findings as to how and fact as to who are the owners of the property and of the interest condemned.

The condemnor is also required to furnish the names and addresses of all mortgagees. Only mortgagees have been included since their rights in the property are purely contractual.

Subsection (b) is new. It authorizes the court to permit a mortgagee to intervene, but only if his interest is not adequately protected. The mortgagee should not be permitted to intervene if the owner is proceeding with due diligence and the value of the property appears adequate to secure the mortgage debt. Judgment creditors and other lienholders have not been included since they had an immediate right to execution whereas the mortgagee's rights are strictly contractual. In addition, the proceedings would be cluttered if lienholders, in general, were permitted to intervene.

Note: The last paragraph of the 1964 Comment must be read in light of the 1969 amendment to subsection (b) which added "judgment creditor or other lienholder" as a party permitted to intervene with court permission.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 507. Joint Claims Required; Apportionment of Damages; Separate Hearings Allowed.

**1964 Comment:** This section is derived from the Act of 1937, July 1, P.L. 2667, No. 528 (26 P.S. §141), which requires that the claims of the owner and lessee be tried together. This concept has been broadened to require also that the claims of tenants in common, life tenants, etc., and all others having an interest in the property be tried together. Except as to owner and tenant, existing law does not require the owners of other interests in the condemned property to join in a single suit. See *Adams v. New Kensington*, 374 Pa. 104 (1953); *Railroad v. Boyer*, 13 Pa. 497 (1850). The purpose of this section is to avoid several suits for damages for the same property. On appeal to the court, the claim of one of the parties may be tried separately without trying the claims of all, if the other claimants are satisfied with their awards and the condemnor has not appealed the entire award.

**Note:** The above Comment must be read in light of the 1969 amendment which specifically authorizes separate hearings or trials for certain special damages for displacement (Section 601-A, *infra*) which are in addition to the damages for the property.

### Section 508. Appointment of Trustee or Guardian Ad Litem.

**1964 Comment:** This section is derived from such acts as the Act of 1929, April 17, P.L. 531, §2 (since repealed in part and suspended, see 15 P.S. §116), which provide for the appointment of trustees and guardians ad litem in eminent domain proceedings.

### Section 509. Furnishing of Plans to Viewers.

**1964 Comment:** This section changes existing law. Most of the statutes specifically provide for the inclusion of many details in the plans such as topography, the incline of the slope, the cubic content of buildings and other similar matters. See, for example, the Act of 1925, April 27, P.L. 310, No. 173, §1 (26 P.S. §1). Since conditions in each type of condemnation and in different types of properties are so dissimilar, it is deemed preferable to state the requirements as to plans in general terms and with limited requirements, leaving to the viewers and the parties the determination of what is essential in any given case.

The requirement that copies of plans be furnished without charge to condemnees is in accord with existing law. Act of 1925, April 27, P.L. 310, No. 173, §2 (26 P.S. §2); The First Class Township Code, 1931, June 21, P.L. 1206, Art. XIX, §1909, as reenacted and amended (53 P.S. §56909). The provision that if the condemnor does not furnish a plan, the court may tax as costs the expenses incurred by the condemnnee for plans, is new. If the condemnor neglects to furnish a plan, it is contemplated that the court, upon petition, will permit the condemnnee to have plans made and the costs thereof charged to the condemnor. *Rush v. Allegheny County*, 159 Pa. Superior Ct. 163 (1916).

### Section 510. Powers of Viewers.

**1964 Comment:** The power of the viewers to administer oaths and affirmations is in accord with existing law. The County Code, 1955, Aug. 9, P.L. 323, §1105 (16 P.S. §1105); The Second Class County Code, 1953, July 28, P.L. 723, Art. XI, §1105 (16 P.S. §1105).

The power of the viewers to compel the attendance of witnesses, the production of books and to adjourn the proceedings is new. The Act of 1905, April 10, P.L. 125, §3 (53 P.S. §2203), gives the viewers the power to issue subpoenas "... at the instance of either party, to compel the attendance of witnesses ..." where cities enter land for sewer purposes. The various turnpike acts provide that if any person refuses to appear and testify before the viewers or refuses to produce books and papers when required, the court on application of the viewers shall make any necessary orders. There does not seem to be any statute generally authorizing viewers to issue subpoenas.

However in *Wheeler Avenue Sewer*, 214 Pa. 504 (1906), the court noted that the viewers had the authority to call witnesses. The viewers should have this power so that they can, if necessary, call a person as a witness even though the condemnor or condemnnee does not call the person.

The (third) sentence of the section follows substantially the provisions of Section 2108 of The County Code, 1955, Aug. 9, P.L. 323 (16 P.S. §2108), and also similar provisions in the Second Class County Code, 1953, July 28, P.L. 723, Art. XXVI, §2608 (16 P.S. §5608). There are, however, some minor variations in these codes and related statutes as to the power of viewers and these are made uniform by this section.

**Note:** The second paragraph of the 1964 Comment, which refers to the viewers' power to issue subpoenas, should be read in light of the 1969 amendment which specifies that the court shall issue such subpoenas.

### Section 511. Report of Viewers.

**1964 Comment:** This section seeks to harmonize statutory provisions and practice. The statutory requirements as to what must be included in the report under existing law now relate to only a limited number of matters such as the assessment of damages and benefits and the apportionment of damages between landlord and tenant. For example, see The Third Class City Code, 1931, June 23, P.L. 932, Art. XXVIII, §2823, as reenacted and amended (53 P.S. §37823) (Assessment of damages and benefits), Act of 1937, July 1, P.L. 2667, No. 528, §1 (Apportionment of damages between landlord and tenant) (repealed by the Eminent Domain Code, section 902(19), *infra*). There are also a number of statutes requiring the viewers to make findings as to the necessity of a private road or the location of utility lines, etc. (Findings as to necessity of private roads, see Act of 1836, June 13, P.L. 551, §12, 36 P.S. §2732). These statutes are not repealed or affected by this act. This preliminary procedure is covered in Article IV. Where there are conflicting or adverse claims, the viewers are required to make specific findings on these matters and may not evade the issue, as is possible under some statutes, by stating that they are unable to determine who are the owners of the property or their interest therein. See, for example, The County Code, 1955, Aug. 9, P.L. 323, §2128 (16 P.S. §2128). This requirement cannot prejudice any of the parties since they will have a right of appeal to the common pleas court from the viewers' report. The form of report required by this section also omits the statutory requirement that the viewers make findings as to all liens upon the property. See The County Code, 1955, Aug. 9, P.L. 323, §2111 (16 P.S. §2111); The First Class Township Code, 1931, June 21, P.L. 1206, Art. XIX, §1911, as reenacted and amended (53 P.S. §56911).

Clause (5) does not affect those laws which permit municipalities to assess upon the properties benefited the costs, damages and expenses for public improvements such as sewers. See, e.g., The First Class Township Code, 1931, June 21, P.L. 1206, Art. XXIV, §2125, as reenacted and amended (53 P.S. §57425). In such cases, benefits may exceed damages. The benefits to be assessed under subsection (5) are only such as are assessable under Section 606 of this act.

Clause (6) is new. It has been included because of the tax ramifications involved where there is a partial taking. The tax aspects which arise in connection with condemnation can have serious consequences to a condemnnee, as severance damages have more favorable tax consequences than general damages. The Internal Revenue Service has taken the position that unless the award specifically indicates what portion of it is severance damages, the entire award will be considered general damages. Rev. Ruling 59-173; *Atleben v. Commissioner*, 35 B.T.A. 327 (1937). See Rev. Ruling 64-183; 26 CFR 1.1033 (a)-1; Involuntary conversion; Rev. Rul. 64-183 non-recognition of gain.

The amount of severance damages paid in connection with the purchase of property by a condemning authority is considered stipulated between the parties and clearly shown, although the contract executed by the parties does not refer to severance damages as such, if the property owner is furnished an itemized statement or closing sheet at the time of settlement and payment by the condemning authority which indicates the specific amount of the total contract purchase price which is for severance damages.

