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Legal and Procedural Issues Related to Relocation Assistance

A report prepared under ongoing NCHRP Project 20-6, "Legal Problems Arising Out of Highway Programs," for which the Transportation Research Board is the Agency conducting the Research. The report was prepared by Richard B. Williams. Robert W. Cunliffe, TRB Counsel for Legal Research, was principal investigator, serving under the Special Technical Activities Division of the Board at the time this report was prepared.

THE PROBLEM AND ITS SOLUTION

State highway departments and transportation agencies have a continuing need to keep abreast of operating practices and legal elements of special problems in highway law. This report deals with the legal and procedural issues that public officials face in administering relocation assistance programs for the acquisition of land for transportation projects. A comprehensive analysis of these issues is provided.

This paper will be included in a future addendum to a text entitled, "Selected Studies in Highway Law." Volumes 1 and 2, dealing primarily with the law of eminent domain, were published by the Transportation Research Board in 1976; and Volume 3 dealing with contracts, torts, environmental and other areas of highway law, was published in 1978. An addendum to "Selected Studies in Highway Law," consisting of five new papers and updates of eight existing papers, was issued during 1979, a

second addendum, consisting of two new papers and 15 supplements, was distributed early in 1981, and a third addendum consisting of eight new papers, seven supplements, and an expandable binder for Volume 4 was distributed in 1983. The text now totals more than 2,200 pages comprising 56 papers. Copies have been distributed to NCHRP sponsors, other offices of state and federal governments, and selected university and state law libraries. The officials receiving copies in each state are: the Attorney General, the Highway Department Chief Counsel, and the Right-of-Way Director. Beyond this initial distribution, the text is available through the TRB publications office at a cost of $90.00 per set.

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INTRODUCTION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) [1] became effective January 2, 1971. By its enactment Congress created a uniform statutory scheme to deal with persons whose property is acquired for Federal or federally assisted projects and who must move their households or businesses as a result of the acquisition.

The URA is divided into two parts having related, though distinct, purposes. Title II [2] provides for the payment of monetary benefits and the giving of advisory assistance, referred to collectively as relocation assistance, to persons who are displaced as the result of a public project. The stated purpose of Congress in enacting Title II is "to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as result of programs designed for the benefit of the public as a whole." [3] In Title III [4] Congress establishes a uniform policy relating to land acquisition practices and outlines requirements for the acquisition of buildings, structures, and improvements and the payment of attorneys fees and certain incidental expenses.

Following the enactment of the URA, the legislatures in each of the 50 states responded to the Congressional initiative by enacting new or revising existing statutes relating to relocation assistance.[5] Although these state statutes are modeled after the URA, many of them contain variations that may affect the method of calculating and the amount of benefits or the description of the classes of persons entitled to receive these benefits. Just as the various legislatures have adopted differing statutory schemes, the judiciary has issued a wide variety of opinions interpreting the URA and the state relocation laws.

Today, the URA and the related state statutes set the standards which public entities must follow in dealing with persons whose property rights are being acquired for public projects. This paper will explore the major legal and procedural issues which public officials may encounter in administering relocation assistance programs in connection with the acquisition of land for transportation projects.

BRIEF HISTORY OF RELOCATION ASSISTANCE

Federal Legislation Enacted Prior to the URA

In the Housing Act of 1949,[6] Congress required local public agencies engaged in urban renewal to provide for a feasible method for the temporary relocation of displaced families and to guarantee that there be suitable replacement dwellings available at rents or prices within their financial means.[7] Subsequent amendments in 1956 [8] and 1959 [9] provided for limited payment of moving expenses for those displaced by land acquisition and housing code enforcement. The Housing Act of 1964 [10] provided for a more comprehensive package in which the administrators of the housing programs were to provide displacees with information and assistance in finding replacement housing as well as temporary rental payments and reimbursement of incidental expenses. These relocation benefits were expanded further by the passage of the Housing and Urban Development Act of 1968 [11] which extended the duration of rental assistance payments for 5 months to 2 years and provided for a payment of up to $5,000 toward the purchase of a replacement dwelling.

The first provisions for relocation assistance for persons displaced by a transportation project were contained in Federal-Aid Highway Act of 1962.[12] As a condition to receiving federal reimbursement, states were required to provide relocation advisory assistance,[13] but residential moving expenses of up to $200 and business moving expenses of up to $3,000 were required to be paid only if they were authorized by state law.[14] Congress greatly expanded this program by its enactment of the Federal-Aid Highway Act of 1968.[15] After compliance with the provisions of this act became mandatory on July 1, 1970, the states were eligible to receive reimbursement to the full extent of federal participation for relocation costs incurred.[16] However, in order to receive federal aid, states had to give assurances that relocation payments would be made, that advisory assistance would be given and that decent, safe and sanitary replacement dwellings would be available.[17] The Act substantially increased potential benefits by providing for the payment of actual and reasonable moving expenses and authorizing supplements of up to $5,000 toward the purchase of a replacement dwelling and up to $1,500 payable over 2 years toward the rental of a replacement dwelling.[18] The benefits received by those displaced by highway projects were greater than those received by persons forced to relocate because of most other federal programs. This disparate treatment of persons displaced by federal projects resulting from the lack of uniformity among statutes authorizing relocation assistance was a major impetus behind the enactment of the URA.[19]

The Uniform Relocation Act

The provisions of the URA apply to all persons who are displaced by a federally funded program regardless of the identity of the agency administering the program.[20] Compliance with the requirements of the Act by state and local agencies administering federally financed programs is enforced by a provision which prohibits the granting of federal financial assistance unless the state or local agency gives "satisfactory assurances" that relocation payments and advisory assistance will be provided as required by statute and that within a reasonable period of time prior to displacement, decent, safe and sanitary dwellings will be available to those persons being displaced.[21] Displaced persons are pro-

vided the additional assurance of the availability of comparable replacement housing through a provision prohibiting the eviction of any person from a dwelling unless such housing is available.[22] If a project cannot proceed to actual construction because comparable replacement housing is not available, the head of the federal agency may take whatever action is necessary to provide the housing by using funds authorized for the project.[23]

The types and amounts of relocation payments previously available to displaced persons were substantially increased by enactment of the URA. A displaced person is entitled to be reimbursed for actual reasonable expenses in moving himself, his business or farm operation, or other personal property.[24] A person moving from a dwelling may choose instead to take a scheduled payment for moving expenses up to $300 and a dislocation allowance of $200.[25] The owner of a displaced business or farm is also entitled to be reimbursed for actual direct losses of tangible personal property resulting from moving or discontinuing the business or farm operation up to an amount equal to the cost of moving such property as well as expenses incurred in searching for a replacement business or farm.[26] In place of reimbursement of these moving expenses, a person displaced from a business or farm may, under certain conditions, elect to receive a fixed payment between $2,500 and $10,000 which is based on the average annual net earnings of the business or farm.[27]

A displaced person who has owned and occupied a dwelling for at least 180 days before the initiation of negotiations to acquire the property is entitled to receive a supplement of up to $15,000 in addition to the fair market value of the property to cover the additional cost of purchasing a comparable decent, safe and sanitary replacement dwelling, any increased interest costs required to finance the replacement dwelling and certain closing costs incident to the purchase of the replacement dwelling.[28] Those who do not qualify for the $15,000 housing supplement but who have lawfully occupied a dwelling for at least 90 days prior to the initiation of negotiations for its acquisition are entitled to receive a payment of up to $4,000 to enable them either to rent for a period of up to 4 years a comparable decent, safe and sanitary dwelling or to make a downpayment on such a dwelling, except that the person must equally match any amount in excess of $2,000.[29]

In addition, a displaced person is also entitled to receive reimbursement for expenses incurred in transferring title to the acquiring agency as well as any mortgage prepayment penalties and a pro rata share of real property taxes allocable after vesting of title in the public agency.[30] If the agency institutes a proceeding to acquire the property by condemnation, the condemnee is awarded costs, including attorney and expert witness fees if the final judgment is that the condemnor cannot acquire the property by condemnation or the proceeding is abandoned by the condemnor.[31]

Finally, the acquiring agency is required to provide relocation assistance advisory services.[32] It must establish a program to determine the need for relocation assistance, to provide continuing information on the availability of replacement dwellings and businesses, to assure that, prior to displacement, there will be available comparable replacement dwellings within the financial means of those displaced, and to assist displaced persons in obtaining and becoming established in a replacement location.[33]

Implementing Regulations

In response to the initiative of the Office of Management and Budget, the Department of Transportation recently published regulations which promulgate new rules to implement the URA.[34] These new rules became effective as to the DOT July 3, 1985 and were intended to form the basis of a model policy to be followed by all other affected federal departments and agencies.[35] Following the receipt of comments, some relatively minor changes were made to the DOT rules and, as amended, the new regulations have become a common rule for the implementation of the provisions of the URA by 17 affected federal agencies effective May 28, 1986.[36] Prior to the adoption of these new uniform regulations, relocation assistance for persons displaced by federally funded highway projects were governed primarily by detailed and extensive rules contained in regulations issued by the Federal Highway Administration, but these rules have been rescinded to the extent that they have been superseded.[37]

ANALYSIS OF IMPORTANT RELOCATION ASSISTANCE AND ACQUISITION ISSUES

Legislative Intent and Declarations of Policy

The stated purpose of Congress in enacting the URA was "to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs. . . ."[38] The Act was considered to be necessary to eliminate existing inconsistencies with respect to the amount and scope of payments and to provide for amelioration of the serious and growing problems relating to relocation of persons displaced by public projects.[39] By providing for relocation assistance Congress intended to create a single program to ensure through uniform and equitable treatment that those displaced not be required to incur disproportionate injuries as a result of programs designed for the benefit of the public as a whole.[40]

This Congressional desire to promote uniformity and equity in the treatment of property owners affected by federally funded public projects is reflected as well in its establishment of a set of acquisition policies designed to encourage and expedite acquisition by negotiation, to avoid litigation, to assure consistent treatment of owners and to promote public confidence in land acquisition practices.[41]

Meaning of Key Terms Used in the Act and Regulations

1. *Displaced person.* Because it describes the class of persons eligible to receive the benefits of relocation assistance, the term "displaced per-

son" is one of the most important used in the Act. Generally speaking, a "displaced person" is one who moves himself or his personal property from real property as a result of the acquisition of or written order to vacate the property for a federally funded program or project.[42]

Not surprisingly, the determination as to the extent of the class of persons included within the description of "displaced person" has been the subject of considerable litigation, including one case which reached the United States Supreme Court. In *Alexander v. U.S. Dep't of Housing and Urban Development*[43] the Supreme Court granted *certiorari* to review conflicting interpretations of the term "displaced person" by the Courts of Appeals for the Seventh Circuit in *Alexander*[44] and the District of Columbia Circuit in *Cole v. Harris.*[45] Both *Alexander* and *Cole* involved housing projects acquired by HUD following foreclosure after the projects' sponsors defaulted on federally insured loans. In both instances HUD continued to operate the projects for a time but, after determining that the living conditions had deteriorated to a point where rehabilitation would have been futile, decided to evict the tenants and close the project. The tenants have initiated actions to prevent their eviction until they received full relocation assistance benefits. In *Alexander* the Seventh Circuit Court of Appeals affirmed the District Court's ruling granting summary judgment to HUD and held that the definition of "displaced person" covered only those required to move as a result of programs designed to benefit the public as a whole, not those caused by the failure of a housing project.[46] The district Court in *Cole,* on the other hand, granted summary judgment in favor of the tenants, and the Court of Appeals affirmed declaring that the occupants were "displaced persons" because they were ordered to vacate for a federal program designed to benefit the public as a whole.[47]

The primary issue facing the Supreme Court was the meaning of the phrase "as the result of the written order of the acquiring agency to vacate real property." The parties conceded that the tenants were not moving as a result of HUD's acquisition of the property; therefore, they would be eligible to receive a written order to vacate. HUD contended that the "written order" clause applies only if an agency issues its notice to vacate pursuant to an actual or proposed acquisition of property intended to further a federal program. The tenants read the language as requiring the payment of benefits to any individual receiving a written order to vacate so long as the displacement is for a federal program.

In his opinion for a unanimous Court, Justice Marshall made an extensive review of the legislative history of the Act and determined that HUD's interpretation more nearly reflected the intent of Congress in establishing the relocation assistance program.[48] He found that Congress did not attempt to provide benefits to all persons but rather wanted to afford those affected by the *acquisition* of real property fair and equitable treatment as uniformly as possible. Accordingly, the Court held that the "written order" clause includes only those persons ordered to vacate in connection with the actual or proposed acquisition of property for a federal program.[49] It found that the clause contains two causal requirements: (1) the written order to vacate must result directly from an actual or contemplated property acquisition and (2) the acquisition must be intended to further a federal program or project.[50] In other words, persons directed to vacate property for a federal program cannot obtain relocation assistance unless the agency also intended at the time of acquisition to use the property for such a program or project.[51] Based on this reasoning the decision in *Cole* was reversed and that in *Alexander* was affirmed.

The Supreme Court's holding in *Alexander* is consistent with other federal appellate decisions in which the courts have refused to expand the definition of "displaced person" to include those who are forced to move as a result of HUD foreclosures.[52] The definition does not include those being evicted by private landlords even when the landowner was evicting the tenant for a project for which there was some federal financial assistance,[53] or those required to relocate for projects funded by federal revenue sharing funds.[54] Similarly, those who are being required to relocate as a result of public projects for which the public agency is not acquiring a property right, as when a power company is being forced to relocate its lines to a new location within its existing easement[55] or when tenants are being evicted as a consequence of the enforcement of housing codes,[56] have been found not to be "displaced persons" under the URA.

2. *Federal financial assistance.* Although the definition of "Federal financial assistance" contained in Section 101(4)[57] of the Act broadly states that it includes "a grant, loan, or contribution provided by the United States," [58] the use of federal revenue sharing funds or block grants has been held consistently not to be the type of financial assistance which triggers application of the URA.[59] Nevertheless, if federal funds have been appropriated or designated specifically for the program or project causing the displacement, the displacing state or local agency must comply with the terms of the Act, regardless of whether federal funds contribute to the cost of real property being acquired.[60]

3. *Dwelling.* Although used as a key term in the sections of the URA which describe the relocation benefits to which those who are displaced from their home are entitled, "dwelling" is not defined in the Act itself. The new uniform relocation assistance regulations describe a "dwelling" as including any type of residential unit in which a person permanently or customarily and usually resides.[61]

In order to be entitled to receive benefits under Sections 202, 203, 204, and 206[62] of the Act, a person must be displaced by a public program or project from a dwelling which he actually or constructively occupies. Eligibility for these benefits is primarily dependent on whether the displaced person considers the acquired dwelling to be his home.

