

LEGISLATIVE BILL 254

Approved by the Governor March 27, 1989

Introduced by Government, Military & Veterans Affairs
Committee, Baack, 47, Chairperson;
Coordsen, 32; Korshoj, 16; Robak, 22;
Conway, 17; Bernard-Stevens, 42; Beyer, 3

AN ACT relating to acquisition of property; to amend section 18-2154, Reissue Revised Statutes of Nebraska, 1943; to adopt the Relocation Assistance Act; to require certain awards in condemnation proceedings; to eliminate provisions relating to acquisition of property for publicly financed projects; to harmonize provisions; to provide an operative date; to repeal the original section, and also sections 76-1201 to 76-1211 and 76-1213, Reissue Revised Statutes of Nebraska, 1943, and section 76-1212, Revised Statutes Supplement, 1988; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 29 of this act shall be known and may be cited as the Relocation Assistance Act.

Sec. 2. The intent and purpose of the Relocation Assistance Act is to establish uniform policies and procedures for the fair and equitable treatment of persons displaced as a result of publicly financed projects in order that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

Sec. 3. For purposes of the Relocation Assistance Act, the definitions found in sections 4 to 14 of this act shall apply.

Sec. 4. Agency shall mean (1) any department, agency, or instrumentality of (a) the State of Nebraska, (b) any political subdivision of the State of Nebraska, (c) any combination of states which includes the State of Nebraska, (d) any combination of political subdivisions, either of the State of Nebraska alone or of the State of Nebraska and any other state or states acting in combination, and (2) any person who has the authority to acquire property by eminent domain under state law.

Sec. 5. Appraisal shall mean a written

statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date supported by the presentation and analysis of relevant market information.

Sec. 6. Business shall mean any lawful activity, except a farm operation, conducted primarily (1) for the purchase, sale, lease, or rental of personal or real property or for the manufacture, processing, or marketing of products, commodities, or any other personal property, (2) for the sale of services to the public, (3) by a nonprofit organization, or (4) solely for the purposes of sections 15, 16, and 17 of this act, for the erection and maintenance of outdoor advertising displays, whether or not such displays are located on the premises on which any of the other activities defined as business are conducted.

Sec. 7. Comparable replacement dwelling shall mean any dwelling that is (1) decent, safe, and sanitary, (2) adequate in size to accommodate the occupants, (3) within the financial means of the displaced person, (4) functionally equivalent to the dwelling that the displaced person is required to leave, (5) in an area not subject to unreasonable adverse environmental conditions, and (6) in a location not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

Sec. 8. (1) Displaced person shall mean:

(a) Any person who, on or after April 2, 1989, moves from or moves his or her personal property from real property as a result of the acquisition of or a written notice of the intent to acquire all or part of such real property for a publicly financed project;

(b) Any person who, as a result of a publicly financed project, moves from or moves his or her personal property from real property on which such person is a residential tenant, conducts a small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended, conducts a farm operation, or conducts a business, as a direct result of rehabilitation, demolition, or other displacing activity when such displacement is permanent; or

(c) Solely for purposes of sections 15, 16,

and 25 of this act, any person who moves from or moves his or her personal property from real property as a direct result of (i) written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation or (ii) the rehabilitation, demolition, or other displacing activity of other real property on which such person conducts a business or a farm operation, when such displacement is permanent.

(2) Displaced person shall not include (a) a person who either is in unlawful occupancy of any property subject to the Relocation Assistance Act or occupied such property for the purpose of obtaining assistance under the act or (b) in any case in which the displacing agency acquires property for a publicly financed project, any person who occupies such property on a rental basis after the property has been acquired by the displacing agency or for a period subject to termination when the property is needed for the project.

Sec. 9. Displacing agency shall mean (1) any agency carrying out a publicly financed project which causes an individual to become a displaced person and (2) any person lacking the power of eminent domain who carries out a publicly financed project when that project causes an individual to be a displaced person.

Sec. 10. Farm operation shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Sec. 11. Lead agency shall mean the Nebraska Department of Roads.

Sec. 12. Mortgage shall mean any of such classes of liens as are commonly given to secure advances on or the unpaid purchase price of real property under the laws of the state, together with the credit instruments, if any, secured thereby.

