

R.S. 20:3-1 to
20:3-50.

copy 14
January 18, 1972

LEGISLATIVE HISTORY OF R.S. 20:3-1 to 20:3-50
(Eminent Domain Act of 1971)

Earlier bills introduced

- 1965 - A 807 - Rimm, et al.
- 1966 - A 217 - Rimm, et al.
- 1967 - A 238 - Gimson.
- 1968 - A 26 - Gimson.
All these bills were identical. The first three did not get out of Committee. A 26 of 1968 was amended several times and passed Assembly. [Bill and all amendments enclosed].
- 1966 - S 234 - Crabiell, et al. Died in Committee. [Bill encl]
- 1969 - A 388 - Gimson, et al. Passed Assembly, amended. [Bill and amendments enclosed.]

The bill which finally passed was:

- L. 1971 - chap. 361 - A 504 - Foran, et al.
The bill had no statement.
- Feb. 9 - 1970 - Introduced.
- > May 7 - 1970 - Passed Assembly. *S COM. AMEND. - ADOPTED MAY 3, 1971,
RESCINDED MAY 10, 1971*
- May 10 - 1971 - Passed Senate under emergency resolution, amended. (FLOOR AMENDMENTS)
- June 14 - 1971 - Senate amendment passed Assembly.
- Dec. 2 - 1971 - Governor's conditional veto.
- Dec. 2 - 1971 Reenacted in Assembly.
- Dec. 6 - 1971 - Reenacted in Senate.
- Dec. 21 - 1971 Approved (2nd OCR) chap. 361.
[Bill, Amendments and Governor's message enclosed].

Hearings and Reports

New Jersey Supreme Court Committee on Eminent Domain

Report and Minority Reports.
Oct. 27, 1960 83 N.J.L.J. 549, 561. (enclosed)

974.90 New Jersey Eminent Domain Revision Commission
R288
1963b Public Hearing... Nov. 20-Dec. 11, 1963

974.90 New Jersey Eminent Domain Revision Commission
R288
1965 Report April 15, 1965

LP New Jersey State Bar Committee on Revision of
NJ the Law of Eminent Domain

Reports 84 N.J.L.J. 585, 1961 (enclosed)
86 N.J.L.J. 639, 1963 (enclosed)
87 N.J.L.J. 287, 1964 (notice only)
89 N.J.L.J. 313, 1966 (notice only)

Comments to A 504, 1970 (1971)

974.905 League of New Jersey Municipalities
M95

Legislative Bulletin no.7, page 2. 4/28/70
[also former bill A 388 in no.7. 4/23/69]
Bills approved.

974.905 This Week in Farm Bureau
F22.1

May 23, 1970 vol.8 no.21
May 8, 1971 vol.9 no.19 p.1-2; June 19, 1971
vol. 9 no.25. A388, 1969 was also approved
[enclosed]

974.905 State Federation District Boards of Education
L51

Legislation Bulletin
Vol.17 no.2 Feb.28, 1969. (enclosed)

All these agencies approved the bill.

Law Review Articles

Eminent Domain--should the State get it wholesale (editorial)
80 N.J.L.J. 492, October 3, 1957.

Eminent Domain Revision Commissioner solicits bar's suggestions
84 N.J.L.J. June 29, 1961.

"Without just compensation" [need for reform of law of eminent
domain] (editorial) 85 N.J.L.J. 132 March 8, 1962.

Just compensation and the plight of displaced business owners (editorial) 87 N.J.L.J. 68 January 30, 1964.

Lobsenz, T.A. Letter to the editor. 87 N.J.L.J.84, February 6, 1964.

A challenging report on eminent domain, 88 N.J.L.J. 456, July 15, 1965.

Must it be left to the courts? [Just compensation] (editorial) 87 N.J.L.J. 500 August 6, 1964.

United States Department of Transportation ask National Conference of Commissioners on Uniform State Laws to develop uniform eminent domain code. 94 N.J.L.J. 700, July 29, 1971

HP/EH
encl.

CHAPTER 361

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public purposes and repealing chapter 1 of Title 20 of the Revised Statutes, chapter 14 of the laws of 1942, and certain other parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

ARTICLE I
SHORT TITLE**C. 20:3-1 Short title.**

1. This act shall be known and may be cited as the "Eminent Domain Act of 1971."

ARTICLE II
DEFINITIONS**C. 20:3-2 Definitions.**

2. When used in this act, unless the context or subject matter otherwise requires, the following words shall have the meanings ascribed to them under this section:

(a) "Condemn" means to take private property for a public purpose under the power of eminent domain;

(b) "Condemnor" means the entity, public or private, including the State of New Jersey, which is condemning private property for a public purpose under the power of eminent domain;

(c) "Condemnee" means the owner of an interest in the private property being condemned for a public purpose under the power of eminent domain;

(d) "Property" means land, or any interest in land, and (1) any building, structure or other improvement imbedded or affixed to land, and any article so affixed or attached to such building, structure or improvement as to be an essential and integral part thereof, (2) any article affixed or attached to such property in such manner that it cannot be removed without material injury to itself or to the property, (3) any article so designed, constructed, or specially adapted to the purpose for which such property is used that (a) it is an essential accessory or part of such property; (b) it is not capable of use elsewhere; and (c) would lose substantially all its value if removed from such property;

(e) "Court" means Superior Court of New Jersey;

(f) "Rules" means the applicable rules governing the courts of the State of New Jersey as promulgated from time to time by the Supreme Court of New Jersey;

(g) "Action" means the legal proceeding in which

(1) property is being condemned or required to be condemned;

(2) the amount of compensation to be paid for such condemnation is being fixed;

(3) the persons entitled to such compensation and their interests therein are being determined; and

(4) all other matters incidental to or arising therefrom are being adjudicated.

(h) "Compensation" means the just compensation which the condemnor is required to pay and the condemnee is entitled to receive according to law as the result of the condemnation of property;

(i) "Award" means the award of compensation made by the commissioners provided for herein;

(j) "Judgment" means the adjudication by the court of any issue of fact or law, or both, arising under this act. The adjudication of the right to condemn shall be a final judgment. All other judgments shall be interlocutory or final, according to law, or as may be prescribed by the rules;

(k) "Recording office" means the county office of each county in which the property being condemned, or any part thereof, is located, in which office conveyances of real property may be recorded;

(l) "Days" means calendar days, calculated in accordance with the rules of court;

(m) "Public utility" means and includes every public utility, as the same are enumerated in Revised Statutes 48:2-13, and every natural gas pipeline utility as defined in P. L. 1952, chapter 166 (C. 48:10-2 et seq.) vested with the power of eminent domain and subject to regulation under State or Federal law.

(n) Words used in the singular shall include the plural and vice versa. Words used in the neuter gender shall include masculine and feminine gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

C. 20:3-3 Severability.

3. Severability. If any provision or clause of this act, or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the act, which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared to be severable.

C. 20:3-4 Effective date.

4. Effective date. This act shall take effect immediately following the approval thereof, and shall apply to all actions instituted thereafter, and to all proceedings taken subsequent thereto in all actions pending on such effective date; except that judgments theretofore entered or awards theretofore made pursuant to law from which no appeal is pending on such effective date, shall not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

C. 20:3-5 Jurisdiction.

5. Jurisdiction. The court shall have jurisdiction of all matters in condemnation, and all matters incidental thereto and arising therefrom, including, but without limiting the generality of the foregoing, jurisdiction to determine the authority to exercise the power of eminent domain; to compel the exercise of such power; to fix and determine the compensation to be paid and the parties entitled thereto, and to determine title to all property affected by the action.

C. 20:3-6 Application of act.

6. Application of act. Whenever any condemnor shall have determined to acquire property pursuant to law, including public property already devoted to public purpose, but cannot acquire title thereto or possession thereof by agreement with a prospective condemnee, whether by reason of disagreement concerning the compensation to be paid or for any other cause, the condemnation of such property and the compensation to be paid therefor, and to whom payable, and all matters incidental thereto and arising therefrom shall be governed, ascertained and paid by and in the manner provided by this act; provided, however, that no action to condemn

shall be instituted unless the condemnor is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee, which negotiations shall include an offer in writing by the condemnor to the prospective condemnee holding the title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated, and such other matters as may be required by the rules. Prior to such offer the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property. Such offer shall be served by certified mail. In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property. A rejection of said offer or failure to accept the same within the period fixed in written offer, which shall in no case be less than 14 days from the mailing of the offer, shall be conclusive proof of the inability of the condemnor to acquire the property or possession thereof through negotiations. When the holder of the title is unknown, resides out of the State, or for other good cause, the court may dispense with the necessity of such negotiations. Neither the offer nor the refusal thereof shall be evidential in the determination of compensation.

C. 20:3-7 Procedure.

7. (a) Rules of procedure. The procedure governing the action shall be in accordance with the rules.

(b) Multiple proceedings. The condemnation of 10 or less parcels of property lying wholly within the same county may be joined in one action; provided that a separate award, judgment and appeal shall be made, entered and taken with respect to each parcel; more than 10 parcels may be joined in one action only with leave of court.

(c) Amendments. Amended and supplemental pleadings, descriptions, surveys, plans, declarations of taking and the like, may be permitted and parties added or eliminated, in accordance with the rules.

C. 20:3-8 Commencement of action.

8. Commencement of action. The action shall be instituted by filing of a verified complaint in form and content specified by the rules and shall demand judgment that condemnor is duly vested with and has duly exercised its authority to acquire the property being condemned, and for an order appointing commissioners to fix the compensation required to be paid.

C. 20:3-9 Process.

9. Process. After the filing of the complaint, the condemnor shall issue and with due diligence, cause process to be served or published in accordance with the rules. Notice given and process served or published in accordance with the rules shall be effective to bind all condemnees.

C. 20:3-10 Lis pendens.

10. Lis pendens. Within 14 days after the filing of the complaint, the condemnor shall cause to be filed and recorded in the recording office, a notice of the pendency of the action, in form and content specified by the rules. Such notice shall include the title of the action; the docket number thereof, if known; the date of the commencement of the action, a description of the property and the interests therein being condemned, as set forth in the complaint; and the names and addresses of all condemnees known to the condemnor and the nature of their alleged interests in said property. The lis pendens shall be indexed by the recording official, listing the condemnees as grantors and the condemnor as grantee. In default of such record, persons acquiring an interest in or lien upon the property without actual notice of the action, shall not be bound thereby but the failure to comply with the provisions of this section shall not otherwise affect such proceedings.

C. 20:3-11 Denial of authority to condemn.

11. Denial of authority to condemn. Failure to deny the authority of the condemnor to condemn in the manner provided for by the rules, shall constitute a waiver of such defense. When the authority to condemn is denied, all further steps in the action shall be stayed until that issue has been finally determined.

C. 20:3-12 Appointment of commissioners and hearings.

12. Appointment of commissioners and hearings.

(a) Waiver of appointment of commissioners. By stipulation filed in the cause, the condemnor and all condemnees may waive the appointment of commissioners and in such event, the action shall proceed to trial before the court.

(b) Appointment and qualification of commissioners. Upon determination that the condemnor is authorized to and has duly exercised its power of eminent domain, the court shall appoint 3 commissioners to determine the compensation to be paid by reason of the exercise of such power. Such commissioners shall be residents of the county in which any part of the property being condemned is located or, in the case of the commissioner who must be

an attorney, be actively engaged in the practice of law in the county. One of such commissioners shall be an attorney, admitted to practice in this State for at least 10 years, who shall preside at all hearings and rule on all questions of evidence and procedure, subject to a review by a majority of the commissioners. The commissioners shall take and subscribe an oath faithfully and impartially to perform their duties, and to make a true award to the best of their skills and understanding, which oath shall be filed with their award. Should a commissioner die, become disqualified, unable, neglect or refuse to act, the remaining 2 commissioners shall perform the duties of office with the same authority as if all commissioners were acting. The court may fill any vacancy in office, and for cause, may vacate any appointment and appoint a successor in office.

(c) Hearings—subpoena. Upon notice of at least 10 days, the commissioners shall hold hearings at which the parties and their witnesses may be heard, under oath, administered by any commissioner. The conduct of the hearings shall be governed by the rules of evidence except that testimony as to comparable sales shall be considered an exception to the hearsay rule. The compulsory attendance of witnesses and production of records thereat may be compelled by the commissioners. At the request of any party, and at his expense, a stenographic record of the hearing shall be maintained. A majority of commissioners shall be in attendance at all hearings.

(d) Limited discovery. At least 15 days prior to the hearing the parties shall exchange a list of comparable sales intended to be introduced by them setting forth as to each comparable sale the following information: name of seller and purchaser; location of property by block, lot and municipality; date of sale; the consideration; and book and page of recording. No party shall be permitted to offer testimony of any comparable sale not set forth in said list unless consented to by all other parties. There shall be no discovery on the issue of the authority to condemn except by leave of court.

(e) Proof. At the hearing, the condemnor shall proceed first to offer proof of the nature and extent of the taking, and its opinion of the compensation payable by reason thereof.

(f) Inspection of property. Commissioners may inspect the property being condemned, and shall so inspect when requested by any party, and in addition, when requested by any party, the commissioners shall inspect two of the comparable sales testified to by said party. Such inspection may be in the absence of the parties,

unless attendance at inspection is requested by the parties, or any of them. This right of inspection shall exist notwithstanding that the structures on the property may have been demolished and the site altered.

(g) Award of commissioners. Within 4 months next following their appointment, or within any extended period in accordance with the rules, the commissioners, or a majority of them, shall make and file in form and content fixed by the rules, an award fixing and determining the compensation to be paid by the condemnor. The requirements respecting the time of filing of such award shall be directory and not mandatory, and a failure to make and file the same within the time specified, shall not invalidate the award or oust the commissioners of jurisdiction to complete their duties. Upon its own motion, or on application of any party, made within 60 days after the filing of the award, the court may authorize the commissioners to amend, supplement, modify, or correct their award.

(h) Judgment. Any award as to which no appeal is taken in accordance with the rules, shall become final as of course, and shall constitute a final judgment. If not paid within 60 days after final judgment, execution may issue as in other actions at law.

(i) Commissioners' fees and expenses. The court, upon application of any party, including the commissioners, shall fix reasonable fees, costs and expenses of the commissioners, clerks and other persons performing any of their duties, all of which shall be paid by the condemnor.

C. 20:3-13 Appeal.

13. Appeal.

(a) Parties. Any party who has appeared at the hearings of the commissioners, either personally or through an attorney, may appeal from the award of the commissioners. Such appeal shall be taken within the period and in the manner provided by the rules. The necessary parties to the appeal shall be only such parties who have appeared at the commissioners' hearings. Other parties may be admitted by the court pursuant to the rules.

(b) Hearing on appeal. The hearing on appeal shall be a trial de novo, as in other actions at law, without a jury, unless a jury be demanded. The award of the commissioners shall not be admitted in evidence.

(c) Limited discovery. A valuation expert who has not testified at the hearing before the commissioners shall not be permitted to testify at the trial de novo, unless, within 15 days before trial the

party offering such testimony gives notice to the other parties to the appeal of the name and address of such expert and his opinion of the amount of compensation and information relative to comparable sales as required by the rules. The information required by the rules shall be supplied as to all additional comparable sales not previously testified to before commissioners.

(d) Payment of amount of judgment on appeal; right to possession; lien; other remedies. The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court.

If possession shall not have been taken theretofore, the condemnor, upon payment as aforesaid, may notwithstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken.

C. 20:3-14 Agreement as to compensation.

14. Agreement as to compensation. At any time during the pendency of the action, the condemnor and the condemnees may agree upon all or any part or any item of compensation to be paid, and then proceed to have those parts or items not agreed upon, fixed and determined as herein provided. The condemnor may make payment of any part or item thereof agreed upon, and condemnees may accept such payment, without prejudice, and proceed to fix and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

C. 20:3-15 Exclusion.

15. Exclusion. The provisions of this article shall not apply to individuals or private corporations vested with the authority of condemnation.

C. 20:3-16 Preliminary entry.

16. Preliminary entry. Prior to the commencement of any action, a prospective condemnor and its employees and agents, during reasonable business hours, may enter upon any property which it has authority to condemn for the purpose of making studies, surveys, tests, soundings, borings and appraisals, provided notice of the intended entry for such purpose is sent to the owner and the occupant of the property by certified mail at least 10 days prior thereto. No tests, soundings or borings shall be made on property in which there exists a pipeline or other underground utility in-

stallation except in the presence of a representative designated by the public utility owning or using the same. If an action to condemn is not commenced within 2 years after such preliminary entry, any damages sustained as a result thereof, shall be paid by the condemnor to the person or persons so damaged. The amount of such damages, if any, and the person or persons entitled thereto, shall be determined by the court in a summary action pursuant to the rules.

C. 20:3-17 Possession of property and declaration of taking.

17. Possession of property and declaration of taking. At any time contemporaneous with or after the institution of an action and service of process, the condemnor may file in the action, when empowered to do so by law, and if so filed, shall also file in the recording office, a declaration of taking, duly executed by an executive official of the condemnor, in form and content specified by the rules, including the following:

(a) a statement that possession of all or some part of the property being condemned is thereby being taken by the condemnor;

(b) a specific reference to the statute, article and section thereof, under which the action and declaration of taking is authorized;

(c) a description and plot plan of the property being condemned, and, if not the entire property, the portion thereof of which possession is being taken, sufficient for identification thereof, specifying the municipality or municipalities in which the same is located; the street number of the property, if any; the lot and block number of the property as designated upon the current assessment map, if any. In case of a partial taking, the information above specified shall include the entire property of the condemnee, and the portion thereof being taken;

(d) the names and addresses of all condemnees known to the condemnor after reasonable investigation, and the nature of their interests in the property;

(e) a statement of the estate or interest therein being condemned;

(f) a statement of the sum of money estimated by the condemnor to be just compensation for the taking, which sum shall be not less than the amount of the offer, in writing, provided for in section 6 hereof.

(g) Any other matter required by the rules.

C. 20:3-18 Deposit of estimated compensation.

18. Deposit of estimated compensation. Simultaneously with the filing of the declaration of taking, the condemnor shall deposit the amount of such estimated compensation with the clerk of the court.

The amount so deposited shall be not less than the amount offered pursuant to section 6 hereof, and if an award has been made by commissioners hereunder, or a judgment determining compensation has been entered at the time of the filing of such declaration, the amount so deposited shall be not less than the amount of such award or judgment.

Any amount so deposited shall not be subject to the fees set forth in N. J. S. 22A:2-20.

C. 20:3-19 Right to possession and vesting of title.

19. Right to possession and vesting of title. A copy of the declaration of taking and notice of the filing thereof and of the making of the aforesaid deposit, shall be served upon the condemnee and all occupants of the property in accordance with the rules, and proof of such service shall be filed in the action. Thereupon, the right to the immediate and exclusive possession and title to the property described in the declaration of taking shall vest in the condemnor, free and discharged of all right, title, interest and liens of all condemnees without the necessity of further process; provided, however, that the court may, upon application and good cause shown, stay the taking of possession of the land or other property, or authorize possession to be taken upon prescribed conditions. A property owner who refuses to vacate said property or yield possession and remains in possession more than 20 days after service of notice shall be deemed a trespasser and shall be then liable for rents, issues and profits 20 days after service. The court, upon notice and after determining that the property owner has had adequate opportunity to obtain any funds payable to him under sections 23 and 26 of this act and any other expenses to which he may be entitled to as a matter of law, shall enter an order for possession directed to the sheriff of the county in which the property is located. If the owner or tenant occupies the property with the condemnor's permission on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short term occupier. Such right, title and interest shall be transferred and shall attach to the compensation determined to be payable hereunder, to the same extent and in the same order of priority as existed at the date of vesting of title in condemnor. The pendency of an appeal from an award or judgment hereunder shall not interfere with such vesting of title.

C. 20:3-20 Nature of title condemned.

20. Nature of title condemned. The title to property condemned and acquired by the condemnor hereunder, shall be a title in fee simple, free and discharged of all right, title, interest and liens of all condemnees, and shall include all the right, title and interest of each condemnee therein; provided, however, that if the complaint or any amendment thereof shall specify a lesser title, the lesser title so specified shall be the title condemned and acquired.

C. 20:3-21 Date of vesting of title.

21. Date of vesting of title. Title to the property condemned shall vest in the condemnor as of the earliest date of the happening of any of the following events:

(a) Filing and recording the declaraiton of taking and depositing funds pursuant to sections 17 and 18 of this act;

(b) Filing and recording in the recording office of the report of commissioners and payment of the award;

(c) Filing in the action and recording in the recording office, an agreement between condemnor and condemnee fixing the date as of which title shall vest;

(d) Paying and satisfying of record a final judgment fixing compensation payable hereunder.

C. 20:3-22 Appeal not to affect right to possession and vesting of title.

22. Appeal not to affect right to possession and vesting of title. The pendency of an appeal with respect to any issue other than the authority to condemn, shall not affect the right to possession and vesting of title in the condemnor.

C. 20:3-23 Withdrawal of funds.

23. Withdrawal of funds. Upon application of any condemnee, or any other party in interest, and on notice to all parties to the action, including the condemnor, the court may direct that the estimated compensation on deposit, or any part thereof, be paid to the person or persons entitled thereto, on account of the compensation to which they may be entitled in the action; provided, that if the award or judgment fixing such compensation be less than the amount paid pursuant hereto, the person to whom such payment has been made shall repay the same, together with interest at a rate to be fixed by the court from the date of payment to such person, and the court, after hearing in a summary manner, may enter judgment therefor; and provided, further, that if the award or judgment fixing such compensation be more than the amount

deposited, condemnor shall pay the excess to the condemnee entitled thereto, with interest at a rate to be fixed by the court from the date of the deposit, and the court, after hearing in a summary manner, may enter judgment therefor against the condemnor. The court, upon notice to all parties, shall enter appropriate orders distributing any balances on deposit.

C. 20:3-24 Revesting of title and restoration of possession.

24. Revesting of title and restoration of possession. If, after the filing of a declaration of taking, a judgment shall be entered dismissing the action, title to and possession of the property shall revert in the condemnee, subject to the same right, title, interest and liens as existed as of the date of the filing of the declaration of taking. In such event, condemnor shall file and record the judgment and pay any damages sustained by the condemnee as a result of the action of the condemnor, and the expenses of the condemnee.

C. 20:3-25 Compelling condemnor to file declaration of taking.

25. Compelling condemnor to file declaration of taking. If within 6 months from the date of appointment of commissioners, the condemnor fails to file a declaration of taking, the court, upon application of any condemnee, and on notice to all parties in interest, may require the condemnor, at its election, to either file a declaration of taking and make the deposit hereinabove provided, or abandon the proceedings pursuant to section 35 hereof. For good cause and upon terms, the court may extend the time for the filing of such declaration of taking, but not more than 3 months after the commencement of the action.

C. 20:3-26 Reimbursement for certain expenses.

26. a. The condemnor, as soon as practicable after the date of payment of the acquisition price or the date of deposit in court of funds to satisfy the award of compensation, whichever is earlier, shall reimburse the owner for actual expenses he necessarily incurred for

(1) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the condemnor; and

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

b. If the court renders final judgment that the condemnor cannot acquire the real property by condemnation or, if the condemnation

action is abandoned by the condemnor, then the court shall award the owner of any right, or title to, or interest in such real property, such real property, such sum as will reimburse such owner for his reasonable costs, disbursements and expenses actually incurred, including reasonable attorney, appraisal, and engineering fees.

c. When a plaintiff shall have brought an action to compel condemnation against a defendant having the power to condemn, the court or representative of the defendant in case of settlement shall, in its discretion, award such plaintiff his reasonable costs, disbursements, and expenses, including reasonable appraisal, attorney and engineering fees actually incurred regardless of whether the action is terminated by judgment or amicable agreement of the parties.

C. 20:3-27. Deposit and withdrawal of funds not prejudicial.

27. Deposit and withdrawal of funds not prejudicial. Neither the making of the deposit nor any withdrawal thereof pursuant to this article, shall affect or prejudice the rights of either the condemnor or the condemnee in the determination of compensation. The amount of such deposit and any withdrawal thereof, shall not be evidential in such determination.

C. 20:3-28 Fees of clerk of the court.

28. Fees of clerk of the court. Where the clerk of the court is authorized to charge and deduct statutory fees or commissions by reason of the deposit and disbursement of funds pursuant to this article, such fees and commissions shall be paid by the condemnor.

ARTICLE VI

COMPENSATION AND DATE OF DETERMINATION THEREOF

C. 20:3-29 Compensation.

29. Compensation. The condemnee shall be entitled to compensation for the property, and damages, if any, to any remaining property, together with such additional compensation as provided for herein, or as may be fixed according to law.

C. 20:3-30 Date as of which compensation shall be determined.

30. Date as of which compensation shall be determined. Just compensation shall be determined as of the date of the earliest of the following events: (a) the date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee.

ARTICLE VII

INTEREST

C. 20:3-31 Payment of interest.

31. Payment of interest. Interest as set by the court upon the amount of compensation determined to be payable hereunder shall be paid by the condemnor from the date of the commencement of the action until the date of payment of the compensation; provided, however, that there shall be excluded from the amount upon which interest shall be calculated, all moneys deposited pursuant to Article V hereof; and provided, further, that interest payable hereunder shall be subject to abatement for rents and profits derived from the property by the condemnee during the period for which interest is payable hereunder, and/or for the fair rental value of such property or any portion thereof occupied by the condemnee during such period.

C. 20:3-32 Disputes as to interest.

32. Disputes as to interest. Unless agreed upon by the parties, the amount of such interest shall be fixed and determined by the court in a summary manner after final determination of compensation, and shall be added to the amount of the award or judgment, as the case may be.

ARTICLE VIII

MISCELLANEOUS

C. 20:3-33 Possession by individuals or private corporations.

33. Possession by individuals or private corporations. Individuals and private corporations vested with the authority of condemnation may, upon the filing of the report of the commissioners and upon payment, to the parties entitled thereto or into court, of the amount awarded as provided in this act, take possession of the land or other property for the purposes for which the same was authorized to be taken.