In *Ledesma v. Urban Renewal Agcy. of City of Edinburg,*[63] HUD denied the plaintiffs' claim for a housing supplement and other benefit under Section 203[64] on the ground that they had not occupied the dwelling continuously for 180 days before the initiation of negotiations for its acquisition. Plaintiffs contended that after they had constructed the home, they were required to move to another town to find employment, where they rented a home. They stated that they always intended to

return to the acquired dwelling and did in fact live there on weekends and during the summer and never rented it out to tenants. In granting plaintiffs the benefits they sought, the court found that plaintiffs were in constructive occupancy of the dwelling for the required period and that circumstances beyond their control prevented them from occupying it on a continuous basis. HUD's denial of plaintiffs' claim after finding no constructive occupancy was held to be inconsistent with the stated policy that the Act result in fair and equitable treatment of persons displaced by public projects [65] and was found not to be based on substantial evidence.[66]

The Sixth Circuit Court of Appeals also applied the statutory policy of fair and equitable treatment to find a displaced family eligible for Section 203 [67] benefits in *Nagi v. United States.*[68] Plaintiffs in *Nagi* were immigrants from Yemen working in Detroit. At the time of the initiation of negotiations to acquire their home they had been owners for the requisite 180-day period. However, only the husband met the occupancy requirements because the wife and 4 of their 5 children were in Yemen for an extended visit. After being advised of their entitlement to relocation assistance, plaintiffs decided to purchase a replacement dwelling in Yemen. The wife and children occupied the replacement dwelling within the one-year statutory period,[69] but the husband remained in Detroit to continue his employment. Because they lived in separate residences, HUD did not treat plaintiffs as a family unit. Instead, HUD processed the husband's and wife's claims separately and denied them both: the wife's because she did not meet the 180-day occupancy requirement and the husband's because he failed to move within one year. The District Court upheld HUD's ruling. The Court of Appeals reversed, holding that the policy of fair and equitable treatment allows plaintiffs to be considered as a family unit and to be found to be in constructive occupancy of the acquired dwelling where, as in this case, there is no evidence that the husband remained in the United States because the denial of replacement housing benefits required him to maintain his employment in order that he could pay off the loan on the replacement dwelling.[70]

Nevertheless, the constructive occupancy doctrine has not been applied where the displaced owners have never occupied the acquired dwelling, even when they were prevented from doing so only because of a natural disaster,[71] nor when one of the owners has moved out of the dwelling because of a divorce before the initiation of negotiations.[72] However, one court, interpreting a state statutory provision analogous to Section 203,[73] held that a person may be eligible for a housing supplement to replace the acquired dwelling even if he owns another home so long as he actually treated the acquired dwelling as a home.[74] While these cases provide specific examples of decisions where courts have applied or rejected application of the constructive occupancy doctrine, they also indicate that the law is far from clear and that determination of eligibility for payments in the absence of actual occupancy tends to be on a case-by-case basis.

4. *Owner.* Ownership of a dwelling is a prerequisite to obtaining the maximum statutory benefits available to a person displaced from a dwelling by a public project. However, none of the terms "owner," "owned," or "ownership" are defined in the URA itself. The new uniform regulations include within the meaning of "owner of a displacement dwelling" all those who have a right to remain on the acquired property for life or by virtue of a long term lease with at least 50 years remaining and also give the acquiring agency discretion to treat other property interests as being equivalent to ownership.[75]

Clearly, a person must have some ownership interest in the property being acquired for at least 180 days prior to the initiation of negotiations to be eligible to receive a housing supplement and the other benefits provided by Section 203.[76] This interest can even be one which was acquired by oral gift if permitted under state law and if adequate proof of ownership is presented to the acquiring agency,[77] and the phrase "dwelling actually owned and occupied" has been interpreted to include a person who had a fee ownership in the dwelling although only a 15-year lease on the underlying land.[78] However, the courts have not applied the URA retroactively, so that persons who sold their property to the acquiring agency prior to the effective date of the Act and chose to remain on the property as tenants are eligible, if at all, only for benefits under Sections 202 and 204 [79] upon their being required to move after the Act took effect.[80]

5. *Comparable replacement dwelling.* The supplemental housing payment to which a displaced owner is entitled under Section 203 [81] includes a sum which, when added to the cost of the dwelling being acquired by the public agency, equals the reasonable cost of a comparable replacement dwelling. A "comparable replacement dwelling" is defined in the uniform regulations as one which is decent, safe and sanitary, functionally similar to the acquired dwelling, in an area not subject to unreasonable adverse environmental impacts, in a location not generally less desirable than the location of the acquired dwelling with respect to public utilities, commercial and public facilities, reasonably accessible to the person's place of employment, typical in size for residential development with normal site improvement, currently available on the market, and within the displaced person's financial means.[82]

Although comparable replacement housing must conform with all the elements contained in the definition, it need not be identical to the acquired dwelling.[83] While replacement housing must be reasonably accessible to the displaced person's place of employment, it does not have to be in the immediate neighborhood of the acquired dwelling, or even in the same country,[84] nor does it have to be of the same type, for example, a mobile home, as the acquired dwelling.[85]

6. *Improvements located upon the real property.* Section 302 [86] of the URA requires a public agency which acquires an interest in real property to acquire at least an equal interest in all buildings, structures, or other improvements which must be moved or which will be adversely affected by the public use.[87] In order to receive federal financial assistance, State agencies must give assurances that they will be guided by this requirement to the greatest extent practicable under state law.[88]

Much of the litigation arising from the application of Section 302[89] has involved outdoor advertising structures. In *Whitman v. State Highway Commission of Missouri,*[90] the plaintiffs owned outdoor advertising signs located on a parcel of land which was being acquired by the State for a Federal-aid highway improvement project. After obtaining title to the underlying land, the State ordered plaintiffs to remove the signs without paying them compensation. Plaintiffs then bought an action for declaratory relief and an injunction requiring the State to comply with the provisions relating to real property acquisition policies contained in Sections 301–305[91] of the Act and for compensation under Section 302.[92] The Court found that the state had given assurances to the Federal Highway Administration that it would comply with the provisions of the URA with respect to all parcels acquired after January 2, 1971, and held that the language of Section 305[93] made the provisions of Sections 302[94] applicable to the State, that Section 302[95] requires the acquisition of structures, that billboards are structures and that the State must acquire and pay plaintiff just compensation for all billboards located on property acquired after January 2, 1971.[96]

Following *Whitman,* the Missouri courts have held that under Section 302[97] outdoor advertising signs are real property for condemnation purposes[98] and that the condemnor must pay just compensation if it, in fact, acquired possession of the signs even if their tenant-owner had previously been evicted from the property by the landlord in an attempt to defeat the tenant's right to just compensation.[99] Other jurisdictions when making determinations as to whether structures or improvements are realty or personalty have looked to state eminent domain law and concluded that the provisions of Section 302[100] do not change the character of the property to reality if it is considered to be personally under state law, even though the URA may require the condemning agency to acquire and pay just compensation for the structures or improvements.[101] The South Carolina Supreme Court carried this rationale even further in *Creative Displays v. South Carolina Highway Department*[102] where it rejected the *Whitman* view and concluded that because billboards are personal property under state law and not compensable in condemnation and because Section 102[103] states that the URA creates no elements of value or damage not previously in existence, Section 302[104] does not apply to billboards and, therefore, they need not be acquired by the condemnor.[105]

Requirements of Establishing Eligibility to Receive Benefits

Not all persons who relo' e from dwellings, businesses, or farms situated on real property acquired for a public project are entitled to receive relocation assistance. To be eligible under the Act, a person must be able to show occupancy of the acquired property either on the date the negotiations for its purchase were initiated or on the date title passed to the acquiring public agency. Thus, a person who moves in mere anticipation that the property will be acquired for a public project is not within the class of displaced persons who may obtain the benefits of the Act.

In *Messer v. Virgin Islands Urban Renewal Bd.,*[106] plaintiff was the owner of a dry cleaning business which he operated in a building which he leased from the landowner. After a public hearing the urban renewal board determined that plaintiff's business was located on property which it intended to acquire for an urban renewal project. The board sent a letter to plaintiff and the owners of other affected businesses that in the event of the displacement of their businesses they would be entitled to receive relocation benefits. The letter went on to warn the addressees that a move prior to a specific date could jeopardize their entitlement to benefits and urged them to contact the board before making any move. Sometime later, without contacting the board, plaintiff leased a building in another location outside the project area and moved his business to it. He then filed a claim for relocation assistance. The District Court dismissed plaintiff's action, and the Court of Appeals affirmed holding that a person who moves before receiving a formal notice of intent to acquire the property is not entitled to benefits under the URA. The court reviewed the legislative history of the Act and concluded that Congress did not intend that mere announcement of a project or the inclusion of property within the geographic boundary of a plan would be sufficient to trigger payment of benefits and that Congress desired to limit the application of the URA to the acquisition context.[107] Thus, actual or constructive occupancy on the date the public agency formally announces its intention to acquire the property for the proposed project is a prerequisite to receiving relocation benefits even if the person actually owns the property on that date.[108]

To obtain eligibility for benefits a person need not be in occupancy on the date the public agency initiates its negotiations to acquire the property so long as ocupancy can be established on the date the entity is entitled to possession. In *Tullock v. State Highway Commission of Missouri,*[109] plaintiff began renting a house after its owners had commenced negotiations with the State for the acquisition of the property for a highway project. Approximately 2½ years later, the State obtained title to the property after which it brought suit to evict her. In response, plaintiff sought an injunction to prevent her eviction until she was provided with relocation assistance. The District Court denied her motion for a preliminary injunction on the ground that the United States Department of Transportation regulations denied eligibility to receive relocation assistance to those persons who entered occupancy of the property after the initiation of negotiations to acquire it. The Court of Appeals reversed, holding the regulation invalid as going beyond the specific language of the statute. After reviewing the provisions of the entire Act, the court concluded that Congress intended that all persons who move from real property as a result of its acquisition be entitled to reimbursement of moving expenses and advisory assistance regardless of the date their occupancy commenced because, unlike Sections 303[110] (housing supplement) and 204[111] (rental supplement), Sections 202[112] (moving expenses) and 205[113] (advisory assistance) do not require occupancy for any specific period prior to acquisition.[114]

The *Tullock* rationale has not been extended to eliminate the requirement of occupancy on the date ownership passes to the agency where the tenant commences occupancy knowing that the property has been conveyed to the public agency.[115] Nevertheless, the California Court of Appeal, in interpreting an analogous state statute, has held that a person who rents an apartment without knowledge that it is owned by the State is eligible for reimbursement of moving expenses upon receiving subsequent notice to vacate.[116]

Eligibility to receive relocation assistance is limited to those persons who move as a result of the *acquisition* of the property for public use. Tenants who move because of the expiration of their lease on property which has been previously acquired by the public agency are not entitled to receive benefits even if the tenancy commenced before title passed to the acquiring entity.[117] The California Court of Appeal has gone further by indicating that a person who is evicted for nonpayment of rent forfeits his status as a displaced person even though he would have otherwise been eligible.[118] However, the fact of acquisition alone does not necessarily trigger eligibility. A tenant who is not ordered to move by the acquiring agency gets no benefits,[119] and eligibility is predicated on the acquisition of the property by the public agency as being for a public project. In *Day v. City of Dayton, Ohio,*[120] the plaintiffs, who were owners and tenants of homes located near the Dayton Airport, requested the City to buy their homes because they could no longer tolerate the airport noise. After investigating plaintiffs' complaints, the City concluded that the property was not needed for the safety of the airport but did tell plaintiffs that they would make every effort to purchase their property. Plaintiffs and the City eventually agreed on a price, and the City bought the property. Plaintiffs then sued the City for reimbursement of certain relocation expenses under the URA. The Court, after finding that the property was not needed by the airport for safety reasons and that plaintiffs had voluntarily initiated the negotiations which resulted in the sale of their property, held that plaintiffs were not "displaced persons" under the URA because there was no connection between a federally assisted program or project and the acquisition of their property.[121]

Although the right to receive relocation assistance is not limited to those persons whose property is acquired by the actual exercise of the power of eminent domain,[122] the *Day* opinion is illustrative of judicial reluctance to extend eligibility to those persons displaced from property which is not specifically required for a project and in order to obtain which the agency would not have resorted to use of its condemnation power. In *Shephard v. Dept. of Community Corrections,*[123] the County negotiated a 5-year lease with a landlord for the use of two houses for office space. After executing the lease, the landlord required the existing tenants to vacate the property in order that the County could take possession. The County denied the tenants' claims for relocation assistance, and they filed suit. The Supreme Court of Oregon held that the tenants were not entitled to relocation assistance, even though the County did acquire an interest in real property which it intended to use, because the acquisition was not of a site which was specifically needed for a public program or project. The Court concluded that the rental office space did not constitute an acquisition for a program or project in the sense used in the relocation act because there was no indication that the County would have resorted to use of its eminent domain power if its negotiations to acquire the leasehold had failed.[124]

Eligibility of Persons Indirectly or Consequentially Displaced

It is now settled that in order to be eligible for relocation assistance a person must be in at least constructive occupancy of the property at the time it is acquired and must move as the result of an acquisition of the property which is necessary for a public project. However, a person who meets these criteria may be eligible to receive benefits even if the move is not from the actual parcel of property being acquired by the public agency. In *Beaird-Poulan Division v. Dep't. of Highways,*[125] the State acquired by expropriation approximately 3 acres from a 17-acre parcel owned by plaintiff and on which it operated a chain saw manufacturing plant. Although no part of plaintiff's plant facility was physically located on the portion of its land which was taken for the highway, at the time of the acquisition plaintiff had determined that it would have to make a substantial physical expansion of its plant in order to meet the rapidly increasing demand for lightweight chain saws. Plaintiff intended to accomplish this expansion by using the 3 acres taken for the highway. When this became impossible, plaintiff purchased another site to which it moved its manufacturing and assembly operations. The State denied plaintiff's claim for moving and related expenses contending that plaintiff was not a displaced person because it did not move personal property from the parcel of land actually taken for the highway. After reviewing the legislative history of the Act, the court held that plaintiff was a displaced person as defined in the Act because it moved personal property from real property as a result of the acquisition of a part of that real property for a federally funded project.[126] Thus, a person who moves from real property as a consequence of the acquisition of a portion of that property is eligible to receive relocation benefits even if nothing is moved from the parcel actually taken.

