

## No. 6

## AN ACT

To codify, amend, revise and consolidate the laws relating to eminent domain.

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

## ARTICLE I

### Short Title

Section 101. Short Title.—This act shall be known and may be cited as the “Eminent Domain Code.”

## ARTICLE II

### Definitions

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

(1) “Condemn” means to take, injure or destroy private property by authority of law for a public purpose.

(2) “Condemnee” means the owner of a property interest taken, injured or destroyed, but does not include a mortgagee, judgment creditor or other lienholder.

(3) “Condemnor” means the entity, including the Commonwealth of Pennsylvania, taking, injuring or destroying private property under authority of law for a public purpose.

(4) “Court” means the court of common pleas.

## ARTICLE III

### Severability, Effective Date, and Intent

Section 301. Severability.—If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby and to this end the provisions of this act are declared to be severable.

Section 302. Effective Date.—This act shall take effect immediately upon approval, and shall apply to all condemnations effected thereafter, except the provisions of Article IV, which shall not take effect until September 1, 1964, and shall apply to all condemnations effected thereafter. The provisions of Articles V and VII shall also apply to all steps taken subsequent to the effective date of this act in all condemnation proceedings in which the condemnation was effected prior to the effective date of this act.

Section 303. Intent of Act; Exclusions.—It is intended by this act to provide a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages therefor, except as provided in section 901: Provided,

however, That nothing in this act shall be deemed to affect, vary, alter or modify the jurisdiction or power of the Public Utility Commission of the Commonwealth of Pennsylvania, the State Mining Commission created under the act of June 1, 1933 (P. L. 1409), as reenacted and amended, or any act providing for the assessment of benefits for public improvements on the properties benefited. This act is not intended to enlarge or diminish the power of condemnation given by law to any condemnor.

## ARTICLE IV

### Procedure to Condemn

Section 401. Jurisdiction and Venue.—The court of common pleas shall have exclusive jurisdiction of all condemnation proceedings. All condemnation proceedings shall be brought in the court of common pleas of the county in which the property is located, or, if the property is located in two or more counties, then in the court of common pleas of any one of the counties. Where the property is located in two or more counties, and a proceeding is commenced in the court of one of the counties, all subsequent proceedings regarding the same property shall be brought in the same county.

Section 402. Condemnation; Passage of Title; Declaration of Taking.—(a) Condemnation, under the power of condemnation given by law to a condemnor, which shall not be enlarged or diminished hereby, shall be effected only by the filing in court of a declaration of taking, with such security as may be required under section 403 (a), and thereupon the title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of such filing, and the condemnor shall be entitled to possession as provided in section 407.

(b) The declaration of taking shall be in writing and executed by the condemnor, shall be captioned as a proceeding in rem, and shall contain the following:

- (1) The name and address of the condemnor.
- (2) A specific reference to the statute, article and section thereof under which the condemnation is authorized.
- (3) A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when such action was taken, and the place where the record thereof may be examined.
- (4) A brief description of the purpose of the condemnation and the need therefor.
- (5) A description or plan of the property condemned sufficient for the identification thereof, specifying the

city, borough, township or town and the county or counties wherein the property taken is located.

(6) A statement of the nature of the title acquired, if any.

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

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

Section 403. Security Required.—(a) Bond. Except as hereinafter provided, every condemnor shall give security to effect the condemnation by filing with the declaration of taking its bond, without surety, to the Commonwealth of Pennsylvania for the use of the owner or owners of the property interests condemned, the condition of which shall be that the condemnor shall pay such damages as shall be determined by law.

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

(c) Insufficient Security. The court, upon preliminary objections of the condemnee under and within the time set forth in section 406 (a), may require the condemnor to give such bond and security as the court deems proper, if it shall appear to the court that the bond or power of taxation of the condemnor is not sufficient security.

Section 404. Recording Notice of Condemnation.—The condemnor, upon filing its declaration of taking, shall on the same day lodge for record a notice thereof in the office of the recorder of deeds of the county in which the property is located. If the property is located in two or more counties, the notice shall be recorded in all such counties. The notice shall specify the court term and number of the declaration of taking and the date it was filed, and shall contain a description or plan of the property condemned sufficient for the identification thereof and the names of the owners of the property interests condemned, as reasonably known to the condemnor, and shall be indexed in the deed indices showing the condemnee set forth in the notice as grantor and the condemnor as grantee. The recorder shall receive as a fee the sum of five dollars (\$5) for recording each notice and twenty-five cents (25¢) for each name indexed.

Section 405. Notice to Condemnee.—(a) Within thirty days after the filing of the declaration of taking,

the condemnor shall give written notice of the filing to the condemnee.