### Section 512. Disagreement:

**1964 Comment:** This section is derived from a portion of Section 9 of the Act of 1911, June 23, P.L. 1123 (16 P.S. §9185).

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 513. Filing of Report of Viewers.

**1964 Comment:** As it stands, this section substantially follows the provisions of the county codes and the codes of other political subdivisions but omits the requirement of publication and posting. The County Code, 1955, Aug. 9, P.L. 323, §2416 (16 P.S. §2416), for example, requires notice by publication after the filing of the report. Similar provisions appear in statutes covering other condemnors. Under this section notice need be given only to those parties who have appeared before the viewers, since publication will have been made of the original taking and of the viewers' proceedings.

This section eliminates the procedure of filing exceptions to the report with the viewers before the report is filed with the court. A remnant of the exception procedure is, however, retained by the last sentence which permits the viewers to correct any errors in their report. While the errors which are contemplated consist of typographical and possibly administrative errors such as the misspelling of a name, any matter brought to the viewers' attention prior to filing the report may be corrected.

### Section 514. Reports.

**1964 Comment:** The filing of reports as to one or more of the properties involved in a condemnation is authorized in order to expedite the proceedings since there may be a considerable number of properties involved in one condemnation (for example, a condemnation by an urban redevelopment authority). It should not be necessary to have all the condemnees wait until all the cases have been heard and awards made by viewers. Where a report is filed as to a property, all interests in that property must be included in the report. In other words, separate interests in one property cannot be covered by separate reports. The appeal time begins to run from the date the report covering the property is filed. It does not begin to run from the date the last report covering the last property or properties is filed.

Where there is a multiple condemnation there may be many separate petitions filed for the appointment of viewers. This section authorizes the viewers in such case, if the properties have been included in the same *declaration of taking*, to include in their report one or more of the properties submitted to them under separate petitions. This, too, is desirable in order to expedite and simplify the proceedings.

Note: Sections 608, 609 and 610 referenced in this section were repealed in 1971 and their substance incorporated into Section 601-A, *infra*.

### Section 515. Appeals; Time of Taking; Consolidation.

**1964 Comment:** This section differs from the statutes which in most cases provide for a confirmation *nisi* of the viewers' report followed by an absolute confirmation where no objections are filed. The County Code, 1955, Aug. 9, P.L. 323, §2123 (since repealed) provides that when the report is filed, the prothonotary is to mark the same "confirmed nisi" and if no exceptions there-to are filed within thirty (30) days, the prothonotary is to enter a decree confirming the report absolutely. This confirmation *nisi* procedure has been omitted as an unnecessary procedural step.

The provision of this section authorizing the court on its own motion to consolidate appeals is taken from Pa. R.C.P. 213. (Under existing law a party is entitled to a separate trial on appeal. *Comly v. Phila.*, 153 Pa. Superior Ct. 539 (1913); *Edymont Ass.*, 28 Dist. Rep. 256 (1918), where the court indicated that this right is guaranteed by the Pennsylvania Constitution [Art. X, §4]. This section, then, changes present law where the cases are consolidated by the court. There would be no separate jury trial when the consolidated cases present only a question of law.

The last paragraph giving the condemnor an additional fifteen days to appeal is new. The additional time is necessary so that the condemnor may protect itself where a part owner or tenant of the condemned property appeals when the normal thirty-day appeal time is about to expire.

Verification of the appeal required under existing statutes has been eliminated as unnecessary.

Exceptions to viewers' reports are abolished and matters formerly raised by exceptions are now included in the appeal, as provided by Section 516.

The limitation on appeals from assessment of benefits is intended to apply only to benefits assessed in a Board of View report filed under this act assessing benefits assessable under Section 606 of this act and not to benefits assessed under other statutes not superseded by this act.

### Section 516. Appeals.

**1964 Comment:** This section makes a change in procedure by combining in one proceeding, designated as an appeal, the practice of exceptions as to questions of law and the filing of a separate appeal as to questions of fact. There was confusion in many of the lower courts and even appellate courts as to whether exceptions or appeal was the proper procedure, and often as a matter of course to protect the record, attorneys made a practice of filing both. In *Lakewood Memorial Gardens, Inc. Appeal*, 381 Pa. 46 (1955), the court, at page 51, stated that exceptions "are properly limited to procedural matters or questions of law basic to the inquiry . . ."; and in *Urban Redevelopment Authority of Pittsburgh Appeal*, 370 Pa. 218 (1952), the court held that questions pertaining to the elements of property involved in the condemnation and the relevant measure of damages could not be adjudicated by exceptions but should be raised by appeal.

Subsection (a)(4) is intended to cover what formerly were exception "Objections" is not intended to mean objections to rulings on evidence, competency, etc.; it means objections to the report. Under existing law, an appeal on the merits as to damages is considered a trial *de novo* and neither the viewers' report nor any of their findings nor the amount of the award are admitted for the appeal, nor can they be introduced into evidence. *Sweeney v. City of Scranton*, 74 Pa. Superior Ct. 348 (1920) (trial *de novo*: *Berger v. Public Parking Authority of Pittsburgh*, 380 Pa. 19 (1954) (viewers' report not admissible). Therefore, on the appeal the appellant-condemnee must, for example, introduce proof of ownership and interest, and the record without such proof is defective; this practice is continued.

No other pleadings are required and the local rules of practice, many of which require the condemnor to file a complaint followed by an answer, are abandoned. . . . The issues involved in a condemnation case are generally so comparatively simple and clear as to damages that no pleadings or framing of an issue are considered necessary. Where the appeal raises questions of law, since they must be set forth explicitly in separate paragraphs, there should be no necessity for any further pleadings.

Subsection (a)(5) changes existing law, which provides that the trial is by jury unless waived. Unless a jury trial is demanded, the trial will be non-jury. This subsection is derived from the act creating the County Court of Allegheny County, 1911, May 5, P.L. 198, §8, as amended (17 P.S. §634).

It is contemplated that the form of caption will be established by the rules of the Supreme Court or by local court rules, but the proceedings are nevertheless put under the same court term and number as the *declaration of taking*.

Under subsection (c) the case will automatically be at issue on appeal and it will not be necessary to file a praecipe to have the case placed at issue.

Note: With respect to subsection (b) see *Langhorne Springs Water Co. Appeal*, 437 Pa. 298 (1970), which holds that the five-day period is directory and not mandatory. Also see *Miller Estate v. Dept. of Highways*, 424 Pa. 477 (1967), which holds that the filing of proof of service of a copy of the appeal must be accomplished within a reasonable time subsequent to the filing of the appeal.

### Section 517. Disposition of Appeal.

**1964 Comment:** The first paragraph of this section follows substantially the statutory practice under the various codes which provide that the court on exceptions can modify or change the report or refer it back to the viewers. See, for example, The County Code, 1955, Aug. 9, P.L. 323, §2123 (since repealed), and The Borough Code, 1927, May 4, P.L. 519, Art. X1A, §1435, as reenacted and amended (53 P.S. §46531). The confirmation *nisi* procedure provided for in most of these codes has been omitted (see Comments to Sections 515 and 516), and the order of court will constitute a final, appealable judgment.

The second paragraph changes existing law. See Comment to Section 516. The last paragraph is generally in accord with existing practice.

\*For comparable sections under proposed Title 26 see Appendix A.



## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 518. Severance and Special Damages; Allocation.

**1964 Comment:** Subsection (a) of this section is new and is designed to permit, upon request of the condemnee, the allocation of a general award between severance damages to the part of the property not taken and the damages for the part taken. Such allocation may result in definite advantages under the Federal income tax laws by permitting postponement or avoidance of Federal income taxes. The allocation is to be made by the court rather than by the jury as a special finding. The allocation made by the court would be at a special hearing, if necessary, at which the evidence would be restricted solely to the amount allocable to severance damages.