Eligibility of Persons Remaining on Real Property as Tenants after Acquisition

Although a holdover tenant in possession is not entitled to receive relocation assistance if the acquiring public agency does not require him to move or if he moves as a result of the expiration of the lease,[127] the rule is otherwise if he is subsequently ordered to vacate the premises for the construction of the project while in lawful possession, even if he has entered into a new lease with agency. In *Superior Strut & Hanger Co. v. City of Oakland,*[128] plaintiff, a manufacturing company, was a tenant in a building owned by the Oakland Dock and Warehouse Company. The Port of Oakland acquired the parcel by negotiation for the purpose of constructing a marine terminal facility. Because the demolition of the building was not immediately necessary, the Port continued to rent the

property to plaintiff for over 3 more years, accepting rent from plaintiff for periods beyond the expiration of the lease term. Finally, plaintiff moved to another parcel owned by the Port and filed a claim for reimbursement of relocation costs. The Port refused payment on the ground that plaintiff had moved as a result of the termination of the landlord-tenant relationship and not the acquisition of the parcel. The California Court of Appeal rejected the Port's contentions after finding that at the time it acquired the property the Port told plaintiff that it would eventually demolish the buildings for the project but that it would continue to rent to plaintiff during the interim period. The court held that plaintiff was eligible for relocation assistance because it did move as a result of the acquisition and a written notice to vacate.[129] Similarly, persons who are eligible for benefits as owner-occupants when their property is acquired retain these benefits even if they enter into short-term leases with the acquiring agency until actually required to vacate.[130]

Eligibility of Utility Companies to Receive Reimbursement of Relocation Costs

Utility companies are frequently required to relocate facilities which they maintain in public streets in order to permit the construction of a variety of public projects which result in the widening, realignment, or vacation of public streets and highways. Under the common law rule, a public utility accepts franchise rights in public streets subject to an implied obligation to relocate its facilities at its own expense when required to do so for the construction of a public project.[131] However, with respect to Federal-aid highway projects, federal funds can be used to reimburse a state for the cost of relocating a utility's facilities if the payment to the utility is not contrary to state law or a contract between the utility and the state.[132] After the enactment of the URA, many utility companies claimed that the forced relocation of their facilities for a public project made them "displaced persons" entitled to the benefits of the Act. The United States Supreme Court was confronted with this issue in *Norfolk R. & H. Auth. v. Chesapeake & Potomac Tel.*[133] which arose after the redevelopment authority refused to reimburse the telephone company for the relocation of its transmission facilities necessitated by street realignment for an urban renewal project. Justice Rehnquist, writing for the court, concluded that by enacting the URA Congress intended to address the needs of tenants and owners of dwellings and businesses and not the separate problem posed by the relocation of utility service lines. He reasoned that because the reimbursement of utility relocation costs is covered by Title 23, Section 123 of the *United States Code*, which was not repealed or superseded by the URA, the common law principle remains unchanged. Under applicable Virginia law a franchise agreement allowing utilities to place their facilities in public streets is revocable at will and creates no property rights in the utility.[134] The Court held that C&P was not a "displaced person" under the Act and therefore, was not entitled to reimbursement of any of its relocation costs.[135]

The majority of courts which have addressed this issue have likewise concluded that neither the URA nor the state relocation acts create any rights in utility companies to obtain reimbursement for the cost of relocating facilities which they maintain in public streets under license or franchise agreements.[136] If, on the other hand, the utility is being required to move any of its facilities from a parcel in which it has a recognizable property right, such as an easement or fee, it is a displaced person eligible for relocation assistance benefits [137] and utilities may be entitled to compensation in states which have enacted legislation encouraging payment of relocation costs in order to take advantage of federal reimbursement.[138]

Benefits Available to Businesses and Farms

Under the URA, the owners of businesses and farms are entitled to receive reimbursement of moving and related expenses as well as relocation assistance advisory services.[139] Moving and related expenses include actual reasonable expenses in moving the business, farm operation or other personal property, actual direct losses of tangible personal property as a result of moving or discontinuing the business or farm up to an amount not exceeding the actual reasonable cost to move the property and the actual reasonable cost of searching for a replacement business or farm.[140] In certain situations a displaced person may elect to receive a fixed payment between $2,500 and $10,000 based on the average annual net earnings of the business or farm operation in place of reimbursement of actual expenses.[141]

Reimbursement of Moving Expenses

The new uniform relocation assistance regulations list in some detail the types of moving expenses for which a displaced business is entitled to reimbursement. In general, these allowed costs include: transportation for moving personal property; packing and unpacking of personal property; disconnecting and reconnecting machinery, equipment, and other personal property including connection to utilities and the cost modifying or adapting the personal property to the replacement site and adapting the utilities to the personal property; necessary storage of personal property; insurance; licenses, permits or certifications required at the replacement site; professional move planning services; relettering signs and replacing stationery; purchase of substitute personal property limited to the cost of moving and replaced item; and those incurred in searching for a replacement location.[142] However, a displaced person is not entitled to payment for: the cost of moving any real property in which the person retains ownership; interest on loans to cover moving expenses; loss of goodwill, profits, or trained employees; additional operating expenses incurred at the new location; personal injuries; costs of preparing a claim for payment; expenses incurred in searching for a replacement dwelling; physical changes to the real property at the replacement location; or storage costs on property owned by the displaced person.[143]

Interpreting similar regulatory provisions, the court in *Robzen's Inc. v. U.S. Dep't of Housing* [144] allowed plaintiff to obtain reimbursement for license and permit costs, professional planning and preparation services, and search expenses while denying a claim for compensation of

the cost of reassembling, reconnecting, and reinstalling equipment replacing that acquired by the public entity, the cost of purchasing equipment as a substitute for that acquired, and the projected loss of profit on its stock resulting from the added shipping distance to its new location.[145] Thus, expenses incurred in installing and adapting the relocated equipment to the replacement site and, if allowed by regulation, in making physical changes to the replacement site to accommodate the relocated machinery and equipment can be reimbursed, but the cost of upgrading the replacement site to fit the displaced person's business operation will be disallowed.[146] Moving expenses have also been held to include the cost of making rental payments on two sites during the course of a complex move as well as the cost of utilities incurred during a 3-week span during which the displaced person had to shut down the business to complete the move.[147]

Damages for Loss of Tangible Personal Property

In addition to reimbursement of actual reasonable moving expenses, a displaced business is also entitled to a payment for actual direct losses of tangible personal property resulting from the moving or discontinuing of a business or farm.[148] The amount of the loss is measured by the lesser of the fair market value of the item for continued use on the acquired property less the proceeds received from its sale, or the estimated cost of moving the property to the replacement site.[149] But what if the business on the acquired property is of such a nature that it cannot be moved? This was the question that faced the California Court of Appeal in *Baldwin Park Redevelopment Agency v. Irving.*[150]

In *Baldwin Park,* the agency decided to acquire two parcels most of which were occupied and used as a "junkyard" for a business engaged in the acquisition and dismantling of automobiles for sale as parts and scrap metal. The inventory of the business consisted of approximately 400 bodies of vehicles and their component parts. The vast majority of the customers of the business were those living within a 12-mile radius of the property. Approximately 80 percent of the total sales were a result of repeat business. After being notified of the proposed acquisition, the business owner began searching for a replacement site but was unable to find one even after expanding the search beyond the 12-mile radius. At trial, the owner contended she was entitled to be compensated for the diminution in value of the inventory resulting from her inability to relocate the business and offered to introduce evidence to prove the difference between the fair market value of the inventory and the amount she received for scrap value. The agency's motion to exclude this evidence was granted. On appeal, the court held that because the trial court found that the business could not reasonably be relocated because of the condemnatory act of the agency, the owner was entitled to receive just compensation measured by the diminution in value of the inventory.[151] In rejecting the agency's argument that the benefits contained in the relocation assistance act provided the exclusive remedy for recovery of losses of tangible personal property resulting from a displacement, the court found that the act was not applicable to the instant case because its provisions are not an adequate substitute for the constitutional requirement of just compensation.[152]

Fixed Payment for Business Moving Expenses

Instead of receiving reimbursement of actual reasonable moving and related expenses, a displaced business owner who cannot relocate the business without a substantial loss of existing patronage and who is not the owner of at least one other enterprise not being acquired which is engaged in the same or similar business may elect to receive a fixed payment between $2,500 and $10,000 in an amount equal to the average annual net earnings of the business.[153] This optional benefit, known commonly as an "in-lieu" payment, was included by Congress particularly to assist "mom and pop" businesses and owner-occupants of small multifamily dwellings who may lose their primary source of livelihood as the result of the displacement.[154] The regulations implementing the statute permitting the "in-lieu" payment restrict its applicability to those businesses which contribute materially to the income of the displaced person and set standards for determining the number of businesses being displaced, for circumscribing the eligibility of displaced farm operations and nonprofit organizations and for calculating the average annual net earnings of the displaced business.[155]

A displaced person operating a business may receive a fixed payment in lieu of actual reasonable moving and related expenses only if the agency determines that the business cannot be relocated without a substantial loss of its existing patronage.[156] Thus, a business cannot receive a fixed payment if it only had to move three blocks away and could have notified its clients of the move by mail,[157] or if it moved into expanded facilities where its net earnings were increased.[158] However, a person who can relocate or continue operating the business, only under conditions which would be economically unsound, is eligible to receive a fixed payment upon discontinuing the business.[159]

In addition, before it may make a fixed payment, the agency must be satisfied that the business is not part of a commercial enterprise having at least one other establishment engaged in a similar business, that is, a chain operation. A person who operated gas stations on two separate parcels, one of which was acquired, was denied benefits under the chain operation rule where the stations were leased from the same oil company, sold the same products, and were operated under the same name even though the records were kept separately.[160] On the other hand, a business owner who operated two mobile home parks, one as a partnership and one as a corporation, was not precluded from receiving a fixed payment under this rule where there was no evidence that they were operated as a chain.[161] Likewise, the rule does not prevent recovery of an "in-lieu" payment by a business which purchases and commences operation at a replacement location before it is actually required to discontinue its operation on the acquired property.[162]

Once the agency is satisfied that a person qualifies for a fixed payment, it must determine the amount based on the average annual net earnings

of the business during the two taxable years immediately preceding the year of the move or some other equitable period within its discretion.[163] However, if the earnings of the business are such that they do not contribute materially to the income of the displaced owner, eligibility to receive an in-lieu payment may be denied.[164] Thus, the fixed "in lieu" payment provides reimbursement not only for moving expenses but also for loss of goodwill.[165] It does not, however, compensate a displaced person for the loss in value of equipment removed from the acquired property and sold as scrap.[166]

Extent of Obligation to Provide Relocation Assistance Advisory Services

Section 205(a) [167] of the URA requires the head of the federal agency to provide a relocation assistance advisory program whenever the acquisition of real property for a federal program or project will result in the displacement of any person. This program must include whatever measures, facilities, or services are necessary or appropriate to (1) determine the need of displaced persons for relocation assistance, (2) provide continuing information on the availability and prices of comparable residential and commercial properties and business locations, (3) assure the availability of a sufficient number of comparable replacement dwellings within a reasonable period of time prior to displacement, (4) assist the displaced person in obtaining and becoming established in a suitable replacement location, (5) supply information on federal and state housing, loan and other assistance programs, and (6) provide other advisory services in order to minimize hardships to those adjusting to relocation.[168]

A public agency which establishes a relocation assistance advisory program has an obligation to determine the relocation needs and preferences of each displaced person; to explain all procedures and eligibility requirements, including the extent and types of benefits for which the person is eligible; and to interview each displaced person.[169] The agency must also provide current and continuing information on the availability, price, and location of comparable replacement properties, as well as the availability of other state and federal assistance programs, and give such other help as may be appropriate.[170] With respect to persons displaced from their homes, the agency has a special duty to explain to these persons that they cannot be required to move unless at least one comparable replacement dwelling is made available; to inform each person of the basis for calculation of the maximum replacement housing payment; to ensure that the replacement dwelling is decent, safe, and sanitary; to make every effort to give minorities an opportunity to move into an integrated housing area; and to offer to each person transportation to inspect the replacement housing.[171]

Although a displaced person must be provided an opportunity to purchase or lease a comparable replacement dwelling, the displacing agency is not required to actually obtain and tender a replacement parcel.[172] In *Pietroniro v. Borough of Oceanport*,[173] the owner of a combination package store, bar, and tenement business brought an action for damages, and declaratory and injunctive relief against the City and certain public officials who were administering its urban renewal program, claiming that the City had illegally deprived him of his property by its failure to provide effective relocation assistance advisory services. Plaintiff had operated his business from a location in the downtown business district which eventually became a blighted area consisting of a few small businesses, gas stations, and abandoned properties. The City decided to renovate the area and created an urban renewal plan which was eventually approved by HUD. The plan called for the conversion of the former central business district into a residential neighborhood. After extended hostile negotiations, the City finally acquired plaintiff's property by condemnation and paid him over $37,000 in relocation assistance payments. Plaintiff was referred to five alternative locations and several real estate brokers in an attempt to relocate the business. Plaintiff refused all of the suggested locations because he contended that the only feasible alternative location was one which lay essentially across the street from his former location. However, plaintiff could not have established his business at that desired location because it was zoned for residential use, and the City would not grant a variance. After trial, the jury awarded damages to plaintiff in excess of $197,000, and the District Court entered judgment on the verdict. The Court of Appeals reversed holding that the City had performed its obligation to provide advisory assistance to plaintiff and was not required to offer him a parcel which was zoned for residential use. The court found that the urban renewal agency was powerless to rezone the parcel because a variance could only be granted by the City's board of adjustment. The City's eventual decision to grant a variance on the parcel for a doctor's office instead of a bar was not an abuse of discretion entitling plaintiff to relief.[174]

With respect to persons displaced from businesses and farm operations, the purpose of an advisory program is to provide assistance, not to guarantee success in finding a replacement site, and the acquiring agency will be found to have complied with the statutory requirements so long as it acted in good faith even if the replacement sites are inferior to the acquired site or have a higher rental rate.[175] Nevertheless, the agency has an obligation to deal fairly with a displaced person and may not refuse to provide him with the only sites on which it would be economically practicable to relocate his business by conveying those sites to others for political reasons.[176]

Obligation to Provide Last Resort Housing

Under the provisions of the URA no person may be required to move from his dwelling on account of any federal project unless the head of the displacing agency is satisfied that a comparable replacement dwelling is available to him.[177] If a project cannot proceed to construction because of the lack of availability of comparable replacement sale or rental housing, the agency head may provide the housing by use of funds authorized for the project.[178] The agency head is given broad authority to act and is not limited to the use of any particular methods of providing this "last resort housing" although the following are recognized as acceptable

solutions to remedying the shortage: rehabilitating or expanding the size of an existing dwelling, constructing a new dwelling, providing a direct loan, making a replacement housing payment in excess of the statutory limits, relocating and rehabilitating a dwelling, purchasing land or a dwelling for sale, lease or exchange with a displaced person, or making a dwelling habitable by removing barriers to the handicapped.[179] However, a displaced person is not required to accept last resort housing provided by the agency in place of any acquisition or relocation payment for which he is otherwise eligible.[180]