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

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

- (1) The caption of the case.
- (2) The date of filing of the declaration of taking and the court term and number thereof.
- (3) The name of the condemnee or condemnees to whom it is directed.
- (4) The name and address of the condemnor.
- (5) A specific reference to the statute, article and section thereof under which the condemnation action is authorized.
- (6) A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when such action was taken, and the place where the record thereof may be examined.
- (7) A brief description of the purpose of the condemnation.
- (8) A statement that the condemnee's property has been condemned and a reasonable identification thereof in the case of a total taking and, in the case of a partial taking, a plot plan showing the condemnee's entire property and the area taken.
- (9) A statement of the nature of the title acquired.
- (10) A statement specifying where a plan showing the condemned property may be inspected in the county in which the property taken is located.
- (11) A statement of how just compensation has been made or secured.
- (12) A statement that if the condemnee wishes to challenge the power or the right of the condemnor to appropriate the condemned property, the sufficiency of the security, the procedure followed by the condemnor or the declaration of taking, he shall file preliminary objections within thirty days after being served with notice of condemnation.

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

(e) The condemnor shall file proof of service of said notice.

Section 406. Preliminary Objections.—(a) Within thirty days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking. The court upon cause shown may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated; (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking. Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

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

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

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

Section 407. Possession; Entry; Payment of Compensation.—(a) The condemnor after filing the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount of just compensation as estimated by the condemnor. If a condemnee thereafter refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a rule, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

(b) If within sixty days from the filing of the declaration of taking, the condemnor has not paid just com-



compensation as provided in subsection (a) of this section, the condemnee may tender possession or right of entry in writing and the condemnor shall thereupon make payment of the just compensation due such condemnee as estimated by the condemnor. If the condemnor fails to make such payment the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file such declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate such just compensation. The court may, after hearing, enter judgment for the amount of the estimated just compensation.

(c) The compensation paid under subsections (a) and (b) of this section shall be without prejudice to the rights of either the condemnor or the condemnee to proceed to a final determination of the just compensation and the payments heretofore made shall be considered only as payments pro tanto of the just compensation as finally determined.

Section 408. Revocation of Condemnation Proceedings.—The condemnor, by filing a declaration of relinquishment in court within one year from the filing of the declaration of taking, and before having made the payment provided for in section 407 (a) or (b), or as to which the condemnee has not tendered possession of the condemned property as provided in section 407, may relinquish all or any part of the property condemned that it has not taken actual possession of for use in the improvement, whereupon title shall revert in the condemnee as of the date of the filing of the declaration of taking, and all mortgages and other liens existing as of such date shall be reinstated. Notice of said relinquishment shall be recorded in the office of the recorder of deeds of the county in which the property taken is located, with the condemnor as the grantor and the condemnee as the grantee, and the notice of said relinquishment shall be served on the condemnee in the same manner as provided for service of the declaration of taking. Where condemned property is relinquished, the condemnee shall be entitled to the damages sustained by him including costs, expenses and reasonable attorney's fees and such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the condemnee, whose award shall be subject to appeal as provided in this act. The condemnor and the condemnee, without the filing of declaration of relinquishment provided herein, may by agreement effect a reversion of title in the condemnee.

Section 409. Right to Enter Property Prior to Condemnation.—Prior to the filing of the declaration of taking, the condemnor or its employes or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.

Section 410. Abandonment of Project.—If a condemnor has condemned a fee and thereafter abandons the purpose for which the property has been condemned, the condemnor may dispose of it by sale or otherwise: Provided, however, That if the property has not been substantially improved, it may not be disposed of within three years after condemnation without first being offered to the condemnee at the same price paid to the condemnee by the condemnor. The condemnee shall be served with notice of the offer in the same manner as prescribed for the service of notices in subsection (b) of section 405 of this act, and shall have ninety days after receipt of such notice to make written acceptance thereof.

## ARTICLE V

### Procedure for Determining Damages

Section 501. Agreement as to Damages.—At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

Section 502. Petition for the Appointment of Viewers.—(a) The condemnee may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in declaration of taking, with an identification of the petitioner and his property.

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

(3) The name of the condemnor.

(4) The names and addresses of all condemnees known to the petitioner to have an interest in his property and the nature of their interests.

(5) A brief description of his property which may include any or all of his properties included in the declaration of taking.

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

(b) The condemnor may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in the declaration of taking.

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

(3) The names and addresses of all condemnees known to the petitioner to have an interest in the property which is the subject of the petition and the nature of their interests.

(4) A brief description of the property which is the subject of the petition and the interest condemned.

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

(c) The condemnor may include in its petition any or all of the property included in the declaration of taking.

(d) The court appointing the viewers may direct them to determine, at the request of either party, the damages for any property included in a declaration of taking.

(e) If there has been a compensable injury suffered and no declaration of taking therefor has been filed, a condemnee may file a petition for the appointment of viewers substantially in the form provided for in subsection (a) of this section, setting forth such injury.

(f) A copy of any petition for the appointment of viewers filed by a condemnee shall be served promptly on the condemnor named therein.