As to the items of special damages such as moving expenses and relocation costs, the Federal urban renewal and redevelopment program (and other federally reimbursed projects as well as State programs now permit) reimbursement and payment of these costs up to fixed limited amounts separate and apart from the general damages in connection with the taking. It may therefore be helpful in connection with the Federal urban renewal program and also for Federal income tax purposes to require these special items of damages to be separately allocated. The allocation of these special items of damages is also necessary for situations where Federal funds are used for highways since some of these items of damages are not compensable from Federal funds and unless such items are separately stated the Federal Government will not contribute funds toward any part of the award. Under subsection (b) these special damages are to be specifically apportioned by the jury or the court in a trial without a jury.

**1971 Comment:** It is believed that the court can more expeditiously determine the reasonableness of appraisal, attorney and engineering fees, especially since the jury is required to make the many other findings specified in this subsection.

### Section 519. Costs of Proceedings.

**1964 Comment:** This section attempts to clarify case law by providing that generally all costs are to be paid by the condemnor.

This section also changes some existing statutory law which provides that the costs be paid by the condemnor except that where the condemnee takes an appeal from the viewers' award, the condemnee must pay all costs of appeal if he does not recover an amount greater than the viewers' award. The County Code, 1955, Aug. 9, P.L. 323, §2425 (16 P.S. §2425); the Second Class County Code, 1953, July 28, P.L. 723, Art. XXVI, §2625 (16 P.S. §5625). On the other hand, the Third Class City Code, 1931, June 23, P.L. 932, Art. XXVIII, §2830, as reenacted and amended (53 P.S. §37830), and The First Class Township Code, 1931, June 24, P.L. 1206, Art. XIX, §1931, as reenacted and amended (53 P.S. §56931), for example, provide that the costs of the proceedings, including court costs, shall be paid by the city or township, without exception. The purpose of this section is to make it clear that the costs shall be borne by the condemnor unless the circumstances warrant the court in directing otherwise.

### Section 520. Waiver of Viewers' Proceedings; Termination by Stipulation.

**1964 Comment:** This section follows substantially the statutory practice authorizing waiver of viewers in certain cases. See, e.g., the Act of 1895, May 21, P.L. 89, §1 (26 P.S. §81), and The Borough Code, 1927, May 4, P.L. 319, Art. XIV, §1414, as reenacted and amended [since repealed]. However, the requirement of some of the statutes that the owner file a statement of claim and rule the defendant to plead is omitted as unnecessary. In eminent domain cases the issues involved are so relatively simple that no pleadings should be required.

### Section 521. Distribution of Damages; Liens.

**1964 Comment:** This section is intended to cover all damages, including damages agreed upon and damages payable under Section 107. It is intended that the liens shall attach only to the damages payable for the property on which the mortgage, judgment or other charge existed. For example, a mortgage on real estate will not be a lien on damages for moving or removal expenses or business dislocation damages.

The procedure for distribution is new. Since there will no longer be any requirement under this act that liens be set forth in the petition for viewers or that findings be made as to lienholders and their priority, some procedure is necessary in order that proper distribution be made. It is contemplated that in most cases the condemnor will have obtained the necessary information through his title search and that distribution can safely be made on the basis of such search. Where there is any question as to lienholders or priority, this section permits payment to be made at the direction of the court, thus relieving the condemnor from liability.

**1971 Comment:** The rationale of the 1971 amendments is that liens should not attach to the special damages for displacement under Article VI-A (except special damages payable under subsection (b)(1) and (2) of Section 601-A) and to special damages under Sections 608, 609, 610 and 610.1, since these damages are not based on the value of the property to which liens attached, and because the monies will be required for relocation of the condemnee to a new dwelling or business and for payment of incurred expenses.

The second paragraph was added to limit the lienholder's recovery to a portion of the damages measured by the effect of the condemnation upon his security.

### Section 522. Payment into Court; Distribution.

**1964 Comment:** The first paragraph follows substantially existing law. See, e.g., Act of 1891, June 2, P.L. 172, §1 (repealed by the Eminent Domain Code, Section 902(5), *infra*); The County Code, 1955, Aug. 9, P.L. 323, §2430 (16 P.S. §2430); the Second Class County Code, 1953, July 28, P.L. 723, Art. XXVI, §2630 (16 P.S. §5630).

The [third] paragraph is new. If the funds are not claimed by the person entitled thereto within five (5) years of the date of payment into court, the court must order the money paid to the Commonwealth without escheat. It is contemplated that after the money has been paid to the Commonwealth the person entitled thereto may apply for a refund in accordance with existing statutes. See Section 10 of the Act of 1937, June 25, P.L. 2063, No. 403, as amended [since repealed].

**1971 Comment:** The second paragraph of this section requires that notice be given of the condemnor's intention to pay funds into court, and provides a sanction where reasonably effective notice is not given.

**Note:** The five-year period and other provisions set forth in the third paragraph would appear to be modified by Sections 10 and 29(b) of the Disposition of Abandoned and Unclaimed Property Act, 1971, August 9, P.L. 286, Act No. 74.

### Section 523. Appeal to Supreme or Superior Court.

**1964 Comment:**

This section is included in order to provide a complete procedure in one act. Sections 521 and 522, providing for distribution, are not intended to affect the right to appeal a final judgment in favor of a condemnee.

**Note:** Appellate jurisdiction formerly set forth in Section 523 is now covered by Sections 402(6) and 204(a) of the Appellate Court Jurisdiction Act of 1970, July 31, P.L. 673, Act No. 223 (17 P.S. §§402(6), 204(a)) which transferred appeals to the Commonwealth Court with a further appeal to the Supreme Court upon the allowance of two justices.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 524. Limitation Period.

**1964 Comment:** This section distinguishes between takings and injury or consequential damage without taking. In the latter situation the condemnor may not be aware of the injury and therefore not in a position to petition itself. Also it is necessary that the final costs of the improvement be established within a reasonable period.

**Note:** See *Weigand Appeal*, 211 Pa. Superior Ct. 371 (1969), which holds that this section does not operate to revive a claim barred prior to the adoption of the 1964 Code. See also *Upper Montgomery Joint Authority v. York*, 1 Commonwealth Ct. 269 (1971), which holds that a claim not barred by the statute of limitations in effect prior to the effective date of the 1964 Code becomes subject to the new limitation, which runs from the date of payment.

### Section 525. Power of Supreme Court to Promulgate Rules.

**1964 Comment:** The procedural provisions of Article V, which preferably should be governed by rules rather than by statute, are included so that there will be no possible hiatus in practice and procedure between the effective date of this act and the promulgation of Rules of Civil Procedure which it is contemplated will be promptly promulgated by the Supreme Court and the procedural provisions of this act suspended.

**Note:** The 1964 legislative grant of authority to "promptly promulgate" procedural rules to replace the provisions of Article V of the Code has been supplanted by the constitutional authority contained in the 1968 revision, Article V, §10(c), which, in part, provides:

The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts. . . . if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

Neither the constitutional authority to promulgate rules for eminent domain procedures which took effect January 1, 1969, nor the 1964 legislative authority have to date been implemented.

### Section 601. Just Compensation.

**1964 Comment:** This section is derived from the Pennsylvania Constitution, Article I, §10, and [Article X, §1] and indicates that just compensation is defined and is to be determined as set forth in this article.

### Section 602. Measure of Damages.

**1964 Comment:** This section sets forth what damages the condemnee is entitled to when his property is condemned. The first paragraph of this section codifies existing case law by adopting the "before and after rule," which is firmly entrenched in the law, *Brown v. Commonwealth*, 399 Pa. 156 (1960), and adds other items of damages as provided in Sections 608, 609, 610, 611, 612, 613 and 614.

**1971 Comment:** The reference to "article" in the first paragraph of the section was changed to "code" because damages are now provided for in both Articles VI and VI-A. The traditional damages determined by the difference between the before value and after value are denoted "general damages" in Sections 511(5) and 518(b). The term "other damages" of course means the special damages referred to in the same paragraphs.