The broad discretion given to a displacing agency to provide last resort housing does not permit it to construct new housing if there is an adequate supply of existing housing available.[181] Likewise, the agency is not required to construct new housing if it can assure availability of replacement housing by other means, including making a payment in excess of the statutory limits.[182] While the replacement housing provided by the agency must be reasonably accessible to the displaced person's place of employment, it need not be in the same neighborhood or even in the same city or county as the acquired housing,[183] and there is no requirement that the replacement housing be of the same type as the required housing, so long as it is comparable.[184] However, the relocation plan must be carried out in a manner that results in the minimum disruption of neighborhoods.[185]

Compliance by state agencies with the last resort housing provisions is enforced by the requirement that the state agency must assure the federal agency head that comparable replacement dwellings will be available to displaced persons within a reasonable period of time prior to displacement as a condition to receiving federal financial assistance.[186] The purpose of these assurances is to protect persons displaced under federal law,[187] and they must apply specifically to the project causing the displacement.[188] It has been held that a state has made adequate assurances where it prepared an extensive relocation plan based on a study in which displacees were interviewed and their needs tabulated, made a spot check of 5 percent of the available housing area, and took into consideration the availability of financing.[189]

In some situations, even a detailed analysis of housing availability may not be sufficient. In *Keith v. Volpe,*[190] plaintiffs brought suit to enjoin construction of a freeway until state and local officials had complied with state and federal environmental protection acts and the URA. They contended, *inter alia,* that adequate replacement housing for those being displaced by the project was not available and that the housing availability studies prepared by the state were inaccurate. The project, known as the Century Freeway, stretches for a distance of approximately 17 miles across the southern portion of the densely populated Los Angeles basin. In order to prepare the replacement housing availability studies, the State divided the project into five segments. It then conducted extensive surveys which produced detailed information on the needs of the people who would be displaced: the number in each segment of the corridor, the percentage who wanted to relocate in the vicinity of their old homes, and the market value of homes as well as the number of rooms and rental rates of apartments. The study also included information about available housing, its quantity, market or rental value, its proximity to public transportation, as well as the impact of other public works projects and the effect of racial discrimination on the availability of replacement housing. In calculating the availability of replacement homes in any one year, the State used the average annual turnover rate. In determining the quantity of available replacement rental housing the State divided the apartments into categories based on rent instead of number of rooms and did not indicate whether the housing was decent, safe, and sanitary. After reviewing what the State had done, the court granted a preliminary injunction stopping all further work on the project and required the state to amend its existing studies after (1) considering that people other than those displaced by the project would seek housing in the relevant market, (2) considering that housing would be demolished by construction of the project, (3) gathering data on the number of rooms and decent, safe, and sanitary condition of rental units, and (4) considering the effect of increased payments under the URA and replacement housing constructed by the State in connection with the project.[191]

Right to Administrative Appeal

In administering the provisions of the URA the head of each federal agency is authorized to establish regulations to assure that any person aggrieved by a determination as to eligibility for a payment or the amount of a payment may have his application reviewed by the head of the federal or state agency having authority over the project.[192] This provision of the Act was included by Congress as an alternative to judicial review.[193]

Adequacy of Appeal Procedure

The new uniform regulations outline the appeal procedure to be followed by the acquiring agencies. Under this procedure, an aggrieved person is permitted to file a written appeal challenging a determination as to eligibility for, or amount of, a payment, the agency may set a reasonable time limit not less than 60 days for the filing of an appeal, the person appealing has a right to be represented by legal counsel, the agency must permit inspection of all relevant nonconfidential documents, the agency must consider all relevant information in deciding the appeal, and after considering the appeal the agency must promptly make a written determination of the appeal including an explanation of the basis for the decision and a statement of the right to seek judicial review.[194]

The actual format of the administrative appeal process varies from state to state. At least one state permits relocation assistance claims to be considered by the board of viewers appointed by the court to determine just compensation in an eminent domain action.[195] In others, the agency may appoint a committee or board to conduct a hearing to consider the appeal [196] or have the displaced person's claim presented to an administrative hearing officer.[197] But whatever procedure is used, the agency

must publish and disseminate to the public its regulations which outline the procedure [198] and should ensure that the procedure provides an adequate forum which includes the taking of testimony and fact finding and allows the displaced person an opportunity to be heard.[199]

Exhaustion of Administrative Remedies

Because the URA and implementing regulations provide for an extensive administrative procedure for the review of claims under the Act, courts have generally required that a person exhaust these administrative remedies as a condition of obtaining judicial review of disputes relating to relocation assistance.[200] A displaced person has no separate cause of action to recover benefits granted by the relocation assistance acts, and judicial consideration of claims relating to the denial or determination of benefits is limited to the review of prior administrative determinations.[201] In the federal system the District Court, not the Court of Appeals, has jurisdiction to review these agency decisions.[202]

Application of the doctrine of exhaustion of administrative remedies is limited to disputes arising from the determination of eligibility for or amount of benefit payments. If the displaced person is seeking equitable relief or if the dispute arises from the administration of the relocation assistance program, formal presentation of an appeal to the displacing agency is not a prerequisite of judicial review.[203] Courts have also heard claims directly in situations where exhaustion of administrative remedies would have been futile,[204] where the agency has not published or made available its regulations which outline the appeal procedure [205], or where no adequate procedure for reviewing and handling claims has been established.[206]

Uniform Policy Regarding Real Property Acquisition Practices

In addition to providing monetary benefits to alleviate the financial hardships imposed on persons displaced by federally funded projects, Congress in enacting the URA also provided for a comprehensive policy to ensure the fair and consistent treatment of property owners by public agencies during the process of acquiring land for the construction of these projects. Title III of the Act contains a statement of uniform real property acquisition policies outlining recommended acquisition practices,[207] requires the acquisition of all buildings, structures, and other improvements located on the land being acquired,[208] provides for the payment of certain incidental expenses on acquisition,[209] and allows the recovery of litigation expen ; in inverse condemnation actions and in eminent domain actions whic.. result in a judgment in favor of the owner or which are abandoned by the condemning agency.[210] The provisions of Title III are made applicable to state agencies that acquire property for a federally funded program or project by Section 305,[211] which prohibits the authorization of expenditure of federal funds until the head of the administering federal agency receives satisfactory assurances that the state's acquisition of real property will be guided, to the greatest extent practicable under state law, by the statutorily recommended uniform acquisition practices and the requirements relating to acquisition of improvements and that property owners will be reimbursed for incidental and litigation expenses where required by statute.

Effect of Failure to Follow Prescribed Acquisition Practices

Congress made Section 301 [212] an integral part of the URA to provide guidelines for acquiring agencies in order to encourage and expedite acquisition by agreement thereby avoiding litigation and relieving court congestion, to assure consistent treatment of owners whose property may be acquired by various federal programs, and to promote public confidence in land acquisition practices.[213] The statute outlines nine specific policies which agencies are to follow in acquiring real property: (1) make every reasonable effort to acquire the property quickly by negotiation, (2) appraise the property before beginning negotiations and allow the owner to accompany the appraiser, (3) establish just compensation before making an offer in the full amount established and provide the owner with a written summary of the basis for the amount, (4) allow the owner to remain in possession until payment of the purchase price or deposit into court, (5) schedule construction so that occupants of dwellings, businesses, and farms have at least 90 days written notice to vacate, (6) adjust the rent charged to holdover tenants to reflect rental value for short-term occupancy, (7) take no coercive actions to force agreement on the purchase price, (8) institute formal condemnation proceedings rather than force the owner to file an inverse condemnation action, and (9) acquire all uneconomic remnants.[214]

Although Congress clearly intended that acquiring public agencies follow these policy provisions, they are in effect only recommendations or guidelines, because they create no rights on the part of displaced persons or liabilities on the part of the public agencies and have no effect on the validity of any property acquisitions whether completed by purchase or condemnation.[215] Courts have consistently interpreted the acquisition policies to be merely guidelines and have refused to hear actions brought by persons attempting to force compliance by the acquiring agency.[216] In *Paramount Farms, Inc. v. Morton,*[217] plaintiffs sought to enjoin the prosecution of a condemnation action until the agency had complied with the acquisition guidelines contained in Section 301.[218] The District Court dismissed the action on the ground that it lacked jurisdiction to review compliance with the guidelines.[219] The Court of Appeals affirmed, holding that the acquisition policies are only guidelines to be followed to the greatest extent practicable and that by including the provisions of Section 102(a) [220] in the URA Congress expressly indicated its desire to deprive the courts of jurisdiction and to preclude judicial review.[221]

Although the statute itself expressly precludes the creation of rights or liabilities as between property owners and public agencies based on the failure to follow the acquisition policy provisions, compliance by a state or local entity is required as a precondition to obtaining federal funding and will be enforced by the courts. In *City of Columbia, S.C.*

v. Costle,[222] the city brought an action against the Administrator of the Environmental Protection Agency for reimbursement of funds expended for construction of a waste water facility. The city had applied to the ERA under the Clean Water Act for a construction grant that would reimburse a portion of the cost of building a sewer line to the waste water facility. The grant was awarded on the condition that the City comply with the provisions of the URA. The City claimed that the URA was not applicable because no person would be displaced, no federal money was being used for right-of-way acquisition, and it would be impracticable to comply with the acquisition policy requirements. The District Court agreed with the City's position and entered judgment in its favor. The Court of Appeals reversed holding that Section 305[223] requires compliance by state and local agencies with the acquisition policies regardless of whether any person will be displaced and whether any federal funds were used for right-of-way acquisition so long as the project results in the acquisition of real property. The fact that compliance with the acquisition policies may be uneconomical does not relieve the City from compliance because by using the term "practicable" Congress meant "to the fullest extent legally capable."[224]

The requirement that a state or local agency comply with the acquisition policies as a condition of receiving federal reimbursement has been interpreted by one court as indirectly creating a right in displaced persons to enforce compliance with the policies. In *Bethune v. United States, Dep't of Housing & Urban Dev.,*[225] the County entered into a contract with HUD to obtain funding for an urban renewal project. The County assured HUD that it would provide relocation assistance and comply with the acquisition policies and incorporated the provisions of the URA into the contract. After it failed to acquire the property necessary for the project by negotiation, the County filed eminent domain actions. In response, plaintiffs filed an action to enjoin the condemnation alleging that the County had failed to negotiate with them, failed to allow them to accompany the County appraisers on their inspection of the property, and failed to provide them with a statement of summary of the basis for the appraisals. The District Court held that plaintiffs were the third party beneficiaries of the contract between the County and HUD because the incorporation of the URA into the contract required the County to comply with its terms. The court then enjoined the County from further prosecution of the eminent domain actions and ordered the actions dismissed without prejudice until the County complied with the acquisition policy provisions.[226] Other federal courts have specifically rejected this approach, stating that because the statute specifically precludes judicial review of acquisition practices, the standards cannot be enforced by use of a breach of contract theory.[227]

Noncompliance by the agency with specific policy provisions has little effect on the validity of a condemnation action. The failure to allow the owner to accompany the agency's appraiser on his inspection of the property does not affect the admissibility of the appraisal into evidence nor does it preclude the appraiser from testifying at trial.[228] Similarly, a public agency is not required to provide relocation assistance or a hearing as a precondition to instituting an eminent domain action or obtaining the right to possession of the property,[229] although tenants of dwellings must be offered relocation assistance before they can be physically evicted.[230] The provision in Section 301(3)[231] requiring a statement and summary of the appraisal does not entitle the property owner to a copy of the full appraisal,[232] and the general policy of providing consistent treatment of property owners does not allow the condemnee to introduce into evidence the prices paid by the condemnor for other parcels acquired for the project.[233] The displacing agency need not wait until 90 days before commencement of construction of the project to give the written notice to vacate required by Section 301(5).[234] However, prosecution of an eminent domain action may be halted if state statutory provisions require the condemnor to follow specified acquisition procedures.[235]

Acquisition of Improvements to Real Property

In addition to establishing uniform policies to be followed in the acquisition of property for a public program or project, the URA requires public agencies to acquire at least an equal interest in all buildings, structures, or other improvements located on the real property or which will be adversely affected by the project.[236] Furthermore, in valuing these improvements for the purpose of determining just compensation, they must be considered as part of the real property being acquired even if they are owned by a tenant who has the right as against the owner of the real property to remove them at the expiration of the lease term. In the case of tenant-owned improvements, the tenant is entitled to the greater of the amount which the improvement contributes to the fair market value of the real property or the fair market value of the improvement for removal from the real property. However, this payment can be made only if it will not result in a duplication of any payment otherwise authorized, the owner of the land disclaims all interest in the tenant's improvements, and the tenant transfers all right, title, and interest to the acquiring property interests in accordance with other applicable law.[237]

In *Whitman v. State Highway Commission of Missouri,*[238] the court held that outdoor advertising signs were structures within the meaning of that term as used in Section 302[239] and that the State was thereby obligated to acquire them and pay the tenant who owed them just compensation.[240] In the subsequent eminent domain action the court ruled that the compensation paid to the sign owner is separate and apart from any amount offered or paid to the fee owner for acquisition of the land. The court found that one of the purposes of the Act was to alleviate the necessity of the tenant becoming involved in litigation with the fee owner to determine the tenant's share of the entire award and held that the condemnor has a duty to negotiate directly with the tenant and acquire tenant-owned structures through these separate negotiations. The tenant was thus entitled to receive the amount by which the signs enhanced the value of the real property or, if greater, the value of the signs in place, including the value of the deprivation of ownership rights for the remaining useful life of the signs.[241]

In order to establish the fair market value of outdoor advertising signs, courts have permitted appraisal testimony as to the replacement cost of the structure new less depreciation and have allowed the use of an income approach which capitalizes the value of the expected rental income over the remaining term of the lease.[242] Use of the income approach has been limited to situations where the sign cannot be relocated, and a claim by a billboard owner for damages resulting from the "severance" of the acquired billboard from the entire business operation has been disallowed.[243] One court has refused to allow testimony as to the value of a sign holding that Section 302 [244] does not apply to billboards because they are personal property under state law, and therefore the state is not obligated to acquire them as part of the realty where the sign owner had a right to terminate the lease and remove the sign.[245]

Acquisition of Uneconomic Remainders

The last paragraph of the uniform policy on real property acquisition practices requires a public agency to acquire the entire property if the acquisition of only a part of the property would leave its owner with an uneconomic remnant.[246] The term "uneconomic remnant" is not defined in the URA itself, but the new uniform regulations adopted pursuant to the Act describe it as "a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner." [247] A question as to the interpretation of the meaning of this term as defined in the former FHWA regulations arose in *State of New Mexico v. United States,*[248] in which the State of New Mexico filed an action in the Court of Claims to recover federal reimbursement of the cost of acquiring a given parcel pursuant to an agreement between the State and FHWA which provided for federal participation in the State's cost of acquiring right-of-way for an interstate highway project. The property acquired by the State was a 15.49-acre parcel which was needed for the construction of Interstate Route 40. Approximately 4 acres of the property were within the right-of-way, and the remainder was designated as "excess land." The State decided to take the entire property, but FHWA participated only in the cost of acquiring the portion of the parcel which was actually within the freeway right-of-way. The State contended that FHWA was required to participate in the cost of obtaining the entire parcel because the remainder was acquired as an uneconomic remnant. After reviewing the record, the court concluded that the property abutted old Route 66 and that the loss, if any, in the value of the remainder resulted from the diversion of traffic from the old highway to the Interstate. In upholding FHWA's refusal to participate, the court found that any severance damages to the remainder were caused by the loss of direct access and were not the result of it being left as an uneconomic remnant.[249]

Relationship Between Just Compensation Recoverable in Eminent Domain and Statutory Relocation Assistance Benefits.