The report of the commissioners, together with the order or judgment appointing them, or a copy thereof certified by the clerk of the court, and proof of such payment of the amount awarded shall be plenary evidence of the right of the condemnor to have, hold, use, occupy, possess and enjoy the land and other property.

C. 20:3-34 Deposit of funds where ownership in dispute.

34. Deposit of funds where ownership in dispute. If the condemnee entitled to receive the award or judgment upon tender

thereof, shall refuse to receive the same, or shall be out of the State, or under any legal disability; or in case several condemnees interested in the fund shall not agree as to the distribution thereof; or in case the property condemned shall be encumbered by mortgage, judgment or other liens; or if for any other reason the condemnor cannot reasonably pay the award or judgment to any person, the amount thereof may be deposited with the clerk of the court, to be distributed to the parties entitled thereto according to law. The procedure for distributing the funds shall be in accordance with the rules.

C. 20:3-35 Abandonment of proceedings.

35. Abandonment of proceedings. Any action hereunder may be abandoned at any time before or within 30 days after the filing of the award of commissioners; or in the event of an appeal from such award, at any time before or within 30 days after the entry of judgment; or in the event that a hearing before commissioners shall have been waived, at any time before or within 30 days after judgment has been entered in said action; provided, however, that no such action shall be abandoned after the filing of a declaration of taking pursuant to Article V hereof, or after the vesting of title in any condemnor pursuant hereto; and provided further, that (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor shall pay the expenses of all condemnees who have appeared in the action. Nothing herein shall preclude abandonment at any time by mutual consent of the parties.

C. 20:3-36 Method of abandonment.

36. Method of abandonment. The abandonment shall be effected by filing and serving notice of abandonment.

C. 20:3-37 Uneconomic remnants.

37. Uneconomic remnants. If as a result of a partial taking of property, the property remaining consists of a parcel or parcels of land having little or no economic value, the condemnor, in its own discretion or at the request of the condemnee, shall acquire the entire parcel.

C. 20:3-38 Blighted areas.

38. Blighted areas. The value of any land or other property being acquired in connection with development or redevelopment of a blighted area shall be no less than the value as of the date of the declaration of blight by the governing body upon a report by a planning board.

C. 20:3-39 Housing authority or redevelopment agency; declaration of taking:

39. Housing authority or redevelopment agency; declaration of taking. Upon the institution of an action by a housing authority or redevelopment agency to fix the compensation to be paid, or at any time thereafter, a duly authorized officer or agent of the housing authority or redevelopment agency may file with the Clerk of the Superior Court a declaration of taking in the manner provided by this act.

C. 20:3-40 Acquisitions by State colleges; declaration of taking.

40. Acquisitions by State colleges; declaration of taking. Whenever a State college is authorized by law to acquire lands or rights therein, the Director of the Division of Purchase and Property may acquire such lands or right therein by gift, devise, purchase, or by condemnation in the manner provided by this act.

C. 20:3-41 Lands etc. needed for defense or for airports; declaration of taking.

41. Lands etc. needed for defense or for airports; declaration of taking. Whenever the State or any commission, official, board or body thereof or any county or municipality shall determine to acquire lands, easements, rights-of-way or other property to be used by the United States of America, the State of New Jersey or said county or municipality, for furthering national or State defense, or for developing or building airports or providing surface or aerial approaches thereto, by condemnation pursuant to this act, and shall represent to the court that it is necessary for such purposes that the plaintiff enter into possession of the same immediately, the plaintiff may, with leave of court, file with the Clerk of the Superior Court a declaration of taking in the manner provided for by this act.

C. 20:3-42 Recovery of taxes or other municipal liens or charges.

42. Recovery of taxes or other municipal liens or charges. The provisions of this act shall not be construed to prevent any municipality from retaining from or recovering out of any moneys paid by it into court, under this act, any sum or sums due to such municipality, for taxes or other municipal liens or charges against any property taken in condemnation.

C. 20:3-43 Right of owner to recover amount awarded; lien.

43. Right of owner to recover amount awarded; lien. The report of the commissioners together with the order or judgment appointing them, or a copy thereof certified by the clerk of the court, shall be plenary evidence of the right of the owner of the land or other property taken to recover the amount awarded with interest and

costs, in the action or in an action in any court of competent jurisdiction to be instituted against the plaintiff after failure to pay the same for 20 days after the filing of the report, and shall from the time of filing the report be enforceable as a lien upon the land or property taken and any improvements thereon.

C. 20:3-44 Payment of amount of judgment on appeal; right to possession; lien, other remedies.

44. Payment of amount of judgment on appeal; right to possession; lien, other remedies. The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court as provided in section 34 of this act.

If possession shall not have been taken theretofore, the plaintiff, upon payment as aforesaid, may, notwithstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken.

The persons entitled to receive payment of the judgment shall be entitled to the same lien as is provided in section 34 of this act for the collection of awards of commissioners and shall have such other remedies as may be appropriate for the recovery of the same.

C. 20:3-45 Condemnation of public utility property by municipality; after-acquired property and improvements.

45. Condemnation of public utility property by municipality; after-acquired property and improvements. Where an award has been made in an action by a municipality for the condemnation of property of a public utility company and the award has been paid to the parties entitled thereto or the amount thereof paid into court, the municipality, in addition to having the right to take possession of the property so condemned, may take possession of such other property as the company has acquired, and any improvements made in its plant, since the commencement of the action, in advance of making compensation therefor, provided the municipality cannot acquire said property and improvements by agreement with the owner, either by reason of disagreement as to price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause.

Upon a municipality exercising this right and entering upon and taking the after-acquired property and improvements in advance of making compensation therefor, the municipality shall apply to the commissioners therefore appointed in the action to fix the compensation to be paid the persons interested for the after-acquired

property and improvements. Thereupon the commissioners shall make a just and equitable appraisal of the value of all such after-acquired property and improvements and damages if any, in accordance with this act. Upon the making of the award the municipality shall pay the amount thereof unless an appeal is taken therefrom to the Superior Court as provided for in section 13 of this act, in which case the amount of the award shall be paid upon final determination thereof.

C. 20:3-46 Sidewalks; lands condemned for highways to include; condemnation of land for sidewalks.

46. Sidewalks; lands condemned for highways to include; condemnation of lands for sidewalks. Unless otherwise particularly specified in the resolution, map, complaint and other proceedings for the acquiring of land or rights-of-way, or both, for public highways in the manner set forth in this act the boundary lines of the said road and highways, or portion thereof so taken and acquired, shall include within the boundaries thereof all land necessary and desired for the locating of sidewalks or other space then needed, or thereafter to be utilized as sidewalk, and whether the same shall then or thereafter be intended to be paved for use by pedestrians as sidewalks.

All land lying outside of and adjoining the outer boundary lines of any public road or highway, the boundaries of which have been established according to law prior to April 28, 1931, and which lands or the use thereof shall be required for the purpose of laying out, grading and constructing sidewalks for the use of pedestrians, shall be taken, acquired and occupied from and as against the rightful owner thereof, only in accordance with this act and upon paying compensation therefor, to be fixed and determined in the manner prescribed by this act.

Nothing in this section shall limit or impair or deprive any municipality or county of the right to ordain or order the grading and the construction of a paved surface for any sidewalk above referred to, and the assessing of the proportionate cost thereof, against the owner of the property thereby improved as a local public improvement in the manner now provided by law.

C. 20:3-47 Land or property taken for public improvement.

47. Where land or other property is taken or to be taken by a municipal corporation or other public body for public improvement and payment of the compensation for the land or other property and damages is authorized by statute to be set off against or made wholly or partially in benefits to be assessed for the same improve-

ment, the municipal corporation or other body may elect to proceed under such statute and on such election the proceeding shall not be governed by this chapter, except as provided by such statute.

ARTICLE IX

REPEALER

C. 20:3-48 Meaning of certain references.

48. Any reference to Title 20 of the Revised Statutes or to any section or sections thereof or any amendment or supplement thereof in any other statute, in effect on the effective date of this act, shall hereafter be given effect as though reference therein were made to this act or the applicable provisions thereof.

C. 20:3-49 Repealer; effect of act.

49. Chapter 1 of Title 20 of the Revised Statutes and P. L. 1942, chapter 14 are repealed as of the effective date hereof; provided, however, that this act shall not affect statutes insofar as they regulate the ascertainment and payment of compensation for property condemned or taken by bodies organized and administered as a result of or under compacts between States.

C. 20:3-50 Repeal of inconsistent acts; application of act.

50. All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, hereby repealed. This act shall apply to every agency, authority, company, utility or any other entity having the power of eminent domain exercisable within the State of New Jersey except as exempted in section 49 of this act.

Approved December 21, 1971.

CHAPTER 362

AN ACT providing for relocation payments and relocation advisory assistance to persons displaced by certain activities of the taking agencies and repealing certain parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C. 20:4-1 Short title.

1. This act shall be known and may be cited as the "Relocation Assistance Act."

C. 20:4-2 Declaration of policy.

2. Declaration of policy. The purpose of this act is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by State and local land acquisition programs, by building code enforcement activities, or by a program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision. Such policy shall be uniform as to a. relocation payments, b. advisory assistance, c. assurance of availability of standard housing, and d. State reimbursement for local relocation payments under State assisted and local programs.

C. 20:4-3 Definitions.

3. Definitions. As used in this act the term:

a. "Taking agency" means the entity, public or private, including the State of New Jersey, which is condemning private property for a public purpose under the power of eminent domain.

b. "Person" means any individual partnership, corporation, or association.

c. "Displaced person" means any person who, on or after the effective date of this act, 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 taking agency; and solely for the purposes of sections 4 a. and b. and section 7 of this act, 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.

d. "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(1) for the purchase, sale, lease and rental of personal and real property, and 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 section 4 a. of this act for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

APPROVED DECEMBER 21, 1971
[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 504

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1970

By Assemblymen FORAN, LITTELL, THOMAS, RINALDI, KALTENBACHER, VREELAND, PARKER, Assemblywoman MARGETTS, Assemblymen COBB, DE KORTE, AZZOLINA, COLEMAN, EVERS, WILSON, PFALTZ, KIEHN and IRWIN

Referred to Committee on Revision and Amendment of Laws

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public purposes and repealing chapter 1 of Title 20 of the Revised Statutes ***[and]* *** chapter 14 of the laws of 1942*, and certain other parts of the statutory law*.

1 BE IT ENACTED by the Senate and General Assembly of the State of New
2 Jersey:

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 *of* ***[1970]* *1971*."**

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

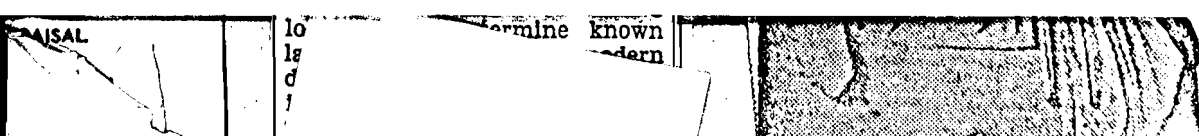
6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public purpose
8 under the power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public purpose under the power of eminent domain;

11 (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

13
14



13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof***[(j)]*** * (2) any article affixed or
15 attached to such property in such manner that it cannot be removed without
16 material injury to itself or to the property***[(j)]*** * (3) any article so designed,
17 constructed, or specially adapted to the purpose for which such property is
18 used that (a) it is an essential accessory or part of such property; (b) it is not
19 capable of use elsewhere; and (c) would lose substantially all its value if re-
20 moved from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable rules governing the courts of the State
23 of New Jersey as promulgated from time to time by the Supreme Court of
24 New Jersey;

24A (g) "Action" means the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation is
27 being fixed;

28 (3) the persons entitled to such compensation and their interests
29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnor
33 is required to pay and the condemnee is entitled to receive according to
34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commis-
36 sioners provided for herein;

37 ***[(j)]*** "Expenses of condemnee" means the reasonable fees and expenses
38 necessarily incurred by condemnee in the action, for attorney, engineering
39 and appraisal services;**[(j)]***

40 ***[(k)]*** *(j)* "Judgment" means the adjudication by the court of any
41 issue of fact or law, or both, arising under this act. The adjudication of the
42 right to condemn shall be a final judgment. All other judgments shall be inter-
43 locutory or final, according to law, or as may be prescribed by the rules;

44 ***[(l)]*** *(k)* "Recording office" means the county office of each county
45 in which the property being condemned, or any part thereof, is located, in
46 which office conveyances of real property may be recorded;

47 ***[(m)]*** *(l)* "Days" means calendar days, calculated in accordance
48 with the rules of court;

49 ***[(n)]*** *(m)* "Public utility" means and includes every public utility,
50 as the same are enumerated in Revised Statutes 48:2-13, and every natural
51 gas pipeline utility as defined in P. L. 1952, chapter 166 (C. 48:10-2 et seq.)
52 vested with the power of eminent domain and subject to regulation under
53 State or Federal law.

54 *[(o)]* *(n)* Words used in the singular shall include the plural and vice
 55 versa. Words used in the neuter gender shall include masculine and femi-
 56 nine gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
 2 thereof to any person or circumstance is held to be invalid, such invalidity
 3 shall not affect other provisions or applications of the act, which can be given
 4 effect without the invalid provision or application, and to this end, the provi-
 5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect ****[60 days next]****
 2 ****immediately**** following the approval thereof, and shall apply to all
 3 actions instituted thereafter, and to all proceedings taken subsequent thereto
 4 in all actions pending on such effective date; except that judgments thereto-
 5 fore entered or awards theretofore made pursuant to law from which no
 6 appeal is pending on such effective date, shall not be affected by the provi-
 7 sions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
 2 demnation, and all matters incidental thereto and arising therefrom, includ-
 3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
 4 mine the authority to exercise the power of eminent domain; to compel the
 5 exercise of such power; to fix and determine the compensation to be paid and
 6 the parties entitled thereto, and to determine title to all property affected
 7 by the action. ****[Where authority to condemn has been granted by a State or
 8 Federal regulatory body having original supervisory jurisdiction over the
 9 condemnor, review of such determination shall be by appeal according to
 10 law.]****

1 6. Application of act. Whenever any condemnor shall have determined
 2 to acquire property pursuant to law, including public property already de-
 3 voted to public purpose, but cannot acquire title thereto or possession thereof
 4 by agreement with a prospective condemnee, whether by reason of disagreee-
 5 ment concerning the compensation to be paid or for any other cause, the con-
 6 demnation of such property and the compensation to be paid therefor, and to
 7 whom payable, and all matters incidental thereto and arising therefrom shall
 8 be governed, ascertained and paid by and in the manner provided by this act;
 9 provided, however, that no action to condemn shall be instituted unless
 10 the condemnor is unable to acquire such title or possession through bona
 11 fide negotiations with the prospective condemnee, which negotiations shall in-
 12 clude an offer in writing by the condemnor to the prospective condemnee hold-

13 ing the title of record to the property being condemned, setting forth
 14 the property and interest therein to **[b]** **be** acquired, the compensation
 15 offered to be paid and a reasonable disclosure of the manner in which the
 16 amount of such offered compensation has been calculated, and such other
 17 matters as may be required by the rules. **Prior to such offer the taking*
 18 *agency shall appraise said property and the owner shall be given an oppor-*
 19 *tunity to accompany the appraiser during inspection of the property.** Such
 20 offer shall be served by certified mail. **In no event shall such offer be less*
 21 *than the taking agency's approved appraisal of the fair market value of such*
 22 *property.** A rejection of said offer or failure to accept the same within the
 23 period fixed in written offer, which shall in no case be less than 14 days from
 24 the mailing of the offer, shall be conclusive proof of the inability of the con-
 25 demnor to acquire the property or possession thereof through negotiations.
 26 When the holder of the title is unknown, resides out of the State, or for other
 27 good cause, the court may dispense with the necessity of such negotiations.
 28 Neither the offer nor the refusal thereof shall be evidential in the deter-
 29 mination of compensation.

1 7. **[(a)]** Nature of action. The court may proceed in a summary
 2 manner pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New
 3 Jersey Statutes, or otherwise.]**

4 **[(b)]** **(a)** Rules of procedure. The procedure governing the
 5 action shall be in accordance with the rules.

6 **[(c)]** **(b)** Multiple proceedings. The condemnation of **[any**
 7 number of] *10 or less* parcels of property lying wholly within the
 8 same county **[.]** *may be joined in one action; provided that a separate*
 9 award, judgment and appeal shall be made, entered and taken with respect
 10 to each parcel *more than 10 parcels may be joined in one action only with*
 11 *leave of court*** ,

12 **[(d)]** **(c)** Amendments. Amended and supplemental pleadings,
 13 descriptions, surveys, plans, declarations of taking and the like, may be per-
 14 mitted and parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
 2 verified complaint in form and content specified by the rules and shall demand
 3 judgment that condemnor is duly vested with and has duly exercised its au-
 4 thority to acquire the property being condemned, and for an order appoint-
 5 ing commissioners to fix the compensation required to be paid.

1 9. Process. **[Within [10] 14 days after]** *After* the filing
 2 of the complaint, the condemnor shall issue and with due diligence, cause
 3 process to be served or published in accordance with the rules. Notice given
 4 and process served or published in accordance with the rules shall be effec-
 5 tive to bind all condemnees.

10. Lis pendens. Within ***[10]* *14*** days after the filing of the complaint, the condemnor shall cause to be filed ****and recorded**** in the recording office, a notice of the pendency of the action, in form and content specified by the rules. Such notice shall include the title of the action; the docket number thereof, if known; the date of the commencement of the action, a description of the property and the interests therein being condemned, as **set forth in the complaint, and the names and addresses of all condemnees** known to the condemnor and the nature of their alleged interests in said property. The lis pendens shall be indexed by the recording official, listing the condemnees as grantors and the condemnor as grantee. In default of such record, persons acquiring an interest in or lien upon the property without actual notice of the action, shall not be bound thereby but the failure to comply with the provisions of this section shall not otherwise affect such proceedings.

11. Denial of authority to condemn. Failure to deny the authority of the condemnor to condemn in the manner provided for by the rules, shall constitute a waiver of such defense. When the authority to condemn is denied, all further steps in the action shall be stayed until that issue has been finally determined ****[except where such authority has been determined by a State or Federal regulatory body having original jurisdiction with respect thereto]****.

12. Appointment of commissioners and hearings.

(a) Waiver of appointment of commissioners. By stipulation filed in the cause, the condemnor and all condemnees may waive the appointment of commissioners ****[and hearings before them hereafter referred to,]**** and in such event, the action shall proceed to trial before the court ****[as in other actions at law]****.

(b) Appointment and qualification of commissioners. Upon determination that the condemnor is authorized to and has duly exercised its power of eminent domain, the court shall appoint 3 commissioners to determine the compensation to be paid by reason of the exercise of such power. Such commissioners shall be residents of the county in which any part of the property being condemned is located or, in the case of the commissioner who must be an attorney, be actively engaged in the practice of law in the county. One of such commissioners shall be an attorney, admitted to practice in this State for at least 10 years, who shall preside at all hearings and rule on all questions of evidence and procedure, subject to a review by a majority of the commissioners. The commissioners shall take and subscribe an oath faithfully and impartially to perform their duties, and to make a true award to the best of their skills and understanding, which oath shall be filed with their award. Should a commissioner die, become disqualified, unable, neglect or refuse to act, the remaining 2 commissioners shall perform the duties of office with the

21 same authority as if all commissioners were acting. The court may fill any
 21A vacancy in office, and for cause, may vacate any appointment and appoint a
 21B successor in office.

22 (c) Hearings—subpœna. ***Upon notice of at least 10 days,*** ****[The]****
 23 ***the*** commissioners shall hold hearings ****[upon notice required by the**
 24 **rules,]**** at which the parties and their witnesses may be heard, under oath,
 25 administered by any commissioner. The conduct of the hearings ****[and]****
 26 ***shall be governed by the rules of evidence except that testimony as to*
 27 *comparable sales shall be considered an exception to the hearsay rule.***
 28 ****[the]**** ***The*** compulsory attendance of witnesses and production of
 29 records thereat ****[, shall be governed by the rules]**** ***may be compelled*
 30 *by the commissioners***. At the request of any party, ***and at his ex-*
 31 *pense,*** a stenographic record of the hearing shall be maintained. A
 32 majority of commissioners shall be in attendance at all hearings.

33 *** (d) Limited discovery. At least 15 days prior to the hearing the*
 34 *parties shall exchange a list of comparable sales intended to be introduced*
 35 *by them setting forth as to each comparable sale the following information:*
 36 *name of seller and purchaser; location of property by block, lot and munici-*
 37 *pality; date of sale; the consideration; and book and page of recording. No*
 38 *party shall be permitted to offer testimony of any comparable sale not set*
 39 *forth in said list unless consented to by all other parties. There shall be no*
 40 *discovery on the issue of the authority to condemn except by leave of court.***

41 *** (e) Proof.*** At the hearing, the condemnor shall ***proceed first to***
 42 offer proof of the nature and extent of the taking, and its opinion of the
 43 compensation payable by reason thereof.

44 ****[(d)]**** *** (f)*** Inspection of property. Commissioners may inspect
 45 the property being condemned, and shall so inspect when requested by any
 46 party ****, and in addition, when requested by any party, the commissioners
 47 shall inspect two of the comparable sales testified to by said party****. Such
 48 inspection may be in the absence of the parties, unless attendance at inspec-
 49 tion is requested by the parties, or any of them. This right of inspection shall
 50 exist notwithstanding that the structures on the property may have been
 51 demolished and the site altered.

52 ****[(e)]**** *** (g)*** Award of commissioners. Within 4 months next
 53 following their appointment, or within any extended period ****[fixed by the**
 54 **court on notice, or by stipulation of all the parties filed in the action,]****
 55 ***in accordance with the rules,*** the commissioners, or a majority of them,
 56 shall make and file in form and content fixed by the rules, an award fixing
 57 and determining the compensation to be paid by the condemnor ****[because**
 58 **of the taking]****. The requirements respecting the time of filing of such
 59 award shall be directory and not mandatory, and a failure to make and file
 60 the same within the time specified, shall not invalidate the award or oust the

61 commissioners of jurisdiction to complete their duties. Upon its own motion,
 62 or on application of any party, made within 60 days after the filing of the
 63 award, the court may authorize the commissioners to amend, supplement,
 64 modify, or correct their award.

65 **[(f)]** **(h)** Judgment. Any award as to which no appeal is taken
 66 in accordance with the rules, shall become final as of course, and shall con-
 67 stitute a final judgment. If not paid within 60 days after final judgment,
 68 execution may issue as in other actions at law.

69 **[(g)]** **(i)** Commissioners' fees and expenses. The court, upon
 70 application of any party, including the commissioners, shall fix reasonable
 71 fees, costs and expenses of the commissioners, clerks and other persons
 72 performing any of their duties, all of which shall be paid by the condemnor.

1 **13. Appeal.**

2 **[13. (a) Appeal.]** **(a) Parties.** Any party who has appeared
 3 at the hearings of the commissioners, either personally or through **an**
 4 attorney, may appeal from the award of the commissioners, **[whether or**
 5 not an appeal has or may be given by the statute conferring the power of
 6 eminent domain**]**. Such appeal shall be taken within the period and in the
 7 manner provided by the rules. The necessary parties to the appeal shall be
 8 only such parties **[as]** **who** have **[so]** appeared at the commis-
 8A sioners' hearings. Other parties may be admitted by the court pursuant to
 8B **the** rules.

9 **(b) Hearing on appeal.** The hearing on appeal shall be a trial de novo,
 10 as in other actions at law, without a jury, unless a jury be demanded. The
 11 award of the commissioners shall not be admitted in evidence.

12 **(c) Limited discovery.** A valuation expert who has not testified at the
 13 hearing before the commissioners shall not be permitted to testify at the trial
 14 de novo, unless, within **[such time and in such form as shall be fixed by**
 15 the rules**]** **15 days before trial** the party offering such testimony
 16 **[has given]** **gives** notice to the other parties to the appeal of the
 17 name and address of such expert and his **[proposed]** opinion of the
 18 amount of compensation **[payable by reason of the condemnation]** **and**
 19 information relative to comparable sales as required by the rules. The in-
 20 formation required by the rules shall be supplied as to all additional com-
 21 parable sales not previously testified to before commissioners.

22 **(d) Payment of amount of judgment on appeal; right to possession;**
 23 **lien; other remedies.** The amount of the judgment on the appeal, or so much
 24 thereof as shall not have been paid, shall be paid to the parties entitled there-
 25 to or paid into court.

26 If possession shall not have been taken theretofore, the condemnor, upon
 27 payment as aforesaid, may notwithstanding any further appeal or other pro-

28 ceedings, take possession of the lands or other property for the purposes for
29 which the same was authorized to be taken.**

1 14. Agreement as to compensation. At any time during the
2 pendency of the action, the condemnor and the condemnees may agree upon all
3 or any part or any item of compensation to be paid, and then proceed to have
4 those parts or items not agreed upon, fixed and determined as herein provided.
5 The condemnor may make payment of any part or item thereof agreed upon,
6 and condemnees may accept such payment, without prejudice, and proceed
7 to fix and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to
2 individuals or private corporations vested with the authority of condemnation
3 ****[nor shall the provisions of sections 17 through *29* *28* of this article**
4 **be applicable to condemnation of property owned or used by a public utility]****.

1 16. Preliminary entry. Prior to the commencement of any action, a
2 prospective condemnor and its employees and agents, during reason-
3 able business hours, may enter upon any property which it has authority to
4 condemn for the purpose of making studies, surveys, tests, soundings, borings
5 and appraisals, provided notice of the intended entry for such purpose is sent
6 to the owner and the occupant of the property by certified mail at least 10
7 days prior thereto. No tests, soundings or borings shall be made on prop-
8 erty in which there exists a pipeline or other underground utility installa-
9 tion except in the presence of a representative designated by the public utility
10 owning or using the same. If an action to condemn is not commenced within
11 ****[1]** *2** *[year]** *years**** after such preliminary entry, any dam-
12 ages sustained as a result thereof, shall be paid by the condemnor to the per-
13 son or persons so damaged. The amount of such damages, if any, and the
14 person or persons entitled thereto, shall be determined by the court in a sum-
15 mary action pursuant to ****[sections 2A:16-50 to 2A:16-62 inclusive, of the**
16 **New Jersey Statutes]** *the rules****.