**Note:** Sections 608, 609, 610 and 614 referred to in the 1964 Comment were repealed by the Act of 1971, December 29, P.L. 635, Act No. 169. The damages formerly provided by those sections are now covered in Sections 608 and 601-A. The present Section 608 covers the subject matter of former Section 614.

The 1972 amendment included highway projects within the provisions of the third paragraph relating to property damaged by floods. The amendment is specifically applicable to "all highway projects damaged by the storm and flood of June, 1972, whether or not property acquisition had commenced prior to June, 1972."

### Section 603. Fair Market Value.

**1964 Comment:** This section is intended to enlarge the traditional definition of fair market value to conform to modern appraisal theory and practice, which differentiates between market price, which is the price actually paid for a property under conditions existing at a certain date regardless of pressures, motives or intelligence, and market value, which is what a property is actually worth, a theoretical figure which assumes a market among logical buyers under ideal conditions.

This section contemplates first a "willing" seller and buyer. This means that neither is under abnormal pressure or compulsion, and both have a reasonable time within which to act.

Secondly, it contemplates an "informed" seller and buyer, which means that both are in possession of all the facts necessary to make an intelligent judgment.

Clause (1) will permit consideration of any special value the property may have for its existing use, including improvements uniquely related to that use and, in conjunction with the provisions of Section 705(2)(iv), will provide for proper valuation of special use properties, such as churches, which have no normal market, because it presupposes a buyer who would purchase it for its existing use.

Clause (2) permits the traditional consideration of the property's value for the highest and best use to which it is adapted and capable of being used, provided such use is reasonably available. If it is claimed that the property is more valuable for a use other than its existing use, it should be shown that such use is reasonably available after considering the existing improvements, the demand in the market, the supply of competitive property for such use, the zoning and all other reasonably pertinent factors. Existing zoning would ordinarily be controlling, but evidence may be given of a sufficient probability of a change in zoning as to be reflected in market prices of similarly zoned properties. See *Snyder v. Commonwealth*, 412 Pa. 15 (1963).

Clause (3) is in accord with existing law since it assumes that the machinery, equipment and fixtures are part of the real property taken. See *Diamond Mills Emory Co. v. Philadelphia*, 8 Dist. R. 30 (1898), and also *Philadelphia & Reading Railroad Co. v. Getz*, 113 Pa. 214 (1886).

Clause (4) was included in order to make it clear that in ascertaining fair market value, all matters which may properly be introduced into evidence as provided in Article VII of this act may be considered.

It is not intended by this section to repeal statutes providing for the consideration of additional factors or criteria. See, for example, Second Class County Port Authority Act, 1956, April 6, P.L. (1955) 1114, as amended (55 P.S. §531, et seq.).

**Note:** With regard to clause (3) of this section, for further discussion of "machinery, equipment and fixtures" under the Assembled Economic Unit Doctrine, see *Singer v. Redevelopment Authority of Oil City*, 437 Pa. 55 (1970).

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 604. Effect of Imminence of Condemnation.

**1964 Comment:** This section is new. Although it has no counterpart in existing law, the language of this section is based on the language in *Olson & French, Inc. v. Commonwealth*, 399 Pa. 266 (1960), at page 272, where the court used the phrase "general knowledge of the imminence of . . . condemnation. . . ." In many cases, condemnees suffer an economic loss because of an announcement of the proposed condemnation by the condemnor prior to the actual condemnation. Where such announcement is made and publicized, which may be several years before the actual condemnation, the tenants of the condemnee move out or fail to renew their leases and new tenants cannot be obtained because of the proposed condemnation. Under these conditions, the property which is to be condemned is economically deteriorated through no fault of the owner-condemnee, and as a consequence, at the time of actual condemnation, the amount of damages may be affected to the detriment of the innocent condemnee because of lack of tenants or because the condemnee was forced to rent at lower rentals for short terms. This section permits the condemnee to show these economic circumstances in order to prove what his damages actually are at the date of taking. On the other hand, in many cases an announcement of the proposed condemnation causes an inflation of property values and as a result the condemnor may have to pay more for the condemned property. The condemnor may show this increase in the value of the condemned property. Any decline or increase in the fair market value caused by the general knowledge of the imminence of the condemnation is to be disregarded.

Physical deterioration of the property which may occur because of the imminence of the condemnation is also to be disregarded in determining fair market value if the condemnee has acted reasonably in maintaining and protecting his property.

### Section 605. Contiguous Tracts; Unity of Use.

**1964 Comment:** This section codifies existing case law. *Morris v. Commonwealth*, 367 Pa. 410 (1951) (non-contiguous tracts); *H. C. Frick Coke Co. v. Painter*, 198 Pa. 468 (1901) (contiguous tracts).

### Section 606. Effect of Condemnation Use on After Value.

**1964 Comment:** The provisions of this section are meant to emphasize that the value of the remaining property after a partial taking, as affected by the condemnation, would be that which a prudent buyer would pay, recognizing the damages and benefits accruing to the remaining property as they can be interpreted and evaluated at that time. While the ultimate benefits to be derived from improvements within the part taken may be great, the owner of the remaining property may not enjoy them in some cases for several years. In determining the fair market value of the remaining property, consideration should be given to the necessary time discount, inconvenience and other effects of the construction period, which might materially affect the price which the condemnee would receive if he were to sell the remaining property to a third party immediately after the day of condemnation, but before completion of the improvement.

It is also the purpose of this section to provide, in accordance with existing law, that general benefits and damages which accrue to the community as a whole are not to be considered in arriving at the after value. Only special, particular and direct benefits and damages to the remaining property may be considered in arriving at the after value. The special benefits may not exceed the amount of damages to which the condemnee is entitled; in other words, the condemnor cannot obtain a judgment against the condemnee on the basis that the special benefits exceed the damages.

This act is not intended to supersede or otherwise affect those statutes which authorize the assessment of benefits covering the cost of public improvements, such as sewers, or the method of assessing them, except where a condemnation cognizable under this act accompanies the installation of the assessable improvement, in which case the entire proceeding is intended to be under this act and such benefits may be assessed as provided in the last sentence of this section.

### Section 607. Removal of Machinery, Equipment or Fixtures.

**1964 Comment:** If the machinery, equipment and fixtures are a part of the real estate, they, of course, are condemned with the real estate. See Comment to Section 603. In many cases the condemnor is not interested in the machinery, equipment and fixtures. In such cases, this section requires the condemnor to so notify the condemnee and the condemnee, if he so elects, may remove them. The condemnee of course is not required to remove the machinery, etc., but if he does, his damages are reduced by the fair market value thereof severed from the real estate, in arriving at which, the cost of removal and reinstallation may be considered.

**Note:** This section and the Comment must be read in light of *Singer v. Redevelopment Authority of Oil City*, 437 Pa. 55 (1970), which appears to restrict the option of the condemnee to remove the machinery, equipment and fixtures.

### Sections 608, 609 and 610. (As originally enacted, repealed 1971, December 29, P.L. 635, Act No. 169.)

**Note:** The substance of former Sections 608, 609 and 610 is incorporated in Section 601-A, *infra*, and the 1964 Comments pertinent thereto are appended to that section.

### Section 608. Expenses Incidental to Transfer of Title.

**1971 Comment:** Clauses (1) and (2) are virtually identical to the provisions of the first sentence of former Section 616.

Clause (3) is taken from former Section 614 except that the acquiring agency's liability for real property taxes now begins at the earlier of the two given dates, in accordance with the Federal relocation act, 42 U.S.C. 1653(c).

Clause (4) is also based on former Section 614 except that the acquiring agency's liability for water and sewer charges now begins when it obtains possession.

This section also supersedes the similar benefits contained in Section 304 of the State Highway Law, added 1968, December 12, P.L. 1212, Act No. 381. Section 304 was repealed in 1971, see Section 902(23), *infra*.