Sec. 13. Person shall mean any individual, partnership, corporation, or association.

Sec. 14. Publicly financed project shall mean any project undertaken by an agency in which any part of the cost is to be paid (1) from funds derived from federal, state, or local taxes of any type, (2) by revenue or general obligation bonds issued by the agency, or (3) from funds derived by the agency from the sale of products or services in a proprietary capacity. Publicly financed project shall not mean a project in

which the federal funds involved are in the form of a federal guarantee or insurance.

Sec. 15. Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of (1) actual reasonable expenses in moving himself or herself and his or her family, business, farm operation, or other personal property, (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency, (3) actual reasonable expenses in searching for a replacement business or farm, and (4) actual reasonable expenses necessary to reestablish at its new site a displaced farm, nonprofit organization, or small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended, but not to exceed ten thousand dollars.

Sec. 16. Any displaced person eligible for payments under section 15 of this act who is displaced from a dwelling and who elects to accept the payments authorized by this section in lieu of the payments authorized by section 15 of this act may receive an expense and dislocation allowance which shall be determined according to a schedule established by the head of the lead agency. In establishing the schedule authorized by this section, the head of the lead agency shall take into consideration the reasonable expenses associated with relocation and the regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended.

Sec. 17. Any displaced person eligible for payments under section 15 of this act who is displaced from the person's place of business or farm operation and who is eligible for payments under this section according to criteria established by the head of the lead agency may elect to accept the payment authorized by this section in lieu of the payment authorized by section 15 of this act. Such payment shall consist of a fixed payment in an amount to be determined according to

criteria established by the head of the lead agency, except that such payment shall be at least one thousand dollars but not more than twenty thousand dollars. In establishing the criteria authorized by this section, the head of the lead agency shall take into consideration the reasonable expenses associated with the relocation of a business or farm operation and the regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this section.

Sec. 18. In addition to payments otherwise authorized by the Relocation Assistance Act, the head of the displacing agency shall make an additional payment not to exceed twenty-two thousand five hundred dollars to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for at least one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which, when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling;

(2) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for at least one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling;

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling but not including prepaid expenses; and

(4) The amount, if any, which will compensate such displaced person for the increase in property taxes resulting from the relocation for a period of three years.

Sec. 19. The additional payment authorized by section 18 of this act shall be made only to a displaced

person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under subdivision (2)(c) of section 25 of this act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of such date.

Sec. 20. (1) In addition to amounts otherwise authorized by the Relocation Assistance Act, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 18 of this act which dwelling was actually and lawfully occupied by such displaced person for at least ninety days immediately prior to (a) the initiation of negotiations for acquisition of such dwelling or (b) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe by rules and regulations which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed forty-two months a comparable replacement dwelling, but the payment shall not exceed five thousand two hundred fifty dollars. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(2) Any person eligible for a payment under subsection (1) of this section may elect to apply such payment to a downpayment on and other incidental expenses pursuant to the purchase of a decent, safe, and sanitary replacement dwelling. Such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (1) of this section, except that in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least

ninety days but not more than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 18 of this act had the person owned and occupied the displacement dwelling one hundred eighty days immediately prior to the initiation of such negotiations.

Sec. 21. No person shall be required to move from his or her dwelling as a result of any publicly financed project unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person. If a publicly financed project cannot proceed on a timely basis because comparable replacement dwellings are not available and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by the use of funds authorized for such project. The head of the displacing agency may exceed the maximum amounts which may be paid under sections 18, 19, and 20 of this act on a case-by-case basis for good cause as determined in accordance with rules and regulations adopted and promulgated by the head of the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended.

Sec. 22. No payment received by a displaced person pursuant to the Relocation Assistance Act shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of the state's income tax laws or other tax laws. Except in the case of payments received in conjunction with a low-income housing assistance program, such payments shall not be considered as income or resources of any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Sec. 23. No payment or assistance under the Relocation Assistance Act shall be required to be made to any person or included as a program or project cost if such person receives a payment required by federal, state, or local law which is determined by the head of the displacing agency to have substantially the same purpose and effect as would the payment authorized by

the act.