1 17. Possession of property and declaration of taking. At any
2 time **contemporaneous with or** after the institution of an action and service
3 of process, the condemnor may file in the action, ***when empowered to do so*
4 *by law,*** and if so filed, shall also file in the recording office, a declaration of
5 taking, duly executed by an executive official of the condemnor, in form and
5A content specified by the rules, including the following:

6 (a) a statement that possession of all or some part of the property being
7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
9 which the action and declaration of taking is authorized ****[**, including the date

10 when such authorization was given and the place where the record thereof
11 may be examined]**;

12 (c) a description and plot plan of the property being condemned, and, if
13 not the entire property, the portion thereof of which possession is being taken,
14 sufficient for identification thereof, specifying the *[municipality]* *munic-
15 ipality* or municipalities in which the same is located; the street number of
16 the property, if any; the lot and block number of the property as designated
17 upon the current assessment map, if any. In case of a partial taking, the in-
18 formation above specified shall include the entire property of the condemnee,
19 and the portion thereof being taken;

20 (d) the names and addresses of all condemnees known to the condemnor
21 after reasonable investigation, and the nature of their interests in the prop-
22 erty;

23 (e) a statement of the estate or interest therein being condemned;

24 (f) a statement of the sum of money estimated by the condemnor to be
25 just compensation for the taking, which sum shall be not less than the amount
26 of the offer, in writing, provided for in section 6 hereof.

27 (g) Any other matter required by the rules.

1 18. Deposit of estimated compensation. Simultaneously with the
2 filing of the declaration of taking, the condemnor shall deposit the amount
3 of such estimated compensation **[either]** with the clerk of the court**, or
4 in a special interest-bearing bank account in the name of the condemnor, in
5 trust for the benefit of the condemnees entitled thereto]**. The amount so de-
6 posited shall be not less than the amount offered pursuant to section 6 hereof,
7 and if an award has been made by commissioners hereunder, or a judgment
8 determining compensation has been entered at the time of the filing of such
9 declaration, the amount so deposited shall be not less than the amount of such
10 award or judgment.

11 *[Upon application by any party in interest, and upon being satisfied that
12 the financial responsibility of the condemnor to satisfy any judgment that
13 may be entered in the action is uncertain, the court may require such con-
14 demnor to maintain an additional trust fund with a bank or trust company
15 authorized to do business in New Jersey, in an amount equal to 1/2 of the
16 estimated compensation fund so deposited. Said trust fund shall consist of
17 cash, or securities which are legal investments for trust funds in New Jersey.

18 The fund originally deposited and the additional fund, if any, shall secure
19 the payment of compensation determined to be payable hereunder and may
20 be applied to such payment. After payment or satisfaction of such compensa-
21 tion, condemnor, with approval of the court, may withdraw any surplus cash
22 and securities.]* *Any amount so deposited shall not be subject to the fees
23 set forth in N. J. S. 22A:2-20.*

1 19. Right to possession and vesting of title. A copy of the
 2 declaration of taking and notice of the filing thereof and of the making of the
 3 aforesaid deposit, shall be served upon the condemnee and all occupants of
 4 the property in accordance with the rules, and proof of such service shall be
 5 filed in the action. Thereupon, the right to the immediate and exclusive pos-
 6 session and title to the property described in the declaration of taking shall
 7 vest in the condemnor, free and discharged of all right, title, interest and
 8 liens of all condemnees **without the necessity of further process** ***provided*
 9 *however, that the court may, upon application and good cause shown, stay*
 10 *the taking of possession of the land or other property, or authorize pos-*
 11 *session to be taken upon prescribed conditions***. A property owner who
 12 refuses to vacate said property or yield possession and remains in possession
 13 more than 20 days after service of notice shall be deemed a trespasser and
 14 shall be then liable for rents, issues and profits ***[as of the date of]* ***20*
 15 *days after*** service. The court, upon notice and after determining that
 16 the property owner has had adequate opportunity to obtain any funds pay-
 17 able to him under sections 23 and 26 of this act and any other expenses to
 18 which he may be entitled to as a matter of law, shall enter ***[writs of*
 19 *assistance]* ***an order for possession*** directed to the sheriff of the county
 20 in which the property is located. If the owner or tenant occupies the prop-
 21 erty with the condemnor's permission on a rental basis for a short term or
 22 for a period subject to termination on short notice, the amount of rent re-
 23 quired shall not exceed the fair rental value of the property to a short
 24 term occupier.* Such right, title and interest shall be transferred and shall
 25 attach to the compensation determined to be payable hereunder, to the same
 26 extent and in the same order of priority as existed at the date of vesting of
 27 title in condemnor. The pendency of an appeal from an award or judgment
 28 hereunder shall not interfere with such vesting of title.

1 20. Nature of title condemned. The title to property condemned
 2 and acquired by the condemnor hereunder, shall be a title in fee
 3 simple, free and discharged of all right, title, interest and liens of all con-
 4 demnees, and shall include all the right, title and interest of each condemnee
 5 therein, provided, however, that if the complaint or any amendment thereof
 6 shall specify a lesser title, the lesser title so specified shall be the title con-
 7 demned and acquired.

1 21. Date of vesting of title. Title to the property condemned shall
 2 vest in the condemnor as of the earliest date of the happening of any
 3 of the following events:

4 (a) Filing ***and recording*** the declaration of taking and depositing
 5 funds pursuant to sections 17 and 18 of this act;

6 (b) ***Filing and*** ***[Recording]* ***recording*** in the recording

7 office of ****[conveyance by the condemnee to the condemnor]**** ***the report*
 7A *of commissioners and payment of the award***;

8 (c) Filing in the action and recording in the recording office, an agree-
 9 ment between condemnor and condemnee fixing the date as of which title shall
 10 vest;

11 (d) Paying and satisfying of record a final judgment fixing compensation
 12 payable hereunder.

1 ***[22.]** Order for possession and removal of property. The court, upon
 2 notice, shall fix the time and terms upon which possession of said property
 3 shall be delivered, and personal property thereon shall be removed, and may
 4 enter writs of assistance directed to the sheriff of the county.]*

1 ***[23.]** **22.** Appeal not to affect ****[vesting of]**** right to possession
 2 and ***vesting of*** title. The pendency of an appeal with respect to any issue
 3 other than the authority to condemn, shall not affect the ****[vesting of]****
 4 right to possession and ***vesting of*** title in the condemnor.

1 ***[24.]** **23.** Withdrawal of funds. Upon application of any condemnee,
 2 or any other party in interest, and on notice to all parties to the action, in-
 3 cluding the condemnor, the court may direct that the estimated compensation
 4 on deposit, or any part thereof, be paid to the person or persons entitled
 5 thereto, on account of the compensation to which they may be entitled in the
 6 action; provided, that if the ***award or*** judgment fixing such compensa-
 7 tion be less than the amount paid pursuant hereto, the person to whom such
 8 payment has been made shall repay the same, together with interest at
 9 ***[6%]** **a rate to be fixed by the court** from the date of payment to such
 10 person, and the court, after hearing in a summary manner, may enter judg-
 11 ment therefor; and provided, further, that if the ***award or*** judgment fix-
 12 ing such compensation be more than the amount deposited, condemnor shall
 13 pay the excess to the condemnee entitled thereto, with interest at ***[6%]**
 14 **a rate to be fixed by the court** from the date of the deposit, and the court,
 15 after hearing in a summary manner, may enter judgment therefor against
 16 the condemnor. The court, upon notice to all parties, shall enter appropriate
 17 orders distributing any balances on deposit.

1 ***[25.]** **24.** Revesting of title and restoration of possession. If, after
 2 the filing of a declaration of taking, a judgment shall be entered dismissing
 3 the action, title to and possession of the property shall revert in the con-
 4 demnee, subject to the same right, title, interest and liens as existed as of the
 5 date of the filing of the declaration of taking. In such event, condemnor shall
 6 ***file and record the judgment and*** pay any damages sustained by the con-
 7 demnee as a result of the action of the condemnor, and the expenses of the
 8 condemnee.

1 ***[26.]** **25.** Compelling condemnor to file declaration of taking. If

2 within ****[3]**** ****6**** months ****[after the commencement of an action]****
 2A ****from the date of appointment of commissioners****, the condemnor fails to
 3 file a declaration of taking, the court, upon application of any condemnee,
 4 and on notice to all parties in interest, may require the condemnor, at its elec-
 5 tion, to either file a declaration of taking and make the deposit hereinabove
 6 provided, or abandon the proceedings pursuant to section ****[42]**** ****[40]****
 7 ****35**** hereof. For good cause and upon terms, the court may extend the
 8 time for the filing of such declaration of taking, but not more than 3 months
 9 after the commencement of the action.

1 ****[27. Expenses of condemnee. "Should the compensation as finally de-**
 2 **termined in the action, exclusive of interest, exceed the amount of the deposit**
 3 **by 25% or more, the court, after hearing, may determine that in addition to**
 4 **the amounts so determined to be payable, the condemnor shall pay the**
 5 **expenses of the condemnee as herein defined, to be fixed by the court, but not**
 6 **to exceed 10% of the compensation so determined."**]**

1 ***26. a. The condemnor, as soon as practicable after the date of payment**
 2 **of the ****[purchase]**** ****acquisition**** price or the date of deposit in court of**
 3 **funds to satisfy the award of compensation, whichever is earlier, shall reim-**
 4 **burse the owner**** **[, to the extent the condemnor deems fair and reasonable,]****
 5 **for ****actual**** expenses he necessarily incurred for**

6 (1) recording fees, transfer taxes and similar expenses incidental to con-
 7 veying such real property to the condemnor; ****and****

8 ****[(2) penalty costs for prepayment of any preexisting recorded mortgage**
 9 **entered into in good faith encumbering such real property; and]****

10 ****[(3)]**** **** (2) **** the pro rata portion of real property taxes paid which
 11 are allocable to a period subsequent to the date of vesting title in the condem-
 12 nor, or the effective date of possession of such real property by the condemnor,
 13 whichever is earlier.

14 ****[b. (1) The court having jurisdiction of a proceeding instituted to ac-**
 15 **quire property by condemnation shall award the owner of any right, or title to,**
 16 **or interest in, such real property such sum as will in the opinion of the court re-**
 17 **imburse such owner for his reasonable costs, disbursements and expenses, in-**
 18 **cluding reasonable attorney, appraisal and engineering fees, actually incurred**
 19 **because of the condemnation proceeding if**

20 (a) the final judgment is that the condemnor cannot acquire the real prop-
 21 erty by condemnation; or

22 (b) the proceeding is abandoned by the condemnor.

23 (2) Any award made pursuant to subsection b. (1) shall be paid by the
 24 condemnor.

25 (3) The court rendering a judgment for the plaintiff in a proceeding
 26 against the condemnor awarding compensation for the taking of property by

26A the condemnor, or the condemnor upon effecting a settlement of any such pro-
 27 ceeding, shall determine and award or allow to such plaintiff, as a part of such
 28 judgment or settlement, such sum as will in the opinion of the court or the con-
 29 demnor reimburse such plaintiff for his reasonable costs, disbursements and
 30 expenses, including reasonable attorney, appraisal and engineering fees, ac-
 31 tually incurred because of such proceeding.】**

32 **b. If the court renders final judgment that the condemnor cannot ac-
 33 quire the real property by condemnation or, if the condemnation action is
 34 abandoned by the condemnor, then the court shall award the owner of any
 35 right, or title to, or interest in such real property, such real property, such
 36 sum as will reimburse such owner for his reasonable costs, disbursements and
 37 expenses actually incurred, including reasonable attorney, appraisal, and en-
 38 gineering fees.

39 **c. When a plaintiff shall have brought an action to compel condemna-
 40 tion against a defendant having the power to condemn, the court or repre-
 41 sentative of the defendant in case of settlement shall, in its discretion, award
 42 such plaintiff his reasonable costs, disbursements, and expenses, including
 43 reasonable appraisal, attorney and engineering fees actually incurred regard-
 44 less of whether the action is terminated by judgment or amicable agreement
 45 of the parties.**

1 *【28.】* *27.* Deposit and withdrawal of funds not prejudicial. Neither
 2 the making of the deposit nor any withdrawal thereof pursuant to this article,
 3 shall affect or prejudice the rights of either the condemnor or the condemnee
 4 in the determination of compensation. The amount of such deposit and any
 5 withdrawal thereof, shall not be evidential in such determination.

1 *【29.】* *28.* Fees of clerk of the court. Where the clerk of the court is
 2 authorized to charge and deduct statutory fees or commissions by reason of
 3 the deposit and disbursement of funds pursuant to this article, such fees and
 4 commissions shall be paid by the condemnor.

ARTICLE VI

COMPENSATION AND DATE OF DETERMINATION THEREOF

1 *【30.】* *29.* Compensation. The condemnee shall be entitled to compensa-
 2 tion for the property, and damages, if any, to any remaining property, together
 3 with such additional compensation as provided for herein, or as may be fixed
 4 according to law.

1 **【*【31.】* *30.* Effect of amendment of proceedings. Any increase or
 2 decrease in the value of property being condemned, *【caused by】* *follow-
 3 ing* any *【administrative action or】* *official* public announcement of pro-
 4 posed public improvement other than a decrease in value due to physical
 5 depreciation within the reasonable control of the condemnee, shall be dis-
 6 regarded in determining the amount of just compensation.】**

1 *§32. Elements of compensation. Without limiting the generality of the
2 foregoing, just compensation may be awarded for the following items of
3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
5 being condemned, relocation payments may be made to eligible persons as
6 herein defined, for their reasonable, necessary and actual moving expenses
7 to a location not in excess of 50 miles from the point of taking, but not in ex-
8 cess of \$300.00 in the case of an individual or family, and not in excess of
9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 "Eligible person" shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 "Moving expenses" shall include all costs of reinstallation of property
20 moved and damages thereto caused by or resulting from such removal.

21 "Family" means 2 or more persons living together in the same dwelling
22 unit.

23 "Business entity" means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)
25 for the manufacturing, processing or marketing of any such property; (3)
26 for the sale of services to the public, which entity vacates its place of busi-
27 ness after the effective date hereof as a result of the acquisition, or immi-
28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily
30 for the production of one or more agricultural product, products or commodi-
31 ties for sale or home use, and customarily sells such products or commodi-
32 ties in sufficient quantities to be capable of contributing materially to the sup-
33 port of the operator thereof, which operator vacates such property after the
34 effective date hereof as a result of the acquisition or imminence of acquisi-
35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
37 pensation which a condemnor may pay for relocation expenses in cases where,
38 under applicable Federal law or regulations, such compensation may be paid
39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
40 to condemnor out of Federal funds.

41-55 (b) In determining damages to property remaining after a partial taking,

56 consideration shall be given to the use to which the property condemned shall
 57 be devoted, and the damages and benefits specially affecting such remaining
 58 property due to its proximity to the improvement for which the property is
 59 being taken. Future damages and general benefits which will affect prop-
 60 erty beyond that directly abutting the improvement shall not be considered
 61 in arriving at the after-value of the remaining property. Special benefits
 62 to remaining property shall, in no event, exceed the compensation for the
 63 land taken, exclusive of severance damages.

64 (c) Notwithstanding that no land has been or is being taken, compen-
 65 sation shall be paid for damages to property located within 100 feet from land
 66 taken for a public purpose, resulting from, (1) a change of grade; (2) per-
 67 manent interference with existing access; (3) injury to surface support; and
 68 (4) vacation of a public road, street or highway in actual use.

69 (d) If a condemnor does not require for its use, machinery, equipment or
 70 fixtures constituting a part of the property being condemned, it shall so
 71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
 73 tended time as may be fixed by the condemnor or the court, upon notice, the
 74 condemnee may elect, in writing, to remove such machinery, equipment and
 75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
 76 be reduced by the fair market value of such machinery, equipment and fix-
 77 tures being removed or severed from the property. The notices and elec-
 78 tion herein provided for and other procedure, shall be governed by the rules.]*

1 *~~[33.]~~* **~~[31.]~~** **30.** Date as of which compensation shall be
 2 determined. Just compensation shall be determined as of the date of the
 3 earliest of the following events: **~~[(a)]~~** date of the execution of an agree-
 4 ment of purchase between condemnor and condemnee; (b)]** **~~(a)~~** the
 5 date possession of the property being condemned is taken by the condemnor
 6 in whole or in part; **~~[(c)]~~** **~~(b)~~** the date of the commencement of the
 7 action; **~~[(d)]~~** **~~(c)~~** the date on which action is taken by the condemnor
 8 which substantially affects the use and enjoyment of the property by the con-
 9 demnee **~~[as delineated in section 25 herein*]~~**.

**~~[ARTICLE VII~~
 TAXES]**

1 **~~[34.]~~* **32.* The taxes which are the subject-matter of this article
 2 are the real property taxes duly assessed by the taxing district in which the
 3 property being condemned is located, for the tax year during which pos-
 4 session thereof is taken or title thereto is acquired pursuant to this act,
 5 whichever is the earlier, and are hereafter referred to in this article as
 6 "such taxes."

SAISAL

lo
lg
d

have
known
modern



1 ***[35.]** (a) The condemnation of property pursuant to this act shall not
 2 affect the payment of such taxes to the taxing district, and the provisions of
 3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
 5 taxes other than as herein set forth, but no such agreement shall affect the
 6 payment of such taxes to the taxing district.]*

1 ***[36.]*** *33.* (a) Where the entire property of a condemnee is being con-
 2 demned and ***[such]*** taxes have been paid, the condemnor shall pay to the con-
 3 demnee, in addition to the compensation payable hereunder, an amount of
 4 money which bears the same ratio of the taxes so paid, as part of the ***[tax-**
 5 **able]*** *calendar* year ***[next following the date on]*** *in* which possession is
 6 taken or title acquired ***[hereunder (whichever is earlier) bears to the entire**
 6A **taxable year]***.

7 (b) Where only a part of such property is being condemned, the amount
 8 of money so to be paid by the condemnor shall be a sum which bears the same
 9 ratio of taxes so paid on the part of the property condemned, as the part of
 10 the ***[taxable]*** *calendar* year ***[next following the date on]*** *in* which
 11 possession is taken or title acquired ***[hereunder (whichever is earlier) bears**
 12 **to the entire taxable year]***.

1 ***[37.]*** *34.* (a) Where the entire property of the condemnee is being
 2 condemned and such taxes have not been paid, the condemnor shall deduct from
 3 the compensation payable hereunder, the proportionate share of such unpaid
 4 taxes upon the entire property, allocable to the period between the first day
 5 of the year in which possession is taken, or title acquired (whichever is
 6 earlier), and the date when such possession is taken or title acquired (which-
 7 ever is earlier). The condemnor shall pay to the taxing district on behalf
 8 of the condemnee, (1) the amount so deducted; and (2) ***[as additional com-**
 9 **ensation to the condemnee,]*** the entire balance of such unpaid taxes for
 10 ***[the entire]*** *that calendar* year.

11 (b) Where only a part of such property is being condemned and such
 12 taxes have not been paid, condemnor shall deduct from the compensation
 13 payable hereunder, the proportionate share of such unpaid taxes upon
 14 the entire property allocable to the period between the first day of the year in
 15 **which possession is taken or title acquired (whichever is the earlier) and the**
 16 **date when such possession is taken or title acquired, (whichever is earlier).**
 17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)
 18 the amount so deducted; and (2) as additional compensation to the condemnee,
 19 the proportionate share of such unpaid taxes for the balance of the tax year
 20 allocable to the portion of the property taken.

1 ***[38.]*** *35.* Any dispute as to the apportionment of such taxes and the
 2 payment thereof, shall be determined by the court in the action in a summary
 3 manner, upon petition by any party to the action, or by the taxing district.]*

ARTICLE ****[VIII]**** ****VII****

INTEREST

1 ***[39.]*** ****[36.]*** ****3X**** Payment of interest. Interest ***[at 6%]*** ****as**
 2 **set by the court*** ****[per annum]*** upon the amount of compensation deter-
 3 mined to be payable hereunder shall be paid by the condemnor from the date
 4 of the commencement of the action until the date of payment of the com-
 5 pensation; provided, however, that there shall be excluded from the amount
 6 upon which interest shall be calculated, all moneys deposited pursuant to
 7 Article V hereof, and provided, further, that interest payable hereunder
 8 shall be subject to abatement for rents and profits derived from the property
 9 by the condemnee during the period for which interest is payable hereunder,
 10 and/or for the fair rental value of such property or any portion thereof
 11 occupied by the condemnee during such period.

1 ***[40.]*** ****[37.]*** ****32**** Disputes as to interest. Unless agreed upon
 2 by the parties, the amount of such interest shall be fixed and determined by
 3 the court in a summary manner after final determination of compensation,
 4 and shall be added to the amount of the award or judgment, as the case may
 5 be.

ARTICLE ****[IX]**** ****VIII****

MISCELLANEOUS

1 ***[41.]*** ****[38.]*** ****33**** Possession by individuals or private corpo-
 2 rations. Individuals and private corporations vested with the authority of
 3 condemnation may, upon the filing of the report of the commissioners and
 4 upon payment, to the parties entitled thereto or into court, of the amount
 5 awarded as provided in this act, take possession of the land or other prop-
 6 erty for the purposes for which the same was authorized to be taken.

7 The report of the commissioners, together with the order or judgment
 8 appointing them, or a copy thereof certified by the clerk of the court, and
 9 proof of such payment of the amount awarded shall be plenary evidence of
 10 the right of the condemnor to have, hold, use, occupy, possess and enjoy the
 11 land and other property.

1 ***[42.]*** ****[39.]*** ****34**** Deposit of funds where ownership in dispute.
 2 If the condemnee entitled to receive the award or judgment upon tender
 3 thereof, shall refuse to receive the same, or shall be out of the State, or under
 4 any legal disability; or in case several condemnees interested in the fund shall
 5 not agree as to the distribution thereof; or in case the property condemned
 6 shall be encumbered by mortgage, judgment or other liens; or if for any other
 7 reason the condemnor cannot ****[safely]*** ****reasonably**** pay the award or
 8 judgment to any person, the amount thereof may be deposited with the clerk

and to be held by the clerk until the award or judgment is paid to the
 person entitled to receive the same.

APPRAISAL
 YOURS . . .

to
 be
 d
 !

J.
 hav.
 determine known
 modern

9 of the court, to be distributed to the parties entitled thereto according to law.
 10 The procedure for distributing the funds shall be in accordance with the rules.
 11 ***[The fees of the clerk, if any, shall be paid out of the fund.]***

1 ***[43.]*** ****[40.]**** **35.** Abandonment of proceedings. Any action
 2 hereunder may be abandoned at any time before or within 30 days after the
 3 filing of the award of commissioners; or in the event of an appeal from such
 4 award, at any time before or within 30 days after the entry of judgment ****[on**
 5 **such appeal]**** ; or in the event that a hearing before commissioners shall
 6 have been waived, at any time before or within 30 days after judgment has
 7 been entered in said action; provided, however, that no such action shall be
 8 abandoned after the filing of a declaration of taking pursuant to Article V
 9 hereof, or after the vesting of title in any condemnor pursuant hereto; and
 10 provided further, that (a) a discharge of the notice of lis pendens is filed,
 11 and (b) the condemnor shall pay the expenses of all condemnees who have
 12 appeared in the action. ***Nothing herein shall preclude abandonment at any*
 13 *time by mutual consent of the parties.***

1 ***[44.]*** ****[41.]**** **36.** Method of abandonment. The abandonment
 2 shall be effected by filing and serving notice of abandonment ****[in the**
 3 **manner, form and content fixed by the rules]****.

1 ***[45.]*** ****[42.]**** **37.** Uneconomic remnants. If as a result of a
 2 partial taking of property, the property remaining consists of a parcel or
 3 parcels of land having little or no economic value, the condemnor, **in its*
 4 *own discretion or** at the request of the condemnee, shall acquire the entire
 5 parcel.

1 **38. *Blighted areas. The value of any land or other property being*
 2 *acquired in connection with development or redevelopment of a blighted area*
 3 *shall be no less than the value as of the date of the declaration of blight by the*
 4 *governing body upon a report by a planning board.*

1 39. *Housing authority or redevelopment agency; declaration of tak-*
 2 *ing. Upon the institution of an action by a housing authority or redevelop-*
 3 *ment agency to fix the compensation to be paid, or at any time thereafter,*
 4 *a duly authorized officer or agent of the housing authority or redevelopment*
 5 *agency may file with the Clerk of the Superior Court a declaration of taking*
 6 *in the manner provided by this act.*

1 40. *Acquisitions by State colleges; declaration of taking. Whenever a*
 2 *State college is authorized by law to acquire lands or rights therein, the*
 3 *Director of the Division of Purchase and Property may acquire such lands*
 4 *or right therein by gift, devise, purchase, or by condemnation in the manner*
 5 *provided by this act.*

1 41. *Lands etc. needed for defense or for airports; declaration of tak-*
 2 *ing. Whenever the State or any commission, official, board or body thereof*

3 or any county or municipality shall determine to acquire lands, easements,
 4 rights-of-way or other property to be used by the United States of America,
 5 the State of New Jersey or said county or municipality, for furthering na-
 6 tional or State defense, or for developing or building airports or providing
 7 surface or aerial approaches thereto, by condemnation pursuant to this act,
 8 and shall represent to the court that it is necessary for such purposes that
 9 the plaintiff enter into possession of the same immediately, the plaintiff
 10 may, with leave of court, file with the Clerk of the Superior Court a decla-
 11 ration of taking in the manner provided for by this act.

1 42. Recovery of taxes or other municipal liens or charges. The provis-
 2 ions of this act shall not be construed to prevent any municipality from re-
 3 taining from or recovering out of any moneys paid by it into court, under
 4 this act, any sum or sums due to such municipality, for taxes or other mu-
 5 nicipal liens or charges against any property taken in condemnation.