**Note:** As indicated in the above Comment, the substance of clauses (3) and (4) of the section was contained in former Section 614. The 1964 Comment to former Section 614 stated:

Under existing law and practice the condemnee is chargeable with taxes for the whole year even though the property is condemned during that year. This is based upon the principle that the owner of the property on the first day of the tax year is liable for the taxes for the whole year. See *Shaw v. Quinn*, 12 S. & B. 299 (1825). It is intended that the condemnee be reimbursed for the real estate taxes and water and sewer charges paid on the part of the property condemned for the time subsequent to the date of condemnation or relinquishment of possession and that he should be chargeable with the real estate taxes and water and sewer charges only to the date of condemnation or the date he relinquishes possession.

### Section 609. Condemnee's Costs Where No Declaration of Taking Filed.

**1971 Comment:** This is one of the three sections under which the condemnee is entitled to recover full reimbursement of reasonable appraisal, attorney and engineering fees, as required by Section 304 of the Federal relocation act, 42 U.S.C. 1654. The other two sections are Section 106(e) where a declaration of taking is voided by a court upon preliminary objections of a condemnee and Section 408 where a condemnation is revoked by a condemnor. The instant section is applicable only where a condemnor is found by the court to have taken property without the filing of a declaration of taking; it does not apply to consequential damage claims under Section 612 or to damages for vacation of roads under Section 613, since there is no "taking" in such cases.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 610. Limited Reimbursement of Appraisal, Attorney and Engineering Fees.

**1971 Comment:** It is believed that this contribution toward appraisal, attorney and engineering fees will, in many cases, materially assist the owner of a property interest acquired or injured in making an informed judgment regarding the acquiring agency's offer. The reimbursement provided in this section is not intended to establish a limit on the condemnee's expenditures for such services and is in addition to any costs taxable under Sections 509 and 519 for reasonable expenses of preparing viewers' plans where the condemnor fails to provide satisfactory ones. Cf. *Kling Appeal*, 433 Pa. 118 (1969), which holds that appraisal and attorney fees are not taxable as costs under Section 519.

### Section 610.1. Payment on Account of Increased Mortgage Costs.

**1971 Comment:** This section is based on former Section 617 and differs principally in that the payment is based on the remaining term of the existing mortgage rather than on the entire term of the new mortgage.

Note that owners displaced from dwellings recover damages for increased mortgage costs under Section 602-A(a)(2) rather than under this section.

Under Section 602-A(a)(2), damages for increased mortgage costs are included within the limit of \$15,000 for all Section 602-A damages.

Other changes are the inclusion of installment purchase contracts as well as conventional mortgages, removal of the 6% limit on debt interest and imposition of the requirement that the security instrument be at least 180 days old prior to the initiation of negotiations for the acquisition of the encumbered real estate.

### Section 611. Delay Compensation.

**1964 Comment:** This section is suggested by the procedure in Federal takings where interest is automatically added to the final award at the rate of 6%, but no interest is allowed on any money paid into court. Feb. 26, 1931, c. 307, §1, 46 Stat. 1121 (40 USCA §258a).

This changes the existing law which states that the condemnee is *prima facie* entitled to damages for delay except where the delay is the fault of the condemnee (e.g., unreasonable demand by the condemnee). *Moffat Appeal*, 400 Pa. 123 (1960). The courts, however, have been reluctant to find that the delay was the fault of the condemnee. In the absence of evidence of the commercial rate of interest, the condemnee is entitled to 6% for delay compensation. *Lehigh Valley Trust Co. v. Pennsylvania Turnpike Commission*, 401 Pa. 135 (1960). This section sets the figure in all cases at 6%.

Under this section the condemnee is entitled to delay compensation as a matter of right. However, he is not entitled to such compensation on the money which has been paid to him or deposited in court by the condemnor who has done so to obtain possession. See Section 407. Where the money is paid to the condemnee or deposited in court by the condemnor to obtain possession from the condemnee, the condemnee would still be entitled to delay compensation from the date of taking to the date the money is paid to him or deposited in court. The condemnee is only entitled to the one 6% on his award. He would not be entitled to the 6% and then interest on that 6%. In other words, it is not intended by this section to have interest being paid on delay compensation.

The date from which delay compensation is to be calculated will be fixed by the viewers in their report.

The first sentence of this section is included to make it clear that while the condemnee is in possession of the condemned property, he does not get delay compensation but the condemnor is not entitled to rent or other charges for use and occupancy. The reason for this is that while the condemnee is in possession, the condemnee is not building up damages for delay and the condemnor is not accruing liability for delay damages. Consequently, the delay compensation and the rent, in a sense, offset each other.

### Section 612. Consequential Damages.

**1964 Comment:** Under existing law the Commonwealth is not liable for consequential damages unless liability therefor is expressly provided by statute. *Moyer v. Commonwealth*, 183 Pa. Superior Ct. 333 (1937); *Soldiers and Sailors Memorial Bridge*, 308 Pa. 487 (1932). Municipal and other corporations having the power of eminent domain are liable for consequential damages. Pennsylvania Constitution [Article X, §4]. This section makes the Commonwealth liable for consequential damages to the extent set forth.

### Section 613. Damages for Vacation of Roads.

**1964 Comment:** Under existing case law, the vacation of a highway or street is not an injury to the abutting land owners within the provisions of the Constitution requiring compensation for property taken, injured, or destroyed, and in the absence of legislation allowing damages, none can be recovered. *Howell v. Morrisville Borough*, 212 Pa. 349 (1905). The legislature has, however, provided for damages for vacation of streets in many cases. See, e.g.,

The Borough Code, 1927, May 4, P.L. 519, Art. XVI, §1650, as reenacted and amended [since repealed]; the Act of 1905, March 21, P.L. 46, §§1, as amended, 2 (53 P.S. §§1943, 1945). The purpose of this section is to have a general provision applicable to all condemnors relating to and allowing damages for the vacation of public roads.

It is not intended by this section to broaden the extent of liability for vacation of streets or to change existing case law relating thereto. See *Clementine W. Apple v. City of Philadelphia*, 103 Pa. Superior Ct. 458 (1931). See also *In re Melon Street*, 182 Pa. 397 (1897) involving a *cul-de-sac*.

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

**1971 Comment:** Subsection (a) contains substantially the same provisions as former Sections 608 and 610 of the Code and Section 304.2(a) and (b) of the State Highway Law, added in 1968 and since repealed. The former requirement that moving costs may not exceed the value of the property moved has been deleted.

Note that the \$200 dislocation allowance payable under clause (2) is available only to a displaced person who elects to have his moving costs determined according to the acquiring agency's fixed schedule.

Under subsection (b)(1) or alternatively (b)(2), additional damages are payable for personal property used in a business or farm operation which is not moved to a new location. Clause (1) is based on the Federal relocation act, 42 U.S.C. 4622(a)(2), but allows the greater of the two measures of damages rather than the lesser as in the Federal act. Clause (2) is entirely new and is not found in the Federal act. The notice required under clause (2) must be given at least 60 days in advance of the sale, which must be "commercially reasonable." See Section 9-504(3) of the Uniform Commercial Code, 12A P.S. §9-504(3). Inventory which is not compensable under clause (2), if the business is relocated, nonetheless qualifies for reimbursement of moving costs under subsection (a). The displaced person must choose damages for all unmoved personal property only under either clauses (1) or (2).

Clause (3) of subsection (b) is based on former Section 609. The maximum and minimum figures have been increased. An alternate formula has been added, which was derived from the Federal act and Section 304.2(c) of the State Highway Law, added in 1968 and since repealed.

Clause (4) is new and taken verbatim from the Federal act, 42 U.S.C. 1622(a)(3).