Section 503. View.—In every proceeding at least one of the viewers appointed shall be an attorney at law who shall be chairman of the board, who shall attend the view, and at least two of the three viewers appointed shall view the property in question.

Section 504. Appointment of Viewers; Notice. — Upon the filing of a petition for the appointment of viewers, the court, unless preliminary objections to the validity of the condemnation or jurisdiction, warranting delay, are pending, shall promptly appoint three view-

ers, who shall view the premises, hold hearings, and file a report.

The viewers shall promptly give written notice of their appointment to all persons named as condemnors or condemnees in the petition for the appointment of viewers and of the place and time of the view, which shall not be less than twenty days from the date of said notice.

If notice of the view does not include notice of a time and place of subsequent hearings and a time and place is not agreed upon by the parties at the view, notice of the hearing shall be given by not less than ten days' written notice.

Section 505. Service of Notice of View and Hearing.—Notice of the view and hearing shall be served, within or without the Commonwealth, by any competent adult in the same manner as a complaint or writ of summons in assumpsit, or by certified or registered mail, return receipt requested, to the last known address of the condemnee and condemnor. If service cannot be made in the manner so provided, then service shall be made by posting a copy of the notice upon the most public part of the property and by publication, at the cost of the condemnor, once in a newspaper of general circulation and once in the legal publication, if any, designated by rule or order of court for publication of legal notices, published in the county. Proof of service and the manner of same shall be attached to the viewers' report.

Section 506. Additional Condemnees; Mortgagees.—(a) The condemnee, at or before the hearing at which his claim is presented, shall furnish the viewers and the condemnor the names and addresses of all other condemnees known to him to have an interest in his property and the nature of such interests and the names and addresses of all mortgagees known to the condemnee. The viewers shall thereupon notify by written notice all persons who are so disclosed as having an interest in the property and mortgagees, of the pendency of the proceedings and of subsequent hearings. If the additional condemnees and mortgagees have not received twenty days' notice of the hearing, the viewers shall, upon request, adjourn the hearing to allow such notice.

(b) The court may permit a mortgagee to intervene in the proceedings where his interest is not adequately protected, but he shall not be a party to the proceedings unless he has intervened.

Section 507. Joint Claims Required; Apportionment of Damages.—The claims of all the owners of the condemned property, including joint tenants, tenants in common, life tenants, remaindermen, owners of ease-

ments, and all others having an interest in the property, and the claims of all tenants, if any, of the property, shall be heard or tried together and the award of the viewers or the verdict on appeal from the viewers shall first fix the total amount of damages for the property, and second, apportion the total amount of damages between or among the several claimants entitled thereto.

Section 508. Appointment of Trustees Ad Litem.—The court, on its own motion may, or on petition of any party in interest shall, appoint a trustee ad litem to represent the interests of minors, persons under a disability, unborn or unascertained parties, or parties whose whereabouts are unknown.

Section 509. Furnishing of Plans to Viewers.—The condemnor shall furnish the viewers at or before the view with a plan showing the entire property involved, the improvements thereon, the extent and nature of the condemnation and such other physical data, including grades, as may be necessary for the proper determination of just compensation. If, in the opinion of the viewers, the plans are insufficient, they may require the submission of supplemental plans. Copies of the plans shall be furnished at the same time, without cost, to the condemnee upon written request therefor. If the condemnor does not furnish a plan or the condemnor's plans are insufficient, the court, on application of the condemnee, may tax to the condemnor as costs reasonable expenses for plans furnished by the condemnee.

Section 510. Powers of Viewers.—The viewers shall have power to administer oaths and affirmations, to compel the attendance of witnesses, the production of books and documents, and to adjourn the proceedings from time to time. All the viewers shall act, unless prevented by sickness or other unavoidable cause; but a majority of the viewers may hear, determine, act upon and report all matters relating to the view for which they were appointed.

Section 511. Report of Viewers.—The viewers shall file a report which shall include in brief and concise paragraph form:

- (1) The date of their appointment as viewers.
- (2) A reference to the notices of the time and place of view and hearing with proof of service of notices, which shall be attached to the report.
- (3) A copy of the plan showing the extent of the taking or injury upon which the viewers' award is predicated and a statement of the nature of the interest condemned.

(4) The date of the filing of the declaration of taking or of the injury where no declaration of taking has been filed.

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

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

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

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

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

(10) Such other matters as they may deem relevant.

Section 512. Disagreement.—If a majority of the viewers do not agree on a decision, three new viewers shall be appointed by the court upon application of any interested party.

Section 513. Notice of Filing of Report of Viewers.—Ten days before the filing of their report, the viewers shall mail a copy thereof to all parties or their attorneys of record, with notice of the date of the intended filing and that the report shall become final unless an appeal therefrom is filed within thirty days from the date the report is filed. Prior to the filing of their report they may correct any errors therein and give notice thereof to the persons affected.

Section 514. Reports.—The viewers may include in one report one or more properties referred to them under the same or separate petitions provided such properties are included in the same declaration of taking. Each such report shall be final as to the property or properties included therein and subject to separate appeal.