1 43. Right of owner to recover amount awarded; lien. The report of the
 2 commissioners together with the order or judgment appointing them, or a
 3 copy thereof certified by the clerk of the court, shall be plenary evidence of
 4 the right of the owner of the land or other property taken to recover the
 5 amount awarded with interest and costs, in the action or in an action in any
 6 court of competent jurisdiction to be instituted against the plaintiff after
 7 failure to pay the same for 20 days after the filing of the report, and shall
 8 from the time of filing the report be enforceable as a lien upon the land or
 9 property taken and any improvements thereon.

1 44. Payment of amount of judgment on appeal; right to possession;
 2 lien, other remedies. The amount of the judgment on the appeal, or so much
 3 thereof as shall not have been paid, shall be paid to the parties entitled
 4 thereto or paid into court as provided in section 34 of this act.

5 If possession shall not have been taken theretofore, the plaintiff, upon
 6 payment as aforesaid, may, notwithstanding any further appeal or other
 7 proceedings, take possession of the lands or other property for the purposes
 8 for which the same was authorized to be taken.

9 The persons entitled to receive payment of the judgment shall be en-
 10 titled to the same lien as is provided in section 34 of this act for the collec-
 11 tion of awards of commissioners and shall have such other remedies as may
 12 be appropriate for the recovery of the same.

1 45. Condemnation of public utility property by municipality; after ac-
 2 quired property and improvements. Where an award has been made in an
 3 action by a municipality for the condemnation of property of a public utility
 4 company and the award has been paid to the parties entitled thereto or the
 5 amount thereof paid into court, the municipality, in addition to having the
 6 right to take possession of the property so condemned, may take possession

havi
 known
 modern



7 of such other property as the company has acquired; and any improvements
8 made in its plant, since the commencement of the action, in advance of mak-
9 ing compensation therefor, provided the municipality cannot acquire said
10 property and improvements by agreement with the owner, either by reason
11 of disagreement as to price, or the legal incapacity or absence of the owner,
12 or his inability to convey valid title, or by reason of any other cause.

13 Upon a municipality exercising this right and entering upon and tak-
14 ing the after-acquired property and improvements in advance of making
15 compensation therefor, the municipality shall apply to the commissioners
16 therefore appointed in the action to fix the compensation to be paid the per-
17 sons interested for the after-acquired property and improvements. There-
18 upon the commissioners shall make a just and equitable appraisal of the
19 value of all such after-acquired property and improvements and damages if
20 any, in accordance with this act. Upon the making of the award the munic-
21 ipality shall pay the amount thereof unless an appeal is taken therefrom to
22 the Superior Court as provided for in section 15 of this act, in which case the
23 amount of the award shall be paid upon final determination thereof.

1 46. Sidewalks; lands condemned for highways to include; condemna-
2 tion of lands for sidewalks. Unless otherwise particularly specified in the
3 resolution, map, complaint and other proceedings for the acquiring of land
4 or rights-of-way, or both, for public highways in the manner set forth in
5 this act the boundary lines of the said road and highways; or portion thereof
6 so taken and acquired, shall include within the boundaries thereof all land
7 necessary and desired for the locating of sidewalks or other space then needed,
8 or thereafter to be utilized as sidewalk, and whether the same shall then or
9 thereafter be intended to be paved for use by pedestrians as sidewalks.

10 All land lying outside of and adjoining the outer boundary lines of any
11 public road or highway, the boundaries of which have been established
12 according to law prior to April 28, 1931, and which lands or the use thereof
13 shall be required for the purpose of laying out, grading and constructing side-
14 walks for the use of pedestrians, shall be taken, acquired and occupied from
15 and as against the rightful owner thereof, only in accordance with this act
16 and upon paying compensation therefor, to be fixed and determined in the
17 manner prescribed by this act.

18 Nothing in this section shall limit or impair or deprive any municipality
19 or county of the right to ordain or order the grading and the construction of a
20 paved surface for any sidewalk above referred to, and the assessing of the
21 proportionate cost thereof, against the owner of the property thereby im-
22 proved as a local public improvement in the manner now provided by law.

1 47. Where land or other property is taken or to be taken by a mu-
2 nicipal corporation or other public body for public improvement and payment

3 of the compensation for the land or other property and damages is authorized
4 by statute to be set off against or made wholly or partially in benefits to be
5 assessed for the same improvement, the municipal corporation or other body
6 may elect to proceed under such statute and on such election the proceeding
7 shall not be governed by this chapter, except as provided by such statute.**

ARTICLE ****[X]**** ****IX****

REPEALER

1 ****[46.]**** ****[43.]**** ****48.**** Any reference to Title 20 of the Revised
2 Statutes or to any section or sections thereof or any amendment or supple-
3 ment thereof in any other statute, in effect on the effective date of this act,
4 shall hereafter be given effect as though reference therein were made to this
5 act or the applicable provisions thereof.

1 ****[47.]**** ****[44.]**** ****49.**** Chapter 1 of Title 20 of the Revised Stat-
2 utes and P. L. 1942, chapter 14 are repealed as of the effective date hereof;
3 provided, however, that this act shall not affect statutes ****[regulating]****
4 ****insofar as they regulate**** the ascertainment and payment of compensa-
5 tion for property condemned or taken by bodies organized and administered
6 as a result of or under compacts between States.

1 ****[45.]**** ****50.**** All acts and parts of acts inconsistent with any of the
2 provisions of this act are, to the extent of such inconsistency, hereby re-
3 pealed.* ****This act shall apply to every agency, authority, company, utility**
4 **or any other entity having the power of eminent domain exercisable within**
5 **the State of New Jersey except as exempted in section 49 of this act.****

SAISAL

lo
ls
d

of havin
determine known
tern



[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 504

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1970

By Assemblymen FORAN, LITTELL, THOMAS, RINALDI, KALTENBACHER, VREELAND, PARKER, Assemblywoman MARGETTS, Assemblymen COBB, De KORTE, AZZOLINA, COLEMAN, EVERS, WILSON, PFALTZ, KIEHN and IRWIN

Referred to Committee on Revision and Amendment of Laws

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public purposes and repealing chapter 1 of Title 20 of the Revised Statutes ***[and]*** ***,*** chapter 14 of the laws of 1942*, and certain other parts of the statutory law*.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 *of* ***[1970]*** *1971*."

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public purpose
8 under the power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public purpose under the power of eminent domain;

11 (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any
13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof ***[;]*** ***,*** (2) any article affixed or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

15 attached to such property in such manner that it cannot be removed without
 16 material injury to itself or to the property***[(j)]*** *,* (3) any article so designed,
 17 constructed, or specially adapted to the purpose for which such property is
 18 used that (a) it is an essential accessory or part of such property; (b) it is not
 19 capable of use elsewhere; and (c) would lose substantially all its value if re-
 20 moved from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable rules governing the courts of the State
 23 of New Jersey as promulgated from time to time by the Supreme Court of
 24 New Jersey;

24A (g) "Action" means the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation is
 27 being fixed;

28 (3) the persons entitled to such compensation and their interests
 29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
 31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnor
 33 is required to pay and the condemnee is entitled to receive according to
 34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commis-
 36 sioners provided for herein;

37 ***[(j)]*** "Expenses of condemnee" means the reasonable fees and expenses
 38 necessarily incurred by condemnee in the action, for attorney, engineering
 39 and appraisal services;**]***

40 ***[(k)]*** *(j)* "Judgment" means the adjudication by the court of any
 41 issue of fact or law, or both, arising under this act. The adjudication of the
 42 right to condemn shall be a final judgment. All other judgments shall be inter-
 43 locutory or final, according to law, or as may be prescribed by the rules;

44 ***[(l)]*** *(k)* "Recording office" means the county office of each county
 45 in which the property being condemned, or any part thereof, is located, in
 46 which office conveyances of real property may be recorded;

47 ***[(m)]*** *(l)* "Days" means calendar days, calculated in accordance
 48 with the rules of court;

49 ***[(n)]*** *(m)* "Public utility" means and includes every public utility,
 50 as the same are enumerated in Revised Statutes 48:2-13, and every natural
 51 gas pipeline utility as defined in P. L. 1952, chapter 166 (C. 48:10-2 et seq.)
 52 vested with the power of eminent domain and subject to regulation under
 53 State or Federal law.

54 ***[(o)]*** *(n)* Words used in the singular shall include the plural and vice
 55 versa. Words used in the neuter gender shall include masculine and femi-
 56 nine gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
2 thereof to any person or circumstance is held to be invalid, such invalidity
3 shall not affect other provisions or applications of the act, which can be given
4 effect without the invalid provision or application, and to this end, the provi-
5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect 60 days next following the
2 approval thereof, and shall apply to all actions instituted thereafter, and to
3 all proceedings taken subsequent thereto in all actions pending on such effec-
4 tive date; except that judgments theretofore entered or awards theretofore
5 made pursuant to law from which no appeal is pending on such effective
6 date, shall not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
2 demnation, and all matters incidental thereto and arising therefrom, includ-
3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
4 mine the authority to exercise the power of eminent domain; to compel the
5 exercise of such power; to fix and determine the compensation to be paid and
6 the parties entitled thereto, and to determine title to all property affected
7 by the action. Where authority to condemn has been granted by a State or
8 Federal regulatory body having original supervisory jurisdiction over the
9 condemnor, review of such determination shall be by appeal according to
10 law.

1 6. Application of act. Whenever any condemnor shall have determined
2 to acquire property pursuant to law, including public property already de-
3 voted to public purpose, but cannot acquire title thereto or possession thereof
4 by agreement with a prospective condemnee, whether by reason of disagree-
5 ment concerning the compensation to be paid or for any other cause, the con-
6 demnation of such property and the compensation to be paid therefor, and to
7 whom payable, and all matters incidental thereto and arising therefrom shall
8 be governed, ascertained and paid by and in the manner provided by this act;
9 provided, however, that no action to condemn shall be instituted unless
10 the condemnor is unable to acquire such title or possession through bona
11 fide negotiations with the prospective condemnee, which negotiations shall in-
12 clude an offer in writing by the condemnor to the prospective condemnee hold-
13 ing the title of record to the property being condemned, setting forth
14 the property and interest therein to ***[b]*** *be* acquired, the compensation
15 offered to be paid and a reasonable disclosure of the manner in which the
16 amount of such offered compensation has been calculated, and such other

17 matters as may be required by the rules. **Prior to such offer the taking*
 18 *agency shall appraise said property and the owner shall be given an oppor-*
 19 *tunity to accompany the appraiser during inspection of the property.** Such
 20 offer shall be served by certified mail. **In no event shall such offer be less*
 21 *than the taking agency's approved appraisal of the fair market value of such*
 22 *property.** A rejection of said offer or failure to accept the same within the
 23 period fixed in written offer, which shall in no case be less than 14 days from
 24 the mailing of the offer, shall be conclusive proof of the inability of the con-
 25 demnor to acquire the property or possession thereof through negotiations.
 26 When the holder of the title is unknown, resides out of the State, or for other
 27 good cause, the court may dispense with the necessity of such negotiations.
 28 Neither the offer nor the refusal thereof shall be evidential in the deter-
 29 mination of compensation.

1 7. (a) Nature of action. The court may proceed in a summary manner
 2 pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New Jersey Stat-
 3 utes, or otherwise.

4 (b) Rules of procedure. The procedure governing the action shall be in
 5 accordance with the rules.

6 (c) Multiple proceedings. The condemnation of any number of parcels
 7 of property lying wholly within the same county, may be joined in one action;
 8 provided that a separate award, judgment and appeal shall be made, entered
 9 and taken with respect to each parcel.

10 (d) Amendments. Amended and supplemental pleadings, descriptions,
 11 surveys, plans, declarations of taking and the like, may be permitted and
 12 parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
 2 verified complaint in form and content specified by the rules and shall demand
 3 judgment that condemnor is duly vested with and has duly exercised its au-
 4 thority to acquire the property being condemned, and for an order appoint-
 5 ing commissioners to fix the compensation required to be paid.

1 9. Process. Within ***[10]*** **14** days after the filing of the complaint, the
 2 condemnor shall issue and with due diligence, cause process to be served or
 3 published in accordance with the rules. Notice given and process served or
 4 published in accordance with the rules shall be effective to bind all condemnees.

1 10. Lis pendens. Within ***[10]*** **14** days after the filing of the com-
 2 plaint, the condemnor shall cause to be filed in the recording office, a notice of
 3 the pendency of the action, in form and content specified by the rules. Such
 4 notice shall include the title of the action; the docket number thereof, if
 5 known; the date of the commencement of the action, a description of the
 6 property and the interests therein being condemned, as set forth in the com-
 7 plaint; and the names and addresses of all condemnees known to the con-

8 demnor and the nature of their alleged interests in said property. The lis
9 pendens shall be indexed by the recording official, listing the condemnees as
10 grantors and the condemnor as grantee. In default of such record, persons
11 acquiring an interest in or lien upon the property without actual notice of
12 the action, shall not be bound thereby but the failure to comply with the pro-
13 visions of this section shall not otherwise affect such proceedings.

1 11. Denial of authority to condemn. Failure to deny the authority of the
2 condemnor to condemn in the manner provided for by the rules, shall consti-
3 tute a waiver of such defense. When the authority to condemn is denied, all
4 further steps in the action shall be stayed until that issue has been finally de-
5 termined except where such authority has been determined by a State or Fed-
6 eral regulatory body having original jurisdiction with respect thereto.

1 12. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in the
3 cause, the condemnor and all condemnees may waive the appointment of com-
4 missioners and hearings before them hereafter referred to, and in such event,
5 the action shall proceed to trial before the court as in other actions at law.

6 (b) Appointment and qualification of commissioners. Upon determina-
7 tion that the condemnor is authorized to and has duly exercised its power of
8 eminent domain, the court shall appoint 3 commissioners to determine the
9 compensation to be paid by reason of the exercise of such power. Such com-
10 missioners shall be residents of the county in which any part of the property
11 being condemned is located or, in the case of the commissioner who must be
12 an attorney, be actively engaged in the practice of law in the county. One of
13 such commissioners shall be an attorney, admitted to practice in this State
14 for at least 10 years, who shall preside at all hearings and rule on all ques-
15 tions of evidence and procedure, subject to a review by a majority of the com-
16 missioners. The commissioners shall take and subscribe an oath faithfully
17 and impartially to perform their duties, and to make a true award to the best
18 of their skills and understanding, which oath shall be filed with their award.
19 Should a commissioner die, become disqualified, unable, neglect or refuse to
20 act, the remaining 2 commissioners shall perform the duties of office with the
21 same authority as if all commissioners were acting. The court may fill any
21A vacancy in office, and for cause, may vacate any appointment and appoint a
21B successor in office.

22 (c) Hearings—subpœna. The commissioners shall hold hearings upon
23 notice required by the rules, at which the parties and their witnesses may
24 be heard, under oath, administered by any commissioner. The conduct of
25 the hearings and the compulsory attendance of witnesses and production of
26 records thereat, shall be governed by the rules. At the request of any party,
27 a stenographic record of the hearing shall be maintained. A majority of
28 commissioners shall be in attendance at all hearings.

29 At the hearing, the condemnor shall offer proof of the nature and extent
30 of the taking, and its opinion of the compensation payable by reason thereof.

31 (d) Inspection of property. Commissioners may inspect the property
32 being condemned, and shall so inspect when requested by any party. Such
33 inspection may be in the absence of the parties, unless attendance at inspec-
34 tion is requested by the parties, or any of them. This right of inspection shall
35 exist notwithstanding that the structures on the property may have been
36 demolished and the site altered.

37 (e) Award of commissioners. Within 4 months next following their ap-
38 pointment, or within any extended period fixed by the court on notice, or by stip-
39 ulation of all the parties filed in the action, the commissioners, or a majority
40 of them, shall make and file in form and content fixed by the rules, an award
41 fixing and determining the compensation to be paid by the condemnor
42 because of the taking. The requirements respecting the time of filing of such
43 award shall be directory and not mandatory, and a failure to make and file
44 the same within the time specified, shall not invalidate the award or oust the
45 commissioners of jurisdiction to complete their duties. Upon its own motion,
46 or on application of any party, made within 60 days after the filing of the
47 award, the court may authorize the commissioners to amend, supplement,
48 modify, or correct their award.

49 (f) Judgment. Any award as to which no appeal is taken in accordance
50 with the rules, shall become final as of course, and shall constitute a final
51 judgment. If not paid within 60 days after final judgment, execution may
52 issue as in other actions at law.

53 (g) Commissioners' fees and expenses. The court, upon application of
54 any party, including the commissioners, shall fix reasonable fees, costs and
55 expenses of the commissioners, clerks and other persons performing any of
56 their duties, all of which shall be paid by the condemnor.

1 13. (a) Appeal. Any party who has appeared at the hearings of the
2 commissioners, either personally or through attorney, may appeal from the
3 award of the commissioners, whether or not an appeal has or may be given
4 by the statute conferring the power of eminent domain. Such appeal
5 shall be taken within the period and in the manner provided by the rules.
6 The necessary parties to the appeal shall be only such parties as have so
7 appeared at the commissioners' hearings. Other parties may be admitted by
8 the court pursuant to rules.

9 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo,
10 as in other actions at law, without a jury, unless a jury be demanded. The
11 award of the commissioners shall not be admitted in evidence.

12 A valuation expert who has not testified at the hearing before the com-
13 missioners shall not be permitted to testify at the trial de novo, unless,

14 within such time and in such form as shall be fixed by the rules, the party
 15 offering such testimony has given notice to the other parties to the appeal of
 16 the name and address of such expert and his proposed opinion of the amount
 17 of compensation payable by reason of the condemnation.

1 14. Agreement as to compensation. At any time during the
 2 pendency of the action, the condemnor and the condemnees may agree upon all
 3 or any part or any item of compensation to be paid, and then proceed to have
 4 those parts or items not agreed upon, fixed and determined as herein provided.
 5 The condemnor may make payment of any part or item thereof agreed upon,
 6 and condemnees may accept such payment, without prejudice, and proceed
 7 to fix and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to
 2 individuals or private corporations vested with the authority of condemnation
 3 nor shall the provisions of sections 17 through *~~29~~* *28* of this article be
 4 applicable to condemnation of property owned or used by a public utility.

1 16. Preliminary entry. Prior to the commencement of any action, a
 2 prospective condemnor and its employees and agents, during reason-
 3 able business hours, may enter upon any property which it has authority to
 4 condemn for the purpose of making studies, surveys, tests, soundings, borings
 5 and appraisals, provided notice of the intended entry for such purpose is sent
 6 to the owner and the occupant of the property by certified mail at least 10
 7 days prior thereto. No tests, soundings or borings shall be made on prop-
 8 erty in which there exists a pipeline or other underground utility installa-
 9 tion except in the presence of a representative designated by the public utility
 10 owning or using the same. If an action to condemn is not commenced within 1
 11 year after such preliminary entry, any damages sustained as a result thereof,
 12 shall be paid by the condemnor to the person or persons so damaged. The
 13 amount of such damages, if any, and the person or persons entitled thereto,
 14 shall be determined by the court in a summary action pursuant to sections
 15 2A:16-50 to 2A:16-62 inclusive, of the New Jersey Statutes.

1 17. Possession of property and declaration of taking. At any
 2 time **contemporaneous with or** after the institution of an action and service
 3 of process, the condemnor may file in the action, and if so filed, shall also file
 4 in the recording office, a declaration of taking, duly executed by an executive
 5 official of the condemnor, in form and content specified by the rules, includ-
 5A ing the following:

6 (a) a statement that possession of all or some part of the property being
 7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under

9 which the action and declaration of taking is authorized, including the date
10 when such authorization was given and the place where the record thereof
11 may be examined;

12 (c) a description and plot plan of the property being condemned, and, if
13 not the entire property, the portion thereof of which possession is being taken,
14 sufficient for identification thereof, specifying the ***[municipality]*** **munic-*
15 *ipality** or municipalities in which the same is located; the street number of
16 the property, if any; the lot and block number of the property as designated
17 upon the current assessment map, if any. In case of a partial taking, the in-
18 formation above specified shall include the entire property of the condemnee,
19 and the portion thereof being taken;

20 (d) the names and addresses of all condemnees known to the condemnor
21 after reasonable investigation, and the nature of their interests in the prop-
22 erty;

23 (e) a statement of the estate or interest therein being condemned;

24 (f) a statement of the sum of money estimated by the condemnor to be
25 just compensation for the taking, which sum shall be not less than the amount
26 of the offer, in writing, provided for in section 6 hereof.

27 (g) Any other matter required by the rules.

1 18. Deposit of estimated compensation. Simultaneously with the
2 filing of the declaration of taking, the condemnor shall deposit the amount
3 of such estimated compensation either with the clerk of the court, or in a
4 special interest-bearing bank account in the name of the condemnor, in trust
5 for the benefit of the condemnees entitled thereto. The amount so deposited
6 shall be not less than the amount offered pursuant to section 6 hereof, and
7 if an award has been made by commissioners hereunder, or a judgment
8 determining compensation has been entered at the time of the filing of such
9 declaration, the amount so deposited shall be not less than the amount of such
10 award or judgment.

11 ***[Upon application by any party in interest, and upon being satisfied that**
12 **the financial responsibility of the condemnor to satisfy any judgment that**
13 **may be entered in the action is uncertain, the court may require such con-**
14 **demnor to maintain an additional trust fund with a bank or trust company**
15 **authorized to do business in New Jersey, in an amount equal to 1/2 of the**
16 **estimated compensation fund so deposited. Said trust fund shall consist of**
17 **cash, or securities which are legal investments for trust funds in New Jersey.**

18 The fund originally deposited and the additional fund, if any, shall secure
19 the payment of compensation determined to be payable hereunder and may
20 be applied to such payment. After payment or satisfaction of such compensa-
21 tion, condemnor, with approval of the court, may withdraw any surplus cash
22 and securities.]***** **Any amount so deposited shall not be subject to the fees*
23 *set forth in N. J. S. 22A:2-20.**

1 19. Right to possession and vesting of title. A copy of the
2 declaration of taking and notice of the filing thereof and of the making of the
3 aforesaid deposit, shall be served upon the condemnee and all occupants of
4 the property in accordance with the rules, and proof of such service shall be
5 filed in the action. Thereupon, the right to the immediate and exclusive pos-
6 session and title to the property described in the declaration of taking shall
7 vest in the condemnor, free and discharged of all right, title, interest and
8 liens of all condemnees **without the necessity of further process. A prop-*
9 *erty owner who refuses to vacate said property or yield possession and*
10 *remains in possession more than 20 days after service of notice shall be*
11 *deemed a trespasser and shall be then liable for rents, issues and profits as*
12 *of the date of service. The court, upon notice and after determining that the*
13 *property owner has had adequate opportunity to obtain any funds payable*
14 *to him under sections 23 and 26 of this act and any other expenses to which*
15 *he may be entitled to as a matter of law, shall enter writs of assistance*
16 *directed to the sheriff of the county in which the property is located. If the*
17 *owner or tenant occupies the property with the condemnor's permission on a*
18 *rental basis for a short term or for a period subject to termination on short*
19 *notice, the amount of rent required shall not exceed the fair rental value of*
20 *the property to a short term occupier.** Such right, title and interest shall
21 be transferred and shall attach to the compensation determined to be payable
22 hereunder, to the same extent and in the same order of priority as existed
23 at the date of vesting of title in condemnor. The pendency of an appeal
24 from an award or judgment hereunder shall not interfere with such vesting
25 of title.

1 20. Nature of title condemned. The title to property condemned
2 and acquired by the condemnor hereunder, shall be a title in fee
3 simple, free and discharged of all right, title, interest and liens of all con-
4 demnees, and shall include all the right, title and interest of each condemnee
5 therein, provided, however, that if the complaint or any amendment thereof
6 shall specify a lesser title, the lesser title so specified shall be the title con-
7 demned and acquired.

1 21. Date of vesting of title. Title to the property condemned shall
2 vest in the condemnor as of the earliest date of the happening of any
3 of the following events:

4 (a) Filing the declaration of taking and depositing funds pursuant to
5 sections 17 and 18 of this act;

6 (b) Recording in the recording office of conveyance by the condemnee to
7 the condemnor;

8 (c) Filing in the action and recording in the recording office, an agree-
9 ment between condemnor and condemnee fixing the date as of which title shall
10 vest;

11 (d) Paying and satisfying of record a final judgment fixing compensation
12 payable hereunder.

1 ***[22.]** *22.* Order for possession and removal of property. The court, upon
2 notice, shall fix the time and terms upon which possession of said property
3 shall be delivered, and personal property thereon shall be removed, and may
4 enter writs of assistance directed to the sheriff of the county.]*

1 ***[23.]*** *22.* Appeal not to affect vesting of right to possession and
2 title. The pendency of an appeal with respect to any issue other than the
3 authority to condemn, shall not affect the vesting of right to possession and
4 title in the condemnor.

1 ***[24.]*** *23.* Withdrawal of funds. Upon application of any condemnee,
2 or any other party in interest, and on notice to all parties to the action, in-
3 cluding the condemnor, the court may direct that the estimated compensation
4 on deposit, or any part thereof, be paid to the person or persons entitled
5 thereto, on account of the compensation to which they may be entitled in the
6 action; provided, that if the judgment fixing such compensation be less than
7 the amount paid pursuant hereto, the person to whom such payment has been
8 made shall repay the same, together with interest at ***[6%]*** *a rate to be*
9 *fixed by the court** from the date of payment to such person, and the court,
10 after hearing in a summary manner, may enter judgment therefor; and pro-
11 vided, further, that if the judgment fixing such compensation be more than the
12 amount deposited, condemnor shall pay the excess to the condemnee entitled
13 thereto, with interest at ***[6%]*** *a rate to be fixed by the court** from the
14 date of the deposit, and the court, after hearing in a summary manner, may
15 enter judgment therefor against the condemnor. The court, upon notice to all
16 parties, shall enter appropriate orders distributing any balances on deposit.

1 ***[25.]*** *24.* Revesting of title and restoration of possession. If, after
2 the filing of a declaration of taking, a judgment shall be entered dismissing
3 the action, title to and possession of the property shall revert in the con-
4 demnee, subject to the same right, title, interest and liens as existed as of the
5 date of the filing of the declaration of taking. In such event, condemnor shall
6 pay any damages sustained by the condemnee as a result of the action of the
7 condemnor, and the expenses of the condemnee.