Note: As indicated in the above Comment, subsection (a) reflects provisions contained in former Sections 608 and 610. The 1964 Comments to those sections follow:

[Section 608] adds a new element of damages in eminent domain cases. There is nothing in existing law which gives a condemnee or the tenant of a condemnee the right to recover as a separate item of damages, removal transportation and reinstallation expenses of machinery, equipment and fixtures which are on the condemned property but which are not a part of

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

the real estate. Existing law does provide that the cost of removal of machinery, equipment and fixtures although not allowable as a separate item of damages, may be considered in fixing the before and after values. *Huller Water Company's Petition*, 33B Pa. 212 (1940); *James McMillin Printing Co. v. Pittsburg, Carnegie & Western R.R. Co.*, 216 Pa. 504 (1907); *Cf. Delaware County Redevelopment Authority v. Carminatti*, 18 D. & C. 2d 704 (1959).

"Reasonable expenses" of removal are to be considered as not exceeding the market value of the machinery, equipment and fixtures in place and are to be determined in connection with the value of the machinery, equipment and fixtures. If the cost of removal exceeds the value of the machinery, etc., the cost would obviously be unreasonable. In addition, in ascertaining the reasonableness of the removal expenses another factor to be considered is the distance of the move.

The second paragraph of the 1961 Comment must be read in light of the 1971 amendment which omitted the requirement that removal costs not exceed the value of the personality involved.

[Section 610] changes existing law by allowing the condemnee to recover as a separate and additional item of damages his reasonable expenses for moving his personal property, as distinguished from machinery, equipment and fixtures. *Cf. Henry Becker v. The Philadelphia & Reading Terminal R.R. Co.*, 177 Pa. 252 (1896). See also *Delaware County Redevelopment Authority v. Carminatti*, 18 D. & C. 2d 701 (1959).

It is the purpose of this section to permit the recovery by the condemnee of these moving expenses in addition to the expenses for moving machinery, equipment and fixtures as provided in Section 601-A. If a tenant is involved and has no right to any of the damages for the property taken, he would still be entitled to these moving expenses. In ascertaining whether the expenses are reasonable, a factor to be considered is the distance of the move as well as the total amount of the expenses.

Clause (3) of subsection (b) of this section is based on former Section 609. The 1961 Comment to that section follows:

[Section 609] changes existing law which makes no provision for damages for business dislocation losses. Under it the initial burden is on the claimant to show that the business is of such a local character that it cannot be relocated without substantial loss of patronage. Generally this would be true only of the small neighborhood business. If this burden is sustained then the section provides a mechanical formula for fixing the amount of compensation for this loss. Formulae for business valuation based on earnings or accounting procedures were discarded as too complicated for use in eminent domain cases.

The rent or rental value on which the calculation of compensation is based is the rental of the portion of the property devoted to the business use only, which may be and normally is less than the entire property. This section is intended to compensate in a limited way the small neighborhood merchant substantially put out of business by the condemnation of his business property.

### Section 602-A. Replacement Housing for Homeowners.

1971 Comment: Subsections (a) and (b) are based on the Federal relocation act, 42 U.S.C. 1623. The \$15,000 limit for all damages under this section replaces the \$5,000 limit contained in former Section 615(a) of the Code and Section 304.3(a) of the State Highway Law, added in 1968 and since repealed. The prior limitation to "single, two- or three-family dwellings" has been eliminated, and the prior requirement that a displaced person must have been an owner-occupant for a full year prior to condemnation has been reduced to 180 days prior to the initiation of negotiations for the acquired dwelling or receipt of written notice of intent to acquire or order to vacate.

Clause (1) of subsection (a) replaces former Section 615(a) of the Code and Section 304.3(a) of the State Highway Law. The formula for determining the payment remains the same as before. The comparable replacement dwellings must now be reasonably accessible to the displaced person's place of employment rather than to "places of employment" as in prior law.

Clause (2) replaces former Section 617 and is substantially identical thereto. As in Section 610.1, *supra*, the payment is based on the remaining term of the existing mortgage rather than on the full term of the new mortgage. The interest-rate limit has been removed, installment purchase contracts included, and a 180-day eligibility clause added.

Clause (3), derived from the second sentence of former Section 616, is limited to replacement dwellings. "Prepaid expenses" refers to monies deposited in escrow with the lending institution for payment of taxes, insurance, etc., as they become due in the future.

Subsection (b) changes the prior requirement of purchase and occupancy of the replacement dwelling within a year subsequent to the date on which the condemnee is required to move from the acquired dwelling to one year from the date on which he receives final payment of his full acquisition cost or from the date of the move, whichever is later.

Subsection (c), new and broader than the Federal act, makes available to long-term homeowners the same benefits available to tenants and short-term homeowners, namely, payment up to \$1,000 toward rent or a down payment.

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

1971 Comment: This section replaces former Section 615(b) of the Code and Section 304.3(b) added by the 1968 amendment to the State Highway Law and, in accordance with the Federal relocation act, 42 U.S.C. 1621, substantially increases the amounts payable.

Subsection (a)(1) clarifies the rental-payment formula as the difference between the old and new rentals. As in Section 602-A(a)(1), the comparable replacement dwelling must now be reasonably accessible to the displaced person's place of employment rather than to "places of employment," as in prior law.

### Section 604-A. Issuance of Regulations to Implement this Article.

1971 Comment: Because of the desirability of uniform interpretation and application of special damages for relocation by all acquiring agencies throughout the Commonwealth, the power to promulgate regulations is given to the Attorney General rather than to each acquiring agency.

The Attorney General is directed in subsection (5) to take into consideration the regulations of the various Federal funding agencies, such as the Federal Highway Administration (FHWA), Department of Housing and Urban Development (HUD), Urban Mass Transit Administration (UMTA), etc., so that the State regulations will be sufficiently flexible to allow each acquiring agency to operate freely within its particular Federal requirements and provide the maximum allowable benefits to displaced persons.

Note: The Attorney General's regulations, promulgated pursuant to the authorization of this section, took effect on July 15, 1972 (2 Pa. B. 1333-1337).

### Section 605-A. Payments Not to be Considered as Income or Resources.

1971 Comment: The rationale behind this section is substantially the same as that governing the amendment to Section 521, namely, that the monies payable under Article VI-A (except for Section 601-A(b)) are required for relocation of the displaced person and should not diminish the amount of any assistance being received by him or be taxable or subject to attachment or execution.

### Section 606-A. Rights of Certain Displaced Persons Defined.

1971 Comment: The provisions of Article VI-A were made effective January 2, 1971—the effective date of the Federal relocation act—to make persons displaced on or after that date eligible for any increased benefits, even if such displaced persons had been previously paid and had released their claims under the prior law.

In addition, any greater benefits accruing under the 1968 amendment to the State Highway Law or the former provisions of the Code are preserved to persons displaced prior to December 29, 1971, the effective date of these amendments.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 701. Viewers' Hearing.

(3)

**1964 Comment:** This is to make it clear that viewers may consider everything they deem appropriate, including facts which they have discovered by their own investigation and view, in order to arrive at their decision as to just compensation. Apparently, some viewers have and presently do consider themselves bound by the formal rules of evidence. This section settles the matter by stating that the viewers are not so bound. The purpose is to make viewers' proceedings informal. This is considered desirable since many condemnees appear at viewers' hearings without counsel.

**1961 Comment:** This clause is in accord with the existing law. *Berger v. Public Parking Authority of Pittsburgh*, 380 Pa. 19 (1954).

### Section 702. Condemnor's Evidence Before Viewers.

**1964 Comment:** Under existing law, the condemnor is not required to present testimony before the viewers. In some instances, condemnors have refused to present testimony. This is deemed unfair to the condemnee who has disclosed his figures but does not hear the condemnor's figures until the time of trial on appeal.

It is not intended by this section to require the condemnor to present all its evidence at the viewers' hearing. The condemnor may present additional evidence at the trial in court. As long as the condemnor has one expert testify as to the damages, this is sufficient.

Notes: See *Harris v. Pittsburgh Urban Redevelopment Authority*, 212 Pa. Superior Ct. 232 (1968), which holds that the viewers should require the introduction by the condemnor of expert testimony of the amount of damages suffered by the condemnee, or a stipulation by the condemnor that no such evidence is to be offered; this stipulation is then binding at all subsequent stages of the proceeding.