Section 515. Appeals; Time of Taking; Consolidation.—Any party aggrieved by the decision of the viewers may appeal to the court of common pleas within

thirty days from the filing of the report. The appeal shall raise all objections of law or fact to the viewers' report. The appeal shall be signed by the appellant or his attorney or his agent and no verification shall be required. Any award of damages or assessment of benefits, as the case may be, as to which no appeal is taken within thirty days, shall become final as of course and shall constitute a final judgment.

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

If a condemnee having less than the entire interest in the condemned property appeals the award to him, the condemnor shall have an additional fifteen days to appeal the entire award.

Section 516. Appeals. — (a) The appeal shall set forth:

- (1) The name of appellant.
- (2) A brief description or identification of the property involved and the condemnee's interest therein.
- (3) A reference to the proceedings appealed from and the date of the filing of the viewers' report.
- (4) Objections, if any, to the viewers' report, other than to the amount of the award.
- (5) A demand for jury trial, if desired. If the appellant desires a jury trial, he shall at the time of filing the appeal, endorse thereon, or file separately, a written demand for jury trial, signed by him or counsel. If no demand for jury trial is made by the appellant, any other party may file a written demand for jury trial within fifteen days after being served with a copy of the appeal. If no party makes a demand for a jury trial as set forth herein, the right to jury trial shall be deemed to have been waived and the court shall try the case without a jury.

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

(c) No other pleadings shall be required and the cause shall be deemed at issue.

Section 517. Disposition of Appeal.—All objections, other than to the amount of the award, raised by the appeal shall be determined by the court preliminarily. The court may confirm, modify, change the report or refer it back to the same or other viewers. A decree confirming, modifying or changing the report shall constitute a final order.

The amount of damages shall be determined by the court unless a jury trial has been demanded.

At the trial of the case, the condemnee shall be the plaintiff and the condemnor shall be the defendant.

Section 518. Severance and Special Damages; Allocation.—(a) Upon appeal from an award of viewers, the court, upon the request of the plaintiff, shall, after the jury or the court, if the trial is without jury, has returned its general verdict, make a specific finding and allocation of the amount of the general verdict attributable to severance damages to the part of the property not taken.

(b) The jury, or the court, in a trial without a jury, shall make specific findings as to the portion of the verdict allocated to general damages, moving and removal expenses, business dislocation damages and other items of special damages authorized by this act.

Section 519. Costs of Proceedings. — All taxable costs, including filing fees, jury fees, statutory witness fees and mileage, expense of preparing plans under section 509, the expense of transporting the judge and jury to view the condemned property, and such other costs as the court in the interests of justice may allow, shall be paid by the condemnor unless the court in a proper case shall otherwise direct.

Section 520. Waiver of Viewers' Proceedings.—The condemnor and condemnee may, by written agreement filed with and approved by the court, waive proceedings before viewers and proceed directly to the said court on agreed issues of law or fact. The proceedings thereafter shall be the same as on appeal from a report of viewers.

Section 521. Distribution of Damages; Liens.—Damages payable to a condemnee under any provision of this act shall be subject to a lien for all taxes and municipal claims assessed against and all mortgages, judgments and other liens of record against the property for which the particular damages are payable, existing at the date of the filing of the declaration of taking, and said liens shall be paid out of the damages in order of priority before any payment thereof to the condemnee, unless released.

It shall be the obligation of the condemnor to properly distribute the damages. If the condemnor is unable to determine proper distribution of the damages, it may, without payment into court, petition the court to distribute the damages and shall furnish the court with a schedule of proposed distribution.

Notice of the filing of the petition and schedule of proposed distribution shall be given to all condemnees, mortgagees, judgment creditors and other lienholders, as shown in the proposed schedule, in such manner as



the court may by general rule or special order direct. The court may hear the matter or may appoint a master to hear and report or may order any issue tried by the court and jury as may appear proper under all the circumstances. The court shall thereafter enter an order of distribution of the fund.

Section 522. Payment into Court; Distribution.— Upon refusal to accept payment of the damages, or if the party entitled thereto cannot be found, or if for any other reason the damages cannot be paid to the party entitled thereto, the court upon petition of the condemnor which shall include a schedule of proposed distribution, may direct payment of the damages and costs into court or as the court may direct in full satisfaction thereof.

The court thereafter upon petition of any party in interest shall distribute such funds or any funds deposited in court under section 407 to the persons entitled thereto in accordance with the procedure in section 521, but if no petition is presented within a period of five years of the date of payment into court, the court shall order the fund or any balance remaining to be paid to the Commonwealth without escheat. No fee shall be charged against these funds.

Section 523. Appeal to Supreme or Superior Court.— Either party may appeal to the Supreme or Superior Court as the case may be, from any final order or judgment of the court of common pleas within forty-five days from the entry thereof.