1 ***[26.]*** *25.* Compelling condemnor to file declaration of taking. If
2 within 3 months after the commencement of an action, the condemnor fails to
3 file a declaration of taking, the court, upon application of any condemnee,
4 and on notice to all parties in interest, may require the condemnor, at its elec-
5 tion, to either file a declaration of taking and make the deposit hereinabove
6 provided, or abandon the proceedings pursuant to section ***[42]*** *40* hereof.
7 For good cause and upon terms, the court may extend the time for the filing
8 of such declaration of taking, but not more than 3 months after the commence-
9 ment of the action.

1 ***[27.** Expenses of condemnee. "Should the compensation as finally de-
 2 termined in the action, exclusive of interest, exceed the amount of the deposit
 3 by 25% or more, the court, after hearing, may determine that in addition to
 4 the amounts so determined to be payable, the condemnor shall pay the
 5 expenses of the condemnee as herein defined, to be fixed by the court, but not
 6 to exceed 10% of the compensation so determined.'"]*

1 *26. a. *The condemnor, as soon as practicable after the date of payment*
 2 *of the purchase price or the date of deposit in court of funds to satisfy the*
 3 *award of compensation, whichever is earlier, shall reimburse the owner, to the*
 4 *extent the condemnor deems fair and reasonable, for expenses he necessarily*
 5 *incurred for*

6 (1) *recording fees, transfer taxes and similar expenses incidental to con-*
 7 *veying such real property to the condemnor;*

8 (2) *penalty costs for prepayment of any preexisting recorded mortgage*
 9 *entered into in good faith encumbering such real property; and*

10 (3) *the pro rata portion of real property taxes paid which are allocable*
 11 *to a period subsequent to the date of vesting title in the condemnor, or the*
 12 *effective date of possession of such real property by the condemnor, which-*
 13 *ever is earlier.*

14 b. (1) *The court having jurisdiction of a proceeding instituted to acquire*
 15 *property by condemnation shall award the owner of any right, or title to, or*
 16 *interest in, such real property such sum as will in the opinion of the court re-*
 17 *imburse such owner for his reasonable costs, disbursements and expenses, in-*
 18 *cluding reasonable attorney, appraisal and engineering fees, actually incurred*
 19 *because of the condemnation proceeding if*

20 (a) *the final judgment is that the condemnor cannot acquire the real prop-*
 21 *erty by condemnation; or*

22 (b) *the proceeding is abandoned by the condemnor.*

23 (2) *Any award made pursuant to subsection b. (1) shall be paid by the*
 24 *condemnor.*

25 (3) *The court rendering a judgment for the plaintiff in a proceeding*
 26 *against the condemnor awarding compensation for the taking of property by*
 26A *the condemnor, or the condemnor upon effecting a settlement of any such pro-*
 27 *ceeding, shall determine and award or allow to such plaintiff, as a part of such*
 28 *judgment or settlement, such sum as will in the opinion of the court or the con-*
 29 *demnor reimburse such plaintiff for his reasonable costs, disbursements and*
 30 *expenses, including reasonable attorney, appraisal and engineering fees, ac-*
 31 *tually incurred because of such proceeding.**

1 ***[28.]*** *27.* Deposit and withdrawal of funds not prejudicial. Neither
 2 the making of the deposit nor any withdrawal thereof pursuant to this article,
 3 shall affect or prejudice the rights of either the condemnor or the condemnee
 4 in the determination of compensation. The amount of such deposit and any

5 withdrawal thereof, shall not be evidential in such determination.

1 ***[29.]*** *28.* Fees of clerk of the court. Where the clerk of the court is
2 authorized to charge and deduct statutory fees or commissions by reason of
3 the deposit and disbursement of funds pursuant to this article, such fees and
4 commissions shall be paid by the condemnor.

ARTICLE VI

COMPENSATION AND DATE OF DETERMINATION THEREOF

1 ***[30.]*** *29.* Compensation. The condemnee shall be entitled to compensa-
2 tion for the property, and damages, if any, to any remaining property, together
3 with such additional compensation as provided for herein, or as may be fixed
4 according to law.

1 ***[31.]*** *30.* Effect of amendment of proceedings. Any increase or de-
2 crease in the value of property being condemned, ***[caused by]*** *following*
3 any ***[administrative action or]*** *official* public announcement of proposed
4 public improvement, other than a decrease in value due to physical deprecia-
5 tion within the reasonable control of the condemnee, shall be disregarded in
6 determining the amount of just compensation.

1 ***[32.]*** Elements of compensation. Without limiting the generality of the
2 foregoing, just compensation may be awarded for the following items of
3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
5 being condemned, relocation payments may be made to eligible persons as
6 herein defined, for their reasonable, necessary and actual moving expenses
7 to a location not in excess of 50 miles from the point of taking, but not in ex-
8 cess of \$300.00 in the case of an individual or family, and not in excess of
9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 “Eligible person” shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 “Moving expenses” shall include all costs of reinstallation of property
20 moved and damages thereto caused by or resulting from such removal.

21 “Family” means 2 or more persons living together in the same dwelling
22 unit.

23 “Business entity” means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)

25 for the manufacturing, processing or marketing of any such property; (3)
 26 for the sale of services to the public, which entity vacates its place of busi-
 27 ness after the effective date hereof as a result of the acquisition, or immi-
 28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily
 30 for the production of one or more agricultural product, products or commodi-
 31 ties for sale or home use, and customarily sells such products or commodi-
 32 ties in sufficient quantities to be capable of contributing materially to the sup-
 33 port of the operator thereof, which operator vacates such property after the
 34 effective date hereof as a result of the acquisition or imminence of acquisi-
 35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
 37 pensation which a condemnor may pay for relocation expenses in cases where,
 38 under applicable Federal law or regulations, such compensation may be paid
 39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
 40 to condemnor out of Federal funds.

41-55 (b) In determining damages to property remaining after a partial taking,
 56 consideration shall be given to the use to which the property condemned shall
 57 be devoted, and the damages and benefits specially affecting such remaining
 58 property due to its proximity to the improvement for which the property is
 59 being taken. Future damages and general benefits which will affect prop-
 60 erty beyond that directly abutting the improvement shall not be considered
 61 in arriving at the after-value of the remaining property. Special benefits
 62 to remaining property shall, in no event, exceed the compensation for the
 63 land taken, exclusive of severance damages.

64 (c) Notwithstanding that no land has been or is being taken, compen-
 65 sation shall be paid for damages to property located within 100 feet from land
 66 taken for a public purpose, resulting from, (1) a change of grade; (2) per-
 67 manent interference with existing access; (3) injury to surface support; and
 68 (4) vacation of a public road, street or highway in actual use.

69 (d) If a condemnor does not require for its use, machinery, equipment or
 70 fixtures constituting a part of the property being condemned, it shall so
 71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
 73 tended time as may be fixed by the condemnor or the court, upon notice, the
 74 condemnee may elect, in writing, to remove such machinery, equipment and
 75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
 76 be reduced by the fair market value of such machinery, equipment and fix-
 77 tures being removed or severed from the property. The notices and elec-
 78 tion herein provided for and other procedure, shall be governed by the rules.]*

1 ***[33.]*** *31.* Date as of which compensation shall be determined. Just
 2 compensation shall be determined as of the date of the earliest of the following
 3 events: (a) date of the execution of an agreement of purchase between con-
 4 demnor and condemnee; (b) the date possession of the property being con-

5 demned is taken by the condemnor in whole or in part; (c) the date of the com-
 6 mencement of the action; (d) the date on which action is taken by the con-
 7 demnor which substantially affects the use and enjoyment of the property by
 8 the condemnee *as delineated in section 25 herein*.*

ARTICLE VII

TAXES

1 ***[34.]*** *32.* The taxes which are the subject-matter of this article are the
 2 real property taxes duly assessed by the taxing district in which the property
 3 being condemned is located, for the tax year during which possession thereof is
 4 taken or title thereto is acquired pursuant to this act, whichever is the earlier,
 5 and are hereafter referred to in this article as "such taxes."

1 ***[35.]** (a) The condemnation of property pursuant to this act shall not
 2 affect the payment of such taxes to the taxing district, and the provisions of
 3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
 5 taxes other than as herein set forth, but no such agreement shall affect the
 6 payment of such taxes to the taxing district.]*

1 ***[36.]*** *33.* (a) Where the entire property of a condemnee is being con-
 2 demned and ***[such]*** taxes have been paid, the condemnor shall pay to the con-
 3 demnee, in addition to the compensation payable hereunder, an amount of
 4 money which bears the same ratio of the taxes so paid, as part of the ***[tax-**
 5 **able]*** *calendar** year ***[next following the date on]*** *in** which possession is
 6 taken or title acquired ***[hereunder (whichever is earlier) bears to the entire**
 6A **taxable year]***.

7 (b) Where only a part of such property is being condemned, the amount
 8 of money so to be paid by the condemnor shall be a sum which bears the same
 9 ratio of taxes so paid on the part of the property condemned, as the part of
 10 the ***[taxable]*** *calendar** year ***[next following the date on]*** *in** which
 11 possession is taken or title acquired ***[hereunder (whichever is earlier) bears**
 12 **to the entire taxable year]***.

1 ***[37.]*** *34.* (a) Where the entire property of the condemnee is being
 2 condemned and such taxes have not been paid, the condemnor shall deduct from
 3 the compensation payable hereunder, the proportionate share of such unpaid
 4 taxes upon the entire property, allocable to the period between the first day
 5 of the year in which possession is taken, or title acquired (whichever is
 6 earlier), and the date when such possession is taken or title acquired (which-
 7 ever is earlier). The condemnor shall pay to the taxing district on behalf
 8 of the condemnee, (1) the amount so deducted; and (2) ***[as additional com-**
 9 **pensation to the condemnee,]*** the entire balance of such unpaid taxes for
 10 ***[the entire]*** *that calendar** year.

11 (b) Where only a part of such property is being condemned and such
 12 taxes have not been paid, condemnor shall deduct from the compensation

13 payable hereunder, the proportionate share of such unpaid taxes upon
 14 the entire property allocable to the period between the first day of the year in
 15 which possession is taken or title acquired (whichever is the earlier) and the
 16 date when such possession is taken or title acquired, (whichever is earlier).
 17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)
 18 the amount so deducted; and (2) as additional compensation to the condemnee,
 19 the proportionate share of such unpaid taxes for the balance of the tax year
 20 allocable to the portion of the property taken.

1 ***[38.]*** *35.* Any dispute as to the apportionment of such taxes and the
 2 payment thereof, shall be determined by the court in the action in a summary
 3 manner, upon petition by any party to the action, or by the taxing district.

ARTICLE VIII

INTEREST

1 ***[39.]*** *36.* Payment of interest. Interest ***[at 6%]*** *as set by the court*
 2 per annum upon the amount of compensation determined to be payable here-
 3 under shall be paid by the condemnor from the date of the commencement of
 4 the action until the date of payment of the compensation; provided, however,
 5 that there shall be excluded from the amount upon which interest shall be cal-
 6 culated, all moneys deposited pursuant to Article V hereof; and provided,
 7 further, that interest payable hereunder shall be subject to abatement for rents
 8 and profits derived from the property by the condemnee during the period for
 9 which interest is payable hereunder, and/or for the fair rental value of such
 10 property or any portion thereof occupied by the condemnee during such
 11 period.

1 ***[40.]*** *37.* Disputes as to interest. Unless agreed upon by the parties,
 2 the amount of such interest shall be fixed and determined by the court in a
 3 summary manner after final determination of compensation, and shall be
 4 added to the amount of the award or judgment, as the case may be.

ARTICLE IX

MISCELLANEOUS

1 ***[41.]*** *38.* Possession by individuals or private corporations. Individ-
 2 uals and private corporations vested with the authority of condemnation may,
 3 upon the filing of the report of the commissioners and upon payment, to the
 4 parties entitled thereto or into court, of the amount awarded as provided in
 5 this act, take possession of the land or other property for the purposes for
 6 which the same was authorized to be taken.

7 The report of the commissioners, together with the order or judgment
 8 appointing them, or a copy thereof certified by the clerk of the court, and
 9 proof of such payment of the amount awarded shall be plenary evidence of
 10 the right of the condemnor to have, hold, use, occupy, possess and enjoy the
 11 land and other property.

1 ***[42.]*** *39.* Deposit of funds where ownership in dispute. If the con-
 2 demnee entitled to receive the award or judgment upon tender thereof,
 3 shall refuse to receive the same, or shall be out of the State, or under any legal
 4 disability; or in case several condemnees interested in the fund shall not agree
 5 as to the distribution thereof; or in case the property condemned shall be en-
 6 cumbered by mortgage, judgment or other liens; or if for any other reason the
 7 condemnor cannot safely pay the award or judgment to any person, the
 8 amount thereof may be deposited with the clerk of the court, to be distributed
 9 to the parties entitled thereto according to law. The procedure for distribut-
 10 ing the funds shall be in accordance with the rules. ***[The fees of the clerk,**
 11 **if any, shall be paid out of the fund.]***

1 ***[43.]*** *40.* Abandonment of proceedings. Any action hereunder may be
 2 abandoned at any time before or within 30 days after the filing of the award
 3 of commissioners; or in the event of an appeal from such award, at any time
 4 before or within 30 days after the entry of judgment on such appeal; or in
 5 the event that a hearing before commissioners shall have been waived, at
 6 any time before or within 30 days after judgment has been entered in said
 7 action; provided, however, that no such action shall be abandoned after the
 8 filing of a declaration of taking pursuant to Article V hereof, or after the
 9 vesting of title in any condemnor pursuant hereto; and provided further, that
 10 (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor
 11 shall pay the expenses of all condemnees who have appeared in the action.

1 ***[44.]*** *41.* Method of abandonment. The abandonment shall be effected
 2 by filing and serving notice of abandonment in the manner, form and content
 3 fixed by the rules.

1 ***[45.]*** *42.* Uneconomic remnants. If as a result of a partial taking of
 2 property, the property remaining consists of a parcel or parcels of land
 3 having little or no economic value, the condemnor, **in its own discretion or** at
 4 the request of the condemnee, shall acquire the entire parcel.

ARTICLE X

REPEALER

1 ***[46.]*** *43.* Any reference to Title 20 of the Revised Statutes or to any
 2 section or sections thereof or any amendment or supplement thereof in any
 3 other statute, in effect on the effective date of this act, shall hereafter be given
 4 effect as though reference therein were made to this act or the applicable
 5 provisions thereof.

1 ***[47.]*** *44.* Chapter 1 of Title 20 of the Revised Statutes and P. L. 1942,
 2 chapter 14 are repealed as of the effective date hereof; provided, however, that
 3 this act shall not affect statutes regulating the ascertainment and payment of
 4 compensation for property condemned or taken by bodies organized and ad-
 5 ministered as a result of or under compacts between States.

1 *45. *All acts and parts of acts inconsistent with any of the provisions of*
 2 *this act are, to the extent of such inconsistency, hereby repealed.**

ASSEMBLY, No. 504

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1970

By Assemblymen FORAN, LITTELL, THOMAS, RINALDI, KALTENBACHER, VREELAND, PARKER, Assemblywoman MARGETTS, Assemblymen COBB, DE KORTE, AZZOLINA, COLEMAN, EVERS, WILSON, PFALTZ, KIEHN and IRWIN

Referred to Committee on Revision and Amendment of Laws

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public purposes and repealing chapter 1 of Title 20 of the Revised Statutes and chapter 14 of the laws of 1942.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 1970."

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public purpose
8 under the power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public purpose under the power of eminent domain;

11 (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any
13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof; (2) any article affixed or attached
15 to such property in such manner that it cannot be removed without material

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

16 injury to itself or to the property; (3) any article so designed, constructed,
17 or specially adapted to the purpose for which such property is used that (a)
18 it is an essential accessory or part of such property; (b) it is not capable
19 of use elsewhere; and (c) would lose substantially all its value if removed
20 from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable rules governing the courts of the State
23 of New Jersey as promulgated from time to time by the Supreme Court of
24 New Jersey;

24A (g) "Action" means the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation is
27 being fixed;

28 (3) the persons entitled to such compensation and their interests
29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnor
33 is required to pay and the condemnee is entitled to receive according to
34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commis-
36 sioners provided for herein;

37 (j) "Expenses of condemnee" means the reasonable fees and expenses
38 necessarily incurred by condemnee in the action, for attorney, engineering
39 and appraisal services;

40 (k) "Judgment" means the adjudication by the court of any issue of fact
41 or law, or both, arising under this act. The adjudication of the right to con-
42 demn shall be a final judgment. All other judgments shall be interlocutory
43 or final, according to law, or as may be prescribed by the rules;

44 (l) "Recording office" means the county office of each county in which
45 the property being condemned, or any part thereof, is located, in which office
46 conveyances of real property may be recorded;

47 (m) "Days" means calendar days, calculated in accordance with the
48 rules of court;

49 (n) "Public utility" means and includes every public utility, as the same
50 are enumerated in Revised Statutes 48:2-13, and every natural gas pipeline
51 utility as defined in P. L. 1952, chapter 166 (C. 48:10-2 et seq.) vested with
52 the power of eminent domain and subject to regulation under State or Federal
53 law.

54 (o) Words used in the singular shall include the plural and vice
55 versa. Words used in the neuter gender shall include masculine and femi-
56 nine gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
2 thereof to any person or circumstance is held to be invalid, such invalidity
3 shall not affect other provisions or applications of the act, which can be given
4 effect without the invalid provision or application, and to this end, the provi-
5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect 60 days next following the
2 approval thereof, and shall apply to all actions instituted thereafter, and to
3 all proceedings taken subsequent thereto in all actions pending on such effec-
4 tive date; except that judgments theretofore entered or awards theretofore
5 made pursuant to law from which no appeal is pending on such effective
6 date, shall not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
2 demnation, and all matters incidental thereto and arising therefrom, includ-
3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
4 mine the authority to exercise the power of eminent domain; to compel the
5 exercise of such power; to fix and determine the compensation to be paid and
6 the parties entitled thereto, and to determine title to all property affected
7 by the action. Where authority to condemn has been granted by a State or
8 Federal regulatory body having original supervisory jurisdiction over the
9 condemnor, review of such determination shall be by appeal according to
10 law.

1 6. Application of act. Whenever any condemnor shall have determined
2 to acquire property pursuant to law, including public property already de-
3 voted to public purpose, but cannot acquire title thereto or possession thereof
4 by agreement with a prospective condemnee, whether by reason of disagree-
5 ment concerning the compensation to be paid or for any other cause, the con-
6 demnation of such property and the compensation to be paid therefor, and to
7 whom payable, and all matters incidental thereto and arising therefrom shall
8 be governed, ascertained and paid by and in the manner provided by this act;
9 provided, however, that no action to condemn shall be instituted unless
10 the condemnor is unable to acquire such title or possession through bona
11 fide negotiations with the prospective condemnee, which negotiations shall in-
12 clude an offer in writing by the condemnor to the prospective condemnee hold-
13 ing the title of record to the property being condemned, setting forth
14 the property and interest therein to be acquired, the compensation offered to be
15 paid and a reasonable disclosure of the manner in which the amount of such
16 offered compensation has been calculated, and such other matters as may be

17 required by the rules. Such offer shall be served by certified mail. A re-
18 jection of said offer or failure to accept the same within the period fixed in
19 written offer, which shall in no case be less than 14 days from the mailing
20 of the offer, shall be conclusive proof of the inability of the condemnor to ac-
21 quire the property or possession thereof through negotiations. When the
22 holder of the title is unknown, resides out of the State, or for other good cause,
23 the court may dispense with the necessity of such negotiations. Neither the
24 offer nor the refusal thereof shall be evidential in the determination of com-
25 pensation.

1 7. (a) Nature of action. The court may proceed in a summary manner
2 pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New Jersey Stat-
3 utes, or otherwise.

4 (b) Rules of procedure. The procedure governing the action shall be in
5 accordance with the rules.

6 (c) Multiple proceedings. The condemnation of any number of parcels
7 of property lying wholly within the same county, may be joined in one action;
8 provided that a separate award, judgment and appeal shall be made, entered
9 and taken with respect to each parcel.

10 (d) Amendments. Amended and supplemental pleadings, descriptions,
11 surveys, plans, declarations of taking and the like, may be permitted and
12 parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
2 verified complaint in form and content specified by the rules and shall demand
3 judgment that condemnor is duly vested with and has duly exercised its au-
4 thority to acquire the property being condemned, and for an order appoint-
5 ing commissioners to fix the compensation required to be paid.

1 9. Process. Within 10 days after the filing of the complaint, the con-
2 demnor shall issue, and with due diligence, cause process to be served or pub-
3 lished in accordance with the rules. Notice given and process served or
4 published in accordance with the rules shall be effective to bind all condemnees.

1 10. Lis pendens. Within 10 days after the filing of the complaint, the con-
2 demnor shall cause to be filed in the recording office, a notice of the pendency
3 of the action, in form and content specified by the rules. Such notice shall in-
4 clude the title of the action; the docket number thereof, if known; the date
5 of the commencement of the action, a description of the property and the
6 interests therein being condemned, as set forth in the complaint; and the
7 names and addresses of all condemnees known to the condemnor and the
8 nature of their alleged interests in said property. The lis pendens shall be
9 indexed by the recording official, listing the condemnees as grantors and the
10 condemnor as grantee. In default of such record, persons acquiring an in-
11 terest in or lien upon the property without actual notice of the action, shall

12 not be bound thereby but the failure to comply with the provisions of this
13 section shall not otherwise affect such proceedings.

1 11. Denial of authority to condemn. Failure to deny the authority of the
2 condemnor to condemn in the manner provided for by the rules, shall consti-
3 tute a waiver of such defense. When the authority to condemn is denied, all
4 further steps in the action shall be stayed until that issue has been finally de-
5 termined except where such authority has been determined by a State or Fed-
6 eral regulatory body having original jurisdiction with respect thereto.

1 12. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in the
3 cause, the condemnor and all condemnees may waive the appointment of com-
4 missioners and hearings before them hereafter referred to, and in such event,
5 the action shall proceed to trial before the court as in other actions at law.

6 (b) Appointment and qualification of commissioners. Upon determina-
7 tion that the condemnor is authorized to and has duly exercised its power of
8 eminent domain, the court shall appoint 3 commissioners to determine the
9 compensation to be paid by reason of the exercise of such power. Such com-
10 missioners shall be residents of the county in which any part of the property
11 being condemned is located or, in the case of the commissioner who must be
12 an attorney, be actively engaged in the practice of law in the county. One of
13 such commissioners shall be an attorney, admitted to practice in this State
14 for at least 10 years, who shall preside at all hearings and rule on all ques-
15 tions of evidence and procedure, subject to a review by a majority of the com-
16 missioners. The commissioners shall take and subscribe an oath faithfully
17 and impartially to perform their duties, and to make a true award to the best
18 of their skills and understanding, which oath shall be filed with their award.
19 Should a commissioner die, become disqualified, unable, neglect or refuse to
20 act, the remaining 2 commissioners shall perform the duties of office with the
21 same authority as if all commissioners were acting. The court may fill any
21A vacancy in office, and for cause, may vacate any appointment and appoint a
21B successor in office.

22 (c) Hearings—subpœna. The commissioners shall hold hearings upon
23 notice required by the rules, at which the parties and their witnesses may
24 be heard, under oath, administered by any commissioner. The conduct of
25 the hearings and the compulsory attendance of witnesses and production of
26 records thereat, shall be governed by the rules. At the request of any party,
27 a stenographic record of the hearing shall be maintained. A majority of
28 commissioners shall be in attendance at all hearings.

29 At the hearing, the condemnor shall offer proof of the nature and extent
30 of the taking, and its opinion of the compensation payable by reason thereof.

31 (d) Inspection of property. Commissioners may inspect the property

32 being condemned, and shall so inspect when requested by any party. Such
33 inspection may be in the absence of the parties, unless attendance at inspec-
34 tion is requested by the parties, or any of them. This right of inspection shall
35 exist notwithstanding that the structures on the property may have been
36 demolished and the site altered.

37 (e) Award of commissioners. Within 4 months next following their ap-
38 pointment, or within any extended period fixed by the court on notice, or by stip-
39 ulation of all the parties filed in the action, the commissioners, or a majority
40 of them, shall make and file in form and content fixed by the rules, an award
41 fixing and determining the compensation to be paid by the condemnor
42 because of the taking. The requirements respecting the time of filing of such
43 award shall be directory and not mandatory, and a failure to make and file
44 the same within the time specified, shall not invalidate the award or oust the
45 commissioners of jurisdiction to complete their duties. Upon its own motion,
46 or on application of any party, made within 60 days after the filing of the
47 award, the court may authorize the commissioners to amend, supplement,
48 modify, or correct their award.

49 (f) Judgment. Any award as to which no appeal is taken in accordance
50 with the rules, shall become final as of course, and shall constitute a final
51 judgment. If not paid within 60 days after final judgment, execution may
52 issue as in other actions at law.

53 (g) Commissioners' fees and expenses. The court, upon application of
54 any party, including the commissioners, shall fix reasonable fees, costs and
55 expenses of the commissioners, clerks and other persons performing any of
56 their duties, all of which shall be paid by the condemnor.

1 13. (a) Appeal. Any party who has appeared at the hearings of the
2 commissioners, either personally or through attorney, may appeal from the
3 award of the commissioners, whether or not an appeal has or may be given
4 by the statute conferring the power of eminent domain. Such appeal
5 shall be taken within the period and in the manner provided by the rules.
6 The necessary parties to the appeal shall be only such parties as have so
7 appeared at the commissioners' hearings. Other parties may be admitted by
8 the court pursuant to rules.

9 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo,
10 as in other actions at law, without a jury, unless a jury be demanded. The
11 award of the commissioners shall not be admitted in evidence.

12 A valuation expert who has not testified at the hearing before the com-
13 missioners shall not be permitted to testify at the trial de novo, unless,
14 within such time and in such form as shall be fixed by the rules, the party
15 offering such testimony has given notice to the other parties to the appeal of
16 the name and address of such expert and his proposed opinion of the amount
17 of compensation payable by reason of the condemnation.