### Section 704. Competency of Condemnee as Witness.

**1964 Comment:** The portion of this section permitting the condemnee to testify as to just compensation is in accord with existing law. *Hencken v. Bethlehem Municipal Water Authority*, 364 Pa. 408 (1950). But see *Sgarlat Estate v. Commonwealth*, 398 Pa. 406 (1960), where the court, at page 414, stated "In general he is competent, since he has at least a general knowledge of what he owns. . . . But he is subject to the current rules and occupies no special position as a witness." This section makes it clear that the owner is always competent to express an opinion as to damages.

The provision of this section permitting an officer of a corporate condemnee to testify as to value when the corporation property is condemned changes existing law which does not permit the testimony unless the officer qualifies as an expert. *Westinghouse Air Brake Co. v. Pittsburgh*, 316 Pa. 372 (1934).

The words "without further qualification" are used to emphasize that the condemnee or officer of a corporate condemnee is not required to qualify as an expert witness. The mere fact that he is a condemnee or an officer of a corporate condemnee automatically qualifies him to testify.

### Section 705. Evidence Generally.

(1)

**1964 Comment:** As under existing law, the viewers or the trial judge, as the case may be, determine whether the witness is qualified to express an opinion, except in the case of a condemnee.

The primary purpose and intent of this clause, however, is to change and broaden existing law which unduly limits the examination and cross examination of an expert witness, so as to permit the expert witness to testify on direct, as well as cross examination, to any and all matters which he considered (not necessarily "relied on") in arriving at his opinion of damages. Under existing law, as noted before, the expert is unduly limited as to what he may testify to, and as a consequence, he cannot show his competence or what perhaps is more important, his lack of competence. See *McSorley v. Union Borough School District*, 291 Pa. 232 (1927).

(2)

**1964 Comment:** It is intended by this clause to change existing law which severely restricts the testimony of the expert witness on the ground that "collateral issues" are introduced. This change is intended to take cognizance of and permit testimony of all modern appraisal methods.

(i)

**1964 Comment:** The purpose of this subclause is to emphasize that any sale of or contract or agreement to sell the condemned property or comparable property, if not too remote in time, is admissible in evidence, both on direct and cross examination, as both impeaching evidence and as evidence of value.

As for sales of the condemned property, existing law apparently limits evidence pertaining thereto to cross examination of the condemnee or his expert witness and only as impeaching evidence affecting credibility. *Berkley v. Jeannette*, 373 Pa., 376 (1953); *Greenfield v. Philadelphia*, 282 Pa. 344 (1925); *Rea v. Pittsburgh and Connelville R.R. Co.*, 229 Pa. 106 (1910).

### Section 703. Trial in the Court of Common Pleas on Appeal.

(1)

**1964 Comment:** This clause changes existing law in several respects. First, under existing law, the matter of view by the jury in court is left to the discretion of the judge. *Sebastian A. Hudolph v. The Pa. Schuylkill Valley R.R. Co.*, 186 Pa. 541 (1898); *Frazee v. Manufacturers Light & Heat Co.*, 20 Pa. Superior Ct. 420 (1902); Pa. R.C.P. 219.

Under the Act of 1895, May 21, P.L. 89, §§1, 2 [repealed by the Code, Section 902(6), *infra*] party is entitled to have the trial jury view the premises when viewers have been waived.

The provision in this clause that the view shall be evidentiary also changes existing Pennsylvania law. It is well established under existing law that the only purpose of the view is to enable the trier of the facts to understand the testimony; the view is not evidence and is not to be substituted for the evidence. *Avins v. Commonwealth*, 379 Pa. 202 (1954); *Roberts v. Philadelphia*, 239 Pa. 339 (1913). This position is apparently the minority position, the majority of the states holding that the view is evidence along with the other evidence in the case. *People v. Al. G. Smith Co. Ltd.*, 194 P. 2d 750 (Calif., 1948); 5 *Nichols on Eminent Domain*, §18.31. It is the purpose and intent of this clause to change existing case law by providing, in accordance with the majority view, that the view is evidence along with the other evidence in the case.

There is no requirement under existing law that the trial judge go on the view. This clause makes it mandatory for the trial judge to go on the view with the jury.

(2)

**1964 Comment:** This clause introduces a new concept in eminent domain cases. Existing law does not require disclosure of the names of valuation experts at any time. The purpose of this provision is to eliminate the surprise element in many cases when one expert is used before the viewers and another, with a different valuation and opinion of the highest and best use of the property, is called at the trial.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

Evidence of sales of similar property is not admissible on direct examination and is not evidence of market value under existing Pennsylvania law; such evidence is admissible on cross examination, if the witness relied on the sale, for the purpose of testing his good faith and credibility. *Berkeley v. Jeannelle*, 373 Pa. 376 (1953). It is the purpose of this subclause to allow such evidence on both direct and cross examination of valuation witnesses regardless of whether they "relied on" or "based their opinion on" the sale. Furthermore, it is intended that such evidence be admissible as evidence of market value as well as for credibility purposes.

(ii)

**1964 Comment:** Under existing law, the rent received from the condemned property is admissible in evidence as an element to be considered in ascertaining market value, although it cannot be shown as a separate item of damages. *Westinghouse Air Brake Co. v. Pittsburgh*, 316 Pa. 372 (1934). This subclause, then, is declaratory of existing law on this point.

As for the other terms of a lease, their admission under existing law is forbidden. *Olson & French, Inc. v. Commonwealth*, 399 Pa. 266 (1960), where the court held that the admission of the lease was error, but not prejudicial under the circumstances of the case; *Ogden v. Pa. R.R. Co.*, 229 Pa. 378 (1911). This subclause changes existing law in this regard.

As for the rent and other terms of any lease of comparable property, this subclause changes existing law which does not permit the introduction of rentals and rental values of comparable property.

This subclause also changes existing law which does not allow evidence of the rent or other terms of any lease made after the date of taking.

It is intended that all these matters should be allowed in evidence since they are matters which the modern appraiser considers in appraising property.

(iii)

**1964 Comment:** One of the basic methods of appraising property is to capitalize income attributable to the property. This method is generally not accepted by the courts, including the Pennsylvania courts, and consequently evidence thereof is excluded even though an expert appraiser insists that this approach is the only approach to ascertaining market value in a specific case. In many cases, this method of valuation would certainly be a factor which a willing, well-informed purchaser and seller would consider in reaching an agreement on a sales price. If an expert used this method, he should be permitted to so state and give his reasons therefor and a breakdown thereof. Only the reasonable net rental value of the property itself may be capitalized. The income or profits of any business conducted on the property may not be capitalized to show the value of the property; this is in accord with existing Pennsylvania law.

(iv)

**1964 Comment:** Under existing law, evidence of reproduction costs is not admissible to fix damages unless the circumstances are such as to render the admission of such testimony absolutely essential in the interest of justice. *McSorley v. Avalon Borough School District*, 291 Pa. 252 (1927).

The reproduction approach is another basic approach to valuing property. If an expert has used such method in a particular case, evidence thereof should be allowed together with any explanation.

This approach to value will be particularly helpful in valuing special use properties, such as churches, which have no normal market price.

(v)

**1964 Comment:** These matters, in keeping with the liberalization of the examination of the expert, should properly be considered since they affect fair market value. This is generally in accord with existing law. *Putoka v. Commonwealth*, 323 Pa. 36 (1936), where the court stated that estimates of the cost of rebuilding specific items of property or injury are not recoverable as distinct items of damages but are useful as bearing on the market value.

(3)

**1964 Comment:** A considerable time may elapse from the condemnation to the time of view either by the viewers or by the jury. Possession of the condemned property may have been given up by the owners after the condemnation and as a result the property may have become run down or even demolished. On the other hand, the owner may improve the property after the condemnation in the hope of getting more compensation. The purpose of this provision is to make it clear that either the condemnor or the condemnor may show the difference in condition of the property at the time of taking and at the time of view. Of course, just compensation is to be based on the condition of the property at the time of condemnation. This clause is essentially a declaration of existing law.