Section 524. Limitation Period.— A petition for the appointment of viewers for the assessment of damages for a condemnation or compensable injury may not be filed after the expiration of six years from the date on which the condemnor made payment in accordance with section 407 (a) or (b) of this act where the property or any part thereof has been taken, or from the date of injury where the property has been injured but no part thereof has been taken. If such petition is not filed before the expiration of such period, such payment shall be considered to be in full satisfaction of the damages.

Section 525. Power of Supreme Court to Promulgate Rules.— Nothing herein contained shall be interpreted so as to prevent the Supreme Court of Pennsylvania from promulgating rules of civil procedure under provisions of the act of June 21, 1937 (P. L. 1982), entitled "An act authorizing the Supreme Court of Pennsylvania to prescribe rules of practice and procedure in civil actions at law and in equity in certain courts of this Commonwealth, to prescribe rules and regulations for the con-

duct of any general business, either civil or criminal, by judges of any court of record; authorizing the courts of common pleas to prescribe and adopt local rules, not inconsistent with such general rules of the Supreme Court of Pennsylvania; authorizing the Supreme Court of Pennsylvania to appoint a procedural rules committee, and to fix and define its powers and duties; imposing duties on judges and other officers of every court of record," with respect to matters of procedure set forth in this act.

## ARTICLE VI

### Just Compensation and Measure of Damages

Section 601. Just Compensation.—The condemnee shall be entitled to just compensation for the taking, injury or destruction of his property, determined as set forth in this article.

Section 602. Measure of Damages.—Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this article.

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

Section 603. Fair Market Value.—Fair market value shall be the price which would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

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

Section 604. Effect of Imminence of Condemnation.—Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation, other than that due to physical deterioration of the property within the reasonable control of the condemnee, shall be disregarded in determining fair market value.

Section 605. Contiguous Tracts; Unity of Use.—Where all or a part of several contiguous tracts owned by one owner is condemned or a part of several non-contiguous tracts owned by one owner which are used together for a unified purpose is condemned, damages shall be assessed as if such tracts were one parcel.

Section 606. Effect of Condemnation Use on After Value.—In determining the fair market value of the remaining property after a partial taking, consideration shall be given to the use to which the property condemned is to be put and the damages or benefits specially affecting the remaining property due to its proximity to the improvement for which the property was taken. Future damages and general benefits which will affect the entire community beyond the properties directly abutting the property taken shall not be considered in arriving at the after value. Special benefits to the remaining property shall in no event exceed the total damages except in such cases where the condemnor is authorized under existing law, to make special assessments for benefits.

Section 607. Removal of Machinery, Equipment or Fixtures.—In the event the condemnor does not require for its use machinery, equipment or fixtures forming part of the real estate, it shall so notify the condemnee. The condemnee may within thirty days of such notice elect to remove said machinery, equipment or fixtures, unless the time be extended by the condemnor. If the condemnee so elects, the damages shall be reduced by the fair market value thereof severed from the real estate.

Section 608. Removal Expenses.—The person having legal possession of machinery, equipment or fixtures on the condemned property, not forming part of the realty, including a tenant not entitled to any proceeds of the condemnation, if under the lease the tenant has the right to remove said machinery, equipment or fixtures, shall be entitled, as damages, to the reasonable expenses of the removal, transportation and reinstallation of such machinery, equipment or fixtures. Reasonable expenses under the provisions of this section shall

not exceed twenty-five thousand dollars (\$25,000) and in no event shall such expenses exceed the market value of the machinery, equipment and fixtures.

Section 609. Business Dislocation Damages.—The condemnee shall be entitled to damages, as provided in this section, for dislocation of a business located on the condemned property, but only where it is shown that the business cannot be relocated without substantial loss of patronage. Compensation for such dislocation shall be the actual monthly rental paid for the business premises, or if there is no lease, the fair rental value of the business premises, multiplied by the number of months remaining in the lease, not including unexercised options, not to exceed twenty-four months or multiplied by twenty-four if there is no lease. The amount of such compensation paid shall not exceed five thousand dollars (\$5000) and shall not be less than two hundred fifty dollars (\$250). A tenant shall be entitled to recover for such business dislocation even though not entitled to any of the proceeds of the condemnation.

Section 610. Moving Expenses.—The person having legal possession shall be entitled to, as damages, the reasonable moving expenses for personal property other than machinery, equipment or fixtures, not to exceed five hundred dollars (\$500), when personal property is moved from a place of residence and not to exceed twenty-five thousand dollars (\$25,000) when personal property is moved from a place of business. Receipts therefor shall be prima facie evidence of reasonable moving expenses. A tenant shall be entitled to recover these moving expenses even though he is not entitled to any of the proceeds of the condemnation. In no event shall such expenses exceed the market value of such personal property.