1 14. Agreement as to compensation. At any time during the pendency of
 2 the action, the condemnor and the condemnees may agree upon all or any
 3 part or any item of compensation to be paid, and then proceed to have those
 4 parts or items not agreed upon, fixed and determined as herein provided.
 5 The condemnor may make payment of any part or item thereof agreed upon,
 6 and condemnees may accept such payment, without prejudice, and proceed
 7 to fix and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to individ-
 2 uals or private corporations vested with the authority of condemnation nor
 3 shall the provisions of sections 17 through 29 of this article be applicable to
 4 condemnation of property owned or used by a public utility.

1 16. Preliminary entry. Prior to the commencement of any action, a
 2 prospective condemnor and its employees and agents, during reasonable busi-
 3 ness hours, may enter upon any property which it has authority to condemn
 4 for the purpose of making studies, surveys, tests, soundings, borings and ap-
 5 praisals, provided notice of the intended entry for such purpose is sent to the
 5A owner and the occupant of the property by certified mail at least 10 days prior
 5B thereto. No tests, soundings or borings shall be made on property in which
 5C there exists a pipeline or other underground utility installation except in the
 5D presence of a representative designated by the public utility owning or using
 5E the same. If an action to condemn is not commenced within 1 year after
 6 such preliminary entry, any damages sustained as a result thereof, shall be
 7 paid by the condemnor to the person or persons so damaged. The amount of
 8 such damages, if any, and the person or persons entitled thereto, shall be de-
 9 termined by the court in a summary action pursuant to sections 2A:16-50 to
 10 2A:16-62 inclusive, of the New Jersey Statutes.

1 17. Possession of property and declaration of taking. At any time after
 2 the institution of an action and service of process, the condemnor may file in
 3 the action, and if so filed, shall also file in the recording office, a declaration of
 4 taking, duly executed by an executive official of the condemnor, in form and
 5 content specified by the rules, including the following:

6 (a) a statement that possession of all or some part of the property being
 7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
 9 which the action and declaration of taking is authorized, including the date
 10 when such authorization was given and the place where the record thereof
 11 may be examined;

12 (c) a description and plot plan of the property being condemned, and, if
 13 not the entire property, the portion thereof of which possession is being taken,
 14 sufficient for identification thereof, specifying the municipality or municipal-

ities in which the same is located; the street number of the property, if any; the lot and block number of the property as designated upon the current assessment map, if any. In case of a partial taking, the information above specified shall include the entire property of the condemnee, and the portion thereof being taken;

(d) the names and addresses of all condemnees known to the condemnor after reasonable investigation, and the nature of their interests in the property;

(e) a statement of the estate or interest therein being condemned;

(f) a statement of the sum of money estimated by the condemnor to be just compensation for the taking, which sum shall be not less than the amount of the offer, in writing, provided for in section 6 hereof.

(g) Any other matter required by the rules.

18. Deposit of estimated compensation. Simultaneously with the filing of the declaration of taking, the condemnor shall deposit the amount of such estimated compensation either with the clerk of the court, or in a special interest-bearing bank account in the name of the condemnor, in trust for the benefit of the condemnees entitled thereto. The amount so deposited shall be not less than the amount offered pursuant to section 6 hereof, and if an award has been made by commissioners hereunder, or a judgment determining compensation has been entered at the time of the filing of such declaration, the amount so deposited shall be not less than the amount of such award or judgment.

Upon application by any party in interest, and upon being satisfied that the financial responsibility of the condemnor to satisfy any judgment that may be entered in the action is uncertain, the court may require such condemnor to maintain an additional trust fund with a bank or trust company authorized to do business in New Jersey, in an amount equal to $\frac{1}{2}$ of the estimated compensation fund so deposited. Said trust fund shall consist of cash, or securities which are legal investments for trust funds in New Jersey.

The fund originally deposited and the additional fund, if any, shall secure the payment of compensation determined to be payable hereunder and may be applied to such payment. After payment or satisfaction of such compensation, condemnor, with approval of the court, may withdraw any surplus cash and securities.

19. Right to possession and vesting of title. A copy of the declaration of taking and notice of the filing thereof and of the making of the aforesaid deposit, shall be served upon the condemnee and all occupants of the property in accordance with the rules, and proof of such service shall be filed in the action. Thereupon, the right to the immediate and exclusive possession and title to the property described in the declaration of taking shall vest in the condemnor, free and discharged of all right, title, interest and liens of all

8 condemnees. Such right, title and interest shall be transferred and shall at-
9 tach to the compensation determined to be payable hereunder, to the same
10 extent and in the same order of priority as existed at the date of vesting of
11 title in condemnor. The pendency of an appeal from an award or judgment
12 hereunder shall not interfere with such vesting of title.

1 20. Nature of title condemned. The title to property condemned and
2 acquired by the condemnor hereunder, shall be a title in fee simple, free and
3 discharged of all right, title, interest and liens of all condemnees, and shall
4 include all the right, title and interest of each condemnee therein, provided,
5 however, that if the complaint or any amendment thereof shall specify a
6 lesser title, the lesser title so specified shall be the title condemned and
7 acquired.

1 21. Date of vesting of title. Title to the property condemned shall vest
2 in the condemnor as of the earliest date of the happening of any of the follow-
3 ing events:

4 (a) Filing the declaration of taking and depositing funds pursuant to
5 sections 17 and 18 of this act;

6 (b) Recording in the recording office of conveyance by the condemnee to
7 the condemnor;

8 (c) Filing in the action and recording in the recording office, an agree-
9 ment between condemnor and condemnee fixing the date as of which title shall
10 vest;

11 (d) Paying and satisfying of record a final judgment fixing compensation
12 payable hereunder.

1 22. Order for possession and removal of property. The court, upon
2 notice, shall fix the time and terms upon which possession of said property
3 shall be delivered, and personal property thereon shall be removed, and may
4 enter writs of assistance directed to the sheriff of the county.

1 23. Appeal not to affect vesting of right to possession and title. The
2 pendency of an appeal with respect to any issue other than the authority to
3 condemn, shall not affect the vesting of right to possession and title in the
4 condemnor.

1 24. Withdrawal of funds. Upon application of any condemnee, or any
2 other party in interest, and on notice to all parties to the action, including
3 the condemnor, the court may direct that the estimated compensation on
4 deposit, or any part thereof, be paid to the person or persons entitled thereto,
5 on account of the compensation to which they may be entitled in the action;
6 provided, that if the judgment fixing such compensation be less than the
7 amount paid pursuant hereto, the person to whom such payment has been
8 made shall repay the same, together with interest at 6% from the date of
9 payment to such person, and the court, after hearing in a summary manner,

10 may enter judgment therefor; and provided, further, that if the judgment
11 fixing such compensation be more than the amount deposited, condemnor
12 shall pay the excess to the condemnee entitled thereto, with interest at 6%
13 from the date of the deposit, and the court, after hearing in a summary man-
14 ner, may enter judgment therefor against the condemnor. The court, upon
15 notice to all parties, shall enter appropriate orders distributing any balances
16 on deposit.

1 25. Revesting of title and restoration of possession. If, after the filing of
2 a declaration of taking, a judgment shall be entered dismissing the action, title
3 to and possession of the property shall revert in the condemnee, subject to
4 the same right, title, interest and liens as existed as of the date of the filing
5 of the declaration of taking. In such event, condemnor shall pay any
6 damages sustained by the condemnee as a result of the action of the con-
7 demnor, and the expenses of the condemnee.

1 26. Compelling condemnor to file declaration of taking. If within 3
2 months after the commencement of an action, the condemnor fails to file a
3 declaration of taking, the court, upon application of any condemnee, and on
4 notice to all parties in interest, may require the condemnor, at its election, to
5 either file a declaration of taking and make the deposit hereinabove provided,
6 or abandon the proceedings pursuant to section 42 hereof. For good cause
7 and upon terms, the court may extend the time for the filing of such declara-
8 tion of taking, but not more than 3 months after the commencement of the
9 action.

1 27. Expenses of condemnee. "Should the compensation as finally de-
2 termined in the action, exclusive of interest, exceed the amount of the deposit
3 by 25% or more, the court, after hearing, may determine that in addition to
4 the amounts so determined to be payable, the condemnor shall pay the
5 expenses of the condemnee as herein defined, to be fixed by the court, but not
6 to exceed 10% of the compensation so determined."

1 28. Deposit and withdrawal of funds not prejudicial. Neither the making
2 of the deposit nor any withdrawal thereof pursuant to this article, shall affect
3 or prejudice the rights of either the condemnor or the condemnee in the
4 determination of compensation. The amount of such deposit and any with-
5 drawal thereof, shall not be evidential in such determination.

4 29. Fees of clerk of the court. Where the clerk of the court is authorized
5 to charge and deduct statutory fees or commissions by reason of the deposit
6 and disbursement of funds pursuant to this article, such fees and commissions
7 shall be paid by the condemnor.

ARTICLE VI

COMPENSATION AND DATE OF DETERMINATION THEREOF

1 30. Compensation. The condemnee shall be entitled to compensation for
2 the property, and damages, if any, to any remaining property, together with
3 such additional compensation as provided for herein, or as may be fixed ac-
4 cording to law.

1 31. Effect of amendment of proceedings. Any increase or decrease in
2 the value of property being condemned, caused by any administrative action
3 or public announcement of proposed public improvement, other than a de-
4 crease in value due to physical depreciation within the reasonable control of
5 the condemnee, shall be disregarded in determining the amount of just
6 compensation.

1 32. Elements of compensation. Without limiting the generality of the
2 foregoing, just compensation may be awarded for the following items of
3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
5 being condemned, relocation payments may be made to eligible persons as
6 herein defined, for their reasonable, necessary and actual moving expenses
7 to a location not in excess of 50 miles from the point of taking, but not in ex-
8 cess of \$300.00 in the case of an individual or family, and not in excess of
9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 "Eligible person" shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 "Moving expenses" shall include all costs of reinstallation of property
20 moved and damages thereto caused by or resulting from such removal.

21 "Family" means 2 or more persons living together in the same dwelling
22 unit.

23 "Business entity" means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)
25 for the manufacturing, processing or marketing of any such property; (3)
26 for the sale of services to the public, which entity vacates its place of busi-
27 ness after the effective date hereof as a result of the acquisition, or immi-
28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily

30 for the production of one or more agricultural product, products or commodi-
31 ties for sale or home use, and customarily sells such products or commodi-
32 ties in sufficient quantities to be capable of contributing materially to the sup-
33 port of the operator thereof, which operator vacates such property after the
34 effective date hereof as a result of the acquisition or imminence of acquisi-
35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
37 pensation which a condemnor may pay for relocation expenses in cases where,
38 under applicable Federal law or regulations, such compensation may be paid
39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
40 to condemnor out of Federal funds.

41-55 (b) In determining damages to property remaining after a partial taking,
56 consideration shall be given to the use to which the property condemned shall
57 be devoted, and the damages and benefits specially affecting such remaining
58 property due to its proximity to the improvement for which the property is
59 being taken. Future damages and general benefits which will affect prop-
60 erty beyond that directly abutting the improvement shall not be considered
61 in arriving at the after-value of the remaining property. Special benefits
62 to remaining property shall, in no event, exceed the compensation for the
63 land taken, exclusive of severance damages.

64 (c) Notwithstanding that no land has been or is being taken, compen-
65 sation shall be paid for damages to property located within 100 feet from land
66 taken for a public purpose, resulting from, (1) a change of grade; (2) per-
67 manent interference with existing access; (3) injury to surface support; and
68 (4) vacation of a public road, street or highway in actual use.

69 (d) If a condemnor does not require for its use, machinery, equipment or
70 fixtures constituting a part of the property being condemned, it shall so
71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
73 tended time as may be fixed by the condemnor or the court, upon notice, the
74 condemnee may elect, in writing, to remove such machinery, equipment and
75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
76 be reduced by the fair market value of such machinery, equipment and fix-
77 tures being removed or severed from the property. The notices and elec-
78 tion herein provided for and other procedure, shall be governed by the rules.

1 33. Date as of which compensation shall be determined. Just compensa-
2 tion shall be determined as of the date of the earliest of the following events:
3 (a) the date of the execution of an agreement of purchase between condemnor
4 and condemnee; (b) the date possession of the property being condemned is
5 taken by the condemnor in whole or in part; (c) the date of the commence-
6 ment of the action; (d) the date on which action is taken by the condemnor
7 which substantially affects the use and enjoyment of the property by the
8 condemnee.

ARTICLE VII

TAXES

1 34. The taxes which are the subject-matter of this article are the real
2 property taxes duly assessed by the taxing district in which the property being
3 condemned is located, for the tax year during which possession thereof is
4 taken or title thereto is acquired pursuant to this act, whichever is the earlier,
5 and are hereafter referred to in this article as "such taxes."

1 35. (a) The condemnation of property pursuant to this act shall not
2 affect the payment of such taxes to the taxing district, and the provisions of
3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
5 taxes other than as herein set forth, but no such agreement shall affect the
6 payment of such taxes to the taxing district.

1 36. (a) Where the entire property of a condemnee is being condemned
2 and such taxes have been paid, the condemnor shall pay to the condemnee, in
3 addition to the compensation payable hereunder, an amount of money which
4 bears the same ratio of the taxes so paid, as the part of the taxable year next
5 following the date on which possession is taken or title acquired hereunder
6 (whichever is earlier) bears to the entire taxable year.

7 (b) Where only a part of such property is being condemned, the amount
8 of money so to be paid by the condemnor shall be a sum which bears the same
9 ratio of taxes so paid on the part of the property condemned, as the part of
10 the taxable year next following the date on which possession is taken or title
11 acquired hereunder (whichever is earlier) bears to the entire taxable year.

1 37. (a) Where the entire property of the condemnee is being condemned
2 and such taxes have not been paid, the condemnor shall deduct from the
3 compensation payable hereunder, the proportionate share of such unpaid
4 taxes upon the entire property, allocable to the period between the first day
5 of the year in which possession is taken, or title acquired (whichever is
6 earlier), and the date when such possession is taken or title acquired (which-
7 ever is earlier). The condemnor shall pay to the taxing district on behalf
8 of the condemnee, (1) the amount so deducted; and (2) as additional compensa-
9 tion to the condemnee, the entire balance of such unpaid taxes for the entire
10 year.

11 (b) Where only a part of such property is being condemned and such
12 taxes have not been paid, condemnor shall deduct from the compensation
13 payable hereunder, the proportionate share of such unpaid taxes upon
14 the entire property allocable to the period between the first day of the year in
15 which possession is taken or title acquired (whichever is the earlier) and the
16 date when such possession is taken or title acquired, (whichever is earlier).
17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)

18 the amount so deducted; and (2) as additional compensation to the condemnee,
 19 the proportionate share of such unpaid taxes for the balance of the tax year
 20 allocable to the portion of the property taken.

1 38. Any dispute as to the apportionment of such taxes and the payment
 2 thereof, shall be determined by the court in the action in a summary manner,
 3 upon petition by any party to the action, or by the taxing district.

ARTICLE VIII

INTEREST

1 39. Payment of interest. Interest at 6% per annum upon the amount
 2 of compensation determined to be payable hereunder shall be paid by the
 3 condemnor from the date of the commencement of the action until the date
 4 of payment of the compensation; provided, however, that there shall be ex-
 5 cluded from the amount upon which interest shall be calculated, all moneys
 6 deposited pursuant to Article V hereof; and provided, further, that interest
 7 payable hereunder shall be subject to abatement for rents and profits de-
 8 rived from the property by the condemnee during the period for which in-
 9 terest is payable hereunder, and/or for the fair rental value of such prop-
 10 erty or any portion thereof occupied by the condemnee during such period.

1 40. Disputes as to interest. Unless agreed upon by the parties, the
 2 amount of such interest shall be fixed and determined by the court in a sum-
 3 mary manner after final determination of compensation, and shall be added
 4 to the amount of the award or judgment, as the case may be.

ARTICLE IX

MISCELLANEOUS

1 41. Possession by individuals or private corporations. Individuals and
 2 private corporations vested with the authority of condemnation may, upon
 3 the filing of the report of the commissioners and upon payment, to the parties
 4 entitled thereto or into court, of the amount awarded as provided in this act,
 5 take possession of the land or other property for the purposes for which the
 6 same was authorized to be take.

7 The report of the commissioners, together with the order or judgment
 8 appointing them, or a copy thereof certified by the clerk of the court, and
 9 proof of such payment of the amount awarded shall be plenary evidence of
 10 the right of the condemnor to have, hold, use, occupy, possess and enjoy the
 11 land and other property.

1 42. Deposit of funds where ownership in dispute. If the con-
 2 demnee entitled to receive the award or judgment upon tender thereof, shall
 3 refuse to receive the same, or shall be out of the State, or under any legal dis-
 4 ability; or in case several condemnees interested in the fund shall not agree as
 5 to the distribution thereof; or in case the property condemned shall be encum-
 6 bered by mortgage, judgment or other liens; or if for any other reason the
 7 condemnor cannot safely pay the award or judgment to any person, the

8 amount thereof may be deposited with the clerk of the court, to be distributed
9 to the parties entitled thereto according to law. The procedure for distribut-
10 ing the funds shall be in accordance with the rules. The fees of the clerk,
11 if any, shall be paid out of the fund.

1 43. Abandonment of proceedings. Any action hereunder may be
2 abandoned at any time before or within 30 days after the filing of the award of
3 commissioners; or in the event of an appeal from such award, at any time
4 before or within 30 days after the entry of judgment on such appeal; or in
5 the event that a hearing before commissioners shall have been waived, at
6 any time before or within 30 days after judgment has been entered in said
7 action; provided, however, that no such action shall be abandoned after the
8 filing of a declaration of taking pursuant to Article V hereof, or after the
9 vesting of title in any condemnor pursuant hereto; and provided further, that
10 (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor
11 shall pay the expenses of all condemnees who have appeared in the action.

1 44. Method of abandonment. The abandonment shall be effected
2 by filing and serving notice of abandonment in the manner, form and content
3 fixed by the rules.

1 45. Uneconomic remnants. If as a result of a partial taking of
2 property, the property remaining consists of a parcel or parcels of land
3 having little or no economic value, the condemnor, at the request of the con-
4 demnee, shall acquire the entire parcel.

ARTICLE X

REPEALER

1 46. Any reference to Title 20 of the Revised Statutes or to any section
2 or sections thereof or any amendment or supplement thereof in any other
3 statute, in effect on the effective date of this act, shall hereafter be given
4 effect as though reference therein were made to this act or the applicable
5 provisions thereof.

1 47. Chapter 1 of Title 20 of the Revised Statutes and P. L. 1942, chap-
2 ter 14 are repealed as of the effective date hereof; provided, however, that
3 this act shall not affect statutes regulating the ascertainment and payment of
4 compensation for property condemned or taken by bodies organized and ad-
5 ministered as a result of or under compacts between States.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 504
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED DECEMBER 2, 1971

Amend page 3, section 4, line 1, after "effect", delete "60 days next", and insert "immediately".

Amend page 3, section 5, line 7, after "action.", delete the remainder of line 7 through line 10.

Amend page 4, section 7, line 1, delete subsection (a) in entirety.

Amend page 4, section 7, line 4, delete "(b)", insert "(a)".

Amend page 4, section 7, line 6, delete "(c)", insert "(b)"; after "of", delete "any number of", and insert "10 or less".

Amend page 4, section 7, line 7, after "county", delete ",".

Amend page 4, section 7, line 9, after "parcel.", add "More than 10 parcels may be joined in one action only with leave of court."

Amend page 4, section 7, line 10, delete "(d)", insert "(c)".

Amend page 4, section 9, line 1, after "Process.", delete "Within 14 days", delete "after", and insert "After".

Amend page 4, section 10, line 2, after "filed", insert "and recorded".

Amend page 5, section 11, lines 5 and 6, after "determined", insert ".", and delete the remainder of lines 5 and 6.

Amend page 5, section 12, line 4, after "commissioners", delete "and hearings before them hereafter referred to,".

Amend page 5, section 12, line 5, after "court", delete "as in other actions at law.".

Amend page 5, section 12, line 22, after "subpœna", insert "Upon notice of at least 10 days," delete "The", and insert "the", and after "hold hearings" delete "upon".

Amend page 5, section 12, line 23, delete "notice required by the rules,".

Amend page 5, section 12, line 25, after "hearings", delete "and", insert "shall be governed by the rules of evidence except that testimony as to comparable sales shall be considered an exception to the hearsay rule.", delete "the", insert "The".

Amend page 5, section 12, line 26, after "thereat", delete ", shall be governed by the rules", insert "may be compelled by the commissioners", after "party," insert "and at his expense,".

Amend page 5, section 12, line 28, after this line add a new subsection:

"(d) Limited discovery. At least 15 days prior to the hearing the parties shall exchange a list of comparable sales intended to be introduced by them setting forth as to each comparable sale the following information: name of seller and purchaser; location of property by block, lot and municipality; date of sale, the consideration; and book and page of recording. No party shall be permitted to offer testimony of any comparable sale not set forth in said list unless consented to by all other parties. There shall be no discovery on the issue of the authority to condemn except by leave of court."

Amend page 6, section 12, line 29, before "At", insert "(e) Proof."; after "shall", insert "proceed first to".

Amend page 6, section 12, line 31, delete "(d)", insert "(f)".

Amend page 6, section 12, line 32, after "party", insert ", and in addition, when requested by any party, the commissioners shall inspect two of the comparable sales testified to by said party".

Amend page 6, section 12, line 37, delete "(e)", insert "(g)".

Amend page 6, section 12, lines 38 and 39, after "period", delete "fixed by the court on notice, or by stipulation of all the parties filed in the action,", and insert "in accordance with the rules,".

Amend page 6, section 12, line 42, delete "because of the taking".

Amend page 6, section 12, line 49, delete "(f)", insert "(h)".

Amend page 6, section 12, line 53, delete "(g)", insert "(i)".

Amend page 6, section 12, line 56, insert new line "13. Appeal."

Amend page 6, section 13, line 1, delete "13. (a) Appeal."; before "Any party", insert "(a) Parties."

Amend page 6, section 13, line 2, after "through", insert "an".

Amend page 6, section 13, lines 3 and 4, after "commissioners,", delete "whether or not an appeal has or may be given by the statute conferring the power of eminent domain".

Amend page 6, section 13, line 6, after "such parties", delete "as", insert "who", and after "have", delete "so".

Amend page 6, section 13, line 8, after "to", insert "the".

Amend page 6, section 13, line 12, before "A", insert "(c) Limited discovery."

Amend page 7, section 13, line 14, delete "such time and in such form as shall be fixed by the rules,", and insert "15 days before trial".

Amend page 7, section 13, line 15, delete "has given", and insert "gives".

Page 7, section 13, line 16, delete "proposed".

Amend page 7, section 13, line 17, delete “payable by reason of the condemnation”, and insert “and information relative to comparable sales as required by the rules. The information required by the rules shall be supplied as to all additional comparable sales not previously testified to before commissioners”.

Amend page 7, section 13, after line 17, insert new subsection:

“(d) Payment of amount of judgment on appeal; right to possession; lien; other remedies. The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court.

If possession shall not have been taken theretofore, the condemnor, upon payment as aforesaid, may not withstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken.”.

Amend page 7, section 15, lines 3-4, delete lines 3 and 4.

Amend page 7, section 16, line 10, after “within”, delete “1”, insert “2”.

Amend page 7, section 16, line 11, delete “year”, insert “years”.

Amend page 7, section 16, lines 14-15, after “to”, delete “sections 2A:16-50 to 2A:16-62 inclusive of the New Jersey Statutes”, and insert “the rules”.

Amend page 7, section 17, line 3, after “action,”, insert “when empowered to do so by law,”.

Amend page 8, section 17, lines 9-11; after “authorized”, insert “;”, and delete the remainder of lines 9-11.

Amend page 8, section 18, lines 3-5, delete “either”, after “court”, delete “, or in a special interest-bearing bank account in the name of the condemnor, in trust for the benefit of the condemnees entitled thereto”.

Amend page 9, section 19, line 8, after “process”, insert “provided however, that the court may, upon application and good cause shown, stay the taking of possession of the land or other property, or authorize possession to be taken upon prescribed conditions”.

Amend page 9, section 19, lines 11-12, after “profits”, delete “as of the date of”, insert “20 days after”.

Amend page 9, section 19, line 15, after “enter”, delete “writs of assistance”, and insert “an order for possession”.

Amend page 9, section 21, line 4, after “Filing”, insert “and recording”.

Amend page 9, section 21, line 6, after “(b)”, insert “Filing and”, delete “Recording”, and insert “recording.”.

Amend page 9, section 21, lines 6-7, after “of”, delete “conveyance by the condemnee to the condemnor”, and insert “the report of commissioners and payment of the award”.

Amend page 10, section 22, line 1, delete "vesting of", after "and", insert "vesting of".

Amend page 10, section 22, line 3, delete "vesting of", after "and", insert "vesting of".

Amend page 10, section 23, line 6, after "the", insert "award or".

Amend page 10, section 23, line 11, after "if the", insert "award or".

Amend page 10, section 24, line 6, before "pay", insert "file and record the judgment and".

Amend page 10, section 25, line 2, delete "3", insert "6", and after "months", delete "after the commencement of an action", and insert "from the date of appointment of commissioners".

Amend page 10, section 25, line 6, delete "40", and insert "35".

Amend page 11, section 26, line 2, delete "purchase", and insert "acquisition".

Amend page 11, section 26, line 3, after "owner", delete ", to the".

Amend page 11, section 26, line 4, delete "extent the condemnor deems fair and reasonable," after "for", insert "actual".

Amend page 11, section 26, line 7, after "condemnor," insert "and".

Amend page 11, section 26, lines 8-9; delete lines 8 and 9.

Amend page 11, section 26, line 10, delete "(3)", insert "(2)".

Amend page 11, section 26, lines 14 through 31, delete remainder of section 26 in its entirety and insert the following:

"b. If the court renders final judgment that the condemnor cannot acquire the real property by condemnation or, if the condemnation action is abandoned by the condemnor, then the court shall award the owner of any right, or title to, or interest in such real property, such real property, such sum as will reimburse such owner for his reasonable costs, disbursements and expenses actually incurred, including reasonable attorney, appraisal, and engineering fees."