(4)

**1964 Comment:** This changes existing statutory law which provides that the assessed valuation is admissible against the condemnor when the condemnor is a county, city, borough, township or town. See the Act of 1915, April 21, P.L. 159 §2 (repealed by the Code, Section 902(14), *infra*). The County Code, 1955, August 9, P.L. 323, §2418 (16 P.S. §2418), and the various other municipal codes. The assessed valuation is of no real probative value since it relates to an entirely different matter. Consequently, it should not be admissible against the public condemnor. This clause also continues existing law which does not permit the condemnor to introduce the assessed valuation against the donee. *Berger v. Public Parking Authority of Pittsburgh*, 380 Pa. 19 (1954).

(5)

**1964 Comment:** If, in arriving at his opinion, an expert has relied upon the written estimate, for example, of a contractor as to the cost to repair part of the property damaged by the condemnation, the party using such expert is required by this clause to furnish a copy of the contractor's written estimate to the other party in advance of trial. There is no similar provision in existing law.

(6)

**1964 Comment:** There is nothing in existing law which requires that an expert, in order to testify, must have made sales of property. Apparently, however, some viewers have been disqualifying experts for this reason. The purpose of this clause is to clarify that point. Many highly competent appraisers do not make sales and have not made sales of property.

Under existing law an expert may be disqualified because he did not know or examine the condemned property prior to the condemnation. See *Shimer v. Easton Railway Co.*, 205 Pa. 648 (1903) (trespass case). But see *Hasenfu v. Commonwealth*, 406 Pa. 631 (1962). The purpose of this clause is to provide that an otherwise qualified expert may still testify even though he has not examined the property prior to the condemnation since this is seldom possible under present condemnation practices. However, as the clause states, the expert must have acquired knowledge of the property and its condition at the time of taking; this can be done through the use of photographs and other data available to him.

### Section 706. Use of Condemned Property.

**1964 Comment:** This section is necessary in view of the fact that the use to which the condemned property is put may have a very material bearing upon the value of the remaining property in cases of partial condemnations. This does not represent a substantial change in the law.

\*For comparable sections under proposed Title 26 see Appendix A.

## 1964 and 1971 Comments and Notes to Eminent Domain Code\*

### Section 801. Board of Viewers.

**1964 Comment:** This section is derived from The County Code, 1955, Aug. 9, P.L. 323, §1101 (16 P.S. §1101), and from the Second Class County Code, 1953, July 28, P.L. 723, Art. XI, §1101 (16 P.S. §1101). In the interest of uniformity the minimum number of viewers has been reduced to three for second class counties instead of six.

**Note:** The original maximum of nine viewers was deleted by the 1969 amendment.

### Section 802. Appointment of Board Members; Vacancies.

**1964 Comment:** The first paragraph is derived from Sections 1103 and 1104 of The County Code, 1955, Aug. 9, P.L. 323 (16 P.S. §§1103-1104). Similar provisions appear in the Second Class County Code, 1953, July 28, P.L. 723, Art. XI, §§1103-1104 (16 P.S. §§1103-1104).

The second paragraph is taken without substantial change from Section 5 of the Act of 1911, June 23, P.L. 1123, as amended (16 P.S. §9481).

**Note:** The first sentence of this section must be read in light of the 1968 constitutional unification of the courts of common pleas of Philadelphia. See Pennsylvania Constitution, Art. V, §5.

### Section 803. Qualifications.

**1964 Comment:** This section changes existing law in several respects. Under existing law one-third of the board may be attorneys; this section requires that one-third of the board be attorneys. The reason for this change is because of the legal problems and questions which dominate every viewers' proceeding. Secondly, under existing law a viewer must be a resident of the county. In some of the smaller counties it is difficult to obtain viewers. Consequently, the change is made to authorize the court to appoint viewers from another county where the court cannot complete the board from residents of the county. In addition, this section eliminates, as being unnecessary, the prohibition in the county codes against a viewer being engaged in any public employment for profit.

The second paragraph is taken without change from Section 1103 of The County Code, 1955, Aug. 9, P.L. 323 (16 P.S. §1103).

### Section 804. Oath of Viewers.

**1964 Comment:** There is some conflict of opinion among the lower courts as to the necessity of swearing the viewers for each individual proceeding, and the practice apparently varies from county to county. *Drum, The Law of Viewers in Pa.*, §11 indicates that the viewer must be sworn for each separate case. The Second Class County Code, 1953, July 28, P.L. 723, Art. XXVI, §2613 (16 P.S. §5613), and The County Code, 1955, Aug. 9, P.L. 323, §2413 (16 P.S. §2413), can be construed to require that the viewers be sworn for each case. The purpose of this section is to make it clear that the swearing of the viewers for each case is not required. The form of oath was included so that there would be uniformity.

### Section 805. Compensation of Viewers.

**1964 Comment:** In Philadelphia, the only city and county of the first class, existing law now specifically provides that the salaries of all county or city officials which are paid by the City of Philadelphia shall be determined by the City Council of Philadelphia. 1945, May 2, P.L. 375, §1, as amended (53 P.S. §13401). This is consistent with the Philadelphia Home Rule Amendment and the Philadelphia Home Rule Act. In other counties, legislation now provides that the county salary boards establish the compensation of county employees. Second Class County Code, 1953, July 28, P.L. 723, Art. XVIII, §1820 (16 P.S. §1820); The County Code, 1955, Aug. 9, P.L. 323, §1620 (16 P.S. §1620). The compensation of viewers which is fixed by statute is much

too low and does not permit the court to attract competent and qualified viewers. For example, the various turnpike acts (1937, May 21, P.L. 774, No. 211 §6 (36 P.S. §6524), and subsequent turnpike acts) provide that the viewers shall receive a sum not exceeding \$10 per day for performing their duties. This section recognizes that each county through its county salary board should be authorized to establish adequate compensation. The minimum salary of \$33 per day has been set with leave on the part of the county salary board to establish higher compensation if this is necessary to attract qualified persons as viewers.

For the purpose of compensation, the viewers are to be considered as employees of the court.

### Section 806. Viewers' Hearings; Facilities.

**1964 Comment:** This section is derived from Section 7 of the Act of 1911, June 23, P.L. 1123 (16 P.S. §9483).

### Section 807. Stenographic Notes of Hearings.

**1964 Comment:** This section is derived from existing law. See the Act of 1911, June 23, P.L. 1123, §8 (16 P.S. §9484). The condennor or condennee is not required to pay the original expense of a stenographer.

**Note:** The 1969 amendment to Section 519 which included the cost of "transcripts of the stenographic notes of the trial in court on appeal" as a "taxable cost," payable by the condennor, does not affect this section.

### Section 808. Clerks and Stenographers.

**1964 Comment:** This section is derived from the Second Class County Code, 1953, July 28, P.L. 723, Art. XI, §1106 (16 P.S. §1106), and The County Code, 1955, Aug. 9, P.L. 323, §1106 (16 P.S. §1106). The provision that stenographic and clerical help be paid by city council in counties of the first class was added so that all statutory matters on this point would be consolidated, conveniently, in one section.

### Section 901. Saving Clause.

**Note:** The reference to "court of quarter sessions" must be read in light of the abolition of that court by the 1968 revision of the Pennsylvania Constitution; Pa. Const., Art. V, §1, Sch. §4.

### Section 902. Specific Repeals.

**1971 Comment:** The repealed provisions of the State Highway Law have been incorporated into the Eminent Domain Code by the 1971 amendments. Anyone displaced prior to January 2, 1971, but on or after August 23, 1968, is entitled to the benefit of the repealed provisions of the State Highway Law (or the prior provisions of the Code) if a greater amount of damages would be payable thereunder.

\*For comparable sections under proposed Title 26 see Appendix A.