By enacting the URA, Congress attempted to establish a uniform policy relating to the treatment of displaced persons that was fair and equitable and that did not result in those persons carrying a disproportionate burden of the expense of projects designed for the benefit of the public as a whole.[250] Congress did not intend thereby to expand the concept of just compensation as applied in eminent domain actions and specifically stated that the Act was to create no new element of value or damage in condemnation proceedings not in existence prior to its effective date.[251] Further indications of this Congressional desire to keep payments and benefits of the relocation assistance program entirely separate from the right of owners to receive just compensation for the taking or damaging of their property by the exercise of the power of eminent domain are evidenced by the supplementary nature of the payments,[252] by the prohibitions against duplicate payments,[253] and by the retention of the right of tenants to choose between benefits under the Act and compensation provided by condemnation law.[254]

An overwhelming majority of courts have held that disputes relating to relocation assistance form the basis of an action separate from an eminent domain action because the right to receive benefits is entirely statutory and is not an element of the constitutional right to receive just compensation for the taking or damaging of property.[255] However, because some forms of damages or costs may be recoverable either as just compensation in eminent domain or as a statutory relocation assistance benefit, the Act must be administered and applied in light of the law of eminent domain to ensure that the displaced person does not receive a double recovery. Thus, a property owner is not entitled to receive the cost of moving machinery, equipment, and fixtures which were acquired by the agency,[256] but may be entitled to receive relocation assistance in addition to reimbursement for damage to his personal property resulting from the acquisition of the land so long as he is being compensated for a different economic loss and there is no duplication of payment.[257] Because in many jurisdictions the provisions of the relocation assistance statutes do not provide the exclusive remedy for the recovery of losses to personalty, a condemnee may recover just compensation for damage to personal property necessarily resulting from the act of condemnation in place of statutory benefits.[258]

CONCLUSION

The enactment of the URA in 1970 was the culmination of a legislative trend toward providing uniform benefits for persons displaced by the construction of public projects. Although the Act was not intended to provide complete indemnification for all losses incurred by persons who are forced to relocate their homes or businesses to accommodate public projects, it has become the basis for the establishment of an effective program to ease the trauma of relocation and to provide monetary benefits to alleviate some of the financial losses that these persons must incur.

Despite much criticism of some of its provisions, the URA has remained essentially unchanged since its enactment. Since 1978 several members

of Congress have introduced bills that would make numerous substantial amendments to the Act, including an expansion of the definition of "displaced person" and an increase in the maximum amounts of the supplemental housing payments.[259] In addition to broadening the coverage of the Act and raising benefit levels, these bills would make changes intended to alleviate a number of the problems experienced by public agencies in administering the Act. In the absence of amendment to the statutory provisions, many of the difficulties arising from the lack of consistent application of the provision of the URA at the federal level may be eliminated by the adoption of the new uniform federal regulation. While this impetus toward uniformity may be offset somewhat by the more general approach taken by these model rules, their lack of specific detail should also allow state and local agencies more flexibility in applying the provisions of the Act to difficult and unusual situations and provide these agencies the opportunity to exercise more discretion to administer the Act in a manner which will result in the fair and equitable treatment of displaced persons that was intended by Congress.

APPENDIX

STATE RELOCATION ASSISTANCE ACTS AS APPLIED TO HIGHWAY PROJECTS

STATE AND STATUTE	APPLICABILITY TO PROJECTS	EFFECT OF ACT	SCOPE OF BENEFITS
Alabama CODE OF ALA. §§ 23-1-200 to 23-1-209 (1975)	State and Federal	Permissive	URA, with smaller benefits for non-Federal projects
Alaska ALAS.STAT.ANN. §§ 34.60.010 to 34.60.150 (1985)	Federal	Mandatory	URA
Arizona ARIZ.REV.STAT.ANN. §§ 11-961 to 11-974 and §§ 28-1841 to 28-1853 (1985)	State and Federal	Permissive, but certain benefits are mandatory on local projects	URA
Arkansas ARK.STAT.ANN. §§ 14-1001 to 14-1002 (1985)	Federal	Permissive	URA
California CALIF. GOV'T CODE §§ 7260 to 7276 (1985)	State and Federal	Mandatory	URA
Colorado COLO.REV.STAT. §§ 24-56-101 to 24-56-121 (1985)	Federal	Mandatory	URA
Connecticut CONN.GEN.STAT.ANN. §§ 8-266 to 8-282 (1985)	State and Federal	Mandatory	URA
Delaware DEL.CODE ANN. tit.29, §§ 9301 to 9314 (1985)	State and Federal	Mandatory	URA
Florida FLA.STAT.ANN. § 421.55 (1985)	Federal	Permissive	URA
Georgia GA.CODE ANN. §§ 22-4-1 to 22-4-14 and §§ 32-8-1 to 32-8-6 (1985)	Federal	Mandatory	URA
Hawaii HAWAII REV.STAT. tit.9 §§ 111-1 to 111-12 (1985)	State and Federal	Mandatory	URA, with smaller benefits for non-Federal projects
Idaho IDAHO CODE ANN. §§ 40-2001 to 40-2011 (1985)	State and Federal	Permissive	URA
Illinois ILL.STAT.ANN. ch. 121, §§ 3-107.1 to 3-107.1f (1985)	State and Federal	Permissive	URA
Indiana IND.STAT.ANN. §§ 8-13-18.5-1 to 8-13-18.5-20 (1985)	State and Federal	Mandatory	URA, with smaller benefits for non-Federal projects
Iowa IOWA CODE ANN. §§ 316.1 to 316.15 (1985)	State and Federal	Mandatory	URA
Kansas KAN.STAT.ANN. §§ 58-3501 to 58-3506 (1985)	Federal	Permissive	URA
Kentucky KY.REV.STAT.ANN. §§ 56.610 to 56.760 (1984)	Federal	Mandatory	URA
Louisiana LA.REV.STAT.ANN. § 38:3101 to 38:3110 (1985)	State and Federal	Permissive	URA

STATE AND STATUTE	APPLICABILITY TO PROJECTS	EFFECT OF ACT	SCOPE OF BENEFITS
Maine ME.REV.STAT.ANN. tit.1, §§ 901-904, tit.23, §§ 241-247 (1985)	State and Federal	Mandatory	URA
Maryland MD.ANN.CODE, REAL PROP. §§ 12-201 to 12-212 (1985)	State and Federal	Mandatory	URA
Massachusetts MASS.ANN.LAWS, ch.79A §§ 1 to 15 (1985)	State and Federal	Mandatory	URA
Michigan MICH.STAT.ANN. §§ 8.215(1) to 8.215(72) (1985)	State and Federal	Permissive, but advisory services mandatory	URA
Minnesota MINN.STAT.ANN. §§ 117.50 to 117.56 (1985)	State and Federal	Mandatory	URA
Mississippi MISS.CODE ANN. §§ 43-39-1 to 43-39-27 (1985)	Federal	Mandatory	URA, with larger supplemental payments for home-owners and tenants
Missouri MO.STAT.ANN. §§ 523.200 to 523.215 (1985)	State and Federal	Mandatory	URA
Montana MONT.CODE ANN. §§ 60-4-301 to 60-4-310, and §§ 70-31-101 to 70-31-305 (1985)	State and Federal	Mandatory for Federal, permissive for State	URA
Nebraska NEB.REV.STAT. §§ 76-1201 to 76-1213 (1985)	State and Federal	Mandatory	URA
Nevada NEV.REV.STAT. tit.35, §§ 408.443 to 408.477 (1985)	Federal	Mandatory	URA
New Hampshire N.H.REV.STAT.ANN. §§ 124.10, and 230:33 to 230:43 (1985)	State and Federal	Permissive	URA
New Jersey N.J.STAT.ANN. §§ 20:4-1 to 20:4-22 (1985)	State and Federal	Mandatory	URA
New Mexico N.M.STAT.ANN. §§ 42-3-1 to 42-3-15 (1985)	State and Federal	Permissive	URA
New York N.Y.HWY.LAW. §§ 29 and 30 (1985)	State and Federal	Permissive	URA
North Carolina N.C.GEN.STAT. §§ 133-5 to 133-17 (1985)	State and Federal	Permissive	URA
North Dakota N.D.CENT.CODE, §§ 54-01.1-01 to 54-01.1-16 (1985)	State and Federal	Mandatory	URA
Ohio OHIO REV.CODE ANN. tit.1, §§ 163.51 to 163.62 (1985)	Federal	Mandatory	URA
Oklahoma OKLA.STAT.ANN. tit.63, §§ 1085 to 1099 (1985)	Federal	Mandatory	URA
Oregon ORE.REV.STAT. §§ 281.045 to 281.105 (1985)	State and Federal	Mandatory	URA
Pennsylvania PA.STAT.ANN. tit.26, § 1-601A to 1-606A (1985)	State and Federal	Mandatory	URA
Rhode Island R.I. GEN.LAWS ANN. §§ 37-6.1-1 to 37-6.1-12 (1985)	State and Federal	Mandatory	URA, with smaller benefits for non-Federal projects
South Carolina S.C.CODE ANN. §§ 28-11-10 to 28-11-70 (1985)	State and Federal	Mandatory	URA
South Dakota S.D.CODE LAWS §§ 5-2-18, 31-19-49, 31-19-49.1 (1984)	State and Federal	Permissive	URA
Tennessee TENN.CODE ANN. §§ 13-11-101 to 13-11-117 (1985)	State and Federal	Mandatory	URA
Texas TEX.PROP. CODE § 21.046 (1984)	State and Federal	Permissive	URA
Utah UTAH CODE ANN. §§ 57-12-1 to 57-12-13 (1985)	State and Federal	Permissive	URA

STATE AND STATUTE	APPLICABILITY TO PROJECTS	EFFECT OF ACT	SCOPE OF BENEFITS
Vermont VT.STAT.ANN. tit.19, §§ 2001 to 2006 (1985)	State and Federal	Permissive	URA, with smaller benefits for non-Federal projects
Virginia VA.CODE ANN. §§ 25-235 to 25-254 (1985)	State and Federal	Mandatory	URA
Washington WASH.REV.CODE ANN. §§ 8.26.010 to 8.26.910 (1985)	State and Federal	Mandatory	URA
West Virginia W.VA.CODE ANN. §§ 17-2A-20 and 54-3-1 to 54-3-5 (1985)	State and Federal	Mandatory	URA
Wisconsin WIS.STAT.ANN. §§ 32.19 to 32.27 (1985)	State and Federal	Mandatory	URA, with larger supplemental payments for homeowners, tenants and businesses
Wyoming WYO.STAT.ANN. §§ 16-7-101 to 16-7-121 (1985)	State and Federal	Mandatory	URA

[1] Pub. L. No. 91-646, 84 Stat. 1984, 42 U.S.C. §§ 4601-4655. The act is commonly referred to as the Uniform Relocation Act or URA.

[2] Pub. L. No. 91-646, §§ 201-218, 42 U.S.C. §§ 4621-4638. Title II is designated Subchapter II in the *United States Code.*

[3] Pub. L. No. 91-646, § 201, 42 U.S.C. § 4621.

[4] Pub. L. No. 91-646, §§ 301-305, 42 U.S.C. §§ 4651-4655.

[5] A table of state laws relating to relocation assistance as applied to transportation projects is contained in the Appendix.

[6] Act of July 15, 1949, ch. 338, 63 Stat. 413.

[7] Housing Act of 1949, ch. 338 § 105, 63 Stat. 416.

[8] Housing Act of 1956, ch. 1029 § 305, 70 Stat. 1091, 1100.

[9] Housing Act of 1959, Pub. L. No. 86-372; 73 Stat. 654, 673-674.

[10] Act of Sept. 2, 1964, Pub. L. No. 88-560, 78 Stat. 769.

[11] Pub. L. No. 90-448, 82 Stat. 476.

[12] Act of Oct. 23, 1962, Pub. L. No. 87-866, 76 Stat. 1145.

[13] *Id.*, § 5(a), 76 Stat. 1146.

[14] *Id.*

[15] Pub. L. No. 90-495, 82 Stat. 815.

[16] *Id.*, § 30, 82 Stat. 831.

[17] *Id.*

[18] *Id.*

[19] H.R. No. 91-1656, 1970 *U.S. Code Congressional and Administrative News* 5850, 5851-5852.

[20] Pub. L. No. 91-646, § 201, 42 U.S.C. § 4621.

[21] *Id.*, § 210, 42 U.S.C. § 4630.

[22] *Id.*, § 206(b), 42 U.S.C. § 4626(b).

[23] *Id.*, § 206(a), 42 U.S.C. § 4626(a).

[24] *Id.*, § 202(a)(1), 42 U.S.C. § 4622(a)(1).

[25] *Id.*, § 202(b), 42 U.S.C. § 4622(b).

[26] *Id.*, § 202(a)(3), 42 U.S.C. § 4622(a)(3).

[27] *Id.*, § 202(c), 42 U.S.C. § 4622(c).

[28] *Id.*, § 203, 42 U.S.C. § 4623.

[29] *Id.*, § 204, 42 U.S.C. § 4624.

[30] *Id.*, §§ 303, 305, 42 U.S.C. §§ 4653, 4655.

[31] *Id.*, §§ 304, 305, 42 U.S.C. §§ 4654, 4655.

[32] *Id.*, § 205(a), 42 U.S.C. § 4625(a).

[33] *Id.*, § 205(c), 42 U.S.C. § 4625(c).

[34] 50 Fed. Reg. 8955, March 5, 1985, 49 C.F.R. §§ 25.1 et seq.

[35] Presidential memorandum for the Heads of Executive Departments and Agencies, February 27, 1985, F.R. Doc. 85-5298, 50 Fed. Reg. 8953, March 5, 1985.

[36] 51 Fed. Reg. 7000, February 27, 1986. The amended uniform regulations became effective as to the DOT April 28, 1986 (51 Fed. Reg. 7021).