"c. When a plaintiff shall have brought an action to compel condemnation against a defendant having the power to condemn, the court or representative of the defendant in case of settlement shall, in its discretion, award such plaintiff his reasonable costs, disbursements, and expenses, including reasonable appraisal, attorney and engineering fees actually incurred regardless of whether the action is terminated by judgment or amicable agreement of the parties."

Amend page 12, section 30, lines 1 through 6, delete the section in its entirety.

Amend page 13, section 31, line 1, delete "31", insert "30".

Amend page 13, section 31, lines 3-4, delete "(a) date of the execution of an agreement of purchase between condemnor and condemnee;"

Amend page 13, section 31, line 4, delete "(b)", insert "(a)".

Amend page 14, section 31, line 5, delete "(c)", insert "(b)".

- Amend page 14, section 31, line 6, delete “(d)”, insert “(c)”.
 - Amend page 14, section 31, line 8, delete “as delineated in section 25 herein”.
 - Amend page 14, section 31, after line 8, delete “Article VII. Taxes”.
 - Amend pages 14 and 15, section 32, delete Article VII. in its entirety.
 - Amend page 15, section 35, after line 3, delete “VIII.”, insert “VII.”.
 - Amend page 15, section 36, line 1, delete “36”, insert “31.”.
 - Amend page 15, section 36, line 2, delete “per annum”.
 - Amend page 15, section 37, line 1, delete “37”, insert “32.”.
 - Amend page 15, section 37, after line 4, delete “IX.”, insert “VIII.”.
 - Amend page 15, section 38, line 1, delete “38”, insert “33.”.
 - Amend page 16, section 39, line 1, delete “39”, insert “34.”.
 - Amend page 16, section 39, line 7, delete “safely”, and insert “reasonably”.
 - Amend page 16, section 40, line 1, delete “40”, insert “35.”.
 - Amend page 16, section 40, line 4, delete “on such appeal”.
 - Amend page 16, section 40, line 11, after “action.” insert “Nothing herein shall preclude abandonment at any time by mutual consent of the parties.”.
 - Amend page 16, section 41, line 1, delete “41”, insert “36.”.
 - Amend page 16, section 41, lines 2-3, after “abandonment”, insert “.”, and delete “in the manner, form and content fixed by the rules.”.
 - Amend page 16, section 42, line 1, delete “42”, insert “37.”.
 - Amend page 16, section 42, line 4, after line 4, insert nine new sections, as follows: 38 through 46.
 - “38. Blighted areas. The value of any land or other property being acquired in connection with development or redevelopment of a blighted area shall be no less than the value as of the date of the declaration of blight by the governing body upon a report by a planning board.”.
 - “39. Housing authority or redevelopment agency; declaration of taking. Upon the institution of an action by a housing authority or redevelopment agency to fix the compensation to be paid, or at any time thereafter, a duly authorized officer or agent of the housing authority or redevelopment agency may file with the Clerk of the Superior Court a declaration of taking in the manner provided by this act.”.
 - “40. Acquisitions by State colleges; declaration of taking. Whenever a State college is authorized by law to acquire lands or rights therein, the Director of the Division of Purchase and Property may acquire such lands or right therein by gift, devise, purchase, or by condemnation in the manner provided by this act.”.
-

“41. Lands etc. needed for defense or for airports; declaration of taking. Whenever the State or any commission, official, board or body thereof or any county or municipality shall determine to acquire lands, easements, rights-of-way or other property to be used by the United States of America, the State of New Jersey or said county or municipality, for furthering national or State defense, or for developing or building airports or providing surface or aerial approaches thereto, by condemnation pursuant to this act, and shall represent to the court that it is necessary for such purposes that the plaintiff enter into possession of the same immediately, the plaintiff may, with leave of court, file with the Clerk of the Superior Court a declaration of taking in the manner provided for by this act.”

“42. Recovery of taxes or other municipal liens or charges. The provisions of this act shall not be construed to prevent any municipality from retaining from or recovering out of any moneys paid by it into court, under this act, any sum or sums due to such municipality, for taxes or other municipal liens or charges against any property taken in condemnation.”

“43. Right of owner to recover amount awarded; lien. The report of the commissioners together with the order or judgment appointing them, or a copy thereof certified by the clerk of the court, shall be plenary evidence of the right of the owner of the land or other property taken to recover the amount awarded with interest and costs, in the action or in an action in any court of competent jurisdiction to be instituted against the plaintiff after failure to pay the same for 20 days after the filing of the report, and shall from the time of filing the report be enforceable as a lien upon the land or property taken and any improvements thereon.”

“44. Payment of amount of judgment on appeal; right to possession; lien, other remedies. The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court as provided in section 34 of this act.

If possession shall not have been taken theretofore, the plaintiff upon payment as aforesaid, may, notwithstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken.

The persons entitled to receive payment of the judgment shall be entitled to the same lien as is provided in section 34 of this act for the collection of awards of commissioners and shall have such other remedies as may be appropriate for the recovery of the same.”

“45. Condemnation of public utility property by municipality; after acquired property and improvements. Where an award has been made in an action by a municipality for the condemnation of property of a

public utility company and the award has been paid to the parties entitled thereto or the amount thereof paid into court, the municipality, in addition to having the right to take possession of the property so condemned, may take possession of such other property as the company has acquired, and any improvements made in its plant, since the commencement of the action, in advance of making compensation therefor, provided the municipality cannot acquire said property and improvements by agreement with the owner, either by reason of disagreement as to price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause.

Upon a municipality exercising this right and entering upon and taking the after-acquired property and improvements in advance of making compensation therefor, the municipality shall apply to the commissioners therefore appointed in the action to fix the compensation to be paid the persons interested for the after-acquired property and improvements. Thereupon the commissioners shall make a just and equitable appraisal of the value of all such after-acquired property and improvements and damages if any, in accordance with this act. Upon the making of the award the municipality shall pay the amount thereof unless an appeal is taken therefrom to the Superior Court as provided for in section 13 of this act, in which case the amount of the award shall be paid upon final determination thereof.”

“46. Sidewalks; lands condemned for highways to include; condemnation of lands for sidewalks. Unless otherwise particularly specified in the resolution, map, complaint and other proceedings for the acquiring of land or rights-of-way, or both, for public highways in the manner set forth in this act the boundary lines of the said road and highways, or portion thereof so taken and acquired, shall include within the boundaries thereof all land necessary and desired for the locating of sidewalks or other space then needed, or thereafter to be utilized as sidewalk, and whether the same shall then or thereafter be intended to be paved for use by pedestrians as sidewalks.

All land lying outside of and adjoining the outer boundary lines of any public road or highway, the boundaries of which have been established according to law prior to April 28, 1931, and which lands or the use thereof shall be required for the purpose of laying out, grading and constructing sidewalks for the use of pedestrians, shall be taken, acquired and occupied from and as against the rightful owner thereof, only in accordance with this act and upon paying compensation therefor, to be fixed and determined in the manner prescribed by this act.

Nothing in this section shall limit or impair or deprive any municipality or county of the right to ordain or order the grading and the construction of a paved surface for any sidewalk above referred to, and

the assessing of the proportionate cost thereof, against the owner of the property thereby improved, as a local public improvement in the manner now provided by law.”.

“47. Where land or other property is taken or to be taken by a municipal corporation or other public body for public improvement and payment of the compensation for the land or other property and damages is authorized by statute to be set off against or made wholly or partially in benefits to be assessed for the same improvement, the municipal corporation or other body may elect to proceed under such statute and on such election the proceeding shall not be governed by this chapter, except as provided by such statute.”.

Amend page 16, after “Article” delete “X”, insert “IX”.

Amend page 16, section 43, line 1, delete “43”, and insert “48”.

Amend page 16, section 44, line 1, delete “44”, and insert “49”.

Amend page 16, section 44, line 3, delete “regulating”, and insert “insofar as they regulate”.

Amend page 16, section 45, line 1, delete “45”, and insert “50”.

Amend page 16, section 45, line 2, after “repealed.”, insert new sentence. “This act shall apply to every agency, authority, company, utility or any other entity having the power of eminent domain exercisable within the State of New Jersey except as exempted in section 49 of this act.”.

SENATE COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 504

STATE OF NEW JERSEY

ADOPTED MAY 3, 1971

(RESCINDED MAY 10)

Amend page 1, title, line 3, omit "and", insert ","; after "1942", insert ", and certain other parts of the statutory law".

Amend page 1, section 1, line 1, after "Act", insert "of".

Amend page 1, section 1, line 2, omit "1970", and insert "1971".

Amend page 1, section 2, line 14, omit ";", insert ",".

Amend page 2, section 2, line 16, omit ";", insert ",".

Amend page 2, section 2, lines 35 and 36, omit "commissioners", insert "court".

Amend page 2, section 2, lines 37 to 39, omit lines 37 through 39 in their entirety.

Amend page 2, section 2, line 40, omit "(k)", insert "(j)".

Amend page 2, section 2, line 44, omit "(l)", insert "(k)".

Amend page 2, section 2, line 47, omit "(m)", insert "(l)".

Amend page 2, section 2, line 49, omit "(n)", insert "(m)".

Amend page 2, section 2, line 54, omit "(o)", insert "(n)".

Amend page 3, section 6, line 14, after "therein to", omit "b", insert "be".

Amend page 4, section 6, line 17, after "the rules.", insert "Prior to such offer the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property.".

Amend page 4, section 6, line 17, after "mail.", insert "In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property.".

Amend page 4, section 8, lines 4, 5, omit ", and for an order appointing commissioners to fix the compensation required to be paid".

Amend page 4, section 9, line 1, omit "10", insert "14".

Amend page 4, section 10, line 1, before "days", omit "10", insert "14".

Amend pages 5 and 6, sections 12 and 13, omit "sections 12 and 13" in their entirety and renumber all following sections accordingly.

Amend page 7, section 15, line 3, omit "17 through 29", insert "15 through 26".

Amend page 7, section 17, line 1, after "time", insert "contemporaneous with or".

Amend page 7, section 17, line 14, omit "municipality", insert "municipality".

Amend page 8, section 18, line 7, omit "an award has been made by commissioners hereunder or".

Amend page 8, section 18, line 10, omit "award or".

Amend page 9, section 19, line 8, after "condemnees", insert "without the necessity of further process. A property owner who refuses to vacate said property or yield possession shall be deemed a trespasser and shall be then liable for rents, issues and profits. The court, upon notice, shall enter writs of assistance directed to the sheriff of the county in which the property is located. If the owner or tenant occupies the property with the condemnor's permission on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short term occupier."

Amend page 9, section 19, line 11, after "from", omit "an award or", insert "a".

Amend page 9, section 21, line 5, omit "17 and 18", insert "15 and 16".

Amend page 9, section 22, lines 1 through 4, omit section 22 in its entirety.

Amend page 9, section 24, line 8, omit "6%", insert "a rate to be fixed by the court".

Amend page 10, section 24, line 12, omit "6%", insert "a rate to be fixed by the court".

Amend page 10, section 26, line 6, omit "42", insert "37".

Amend page 10, section 27, lines 1 through 6, omit in their entirety and insert in lieu thereof:

"24. a. The condemnor, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation, whichever is earlier, shall reimburse the owner, to the extent the condemnor deems fair and reasonable, for expenses he necessarily incurred for

(1) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the condemnor;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

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

b. (1) The court having jurisdiction of a proceeding instituted to acquire property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceeding if

(a) the final judgment is that the condemnor cannot acquire the real property by condemnation; or

(b) the proceeding is abandoned by the condemnor.

(2) Any award made pursuant to subsection b. (1) shall be paid by the condemnor.

(3) The court rendering a judgment for the plaintiff in a proceeding against the condemnor awarding compensation for the taking of property by the condemnor, or the condemnor upon effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the condemnor reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.”

Amend page 11, section 31, line 2, omit “caused by”, insert “following”; omit “administrative action”.

Amend page 11, section 31, line 3, omit “or”, insert “official”.

Amend page 11, section 32, omit section 32 in its entirety.

Amend page 12, section 33, line 8, after “condemnee”, insert “as delineated in section 24 herein”.

Amend page 13, section 35, lines 1 through 6, omit section 35 in its entirety.

Amend page 13, section 36, line 2, after “and”, omit “such”.

Amend page 13, section 36, line 4, after “part of the”, omit “taxable”, insert “calendar”; omit “next”.

Amend page 13, section 36, line 5, omit “following the date on”, insert “in”; omit “hereunder”.

Amend page 13, section 36, line 6, omit “(whichever is earlier) bears to the entire taxable year”.

Amend page 13, section 36, line 10, omit “taxable”, insert “calendar”; omit “next following the date on”, insert “in”.

Amend page 13, section 36, line 11, omit "hereunder (whichever is earlier) bears to the entire taxable year".

Amend page 13, section 37, lines 8 and 9, omit "as additional compensation to the condemnee".

Amend page 13, section 37, line 9, after "taxes for", omit "the entire", insert "that calendar".

Amend page 14, section 39, line 1, omit "at 6%", insert "as set by the court".

Amend page 14, section 40, line 4, omit "award or"; omit ", as the case may be".

Amend page 14, section 41, line 2, omit "upon".

Amend page 14, section 41, line 3, omit "the filing of the report of the commissioners and"; after "payment", omit ",".

Amend page 14, section 41, line 4, after "thereto", insert "as determined by judgment,"; after "court", omit ",".

Amend page 14, section 41, lines 7 through 11, omit in their entirety.

Amend page 14, section 42, line 2, omit "award or".

Amend page 14, section 42, line 7, omit "award or".

Amend page 15, section 43, lines 2-5, omit "the filing of the award of", and all of lines 3 through 5.

Amend page 15, section 43, line 6, omit "any time before or within 30 days after".

Amend page 15, section 45, line 3, after "condemnor," insert "in its own discretion or".

Amend page 15, section 47, line 5, add new section to read as follows:

"43. All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, hereby repealed."

SENATE AMENDMENTS TO
ASSEMBLY, No. 504

STATE OF NEW JERSEY

ADOPTED MAY 10, 1971

Amend page 1, title, line 3, omit "and", insert ","; after "1942", insert ", and certain other parts of the statutory law".

Amend page 1, section 1, line 1, after "Act", insert "of".

Amend page 1, section 1, line 2, omit "1970", and insert "1971".

Amend page 1, section 2, line 14, omit ";", insert ",".

Amend page 2, section 2, line 16, omit ";", insert ",".

Amend page 2, section 2, lines 37 to 39, omit lines 37 through 39 in their entirety.

Amend page 2, section 2, line 40, omit "(k)", insert "(j)".

Amend page 2, section 2, line 44, omit "(l)", insert "(k)".

Amend page 2, section 2, line 47, omit "(m)", insert "(l)".

Amend page 2, section 2, line 49, omit "(n)", insert "(m)".

Amend page 2, section 2, line 54, omit "(o)", insert "(n)".

Amend page 3, section 6, line 14, after "therein to", omit "b", insert "be".

Amend page 4, section 6, line 17, after "the rules.", insert "Prior to such offer the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property."

Amend page 4, section 6, line 17, after "mail.", insert "In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property."

Amend page 4, section 9, line 1, omit "10", insert "14".

Amend page 4, section 10, line 1, before "days", omit "10", insert "14".

Amend page 7, section 15, line 3, omit "29", insert "28".

Amend page 7, section 17, line 1, after "time", insert "contemporaneous with or".

Amend page 7, section 17, line 14, omit "municipality", insert "municipality".

Amend page 8, section 18, lines 11 through 22, omit lines 11 through 22 in their entirety, insert "Any amount so deposited shall not be subject to the fees set forth in N. J. S. 22A:2-20."

Amend page 9, section 19, line 8, after "condemnees", insert "without the necessity of further process. A property owner who refuses to vacate said property or yield possession and remains in possession more than 20 days after service of notice shall be deemed a trespasser and shall be then liable for rents, issues and profits as of the date of service. The court, upon notice and after determining that the property owner has had adequate opportunity to obtain any funds payable to him under sections 23 and 26 of this act and any other expenses to which he may be entitled to as a matter of law, shall enter writs of assistance directed to the sheriff of the county in which the property is located. If the owner or tenant occupies the property with the condemnor's permission on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short term occupier."

Amend page 9, section 22, lines 1 through 4, omit section 22 in its entirety and renumber all following sections accordingly.

Amend page 9, section 24, line 8, omit "6%", insert "a rate to be fixed by the court".

Amend page 10, section 24, line 12, omit "6%", insert "a rate to be fixed by the court".

Amend page 10, section 26, line 6, omit "42", insert "40".

Amend page 10, section 27, lines 1 through 6, omit in their entirety and insert in lieu thereof:

"26. a. The condemnor, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation, whichever is earlier, shall reimburse the owner, to the extent the condemnor deems fair and reasonable, for expenses he necessarily incurred for

(1) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the condemnor;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

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

b. (1) The court having jurisdiction of a proceeding instituted to acquire property by condemnation shall award the owner of any right,

or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceeding if

(a) the final judgment is that the condemnor cannot acquire the real property by condemnation; or

(b) the proceeding is abandoned by the condemnor.

(2) Any award made pursuant to subsection b. (1) shall be paid by the condemnor.

(3) The court rendering a judgment for the plaintiff in a proceeding against the condemnor awarding compensation for the taking of property by the condemnor, or the condemnor upon effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the condemnor reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding."

Amend page 11, section 31, line 2, omit "caused by", insert "following"; omit "administrative action".

Amend page 11, section 31, line 3, omit "or", insert "official".

Amend page 11, section 32, omit section 32 in its entirety.

Amend page 12, section 33, line 8, after "condemnee", insert "as delineated in section 25 herein".

Amend page 13, section 35, lines 1 through 6, omit section 35 in its entirety.

Amend page 13, section 36, line 2, after "and", omit "such".

Amend page 13, section 36, line 4, after "part of the", omit "taxable", insert "calendar"; omit "next".

Amend page 13, section 36, line 5, omit "following the date on", insert "in"; omit "hereunder".

Amend page 13, section 36, line 6, omit "(whichever is earlier) bears to the entire taxable year".

Amend page 13, section 36, line 10, omit "taxable", insert "calendar"; omit "next following the date on", insert "in".

Amend page 13, section 36, line 11, omit "hereunder (whichever is earlier) bears to the entire taxable year".

Amend page 13, section 37, lines 8 and 9, omit "as additional compensation to the condemnee,".

Amend page 13, section 37, line 9, after "taxes for", omit "the entire", insert "that calendar".

Amend page 14, section 39, line 1, omit "at 6%", insert "as set by the court".

Amend page 15, section 42, line 10, omit "The fees of the clerk,".

Amend page 15, section 42, line 11, omit "if any, shall be paid out of the fund.".

Amend page 15, section 45, line 3, after "condemnor," insert "in its own discretion or".

Amend page 15, section 47, line 5, add new section to read as follows:

"45. All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, hereby repealed.".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 2, 1971

ASSEMBLY BILL NO. 504

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I hereby return Assembly Bill No. 504 with my objections, for reconsideration.

Assembly Bill No. 504 would revise the Eminent Domain Laws of New Jersey to make uniform the legal requirements for all entities and agencies having the power to condemn. The bill would increase protection to the citizen whose property is condemned. I concur in this legislation and compliment the legislature for its passage. However, I cannot approve Assembly Bill No. 504 in its present form because among other things it does not comply with several requirements of federal law which could result in the diminution of federal-aid monies vitally needed by our highway programs. There are also some technical errors in the bill which should be eliminated to reduce confusion. Several provisions in the existing law were repealed by the bill as passed when modification rather than repeal was necessary. The desired result will be accomplished by the suggested amendments.

Accordingly, I am returning Assembly Bill No. 504 for reconsideration and recommend that it be amended as follows:

Page 3, section 4, line 1: After "effect" delete "60 days next" and insert "immediately"

Page 3, section 5, line 7: After "action." delete the remainder of line 7 through line 10.

Page 4, section 7, line 1: Delete Section 7 (a)

Page 4, section 7, line 4: Delete "(b)", insert "(a)"

Page 4, section 7, line 6: Delete "(c)", insert "(b)"

Page 4, section 7, line 6: After "of" delete "any number of" and insert "10 or less"

Page 4, section 7, line 7: After "county" delete ", "

Page 4, section 7, line 9: After "parcel." add "More than 10 parcels may be joined in one action"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-2-

only with leave of court."

Page 4, section 7, line 10: Delete "(d)", insert
"(c)"

Page 4, section 9, line 1: After "Process." delete
"Within 14 days", delete "after" and insert "After"

Page 4, section 10, line 2: After "filed" insert
"and recorded"

Page 5, section 11, lines 5-6: After "determined"
insert "." and delete the remainder of lines 5-6

Page 5, section 12, line 4: After "commissioners"
delete "and hearings before them hereafter referred to,"

Page 5, section 12, line 5: After "court" delete
"as in other actions at law."

Page 5, section 12, line 22: After "subpoena"
insert "Upon notice of at least 10 days," delete "The"
and insert "the" and after "hold hearings" delete "upon"

Page 5, section 12, line 23: Delete "notice re-
quired by the rules,"

Page 5, section 12, line 25: After "hearings"
delete "and", insert "shall be governed by the rules of
evidence except that testimony as to comparable sales
shall be considered an exception to the hearsay rule.",
delete "the", insert "The"

Page 5, section 12, line 26: After "thereat" delete
", shall be governed by the rules.", insert "may be com-
pelled by the commissioners.", after "party," insert
"and at his expense,"

Page 5, section 12, line 28: After this line add
a new subsection: "(d) Limited discovery. At least 15
days prior to the hearing the parties shall exchange a
list of comparable sales intended to be introduced by
them setting forth as to each comparable sale the follow-
ing information: name of seller and purchaser; location
of property by block, lot and municipality; date of

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-3-

sale; the consideration; and book and page of recording. No party shall be permitted to offer testimony of any comparable sale not set forth in said list unless consented to by all other parties. There shall be no discovery on the issue of the authority to condemn except by leave of court."

Page 6, section 12, line 29: Before "At" insert "(e) Proof."

Page 6, section 12, line 29: After "shall" insert "proceed first to"

Page 6, section 12, line 31: Delete "(d)" insert "(f)"

Page 6, section 12, line 32: After "party" delete "." and insert ", and in addition, when requested by any party, the commissioners shall inspect two of the comparable sales testified to by said party."

Page 6, section 12, line 37: Delete "(e)" insert "(g)"

Page 6, section 12, lines 38-39: After "period" delete "fixed by the court on notice, or by stipulation of all the parties filed in the action," and insert "in accordance with the rules,"

Page 6, section 12, line 41: After "condemnor" insert "."

Page 6, section 12, line 42: Delete "because of the taking."

Page 6, section 12, line 49: Delete "(f)" insert "(h)"

Page 6, section 12, line 53: Delete "(g)" insert "(i)"

Page 6, section 12, line 56: Insert line 56a "13. Appeal."

Page 6, section 13, line 1: Delete "13. (a) Appeal."

Page 6, section 13, line 1: Before "Any party" insert "(a) Parties."

Page 6, section 13, line 2: After "through" insert "an"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-4-

Page 6, section 13, lines 3-4: After "commissioners," delete "," insert "." and delete "whether or not an appeal has or may be given by the statute conferring the power of eminent domain."

Page 6, section 13, line 6: After "such parties" delete "as", insert "who" and after "have" delete "so"

Page 6, section 13, line 8: After "to" insert "the"

Page 6, section 13, line 12: Before "A" insert "(c) Limited discovery."

Page 7, section 13, line 14: Delete "such time and in such form as shall be fixed by the rules," and insert "15 days before trial"

Page 7, section 13, line 15: Delete "has given" and insert "gives"

Page 7, section 13, line 16: Delete "proposed"

Page 7, section 13, line 17: Delete "payable by reason of the condemnation." and insert "and information relative to comparable sales as required by the rules. The information required by the rules shall be supplied as to all additional comparable sales not previously testified to before commissioners."

Page 7, section 13, line 17: Insert new subsection: "(d) Payment of amount of judgment on appeal; right to possession; lien; other remedies. The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court.

If possession shall not have been taken theretofore, the condemnor, upon payment as aforesaid, may notwithstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-5-

Page 7, section 15, line 2: After "condemnation"
insert "."

Page 7, section 15, lines 3-4: Delete lines 3 and
4

Page 7, section 16, line 10: After "within"
delete "1" insert "2"

Page 7, section 16, line 11: Delete "year" insert
"years"

Page 7, section 16, lines 14-15: After "to" delete
"sections 2A:16-50 to 2A:16-62 inclusive of the New
Jersey Statutes." and insert "the rules."

Page 7, section 17, line 3: After "action," insert
"when empowered to do so by law,"

Page 8, section 17, lines 9-11: After "authorized"
insert "." and delete the remainder of lines 9-11.

Page 8, section 18, lines 3-5: Delete "either",
after "court" delete "," and insert ".", and delete
"or in a special interest-bearing bank account in the
name of the condemnor, in trust for the benefit of the
condemnees entitled thereto."

Page 9, section 19, line 8: After "process" delete
"." and insert "provided however, that the court may,
upon application and good cause shown; stay the taking
of possession of the land or other property, or
authorize possession to be taken upon prescribed
conditions."

Page 9, section 19, lines 11-12: After "profits"
delete "as of the date of " insert "20 days after"

Page 9, section 19, line 15: After "enter" delete
"writs of assistance" and insert "an order for possession"

Page 9, section 21, line 4: After "Filing" insert
"and recording"

Page 9, section 21, line 6: After "(b)" insert
"Filing and", delete "Recording" and insert "recording."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-6-

Page 9, section 21, lines 6-7: After "of" delete "conveyance by the condemnee to the condemnor;" and insert "the report of commissioners and payment of the award."