Section 611. Delay Compensation.—The condemnee shall not be entitled to compensation for delay in payment during the period he remains in possession after the condemnation, nor during such period shall a condemnor be entitled to rent or other charges for use and occupancy of the condemned property by the condemnee. Compensation for delay in payment shall, however, be paid at the rate of six per cent per annum from the date of relinquishment of possession of the condemned property by the condemnee, or if the condemnation is such that possession is not required to effectuate it, then delay compensation shall be paid from the date of condemnation: Provided, however, That no compensation for delay shall be payable with respect to funds paid on account, or by deposit in court, after the date of such payment or deposit. Compensation for delay shall

not be included by the viewers or the court or jury on appeal as part of the award or verdict, but shall at the time of payment of the award or judgment be calculated as above and added thereto. There shall be no further or additional payment of interest on the award or verdict.

Section 612. Consequential Damages.—All condemnors, including the Commonwealth of Pennsylvania, shall be liable for damages to property abutting the area of an improvement resulting from change of grade of a road or highway, permanent interference with access thereto, or injury to surface support, whether or not any property is taken.

Section 613. Damages for Vacation of Roads.—Whenever a public road, street, or highway is vacated, the affected owners may recover damages for any injuries sustained thereby, even though no land is actually taken.

Section 614. Proration of Real Estate Taxes.—At the time of payment of the damages, the condemnor shall pay to the condemnee as part of the damages the pro rata portion of all real property taxes, water and sewer charges, paid to a taxing entity or a municipal authority by the condemnee with respect to the condemned property, allocable to a period subsequent to the filing of the declaration of taking or the relinquishment of possession, whichever occurs later.

## ARTICLE VII

### Evidence

Section 701. Viewers' Hearing.—The viewers may hear such testimony, receive such evidence, and make such independent investigation as they deem appropriate, without being bound by formal rules of evidence.

Section 702. Condemnor's Evidence Before Viewers.—The condemnor shall, at the hearing before the viewers, present expert testimony of the amount of damages suffered by the condemnee.

Section 703. Trial in the Court of Common Pleas on Appeal.—At the trial in court on appeal:

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

(2) If any valuation expert who has not previously testified before the viewers is to testify, the party calling

him must disclose his name and serve a statement of his valuation of the property before and after the condemnation and his opinion of the highest and best use of the property before the condemnation and of any part thereof remaining after the condemnation, on the opposing party, at least ten days before the date when the case is listed for pre-trial or trial, whichever is earlier.

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

Section 704. Competency of Condemnee as Witness.—The condemnee or an officer of a corporate condemnee, without further qualification, may testify as to just compensation.

Section 705. Evidence Generally.—Whether at the hearing before the viewers, or at the trial in court on appeal:

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

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

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

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

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

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

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

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

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

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

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

Section 706. Use of Condemned Property.—In arriving at his valuation of the remaining part of the property in a partial condemnation, an expert witness may consider and testify to the use to which the condemned property is intended to be put by the condemnor.

## ARTICLE VIII

### Board of Viewers

Section 801. Board of Viewers.—There shall be in each county a board of viewers to consist of not less than three nor more than nine members who shall be appointed by the judges of the court of common pleas for a term of not less than three nor more than six years, whether such appointment be for an original or partly expired term. In counties of the first class the board of viewers may be appointed from among the members of the board of revision of taxes of such counties. The judges shall, in each case, determine within the aforesaid limits, the total number of members of which the board shall be composed, fixing and determining such number as shall be necessary for the proper performance of the duties imposed upon the board. The judges may change the total number of members within the above limits.

Section 802. Appointment of Board Members; Vacancies.—In counties having more than one court of common pleas, the judges of all courts of common pleas shall meet as a body and make the appointments. In judicial districts which comprise more than one county,

the appointment for each county shall be made by the judge or judges of the judicial district in which the county is situate. All vacancies happening from any cause shall be filled by appointment by the judges of the court of common pleas. All appointments shall be subject to the power of the court of common pleas, at its pleasure, to remove members of said board before the expiration of their terms of office, and to appoint successors.

In case of a vacancy in the viewers appointed in any specific case or proceeding before final action has been taken by them, the court may fill such vacancy by appointing another member of the board of viewers.

Section 803. Qualifications.—At least one-third of the members of the board of viewers shall be attorneys. Each member of the board of viewers shall be a resident of the county: Provided, however, That if by reason of existing conditions it becomes necessary or the judges are unable to complete the membership of the board from residents of the county, they may appoint residents of adjacent counties. The judges may by general rule or special order establish additional qualifications.

No member of the board shall represent a client or testify as an expert witness before the board.

Section 804. Oath of Viewers. — Viewers shall be sworn to discharge the duties of their appointment as viewers with impartiality and fidelity and according to the best of their learning and ability, upon their initial appointment to the board of viewers, and thereafter need not be sworn in any proceeding referred to them.

Section 805. Compensation of Viewers.—In counties of the first class the compensation of viewers shall be fixed by the city council. In counties of the second class, compensation shall be established by the salary board. In all other classes of counties, the minimum fee per day for services rendered shall be thirty-five dollars (\$35) or in such other amount in excess thereof as may be fixed by the salary board or their compensation shall be such annual salary as may be fixed by the salary board.