[37] *See* 23 C.F.R. §§ 710.101 et seq., outlining state highway department responsibilities and providing requirements for federal reimbursement; 23 C.F.R. §§ 712.101 et seq., outlining procedures for acquiring real property; 23 C.F.R. §§ 713.101 et seq., relating to the management of property acquired for Federal-aid highway projects; 23 C.F.R. §§ 720.200 et seq., outlining appraisal requirements; 23 C.F.R. §§ 740.1 et seq., relating to relocation assistance; 23 C.F.R. §§ 751.1 et seq., regarding junkyard control and acquisition. These regulations were rescinded to the extent that they were superseded by the new DOT regulations effective July 3, 1985 (50 Fed. Reg. 34091, August 23, 1985).

[38] H.R. No. 91-1656, 1970 *U.S. Code Cong. & Adm. News* 5850.

[39] *Id.* The House of Representatives Committee on Public Works in its report recommending passage of the bill made this broad statement of its intent and purpose:

> The bill as recommended is necessary to eliminate the great inconsistencies that exist among Federal and federally assisted programs with respect to the amount and scope of payments, other assistance provided, and assurance of housing offered. It recognizes that relocation is a serious and growing problem in the United States and that the pace of displacement will accelerate in the years immediately ahead. It recognizes that advisory assistance is of special importance in the relocation process especially for the poor, the nonwhite, the elderly, and people engaged in small business. It recognizes the need for more equitable land acquisition policies in connection with the acquisition of real property for these programs. In short, this legislation recognizes that the Federal Government has a primary responsibility to provide uniform treatment for those forced to relocate by Federal and federally aided public improvement programs and to ease the impact of such forced moves.
>
> This legislation refines and strengthens the basic principles and programs in S. 1. as passed by the Senate. It provides a humanitarian program of relocation payments, advisory assistance, assurance that comparable, decent, safe, and sanitary replacement housing will be available for displaced persons prior to displacement, economic adjustments, and other assistance to owners and tenants displaced from their homes, farms, and places of business. It establishes a uniform policy on real property acquisition practice for all Federal and federally assisted programs. And, perhaps most important of all, it gets to the heart of the dislocation problem by providing the means for positive action to increase the available housing supply for displaced low and moderate income families and individuals.
>
> 1970 *U.S. Code Cong. & Adm. News* at 5851-5852.

[40] Pub. L. No. 91-656, § 201, 42 U.S.C. § 4621. Section 201 in its entirety reads: "The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

[41] *Id.*, § 301, 42 U.S.C. § 4651. The preamble to the acquisition policies contained in Sec. 301 states: "In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies: . . . "

[42] *Id.*, § 101(6), 42 U.S.C. § 4601(6). The full text of the definition of "displaced person" reads: "The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

[43] 441 U.S. 39, 99 S. Ct. 1572 (1979).

[44] 555 F.2d 166 (7th Cir., 1977).

[45] 571 F.2d 590 (D.C. Cir., 1977).

[46] 441 U.S. at 45.

[47] *Id.* at 46.

[48] *Id.* at 49–53.

[49] *Id.* at 62.

[50] *Id.* at 62–63.

[51] *Id.* at 63.

[52] Caramico v. Secretary of the Dep't of Housing & Urban Dev., 509 F.2d 694 (2nd Cir., 1974); Blount v. Harris, 593 F.2d 336 (8th Cir., 1979).

[53] Parlane Sportswear Company, Inc. v. Weinberger. 513 F.2d 835 (1st Cir., 1975), *cert. den.* 423 U.S. 925, 96 S.Ct. 269, 46 L. Ed.2d 252; Conway v. Harris, 586 F.2d 1137 (7th Cir., 1978); Moorer v. Dept. of H.U.D., 561 F.2d 175 (8th Cir., 1977); Harris v. Lynn, 555 F.2d 1357 (8th Cir., 1977); Dawson v. U.S. Dept. of H.U.D., 592 F.2d 1292 (5th Cir., 1979); Austin v. Andrus, 638 F.2d 113 (9th Cir., 1981); Isham v. Pierce, 694 F.2d 1196 (9th Cir., 1982).

[54] Goolsby v. Blumenthal, 590 F.2d 1369 (5th Cir., 1979), *rehearing den.* 597 F.2d 934; *cert. den.* 444 U.S. 970, 100 S. Ct. 462, 62 L. Ed.2d 384; Young v. Harris, 599 F.2d 870 (8th Cir., 1979).

[55] Consumers Power Co. v. Costle, 615 F.2d 1147 (6th Cir., 1980).

[56] Devines v. Maier, 665 F.2d 138 (7th Cir., 1981), *rev.* on other grounds 728 F.2d 876 (7th Cir., 1984), *cert. den.* 105 S. Ct. 130 (1984). In *Devines* the Court of Appeals held that the City's enforcement of its housing code did not constitute an acquisition of property rights by the city sufficient to qualify the tenants as "displaced persons" under Sec. 101(6) of the URA. However, many state relocation assistance statutes provide eligibility for those displaced by code enforcement. *See, e.g.,* McNally v. Middletown Tp., 182 N.J. Super. 622, 442 A.2d 1075 (App.Div., 1982); Dukes v. Durante, 192 Conn. 207, 471 A.2d 1368 (1984); City of Hartford v. Mejias, 2 Conn.App. 321, 478 A.2d 269 (1984); Lau v. Bautista, 598 P.2d 161 (Hawaii, 1979).

[57] 42 U.S.C. § 4601(4).

[58] The full text of Section 101(4) reads: "(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia."

[59] Goolsby v. Blumenthal, 590 F.2d 1369 (5th Cir., 1979), *reh. den.* 597 F.2d 934, *cert. den.* 444 U.S. 970, 100 S. Ct. 462, 62 L. Ed.2d 384; Young v. Harris, 599 F.2d 870 (8th Cir., 1979).

[60] H.R. No. 91–1656, 1970 *U.S. Code Cong. & Adm. News* at 5850. In the report, the House of Representatives Committee on Public Works in the following passage specifically states that it intends to have the Act apply to all Federal-aid highways even if only state funds are used to acquire the right of way. "It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project. For example: "(a) A number of State highway departments frequently acquire rights-of-way for Federal-aid highways (usually, other than the Interstate System) with non-Federal funds, and seek Federal financial assistance only for the actual construction work. Persons required to move from such rights-of-way are recognized as displaced persons under the relocation provisions of the Federal-Aid Highway Act of 1968 and this bill affirms that principle . . . " 1970 *U.S. Code Cong. & Adm. News* at 5853.

[61] 49 C.F.R. § 25.2(g). "Dwelling" is specifically defined in the regulations as: "(g) *Dwelling.* The term 'dwelling' means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit."

[62] 42 U.S.C. §§ 4622, 4623, 4624 and 4626.

[63] 432 F.Supp. 564 (S.D. Tex., 1977).

[64] 42 U.S.C. § 4623.

[65] Pub. L. No. 91–646, § 201, 42 U.S.C. § 4621. In recognition of this stated policy, the new uniform regulations instruct acquiring agencies that displaced persons may not be denied eligibility for a replacement housing payment solely because of a failure to meet the occupancy requirements for reasons beyond their control (49 C.F.R. § 25.403(e)). The full text of this paragraph reads: "(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency."

[66] 432 F.Supp. at 567.

[67] 42 U.S.C. § 4623.

[68] 751 F.2d 826 (6th Cir., 1985).

[69] Pub. L. No. 91–646, § 203(a)(2), 42 U.S.C. § 4623(a)(2).

[70] 751 F.2d at 830–831.

[71] Seeherman v. Lynn, 404 F.Supp. 1318 (M.D.Pa., 1975). *Cf.* 49 C.F.R. § 25.403(e).

[72] Spackman v. Spackman, 3 Kan.App.2d 400, 595 P.2d 748 (1979).

[73] 42 U.S.C. § 4623.

[74] Albright v. State of California, 101 Cal.App.3d 14, 161 Cal. Rptr. 317 (1979), Interpreting CALIF. GOVT. CODE § 7263. In response to the *Albright* decision the California Legislature amended the first sentence of Sec. 7263 to read: "(a) In addition to the payments required by Section 7262, the public entity, as a part of the cost of acquisition, shall make a payment to the owner of real property acquired for public use which is improved with a dwelling actually owned and occupied by the owner as a permanent or customary and usual place of abode for not less than 180 days prior to the initiation of negotiation for the acquisition of that property. . . . "

[75] 49 C.F.R. § 25.2(1). The definition in its entirety reads: "(1) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project: (1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or (2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or (3) A contract to purchase any of the interests or estates described in paragraphs (1) or (2) of this section, or (4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership."

[76] 42 U.S.C. § 4623.

[77] Vines v. Andrus, 534 F. Supp. 146 (S.D.Fla., 1981).

[78] Albright v. State of California, 101 Cal.App.3d 14, 161 Cal. Rptr. 317 (1979), interpreting CALIF. GOV'T. CODE § 7263.

[79] 42 U.S.C. §§ 4622, 4624.

[80] Jensen v. United States, 662 F.2d 665 (10th Cir., 1981); Bourne v. Schlesinger, 426 F.Supp. 1025 (E.D. Pa., 1977).

[81] 42 U.S.C. § 4623.

[82] 49 C.F.R. § 25.2(c). The full text of the definition reads:

> (c) *Comparable replacement dwelling.* The term comparable replacement dwelling means a dwelling which is:
>
> (1) Decent, safe, and sanitary as described in § 25.2(e).
>
> (2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A.)
>
> (3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.
>
> (4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need

not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 25.403(a)(2)).

(5) Currently available to the displaced person. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 25.401(c), all increased mortgage interest costs as described at § 25.401(d) (for last resort housing see Appendix A, § 25.602) and all incidental expenses as described at § 25.401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under these regulations. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement dwelling may be used when computing costs (See Appendix A, § 25.402(b)(1)).

[83] Katsev v. Coleman, 530 F.2d 176, 180, n. 7 (8th Cir., 1976); H.R. No. 91-1656, 1970 *U.S. Code Cong. & Adm. News* 5850, 5860.

[84] *Id.;* Mejia v. United States Dep't of Housing & Urban Dev., 688 F.2d 529, 533 (7th Cir., 1982); 49 C.F.R. § 25.2(c)(3).

[85] Katsev v. Coleman, 530 F.2d at 180 n. 7; H.R. No. 91-1656, 1970 *U.S. Code Cong. & Adm. News* 5850, 5860.

[86] 42 U.S.C. § 4652.

[87] The full text of section 302 reads:

(a) Notwithstanding any other provision of law, if the head of a federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any right to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

[88] Pub. L. No. 91-646, § 305, 42 U.S.C. § 4655.

[89] 42 U.S.C. § 4652.

[90] 400 F.Supp. 1050 (W.D.Mo., 1975).

[91] 42 U.S.C. §§ 4651-4655.

[92] 42 U.S.C. § 4652.

[93] 42 U.S.C. § 4655.

[94] 42 U.S.C. § 4652.

[95] *Id.*

[96] 400 F.Supp. at 1066-1077. The court held further that the proper measure of just compensation to which the tenants were entitled for the acquired billboards is that contained in Sec. 302(b)(1) [42 U.S.C. § 4652(b)(1)], that is, the amount which the structures contribute to the fair market value of the real property or the fair market value of the structures for removal from the property, whichever is greater (400 F. Supp. at 1080).

[97] 42 U.S.C. § 4652.

[98] State *ex rel.* Thompson v. Osage Outdoor Ad., 674 S.W.2d 81 (Mo.App., 1984).

[99] State v. Volk, 611 S.W.2d 81 (Mo. App., 1980).

[100] 42 U.S.C. § 4652.

[101] City of Scottsdale v. Eller Outdoor Advertising, 119 Ariz. 86, 579 P.2d 590 (App., 1978); United States v. 19.7 Acres of Land, 103 Wash.2d 296; 692 P.2d 809 (1984). *In* State Highway & Transp. Com'r. v. Edwards Co., 255 S.E.2d 500 (Va., 1979), the court rejected the property owner's contention that a railroad siding, a coal unloading pit, a coal conveyor control house, yard lights, a wagon or truck scale, advertising signs, underground storage tanks and a coal conveyor system were personalty for which it was entitled to reimbursement of moving expenses under the URA and held that under state law all of the items were realty and subject to condemnation.

[102] 248 S.E.2d 916 (S.C., 1978).

[103] 42 U.S.C. § 4602.

[104] 42 U.S.C. § 4652.

[105] 248 S.E.2d at 918-919.

[106] 623 F.2d 303 (3rd Cir., 1980).

[107] *Id.* at 306-307. *Accord:* Lowell v. Secretary of Dep't of Housing, 446 F.Supp. 859 (N.D. Cal., 1977). The courts in Pennsylvania appear to be in conflict on this point. *In* Dombroski v. Redevelop. Auth. of Luzerne County, 28 Pa. Cmwlth. 22, 367 A.2d 388 (1976), the court upheld a jury finding that the publishing of newspaper articles and the posting of a map of the redevelopment area constituted informal written notice of the agency's intent to acquire sufficient to quality plaintiffs as displaced persons eligible for relocation assistance benefits even though they moved one year before the agency gave formal notice. However, *in re* Commonwealth, Dep't of Transp., 28 Pa. Cmwlth. 396, 368 A.2d 917 (1977), the court affirmed a judgment holding that an industrial tenant was not a displaced person when it moved before receiving formal notice of the department's intent to acquire the property even though the highway plan had been advertised, the department had acquired other property nearby and the tenant had received letters from the department indicating that it was considering acquisition of the parcel in the future. The better view would condition eligibility on the receipt of a formal notice of intent to acquire the specific parcel in light of the congressional intent expressed in Sec. 101(6) of the URA to limit the payment of benefits to those who move as the result of an acquisition or written order to vacate.

[108] Seeherman v. Lynn, 404 F. Supp. 1318 (M.D.Pa., 1975); Redevelopment Authority v. Stepanik, 387 A. 2d 1292 (Pa., 1978); Spackman v. Spackman, 3 Kan.App.2d 400, 595 P.2d 748; Reasor v. City of Norfolk, Va., 606 F. Supp. 788 (E.D. Va., 1984). *See also,* 49 C.F.R. §§ 25.2(f)(2)(i). However, under 49 C.F.R. 25.403(e) a person cannot be denied eligibility solely for failure to meet the occupancy requirements for reasons beyond his control.

[109] 507 F.2d 712 (8th Cir., 1974).

[110] 42 U.S.C. § 4623.

[111] 42 U.S.C. § 4624.

[112] 42 U.S.C. § 4622.

[113] 42 U.S.C. § 4625.

[114] 507 F.2d at 715-717.

[115] Lewis v. Brinegar, 372 F.Supp. 424 (W.D. Mo., 1974).