Sec. 24. Publicly financed projects shall be planned in a manner that (1) recognizes, at an early stage in the planning of such project and before the commencement of any action which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite project advancement and completion.

Sec. 25. (1) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (2) of this section are made available to all persons displaced by such agency. If the agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result of the activity, the agency head may make available to such person such advisory services.

(2) Each relocation assistance advisory program required by this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance;

(b) Provide current and continuing information on the availability, sale prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(c) Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling except in the case of (i) a major disaster as defined in section 102(2) of the Federal Disaster Relief Act of 1974, (ii) a national emergency declared by the President, or (iii) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of the dwelling by such person constitutes a substantial danger to the health or safety of such person;

(d) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(e) Supply (i) information concerning other programs which might assist displaced persons and (ii)

technical assistance to such persons in applying for assistance under such programs; and

(f) Provide other advisory services to displaced persons in order to minimize the hardships of adjusting to relocation.

(3) The head of a displacing agency shall coordinate the relocation assistance activities performed by such agency with other federal, state, or local governmental activities in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(4) Notwithstanding section 8 of this act, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis after the property is acquired by the displacing agency or for a period subject to termination when the property is needed for the project shall be eligible for advisory services to the extent determined by the displacing agency in accordance with rules and regulations adopted and promulgated by the head of the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended.

Sec. 26. In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any person for services in connection with such programs or may carry out its functions through any federal, state, or local agency having an established organization for conducting relocation assistance programs.

Sec. 27. The head of the lead agency shall adopt and promulgate, with the active participation of the heads of other state agencies responsible for funding relocation and acquisition actions and in coordination with local governments, such rules and regulations as may be necessary to carry out the Relocation Assistance Act.

Sec. 28. Any person aggrieved by a determination as to eligibility for a payment authorized by the Relocation Assistance Act or as to the amount of the payment may appeal the determination. The appeal shall be in accordance with the Administrative Procedure Act. Nothing in the Relocation Assistance Act shall be construed as creating in any condemnation proceedings

brought under the power of eminent domain any element of value or damage not in existence immediately prior to April 2, 1989.

Sec. 29. Any funds which have been appropriated by or to any agency for the acquisition of real property or any interest in real property for a particular program or project shall also be available for expenditure to carry out the Relocation Assistance Act as applied to such program or project.

Sec. 30. (1) The court having jurisdiction of a proceeding instituted by an agency as defined in section 4 of this act to acquire real property by condemnation shall award the owner of any right, title, or interest in such real property such sum as will, in the opinion of the court, reimburse such owner for his or her reasonable costs, disbursements, and expenses, including reasonable attorney's, appraisal, and engineering fees, actually incurred because of the condemnation proceedings if (a) the final judgment is that the agency cannot acquire the real property by condemnation or (b) the proceeding is abandoned by the agency. If a settlement is effected, the court may award to the plaintiff reasonable expenses, fees, and costs.

(2) The court having jurisdiction of a proceeding instituted by a condemnee under section 76-705 shall award the condemnee such sum as will, in the opinion of the court, reimburse the condemnee for his or her reasonable costs, disbursements, and expenses, including reasonable attorney's, appraisal, and engineering fees, actually incurred as a result of the taking of or damage to the condemnee's property if (a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected.

Sec. 31. That section 18-2154, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

18-2154. A redevelopment authority shall relocate or provide assistance in the relocation of individuals, families, and businesses occupying premises acquired for a redevelopment project pursuant to the procedures described in ~~sections 76-1201 to 76-1213~~ the Relocation Assistance Act. In the event any housing units are eliminated by a redevelopment project, the redevelopment plan for any such project shall include plans for equivalent replacement housing units elsewhere in the community.

Sec. 32. This act shall become operative on April 2, 1989.

Sec. 33. That original section 18-2154, Reissue Revised Statutes of Nebraska, 1943, and also sections 76-1201 to 76-1211 and 76-1213, Reissue Revised Statutes of Nebraska, 1943, and section 76-1212, Revised Statutes Supplement, 1988, are repealed.

Sec. 34. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.