Section 806. Viewers' Hearings; Facilities. — All hearings of viewers shall be held publicly in a suitable place within the county designated by the court. The proper county authorities shall prepare and furnish the hearing place, provide for proper lighting, heating and care of same, and furnish such facilities and do such things as shall be proper to enable the viewers to fully discharge their duties.



Section 807. **Stenographic Notes of Hearings.**—Whenever in the opinion of the board of viewers, it shall be desirable, accurate stenographic notes of hearings shall be taken and copies of such notes shall be furnished to the parties interested when desired upon payment of such sum as shall be fixed by the rules and regulations of the respective courts of common pleas.

Section 808. **Clerks and Stenographers.**—The board of viewers may employ such stenographers and clerical assistants as shall be authorized by the county salary board in counties of the second to eighth class or by city council in counties of the first class.

## ARTICLE IX

### Repeals

Section 901. **Saving Clause.**—This act shall not repeal or modify Articles XXVII, XXVIII and XXIX of the “Second Class County Code,” act of July 28, 1953 (P. L. 723), as amended, applicable to procedures in the court of quarter sessions with respect to bridges, viaducts, culverts and roads or section 412 of the State Highway Law, act of June 1, 1945 (P. L. 1242), as amended, nor, except as to the measure of damages prescribed by Article VI hereof, shall it repeal, modify or supplant any law insofar as it confers the authority or prescribes the procedure for condemnation of rights-of-way or easements for occupation by water, electric, gas, oil and/or petroleum products, telephone or telegraph lines used directly or indirectly in furnishing service to the public. If the condemnation for occupation by water, electric, gas, oil and/or petroleum products, telephone or telegraph lines consists of the taking of a fee, all the provisions of this act shall be applicable.

Section 902. **Specific Repeals.**—The following acts and parts of acts are repealed absolutely:

(1) Act of June 8, 1874 (P. L. 280), entitled “An act providing a mode by which the title to all estates and interests in lands in the state of Pennsylvania may be vested in the United States when no agreement can be made with the owners of the same for the purchase thereof.”

(2) Act of May 23, 1891 (P. L. 109), entitled “An act to limit the period within which petitions for the assessment of damages for the opening or widening of any street, road or highway, may be filed in the court of quarter sessions.”

(3) Act of May 23, 1891 (P. L. 109), entitled “An act to provide for the security to be entered by municipi-

pal corporations for the taking of land for the opening or widening of roads, streets and highways.”

(4) Act of May 26, 1891 (P. L. 116), entitled “An act to provide for an appeal to the court of common pleas, from the decree of the court of quarter sessions confirming any award of viewers in proceedings to assess damages for the opening, widening or changing of grade of any street, road or highway.”

(5) Act of June 2, 1891 (P. L. 172), entitled “A supplement to an act, entitled ‘An act for further regulations of appeals from assessment of damages to owners of property taken for public use,’ approved the thirteenth day of June, one thousand eight hundred and seventy-four.”

(6) Act of May 21, 1895 (P. L. 89), entitled “An act relating to actions brought to ascertain or recover damages for appropriation of rights of way or easements in lands by corporations invested with the right of eminent domain, and empowering and authorizing owners of lands and corporations, municipal or otherwise, desiring to exercise the right of eminent domain in such lands, to waive the assessment of damages by viewers, and granting the right to either party to demand and have the jury engaged in trying such action visit and view said land and premises.”

(7) Act of June 8, 1895 (P. L. 188), entitled “An act providing for the manner of ascertaining, determining, awarding and paying compensation and damages in all cases where municipalities of this Commonwealth may hereafter be authorized by law to take, use and appropriate private property for the purpose of making, enlarging and maintaining public parks within the corporate limits of such municipality.”

(8) Act of March 18, 1903 (P. L. 28), entitled “An act regulating the filing of reports of viewers, or juries of view, appointed by the courts of this Commonwealth to assess damages and benefits for the taking, injury or destruction of private property in the construction or enlargement of public works, highways or improvements.”

(9) Act of March 27, 1903 (P. L. 83), entitled “An act to provide for the confirmation of the reports of viewers, or juries of view, appointed by the courts of quarter sessions to assess damages and benefits, and for the collection of damages in such proceedings.”

(10) Act of April 18, 1905 (P. L. 198), entitled “An act supplementary to an act, entitled ‘An act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges, in the several municipalities of this

Commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs and expenses thereof upon the property benefited, and the construction of sewers and the payment of the damages, costs and expenses thereof, including the damages to private property resulting therefrom,' approved the sixteenth day of May, Anno Domini one thousand eight hundred and ninety-one; relating to exceptions and to the confirmation of the reports of viewers and of parts thereof, and of appeals to the Superior and Supreme Court from the confirmation of viewers' reports or parts thereof, the manner of taking the same, and the effect thereof."