[116] Cavanaugh v. State of California, 85 Cal.App.3d 354, 149 Cal.Rptr. 453 (1978) interpreting CALIF. GOV'T CODE §§ 7260 (c) and 7262. Following the *Albright* decision, the California Legislature amended the definition of "displaced person" contained in § 7260(c) by adding a third sentence which now reads: " ... Except persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing which was made available to them on a permanent basis by a public agency and who are required to move from such housing, a "displaced" person shall not include: (1) any person who, at the time of the public entity's acquisition of the real property, was not a tenant or occupant in lawful possession of the real property, and whose right of possession at the time of moving arose after the date of the public entity's acquisition of the real property and with knowledge of such acquisition; or

(2) unless federal law or regulations require such a tenant to be considered a displaced person, any nonresidential tenant or occupant who moves as a result of his breach of his tenancy agreement."

[117] Brody v. Moan, 551 F.Supp 443 (S.D.N.Y., 1982); Stephens v. Perry, 134 Cal.App.3d 748, 184 Cal.Rptr. 701 (1982). Holdover tenants were denied eligibility in Hindsley v. Township of Lower Merion, 25 Pa. Cmwlth. 455, 360 A.2d 297 (1976) and Peter Kiewit Sons' Co. v. Richmond Redevelopment Agency, 178 Cal.App.3d 435, 223 Cal. Rptr. 728 (1986).

[118] Baiza v. Southgate Recreation & Park Dist., 59 Cal.App. 3d 669, 130 Cal.Rptr. 836 (1976). The court was interpreting the definition of "displaced person" contained in CALIF. GOV'T CODE § 7260(c) which subsequent to the decision has been amended to exclude from the definition "unless federal law or regulations require such a tenant to be considered a displaced person, any nonresidential tenant or occupant who moves as a result of his breach of his tenancy agreement." The new uniform regulations permit a person evicted for cause after the initiation of negotiations to retain eligibility for relocation payments and advisory assistance (49 C.F.R. § 25.206).

[119] Marini v. Borough of Woodstown, 146 N.J. Super. 235, 369 A.2d 919 (App.Div., 1976).

[120] 604 F.Supp. 191 (S.D. Ohio, 1984).

[121] *Id.* at 194–199.

[122] Superior Strut & Hanger Co. v. City of Oakland, 72 Cal.App.3d 987, 994, 140 Cal.Rptr. 515 (1977).

[123] 293 Or. 191, 646 P.2d 1322.

[124] *Id.*, 646 P.2d at 1328–1329. Although the court's stated reason in *Shephard* for denying liability was that the acquisition was not for a "program or project," the decision may reflect the court's recognition that the aggrieved tenants were required to move only after the expiration of their month-to-month tenancies. Other courts have held that tenants who do not move until after the expiration of their right to possession of the property are not eligible to receive relocation assistance payments. *See, e.g.*, Hindsley v. Township of Lower Merion, 25 Pa. Cmwlth. 455, 360 A.2d 297 (1976); Peter Kiewit Sons' Co. v. Richmond Redevelopment Agency, 178 Cal. App.3d 435, 223 Cal.Rptr. 728 (1986). *Cf.* Ward v. Downtown Development Authority, 786 F.2d 1526 (11th Cir., 1986).

[125] 441 F. Supp. 866 (W.D.La., 1977), *aff'd per curiam* 616 F.2d 255 (5th Cir., 1980), *cert. den.* 449 U.S. 971, 101 S. Ct. 383, 66 L.Ed.2d 234.

[126] Pub. L. No. 91–646, § 101 (6), 42 U.S.C. § 4601(6); 441 F. Supp. at 870–872.

[127] Marini v. Borough of Woodstown, 146 N.J.Super. 235, 369 A.2d 919 (App.Div., 1976). See, also, the cases cited in note 117, *supra.*

[128] 72 Cal.App.3d 987, 140 Cal.Rptr. 515 (1977).

[129] *Id.* at 995–996. *In* Peter Kiewit Sons' Co., v. Richmond Redevelopment Agency, 178 Cal.App.3d 435, 223 Cal.Rptr. 728 (1986), the California Court of Appeal denied relocation assistance eligibility to a holdover tenant which had been forced to move after the failure of negotiations to extend a lease which it had entered into with the previous owner. Following the expiration of the term, the agency refused to accept the tenant's tender of rent and instituted an unlawful detainer action. The court held that because the plaintiff tenant was not in lawful possession after the expiration of the lease, it was not a displaced person as defined. The Court distinguished the prior holding in Superior Strut & Hanger Co., v. City of Oakland on the ground that in that case the tenant had remained lawfully in possession because the landlord had continued to accept rent payments.

[130] Albright v. State of California, 101 Cal.App.3d 14, 20–21, 161 Cal.Rptr. 317 (1979).

[131] New Orleans Gas Co. v. Drainage Comm., 197 U.S. 453, 462, 25 S.Ct. 471, 474, 49 L.Ed. 831 (1905).

[132] 23 U.S.C. § 123. The full text of this section reads:

> (a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.
>
> (b) The term "utility", for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.
>
> (c) The term "cost of relocation", for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in value of the new facility and any salvage value derived from the old facility.

[133] 464 U.S. 30, 104 S. Ct. 304 (1983).

[134] Potomac Electric Power Co. v. Fugate, 211 Va. 745, 747–748, 180 S.E.2d 657 (1971).

[135] Norfolk R.& H. Auth. v. Chesapeake & Potomac Tel., *supra,* 104 S.Ct. at 305.

[136] Artesian Water Co. v. State, Dep't of Hwys. & Transp., 330 A.2d 432 (Del. Super., 1974) *modified* 330 A.2d 441 (Del., 1974); Pennsylvania & Southern Gas Co. v. State, 57 A.D.2d 636, 393 N.Y.S. 2d 793 (1977); Pacific Tel. & Tel. Co. v. Redevelopment Agency, 87 Cal.App.3d 296, 151 Cal.Rptr. 68 (1978); *see also* Consumers Power Co. v. Costle, 615 F.2d 1147 (6th Cir., 1980).

[137] Weir v. Consolidated Rail Corp., 12 Ohio App.3d 63, 465 N.E.2d 1341 (1983); *see also* Pennsylvania & Southern Gas Co. v. State, 57 A.D.2d 636, 393 N.Y.S.2d 793 (1977).

[138] Southwestern Bell v. City of Fayetteville, 271 Ark. 630, 609 S.W.2d 914 (1980). The Court in *Southwestern Bell* held that the utility was entitled to reimbursement of its relocation costs because the Arkansas legislature in enacting a statute requiring compliance with the URA had included an expression of its intent to encourage payment to take full advantage of federal payments under the URA. Because the United States Supreme Court in Norfolk R. & H. Auth. v. Chesapeake & Potomac Tel., 464 U.S. 30, 104 S.Ct. 304 (1983), held that utilities were not entitled to reimbursement under the URA, this decision is of doubtful authority. However, it does indicate that utilities may receive reimbursement for their relocation costs if otherwise permitted by the provisions of a state relocation act or other state statute and that, if so, the state would be entitled to federal participation under 23 U.S.C. § 123.

[139] Pub. L. No. 91–646, §§ 202, 205, 42 U.S.C. §§ 4622, 4625.

[140] Pub. L. No. 91–646, § 202(a), 42 U.S.C. § 4522(a).

[141] Pub. L. No. 91–646, 202(c), 42 U.S.C. § 4622(c).

[142] 49 C.F.R. § 25.303(a).

[143] 49 C.F.R. § 25.305.

[144] 515 F.Supp. 228 (M.D. Pa., 1981).

[145] *Id.* at 236–239. The court also permitted the displaced business to recover reimbursement for the cost of making physical changes to the replacement facility because such costs were specifically allowed under the applicable regulation (24 C.F.R. § 42.65(b)(2)(i)).

[146] Foreign Auto Prep. S. v. N.J. Economic D. Auth., 201 N.J.Super. 428, 493 A.2d 550 (A.D., 1985).

[147] Plastic Distributors, Inc. v. Burns, 5 Conn.App. 219, 497 A.2d 1005 (1985).

[148] Pub. L. No. 91–646, § 202(a)(2), 42 U.S.C. § 4622(a)(2). *In* Schons v. State, Dep't of Transp., 715 P. 2d 1142 (Wash.App., 1986), the court rejected plaintiff's contention that a loss of milk production caused by the stress of relocation on his cows was a loss of tangible personal property reimbursable under the state relocation assistance act (WASH. REV. CODE § 8.26.040 (1)(b)) and held that the claimed loss constituted a loss of profits, an item which is classified as a nonallowable moving expense under the implementing regulations (W.A.C. § 365-24-440(6)).

[149] 49 C.F.R. § 25.303(a)(10).

[150] 156 Cal.App.3d 428, 202 Cal.Rptr. 792 (1984).

[151] *Id.* at 437. The California Eminent Domain Law permits the acquisition of personal property. *See* CALIF. CODE CIV. PROC. § 1235.170.

[152] 156 Cal.App.3d at 438.

[153] Pub. L. No. 91–646 § 202(c), 42 U.S.C. § 4622(c). Subsection (c) in its entirety reads: "Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this

section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period."

[154] H.R. No. 91-1656, 1970 *U.S. Code Cong. & Adm. News* 5850, 5857.

[155] 49 C.F.R. § 25.304.

[156] However, under the new uniform regulations the burden is on the agency to demonstrate that displaced business will not suffer a substantial loss of existing patronage (49 C.F.R. § 25.304(a)(1)). *See also,* Division of Admin. v. Grant Motor Co., 345 So.2d 843 (Fla.App., 1977).

[157] Starke v. Secretary, U.S. Dep't of Housing, 454 F. Supp. 477 (W.D. Okla. 1976).

[158] *Appeal of Brennan,* 30 Pa.Cmwlth. 58, 372 A.2d 1240(1977); Eisenberg v. Redevelopment Auth., 386 A.2d 163 (Pa.Cmwlth., 1978).

[159] Smith v. Missouri State Highway Commission, 488 S.W.2d 230 (Mo.App., 1972); Steppelman v. State Highway Comm'm of Missouri, 650 S.W.2d 343 (Mo.App., 1983).

[160] *Appeal of Connolly,* 448 A.2d 422 (N.H., 1982).

[161] Steppelman v. State Highway Comm'm of Missouri, 650 S.W.2d 343 (Mo.App., 1983).

[162] Mitakis v. Department of General Services, 149 Cal.App.3d 684, 197 Cal.Rptr. 142 (1983).

[163] Henry v. North Carolina Dep't of Transp., 44 N.C.App. 170, 260 S.E.2d 438 (1979); Lickteig v. Iowa Dep't of Transp., 356 N.W.2d 205(Iowa, 1984); 49 C.F.R. § 25.304(e).

[164] Albright v. State of California, 101 Cal.App.3d 14, 161 Cal.Rptr. 317 (1979); 49 C.F.R. § 25.304(a)(3).

[165] Cutler v. Bowen, 543 P.2d 1349 (Utah, 1975); Lickteig v. Iowa Dep't of Transp., 356 N.W.2d 205 (Iowa, 1984); CALIF. CODE CIV. PROC. § 1263.510. *But see,* City of Shreveport v. Pupillo, 390 So.2d 941 (La.App., 1980), in which the court held that the possibility that the property owner may have received compensation for loss of business in the verdict following an expropriation trial did not preclude him from submitting a claim for an in lieu payment under the relocation assistance act.

[166] Schnaible v. City of Bismarck, 275 N.W.2d 859 (N.D., 1979).

[167] 42 U.S.C. § 4625(a).

[168] Pub. L. No. 91-646, § 205(c), 42 U.S.C. § 4625(c). More detailed requirements for advisory assistance are contained in the uniform regulations at 49 C.F.R. § 25.205.

[169] 49 C.F.R. § 25.205(b)(1).

[170] 49 C.F.R. § 25.205 (b)(2), (3), (4), (5).

[171] 49 C.F.R. § 25.205 (b)(2).

[172] Am. Dry Cleaners & Laundry v. U.S. Dep't of Transp., 722 F.2d 70 (4th Cir., 1983).

[173] 764 F.2d 976 (3rd Cir., 1985).

[174] *Id.* at 980-983.

[175] Am. Dry Cleaners & Laundry v. U.S. Dep't of Transp., 722 F.2d 70, 71, 73 (4th Cir., 1983); United States v. 0.37 of an Acre of Land, 577 F.Supp. 236, 237 (D. Mass., 1983).

[176] Battison v. City of Niles, Ohio, 445 F. Supp. 1082, 1091-1092 (N.D.Ohio, 1977).

[177] Pub. L. No. 91-646, § 206(b), 42 U.S.C. § 4626(b). The new uniform regulations go further and direct acquiring agencies to make available three or more comparable replacement dwellings whenever possible (49 C.F.R. § 25.304(a)).

[178] Pub. L. No. 91-646, § 206(a), 42 U.S.C. § 4626(a).

[179] 49 C.F.R. § 25.602; H.R. No. 91-1656, 14-15, 1970 *U.S. Code Cong. & Adm. News* at 5850, 5863-5864.

[180] 49 C.F.R. § 25.601; H.R. No. 91-1656, 14-15, 1970 *U.S. Code Cong. & Adm. News* at 5850, 5864.

[181] Society Hill Civic Ass'n v. Harris, 632 F.2d 1045, 1056-1057 (3rd Cir., 1980).

[182] Dukes v. Durante, 192 Conn. 207, 471 A.2d 1368, 1378 (1984); Lickteig v. Iowa Dep't of Transp., 356 N.W.2d 205, 211-212 (Iowa, 1984).

[183] 49 C.F.R. § 25.2(c)(3); Rowe v. Pittsgrove Tp., 172 N.J.Super. 209, 411 A.2d 720, 722(App.Div., 1980); Katsev v. Coleman, 530 F.2d 176, 180, n. 7(8th Cir., 1976).

[184] Katsev v. Coleman, 530 F.2d 176, 180, n.7 (8th Cir., 1976).

[185] Society Hill Civic Ass'n. v. Harris, 632 F.2d 1045, 1054 (3rd Cir., 1980).

[186] P.L. No. 91-646, § 210, 42 U.S.C. § 4630.

[187] La Raza Unida of Southern Alameda County v. Volpe, 488 F.2d 559, 562 (9th Cir., 1973), *cert.den.* 417 U.S. 968, 94 C.St. 3171, 41 L.Ed.2d 1138.

[188] Lathan v. Volpe, 455 F.2d 1111, 1125-1126 (9th Cir., 1971); Keith v. Volpe, 352 F. Supp. 1324, 1344 (C.D.Cal., 1972), *aff'd.* 506 F.2d 696 (9th Cir., 1974), *cert. den.* 420 U.S. 908, 95 S.Ct. 826, 42 L.Ed.2d 837.

[189] Katsev v. Coleman, 530 F.2d 176, 180 (8th Cir., 1976).

[190] 352 F.Supp. 1324 (C.D.Cal., 1972).

[191] *Id.* at 1346-1350. A thorough presentation of issues relating to the adequacy of relocation plans, including a discussion of the use of housing turnover rates to establish the availability of replacement housing, may be found in the note: "In the Path of Progress: Federal Highway Relocation Assurances," 82 YALE L.J. 373 (1972). The new uniform federal regulations do not establish standards for relocation plans.

[192] Pub. L. No. 91-646, § 213(b)(3), 42 U.S.C. § 4633(b)(3).

[193] H.R. No. 91-1656, 5-6, 1970 *U.S. Code Cong. & Adm. News* at 5850, 5854-5855.

[194] 49 C.F.R. § 25.10.

[195] Mobil Oil Corp. v. Commonwealth, Dep't of Transp., 11 Pa. Cmwlth. 593, 315 A.2d 639 (1974).

[196] Dybiec v. Burns, 34 Conn. Sup. 199, 383 A.2d 1058 (1977).

[197] Campbell v. State Department of Transportation, 326 So.2d 66 (Fla.App., 1976); Division of Admin. v. Grant Motor Co. 345 So.2d 843 (Fla.App., 1977).

[198] Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

[199] Superior Strut & Hanger Co. v. City of Oakland, 72 Cal.App.3d 987, 140 Cal.Rptr. 515 (1977).

[200] Smith v. City of Cookville, 381 F.Supp. 100 (M.D.Tenn., 1974); Colon v. Federal Reserve Bank of San Francisco, 538 F.Supp. 498 (N.D.Cal., 1982); Baiza v. Southgate Recreation & Park Dist., 59 Cal.App.3d 669, 130 Cal.Rptr. 836 (1976); City of Los Angeles v. Decker, 61 Cal.App.3d 44, 132 Cal.Rptr. 188 (1976); Snow v. State Highway Commission, 528 P.2d 1368 (Or.App., 1974); Bounds v. State Department of Highways, 333 So.2d 714 (La.App., 1975); Boston v. United States, 424 F.Supp. 259 (E.D. Mo., 1976). *Cf.* Mobil Oil Corp. v. Commonwealth, Dep't of Transp., 11 Pa. Comwlth. 593, 315 A.2d 639 (1974). In Pennsylvania, the displaced person may elect to have a relocation claim heard by the board of viewers appointed in connection with a condemnation action without first obtaining agency review at least in situations where the claimed damages are also considered part of just compensation.

[201] Fountain v. Metro. Atlanta Rapid Transit Authority, 678 F.2d 1038 (11th Cir., 1982); Wirt v. Metro. Atlanta Rapid Trans. Authority, 139 Ga.App. 592, 229 S.E.2d 100 (1976); Bounds v. State Department of Highways, 333 So.2d 714 (La.App., 1976); Hernandez v. City of Phoenix, 130 Ariz. 566, 637 P.2d 1069 (App., 1981); Snow v. State Highway Commission, 528 P.2d 1368 (Or.App. 1974). However, the language of some court decisions indicates that in Oregon a displaced person may have a right of action independent of the administration review process. *See* Urban Renewal Agency of City of Coos Bay v. Lackey, 549 P.2d 657, 661, fn. 7 (Or., 1976); Spada v. City of Portland, 55 Or.App. 148, 637 P.2d 229, 232 (1981).

[202] Dillard v. U.S. Dep't of H.U.D., 548 F.2d 1142 (4th Cir., 1977).

[203] Dukes v. Durante, 192 Conn. 207, 471 A.2d 1368 (1984); Sande v. City of Grand Forks, 269 N.W.2d 93(N.D., 1978); Bronson v. Potsdam Urban Renewal Agency, 82 A.D.2d 946, 440 N.Y.S.2d 764 (1981); Reasor v. City of Norfolk, Va., 606 F.Supp. 788 (E.D. Va., 1984).

[204] Tullock v. State Highway Commission of Missouri, 507 F.2d 712 (8th Cir., 1974).

[205] Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

[206] Superior Strut & Hanger Co. v. City of Oakland, 72 Cal.App.3d 987, 140 Cal.Rptr. 515 (1977).

[207] Pub. L. No. 91-646 § 301, 42 U.S.C. § 4651.

[208] Pub. L. No. 91-646 § 302, 42 U.S.C. § 4652.

[209] Pub. L. No. 91-646, § 303, 42 U.S.C. § 4653.

[210] Pub. L. No. 91-646, § 304, 42 U.S.C. § 4654.

[211] 42 U.S.C. § 4655.

[212] 42 U.S.C. § 4651.

[213] H.R. No. 91-1656, 21-22, 1970 *U.S. Code Cong. & Adm. News* 5850, 5871.

[214] *Id.*, Pub.L. No. 91-646 § 301, 42 U.S.C. § 4651. The full text of this section reads:

> In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:
>
> (1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
>
> (2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.
>
> (3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.
>
> (4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.
>
> (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.
>
> (6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
>
> (7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.
>
> (8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
>
> (9) If the acquisition of the only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

[215] Pub. L. No. 91-646, § 102, 42 U.S.C. § 4602.

[216] Roth v. United States Dep't of Transp., 572 F.2d 183 (8th Cir., 1978); Fountain v. Metro. Atlanta Rapid Transit Authority, 678 F.2d 1038 (11th Cir., 1982); Paramount Farms, Inc. v. Morton, 527 F.2d 1301 (7th Cir., 1975); Barnhart v. Brinegar, 362 F.Supp. 464 (W.D.Mo., 1973); Nall Motors, Inc. v. Iowa City, Iowa, 410 F.Supp. 111 (S.D. Iowa, 1975), aff'd per curiam 533 F.2d 381 (8th Cir., 1976); Nelson v. Brinegar, 420 F.Supp. 975 (E.D. Wis., 1976); Boston v. United States, 424 F. Supp. 259 (E.D.Mo., 1976); Bunker Properties, Inc. v. Kemp, 524 F.Supp. 109 (D. Kans., 1981); Department of Transp. v. Zabel, 47 Ill.App.3d 1049, 362 N.E.2d 687 (1977); Whitmeir & Ferris Co. v. City of Buffalo, 89 A.D.2d 447, 455 N.Y.S.2d 454 (1982); O'Brien v. City of Syracuse, 54 A.D.2d 186, 388 N.Y.S.2d 866 (1976); St. Genevieve Gas Co. v. Tennessee Valley Authority, 747 F.2d 1411 (11th Cir., 1984); Whitman v. State Highway Commission of Missouri, 400 F.Supp. 1050 (W.D. Mo., 1975); Rhodes v. City of Chicago, Use of Schools, 516 F.2d 1373 (7th Cir., 1975). *See also,* Toso v. City of Santa Barbara, 101 Cal.App.3d 934, 162 Cal.Rptr. 210 (1980) interpreting an anologous state statute.

[217] 527 F.2d 1301 (7th Cir., 1975).

[218] 42 U.S.C. § 4651.

[219] 384 F.Supp. 1294 (W.D.Wis., 1974).

[220] 42 U.S.C. § 4602(a).

[221] 527 F.2d at 1304.

[222] 710 F.2d 1009 (4th Cir., 1983).

[223] 42 U.S.C. § 4655.

[224] 710 F.2d at 1013-1014.

[225] 376 F. Supp. 1074 (W.D.Mo. 1972).

[226] *Id.* at 1077-1078.

[227] Barnhart v. Brinegar, 362 F.Supp. 464 (W.D.Mo., 1973); Nall Motors, Inc. v. Iowa City, Iowa, 410 F.Supp. 111 (S.D. Iowa, 1975), *aff'd per curiam* 533 F.2d 381 (8th Cir., 1976); Bunker Properties, Inc., v. Kemp, 524 F.Supp. 109 (D. Kans., 1981).

[228] United States v. 416.81 Acres of Land, 525 F. 2d 450 (7th Cir., 1975); City of Mishawaka v. Sara, 396 N.E.2d 946 (Ind.App., 1979); State v. Obie Outdoor Advertising, Inc., 9 Wash.App. 943, 516 P.2d 233 (1973).

[229] United States v. 131.68 Acres of Land, More or Less, 695 F.2d 872 (5th Cir., 1983); Anthrop v. Tippecanoe School Corporation, 295 N.E.2d 637 (Ind.App., 1973); City of Mishawaka v. Fred W. Bubb, 396 N.E.2d 943 (Ind.App., 1979); 815 Mission Corp. v. Superior Court, 22 Cal.App.3d 604, 99 Cal.Rptr. 538 (1971); Hegedic v. Commonwealth, Department of Transp., 9 Pa.Cmwlth. 551, 304 A.2d 181 (1973); City of Cookville v. Smith, 524 S.W.2d 257 (Tenn.App., 1974); Auraria Business Against Con., Inc., v. Denver U.R.A., 517 P.2d 845 (Colo., 1974).

[230] City and City of Honolulu v. Toyama, 598 P.2d 168 (Haw., 1979); 49 C.F.R. § 25.204(a).

[231] 42 U.S.C. § 4651(3).

[232] Wise v. United States, 369 F.Supp. 30 (W.D.Ky., 1973).

[233] Rapid City v. Baron, 227 N.W.2d 617 (S.D., 1975).

[234] 42 U.S.C. § 4651(5) 815 Mission Corp. v. Superior Court, 22 Cal.App.3d 604, 99 Cal.Rptr. 538 (1971).

[235] State *ex rel.* Weatherby Advertising v. Conley, 527 S.W.2d 334 (Mo., 1975).

[236] Pub. L. No. 91-646 § 302(a), 42 U.S.C. § 4652(a). For the complete text of Sec. 302(a) *see* note 87.

[237] Pub. L. No. 91-646, § 302(b), 42 U.S.C. § 4652(b). For the complete text of Sec. 302(b), *see* note 87.

[238] 400 F.Supp. 1050 (W.D.Mo., 1975).

[239] 42 U.S.C. § 4652.

[240] 400 F. Supp. at 1080.

[241] United States v. 40.00 Acres of Land, More or Less, 427 F.Supp 434, 440-442 (W.D. Mo., 1976).

[242] State v. Obie Outdoor Advertising, Inc., 9 Wash.App. 943, 516 P.2d 233 (1973); City of Scottsdale v. Eller Outdoor Advertising, 119 Ariz. 86, 579 P.2d 590 (App., 1978).

[243] City of Scottsdale v. Eller Outdoor Advertising, 119 Ariz. 86, 579 P.2d 590 (App., 1978).

[244] 42 U.S.C. § 4652.

[245] Creative Displays v. South Carolina Highway, 248 S.E.2d 916 (S.C., 1978).

[246] Pub. L. No. 91-646, § 301(9), 42 U.S.C. § 4651(9).

[247] 49 C.F.R. § 25.102(k).

[248] 665 F.2d 1023 (Ct.Cl., 1981). The former FHWA regulations defined "uneconomic remnant" as a "remaining part of land, after a partial acquisition, that is of

little or no utility or value to the owner" (23 C.F.R. § 710.104(g)). In addition to its argument that it should be reimbursed for acquiring an uneconomic remnant under § 301(9), the state also contended that it should be reimbursed because the parcel was excess land and because the damages suffered by the property owner were of a type generally compensable in eminent domain.

[249] *Id.* at 1028–1032.

[250] Pub. L. No. 91–646, § 201, 42 U.S.C. § 4621.

[251] *Id.*, § 102(b), 42 U.S.C. § 4602(b). *See also,* United Family Life Ins. Co. v. De Kalb County, 235 Ga. 417, 219 S.E.2d 707 (1975); Creative Displays v. South Carolina Highway, 248 S.E.2d 916(S.C., 1978).

[252] *Id.*, § 203, 42 U.S.C. § 4623.

[253] *Id.*, §§ 211(b), 302(b), 42 U.S.C. §§ 4631(b), 4652(b).

[254] *Id.*, § 302(b), 42 U.S.C. § 4652(b).

[255] United States v. 3.66 Acres of Land, in Cty. and Cty. of S.F., 426 F.Supp. 533 (N.D.Cal., 1977); Weir v. Consolidated Rail Corp., 12 Ohio App.3d 63, 465 N.E.2d 1341 (1983); Mississippi State Highway Comm'n v. Waller, 353 So. 2d 755 (Miss., 1977); Malone v. Div. of Admin., Dep't of Transp., 438 So.2d 857 (Fla.App., 1983); State Highway & Transp. Comm'r v. Edwards Co., 255 S.E. 2d 500 (Va., 1979); Denver Urban Renewal Authority v. Marshall Mfg. Co., 532 P.2d 746 (Colo.App., 1975); Pepsi-Cola Metropolitan Bottling Co. v. Romley, 118 Ariz. 565, 578 P.2d 994 (App., 1978); Parking Authority v. Nicovich, 32 Cal.App.3d 420, 108 Cal.Rptr. 137 (1973); Community Redevelopment Agency v. Abrams, 15 Cal.3d 813, 126 Cal.Rptr. 473, 543 P.2d 905 (1975); Orange County Flood Control Dist. v. Sunny Crest Dairy, Inc., 77 Cal.App.3d 742, 143 Cal.Rptr. 803 (1978); City of Mountain View v. Superior Court, 54 Cal.App.3d 72, 126 Cal.Rptr. 358 (1975); Schnaible v. City of Bismarck, 275 N.W.2d 859 (N.D., 1979). In Pennsylvania, the board of viewers appointed by the court to determine just compensation in an eminent domain action have the power to hear related claims for relocation assistance (Mobil Oil Corp. v. Commonwealth, Dept. of Transp., 11 Pa. Cmwlth. 593, 315 A.2d 639 (1974)). The Georgia Supreme Court has held that relocation expenses are part of just compensation but may not be litigated in an eminent domain action if the displaced person has elected to have his right determined by separate administrative process (Dep't of Transp. v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983)).

[256] Robzen's Inc. v. U.S. Dep't of Housing, 515 F. Supp. 228 (M.D. Pa., 1981); New Jersey Sports & E.A. v. Borough of E. Rutherford, 137 N.J. Super. 271, 348 A.2d 825 (Law Div., 1975).

[257] Schnaible v. City of Bismarck, 275 N.W.2d 859 (N.D., 1979).

[258] State v. Ness, 516 P.2d 1212 (Alaska, 1973); Baldwin Park Redevelopment Agency v. Irving, 156 Cal.App.3d 428, 202 Cal.Rptr. 792 (1984).

[259] The most recent congressional proposal to amend the URA is contained in S. 249, 99th Congress, 1st Session, introduced January 22, 1985.

APPLICATIONS

The foregoing research should prove helpful to highway and transportation administrators, their legal counsel, federal administrators, and others involved in relocation and acquisition activities related to transportation projects. The analysis of issues developing since the enactment of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the summary of the provisions of state relocation assistance acts should be useful in reviewing current policies and procedures.

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