(11) Act of June 7, 1907 (P. L. 461), entitled "An act providing a method to secure possession of lands, buildings or other property acquired under the power of eminent domain."

(12) Act of May 15, 1913 (P. L. 215), entitled "A supplement to an act, entitled 'An act in relation to the laying out, opening, widening, straightening, extending, or vacating streets and alleys, and the construction of bridges, in the several municipalities of this Commonwealth; the grading, paving, macadamizing, or otherwise improving, streets and alleys, providing for ascertaining damages to private property resulting therefrom; the assessment of the damages, costs, and expenses thereof upon the property benefited; and the construction of sewers, and payment of the damages, costs and expenses thereof, including damages to private property resulting therefrom,' approved the sixteenth day of May, Anno Domini one thousand eight hundred and ninety-one (Pamphlet Laws, seventy-five); by providing that, in proceedings to assess damages and benefits arising from improvements under the act to which this is a supplement, if property benefited and damaged by such improvements, the excess of damages over benefits, or the excess of benefits over damages, or nothing in case the benefits and damages are equal, shall be awarded to or assessed against the owners of property, and providing that the report thereof made by the Board of Viewers shall show the net result only."

(13) Act of April 14, 1915 (P. L. 122), entitled "An act providing for the payment of judgments and mortgages, and other claims, which are liens on property affected by public improvements or appropriated by the exercise of the right of eminent domain."

(14) Act of April 21, 1915 (P. L. 159), entitled "An act relating to the competency of witnesses and to the

rules of evidence in proceedings arising from the exercise of the right of eminent domain."

(15) Act of May 10, 1921 (P. L. 428), entitled "An act fixing the time for the confirmation of the reports of viewers, or portions thereof, in proceedings to assess damages or benefits incident to public improvements, where no exceptions are filed or appeals taken."

(16) Act of May 27, 1925 (P. L. 310), entitled "An act to provide for the preparation of plans for the use of viewers, owners, tenants, and occupiers of property, and all other parties affected in proceedings for the assessment of damages for the taking, injury, or destruction of private property for public use, and the furnishing of copies thereof to parties affected thereby."

(17) Act of May 4, 1927 (P. L. 728), entitled "An act making the power of taxation of cities of this Commonwealth security for the taking, injury, or destruction of private property for public use, without the entry of a bond."

(18) Act of April 25, 1929 (P. L. 777), entitled "An act fixing the time when interest shall begin to run on the amounts fixed in reports of viewers for the taking, injury and destruction of property by the right of eminent domain."

(19) Act of July 1, 1937 (P. L. 2667), entitled "An act regulating the hearing before boards of view and jury trials, and the awards and verdicts in cases arising from the taking, injury, or destruction of private property under the right of eminent domain, where both the owner of the fee, and any lessee or lessees under such owner, shall claim damages."

(20) Act of June 21, 1939 (P. L. 651), entitled "An act authorizing the courts of common pleas to make orders relative to the payment of costs in road cases."

(21) Act of April 3, 1956 (P. L. 1366), entitled "An act limiting the period within which petitions for the assessment of damages may be filed or actions for damages commenced for injury to or taking of private land, property or material or any interest therein by political subdivisions or by authorities created by political subdivisions in the exercise of their power of eminent domain."

(22) Act of July 10, 1957 (P. L. 632), entitled "An act authorizing cities of the first class to file declarations of valuation with respect to property condemned for public purposes, and for the deposit in court of the estimated value of the property taken, and authorizing the courts to pay said sums to parties in interest under certain terms and conditions."

Section 903. General Repeal.—All other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

APPROVED—The 22d day of June, A. D. 1964.

WILLIAM W. SCRANTON

No. 7

AN ACT

Amending the act of December 5, 1936 (1937 P. L. 2897), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," deleting obsolete definitions and provisions, redefining certain terms, correcting certain references to the Internal Revenue Code, clarifying certain definitions, consolidating rate tables, recodifying certain content, revising provisions concerning refunds, collection, benefit overpayments, appeals modifying transfer provisions and modifying penalty provisions.

Unemployment  
Compensation  
Law.

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

Section 1. Subsection (e) of section 4, act of December 5, 1936 (1937 P. L. 2897), known as the "Unemployment Compensation Law," amended May 23, 1949 (P. L. 1738), is repealed.

Section 2. Subsection (j) of section 4 of the act, amended May 23, 1949 (P. L. 1738), is amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

\* \* \* \* \*

(j) (1) "Employer" means every [(1)] individual [(2)] copartnership, [(3)] association, [(4)] corporation (domestic or foreign), [(5)] the legal representative, trustee in bankruptcy, receiver or trustee of any individual, copartnership, association or corporation, or [(6)] the legal representative of a deceased person, who or which employed or employs any employe in employment subject to this act for some portion of a day during a calendar year, or who or which has elected to become