Page 10, section 22, line 1: Delete "affect" insert "effect", delete "vesting of", after "and" insert "vesting of"

Page 10, section 22, line 3: Delete "affect" insert "effect", delete "vesting of", after "and" insert "vesting of"

Page 10, section 23, line 6: After "the" insert "award or"

Page 10, section 23, line 11: After "if the" insert "award or"

Page 10, section 24, line 6: Before "pay" insert "file and record the judgment and"

Page 10, section 25, line 2: Delete "3" insert "6" and after "months" delete "after the commencement of the action," and insert "from the date of appointment of commissioners,"

Page 10, section 25, line 6: Delete "40" and insert "35"

Page 11, section 26, line 2: Delete "purchase" and insert "acquisition"

Page 11, section 26, line 3: After "owner" delete ", to the"

Page 11, section 26, line 4: Delete "extent the condemnor deems fair and reasonable," after "for" insert "actual"

Page 11, section 26, line 7: After "condemnor;" insert "and"

Page 11, section 26, lines 8-9: Delete lines 8 and 9

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-7-

Page 11, section 26, line 10: Delete "(3)"

insert "(2)"

Page 11, section 26, lines 14-31: Delete remainder of Section 26 in its entirety and insert the following:

"b. If the court renders final judgment that the condemnor cannot acquire the real property by condemnation or, if the condemnation action is abandoned by the condemnor, then the court shall award the owner of any right, or title to, or interest in such real property, such real property, such sum as will reimburse such owner for his reasonable costs, disbursements and expenses actually incurred, including reasonable attorney, appraisal, and engineering fees."

"c. When a plaintiff shall have brought an action to compel condemnation against a defendant having the power to condemn, the court or representative of the defendant in case of settlement shall, in its discretion, award such plaintiff his reasonable costs, disbursements, and expenses, including reasonable appraisal, attorney and engineering fees actually incurred regardless of whether the action is terminated by judgment or amicable agreement of the parties."

Page 12, section 30, line 1: Delete the section in its entirety

Page 13, section 31, line 1: Delete "31" insert "30"

Page 13, section 31, lines 3-4: Delete "(a) date of the execution of an agreement of purchase between condemnor and condemnee;"

Page 13, section 31, line 4: Delete "(b)" insert "(a)"

Page 14, section 31, line 5: Delete "(c)" insert "(b)"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-8-

Page 14, section 31, line 6: Delete "(d)"
insert "(c)"

Page 14, section 31, line 8: Delete "as
delineated in section 25 herein."

Page 14, section 31, line 8: After line 8,
delete "Article VII Taxes"

Page 14, section 32, line 1: Delete Article VII
in its entirety

Page 15, section 35, line 3: Delete "VIII"
insert "VII"

Page 15, section 36, line 1: Delete "36" insert
"31."

Page 15, section 36, line 2: Delete "per annum"

Page 15, section 37, line 1: Delete "37" insert
"32."

Page 15, section 37, line 4: Delete "IX" insert
"VIII"

Page 15, section 38, line 1: Delete "38" insert
"33."

Page 16, section 39, line 1: Delete "39" insert
"34."

Page 16, section 39, line 7: Delete "safely" and
insert "reasonably"

Page 16, section 40, line 1: Delete "40" insert
"35."

Page 16, section 40, line 4: Delete "on such
appeal"

Page 16, section 40, line 11: After "action."
insert "Nothing herein shall preclude abandonment at
any time by mutual consent of the parties."

Page 16, section 41, line 1: Delete "41" insert
"36."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-9-

Page 16, section 41, lines 2-3: After "abandonment" insert "." and delete "in manner, form and content fixed by the rules."

Page 16, section 42, line 1: Delete "42" insert "37."

Page 16, section 42, line 4: After line 4, delete X insert IX and insert nine new sections, as follows: 38 through 46.

"38. Blighted areas. The value of any land or other property being acquired in connection with development or redevelopment of a blighted area shall be no less than the value as of the date of the declaration of blight by the governing body upon a report by a planning board."

"39. Housing authority or redevelopment agency; declaration of taking. Upon the institution of an action by a housing authority or redevelopment agency to fix the compensation to be paid, or at any time thereafter, a duly authorized officer or agent of the housing authority or redevelopment agency may file with the Clerk of the Superior Court a declaration of taking in the manner provided by this act."

"40. Acquisitions by State colleges; declaration of taking. Whenever a State college is authorized by law to acquire lands or rights therein, the Director of the Division of Purchase and Property may acquire such lands or right therein by gift, devise, purchase, or by condemnation in the manner provided by this act.

"41. Lands etc. needed for defense or for airports; declaration of taking. Whenever the State or any commission, official, board or body thereof or any county or municipality shall determine to acquire lands, easements, rights-of-way or other property to be used by the

United States of America, the State of New Jersey or said county or municipality, for furthering national or State defense, or for developing or building airports or providing surface or aerial approaches thereto, by condemnation pursuant to this Act, and shall represent to the court that it is necessary for such purposes that the plaintiff enter into possession of the same immediately, the plaintiff may, with leave of court, file with the Clerk of the Superior Court a declaration of taking in the manner provided for by this Act."

"42. Recovery of taxes or other municipal liens or charges. The provisions of this act shall not be construed to prevent any municipality from retaining from or recovering out of any moneys paid by it into court, under this act, any sum or sums due to such municipality, for taxes or other municipal liens or charges against any property taken in condemnation."

"43. Right of owner to recover amount awarded; lien. The report of the commissioners together with the order or judgment appointing them, or a copy thereof certified by the Clerk of the court, shall be plenary evidence of the right of the owner of the land or other property taken to recover the amount awarded with interest and costs, in the action or in an action in any court of competent jurisdiction to be instituted against the plaintiff after failure to pay the same for twenty days after the filing of the report, and shall from the time of filing the report be enforceable as a lien upon the land or property taken and any improvements thereon."

"44. Payment of amount of judgment on appeal; right to possession; lien, other remedies. The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court as provided in section 34

of this act

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-11-

If possession shall not have been taken theretofore, the plaintiff, upon payment as aforesaid, may, notwithstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken.

The persons entitled to receive payment of the judgment shall be entitled to the same lien as is provided in section 34 of this act for the collection of awards of commissioners and shall have such other remedies as may be appropriate for the recovery of the same."

"45. Condemnation of public utility property by municipality; after acquired property and improvements. Where an award has been made in an action by a municipality for the condemnation of property of a public utility company and the award has been paid to the parties entitled thereto or the amount thereof paid into court, the municipality, in addition to having the right to take possession of the property so condemned, may take possession of such other property as the company has acquired, and any improvements made in its plant, since the commencement of the action, in advance of making compensation therefor, provided the municipality cannot acquire said property and improvements by agreement with the owner, either by reason of disagreement as to price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause.

Upon a municipality exercising this right and entering upon and taking the after-acquired property and improvements in advance of making compensation therefor, the municipality shall apply to the commissioners therefore appointed in the action to fix the compensation to be paid the persons interested

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-12-

for the after-acquired property and improvements. Thereupon the commissioners shall make a just and equitable appraisal of the value of all such after-acquired property and improvements and damages if any, in accordance with this act. Upon the making of the award the municipality shall pay the amount thereof unless an appeal is taken therefrom to the Superior Court as provided for in section 13 of this act, in which case the amount of the award shall be paid upon final determination thereof."

"46. Sidewalks; lands condemned for highways to include; condemnation of lands for sidewalks. Unless otherwise particularly specified in the resolution, map, complaint and other proceedings for the acquiring of land or rights of way, or both, for public highways in the manner set forth in this act the boundary lines of the said road and highways, or portion thereof so taken and acquired, shall include within the boundaries thereof all land necessary and desired for the locating of sidewalks or other space then needed, or thereafter to be utilized as sidewalk, and whether the same shall then or thereafter be intended to be paved for use by pedestrians as sidewalks.

All land lying outside of and adjoining the outer boundary lines of any public road or highway, the boundaries of which have been established according to law prior to April twenty-eighth, one thousand nine hundred and thirty-one, and which lands or the use thereof shall be required for the purpose of laying out, grading and constructing sidewalks for the use of pedestrians, shall be taken, acquired and occupied from and as against the rightful owner thereof, only in accordance with this act and upon paying compensation

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-13-

therefor, to be fixed and determined in the manner prescribed by this act.

Nothing in this section shall limit or impair or deprive any municipality or county of the right to ordain or order the grading and the construction of a paved surface for any sidewalk above referred to, and the assessing of the proportionate cost thereof, against the owner of the property thereby improved, as a local public improvement in the manner now provided by law."

"47. Where land or other property is taken or to be taken by a municipal corporation or other public body for public improvement and payment of the compensation for the land or other property and damages is authorized by statute to be set off against or made wholly or partially in benefits to be assessed for the same improvement, the municipal corporation or other body may elect to proceed under such statute and on such election the proceeding shall not be governed by this chapter, except as provided by such statute.

Page 16, section 43, line 1: Delete "43" and insert "48"

Page 16, section 44, line 1: Delete "44" and insert "49"

Page 16, section 44, line 3: Delete "regulating" and insert "insofar as they regulate"

Page 16, section 45, line 1: Delete "45" and insert "50"

Page 16, section 45, line 2: After "repealed" insert new sentence. "This Act shall apply to every agency, authority, company, utility or any other entity

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-14-

having the power of eminent domain exercisable within
the State of New Jersey except as exempted in Section
49 of this act.

Respectfully,

/s/ William T. Cahill

GOVERNOR

[seal]

Attest:

/s/ Jean E. Mulford

Acting Secretary to the Governor

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 26

STATE OF NEW JERSEY

INTRODUCED JANUARY 9, 1968

By Assemblymen GIMSON and LITTELL

Referred to Committee on Revision and Amendment of Laws

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public **[use]** **purposes** and revising and supplementing chapter 1 of Title 20 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 1968."

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public **[use]**
8 **purpose** under the power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public **[use]** **purpose** under the power of eminent
11 domain;

11A (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any
13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof; (2) any article affixed or attached
15 to such property in such manner that it cannot be removed without material

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

16 injury to itself or to the property; (3) any article so designed, constructed
 17 or specially adapted to the purpose for which such property is used that
 18 it is an essential accessory or part of such property; (b) it is not **capable*
 19 *table** **capable** **of** **for** **of** use elsewhere; and (c) would lose
 20 substantially all its value if removed from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable **rules of court** **rules governing*
 23 *the courts of the State of New Jersey** as promulgated from time to time *
 24 *the Supreme Court of New Jersey**;

24A (g) "Action" means the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation
 27 being fixed;

28 (3) the persons entitled to such compensation and their interests
 29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
 31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnee
 33 is required to pay and the condemnee is entitled to receive according
 34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commissioners
 36 provided for herein;

37 (j) "Expenses of condemnee" means the reasonable fees and expenses
 38 necessarily incurred by condemnee in the action, for attorney, engineering
 39 and appraisal services;

40 (k) "Judgment" means the adjudication by the court of any issue of fact
 41 or law, or both, arising under this act. The adjudication of the right to
 42 compensation shall be a final judgment. All other judgments shall be interlocutory
 43 or final, according to law, or as may be prescribed by the rules;

44 (l) "Recording office" means the county office of each county in which
 45 the property being condemned, or any part thereof, is located, in which
 46 conveyances of real property may be recorded;

47 (m) "Days" means calendar days, **exclusive of Sundays or other*
 48 *legal holidays** **calculated in accordance with the rules of court**;

49 (n) Words used in the singular shall include the plural and vice versa.
 50 Words used in the neuter gender shall include masculine and feminine
 51 gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
 2 thereof to any person or circumstance is held to be invalid, such invalidity

3 shall not affect other provisions or applications of the act, which can be given
4 effect without the invalid provision or application, and to this end, the provi-
5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect 60 days next following the
2 approval thereof, and shall apply to all actions instituted thereafter, and to
3 all *~~steps~~* *proceedings** taken subsequent thereto in all actions pending on
4 such effective date; except that judgments theretofore entered or awards
5 theretofore made *~~under existing Title 20 of the Revised Statutes~~* *pur-*
6 *suant to law** from which no appeal is pending on such effective date, shall
7 not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
2 demnation, and all matters incidental thereto and arising therefrom, includ-
3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
4 mine the authority to exercise the power of eminent domain; to compel the
5 exercise of such power; to fix and determine the compensation to be paid and
6 the parties entitled thereto, and to determine title to all property affected
7 by the action.

1 6. Application of act. Whenever any condemnor shall have determined
2 to acquire property pursuant to law, including public property already de-
3 voted to public *~~use~~* *purpose**, but cannot acquire title thereto or posses-
4 sion thereof by agreement with a prospective condemnee, whether by reason of
5-6 disagreement concerning the compensation to be paid or for any other cause,
7 the condemnation of such property and the compensation to be paid therefor,
8 and to whom payable, and all matters incidental thereto and arising therefrom
9 shall be governed, ascertained and paid by and in the manner provided by this
9A act;

9B *~~Provided~~* *provided**, however, that no action to condemn shall be instituted
10 unless the condemnor is unable to acquire such title or possession through bona
11 fide negotiations with the prospective condemnee, which negotiations shall in-
12 clude an offer in writing by the condemnor to the prospective condemnee hold-
13 ing the fee title of record to the property being condemned, setting forth the
14 property and interest therein to be acquired, the compensation offered to be
15 paid and a reasonable disclosure of the manner in which the amount of such
16 offered compensation has been calculated, and such other matters as may be
17 required by the rules. Such offer shall be served in accordance with the rules.
18 A rejection of said offer or failure to accept the same within the period fixed
19 by the rules shall be conclusive proof of the inability of the condemnor to ac-
20 quire the property or possession thereof through negotiations. When the
21 holder of the fee title is unknown, *~~or~~* resides out of the State, *~~and~~* *or**

22 for other good cause, the court may dispense with the necessity of such negoti-
23 ations. Neither the offer nor the refusal thereof shall be evidential in the
24 determination of compensation.

1 7. (a) Nature of action. The court may proceed in a summary manner
2 pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New Jersey Stat-
3 utes, or otherwise.

4 (b) Rules of procedure. The procedure governing the action shall be in
5 accordance with the rules.

6 (c) Multiple proceedings. The condemnation of any number of parcels
7 of property lying wholly within the same county, may be joined in one action;
8 provided that a separate award, judgment and appeal shall be made, entered
9 and taken with respect to each parcel.

10 (d) Amendments. Amended and supplemental pleadings, descriptions,
11 surveys, plans, declarations of taking and the like, may be permitted and
12 parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
2 verified complaint in form and content specified by the rules*. The complaint
3 shall include a prayer for * *and shall demand** judgment that condemnor is
4 duly vested with and has duly exercised its authority to acquire the property
5 being condemned, and for an order appointing commissioners to fix the com-
6 pensation required to be paid.

1 9. Process. Within 10 days after the filing of the complaint, **the** con-
2 demnor shall issue, and with due diligence, cause process to be served or pub-
3 lished in accordance with the rules. Notice given and process served or
4 published in accordance with the rules shall be effective to bind all condemnees.

1 10. Lis pendens. Within 10 days after the filing of the complaint, **the** con-
2 demnor shall cause to be filed in the recording office, a notice of the pendency
3 of the action, in form and content specified by the rules. Such notice shall in-
4 clude the title of the action; the docket number thereof, if known; the date
5 of the commencement of the action, a description of the property and the
6 interests therein being condemned, as set forth in the complaint; and the
7 names and addresses of all condemnees known to the condemnor and the
8 nature of their alleged interests in said property. The lis pendens shall be
9 indexed by the recording official, listing the condemnees as grantors and the
10 condemnor as grantee. In default of such record, persons acquiring an in-
11 terest in or lien upon the property without actual notice of the action, shall
12 not be bound thereby.

1 11. Denial of authority to condemn. Failure to deny the authority of the
2 condemnor to condemn in the manner provided for by the rules, shall consti-
3 tute a waiver of such defense. When the authority to condemn is denied, all

4 further steps in the action shall be stayed until that issue has been finally de-
5 terminated.

1 12. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in the
3 cause, **the** condemnor and **[condemnee]* **all condemnees** may waive the
4 appointment of commissioners and hearings before them hereafter referred
5 to, and in such event, the action shall proceed to trial before the court as in
6 other actions at law.

6A (b) Appointment and qualification of commissioners. Upon determina-
7 tion that **the** condemnor is authorized to and has duly exercised its power of
8 eminent domain, the court shall appoint 3 commissioners to determine the
9 compensation to be paid by reason of the exercise of such power. Such com-
10 missioners shall be residents of the county in which any part of the property
11 being condemned is located. One of such commissioners shall be an attorney,
12 admitted to practice in this State for at least 10 years, who shall preside at
13 all hearings and rule on all questions of evidence and procedure, subject to
14 a review by a majority of the commissioners. The commissioners shall take
15 and subscribe an oath faithfully and impartially to perform their duties,
16 and to make a true award to the best of their skills and understanding, which
17 oath shall be filed with their award. Should a commissioner die, become dis-
18 qualified, unable, neglect or refuse to act, the remaining 2 commissioners
19 shall perform the duties of office with the same authority as if all commis-
20 sioners were acting. The court may fill any vacancy in office, and for cause,
21 may vacate any appointment and appoint a successor in office.

22 (c) Hearings—subpoena. The commissioners shall hold hearings upon
23 notice required by the rules, at which the parties and their witnesses may
24 be heard, under oath, administered by any commissioner. The conduct of
25 the hearings and the compulsory attendance of witnesses and production of
26 records thereat, shall be governed by the rules. At the request of any party,
27 a stenographic record of the hearing shall be maintained. A majority of
28 commissioners shall be in attendance at all hearings.

29 At the hearing, the condemnor shall offer proof of the nature and extent
30 of the taking, and its opinion of the compensation payable by reason thereof.

31 (d) Inspection of property. Commissioners may inspect the property
32 being condemned, and shall so inspect when requested by any party. Such
33 inspection may be in the absence of the parties, unless attendance at inspec-
34 tion is requested by the parties, or any of them. This right of inspection shall
35 exist notwithstanding that the structures on the property may have been
36 demolished and the site altered.

37 (e) Award of commissioners. Within 4 months next following their ap-
38 pointment, or within any extended period fixed by the court on notice, or by stip-
39 ulation of **all** the parties filed in the action, the commissioners, or a majority

40 of them, shall make and file in form and content fixed by the rules, an award
41 fixing and determining the compensation to be paid by the condemnor
42 because of the taking. The requirements respecting the time of filing of such
43 award shall be directory and not mandatory, and a failure to make and file
44 the same within the time specified, shall not invalidate the award or oust the
45 commissioners of jurisdiction to complete their duties. Upon its own motion,
46 or on application of any party, made within 60 days after the filing of the
47 award, the court may authorize the commissioners to amend, supplement,
48 modify, or correct their award.

49 (f) Judgment. Any award as to which no appeal is taken in accordance
50 with the rules, shall become final as of course, and shall constitute a final
51 judgment. If not paid within 60 days after final judgment, execution may
52 issue as in other actions at law.

53 (g) Commissioners' fees and expenses. The court, upon application of
54 any party, including the commissioners, shall fix reasonable fees, costs and
55 expenses of the commissioners, clerks and other persons performing any of
56 their duties, all of which shall be paid by the condemnor.

1 13. (a) Appeal. Any party *in interest*

2 who has appeared at the hear-
3 ings of the commissioners, either personally or through attorney, may appeal
4 from the award of the commissioners, whether or not an appeal has or may be
5 given by the statute conferring the power of eminent domain. Such appeal
6 shall be taken within the period and in the manner provided by the rules.
7 The necessary parties to the appeal shall be only such parties as have so
8 appeared at the commissioners' hearings. Other parties may be admitted by
9 the court pursuant to rules.

9 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo,
10 as in other actions at law, without a jury, unless a jury be demanded. The
11 award of the commissioners shall not be admitted in evidence.

12 A valuation expert who has not testified at the hearing before the com-
13 missioners shall not be permitted to testify at the trial de novo, unless,
14 within such time and in such form as shall be fixed by the rules, the party
15 offering such testimony has given notice to the other parties to the appeal of
16 the name and address of such expert and his proposed opinion of the amount
17 of compensation payable by reason of the condemnation.

1 14. Agreement as to compensation. At any time during the pendency of
2 the action, the condemnor and the condemnees may agree upon all or any
3 part or any item of compensation to be paid, and then proceed to have those
4 parts or items not agreed upon, fixed and determined as herein provided.
5 *Condemnor* *The condemnor* may make payment of any part or item
6 thereof agreed upon, and condemnees may accept such payment, without prej-
7 udice, and proceed to fix and determine the parts and items remaining in
8 dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to individ-
2 uals or private corporations vested with the authority of condemnation.

1 16. Preliminary entry. Prior to the commencement of any action, a
2 prospective condemnor and its employees and agents, during reasonable busi-
3 ness hours, may enter upon any property which it has authority to condemn
4 for the purpose of making studies, surveys, tests, soundings, borings and ap-
5 praisals *, *provided notice of the intended entry for such purpose is sent to the*
5A *owner and the occupant of the property by certified mail at least 10 days prior*
5B *thereto* *. If an action to condemn is not commenced within one year after
6 such preliminary entry, any damages sustained as a result thereof, shall be
7 paid by the condemnor to the person or persons so damaged. The amount of
8 such damages, if any, and the person or persons entitled thereto, shall be de-
9 termined by the court in a summary action pursuant to sections 2A:16-50 to
10 2A:16-62 inclusive, of the New Jersey Statutes.

1 17. Possession of property and declaration of taking. At any time after
2 the institution of an action and service of process, *the* condemnor may file in
3 the action, and if so filed, shall also file in the recording office, a declaration of
4 taking, duly executed by an executive official of the condemnor, in form and
5 content specified by the rules, including the following:

6 (a) a statement that possession of all or some part of the property being
7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
9 which the action and declaration of taking is authorized, including the date
10 when such authorization was given and the place where the record thereof
11 may be examined;

12 (c) a description and plot plan of the property being condemned, and, if
13 not the entire property, the portion thereof of which possession is being taken,
14 sufficient for identification thereof, specifying the municipality or municipal-
15 ities in which the same is located; the street number of the property, if any;
16 the lot and block number of the property as designated upon the current as-
17 sessment map, if any. In case of a partial taking, the information above
18 specified shall include the entire property of the condemnee, and the portion
19 thereof being taken;

20 (d) the names and addresses of all condemnees known to the condemnor
21 after reasonable investigation, and the nature of their interests in the prop-
22 erty;

23 (e) a statement of the estate or interest therein being condemned;

24 (f) a statement of the sum of money estimated by the condemnor to be
25 just compensation for the taking, which sum shall be not less than the amount
26 of the offer, in writing, provided for in section *~~17~~* *6* hereof.

27 (g) Any other matter required by the rules.

1 18. Deposit of estimated compensation. Simultaneously with the filing of
2 the declaration of taking, the condemnor shall deposit the amount of such
3 estimated compensation either with the clerk of the court, or in a special
4 interest-bearing bank account in the name of the condemnor, in trust for
5 the benefit of the condemnees entitled thereto. The amount so deposited
6 shall be not less than the amount offered pursuant to section 6 hereof, and
7 if an award has been made by commissioners hereunder, or a judgment
8 determining compensation has been entered at the time of the filing of such
9 declaration, the amount so deposited shall be not less than the amount of such
10 award or judgment.

11 Upon application by any party in interest, and upon being satisfied that
12 the financial responsibility of the condemnor to satisfy any judgment that
13 may be entered in the action is uncertain, the court may require such con-
14 demnor to maintain an additional trust fund with a bank or trust company
15 authorized to do business in New Jersey, in an amount equal to $\frac{1}{2}$ of the
16 estimated compensation fund so deposited. Said trust fund shall consist of
17 cash, or securities which are legal investments for trust funds in New Jersey.

18 The fund originally deposited and the additional fund, if any, shall secure
19 the payment of compensation determined to be payable hereunder and may
20 be applied to such payment. After payment or satisfaction of such compensa-
21 tion, condemnor, with approval of the court, may withdraw any surplus cash
22 and securities.

1 19. Right to possession and vesting of title. A copy of the declaration
2 of taking and notice of the filing thereof and of the making of **the** aforesaid
3 deposit, shall be served upon the condemnee and all occupants of the property
4 in accordance with the rules, and proof of such service shall be filed in the
5 **[cause]* *action**. Thereupon, the right to the immediate and exclusive pos-
6 session and title to the property described in the declaration of taking shall
7 vest in the condemnor, free and discharged of **[the]* *all** right, title
8 **[and]* **, interest **and liens** of all condemnees. Such right, title and in-
9 terest shall be transferred and shall attach to the compensation determined to
10 be payable hereunder, to the same extent and in the same order of priority as
11 existed at the date of vesting of title in condemnor. The pendency of an ap-
12 peal from an award or judgment hereunder shall not interfere with such vest-
13 ing of title.

1 20. Nature of title condemned. The title to property condemned and
2 acquired by the condemnor hereunder, shall be a title in fee simple, free and
3 discharged of all right, title, interest and liens of all condemnees, and shall
4 include all the right, title and interest of each condemnee therein, provided,
5 however, that if the complaint or any amendment thereof shall specify a

6 lesser title, the lesser title so specified shall be the title condemned and
7 acquired.

1 21. Date of vesting of title. Title to the property condemned shall vest
2 in the condemnor as of the earliest date of the happening of any of the follow-
3 ing events:

4 (a) Filing the declaration of taking and depositing funds pursuant to
5 *~~Article V hereof~~* *sections 17 and 18 of this act*;

6 (b) Recording in the recording office of conveyance by the condemnee to
7 the condemnor;

8 (c) Filing in the action and recording in the recording office, an agree-
9 ment between condemnor and condemnee fixing the date as of which title shall
10 vest;

11 (d) Paying and satisfying of record a final judgment fixing compensation
12 payable hereunder.

1 22. Order for possession and removal of property. The court, upon
2 notice, shall fix the time and terms upon which possession of said property
3 shall be delivered, and personal property thereon shall be removed, and may
4 enter writs of assistance directed to the sheriff of the county.

1 23. Appeal not to affect vesting of right to possession and title. The
2 pendency of an appeal with respect to any issue other than the authority to
3 condemn, shall not affect the vesting of right to possession and title in the
4 condemnor.

1 24. Withdrawal of funds. Upon application of any condemnee, or any
2 other party in interest, and on notice to all parties to the action, including
3 the condemnor, the court may direct that the estimated compensation on
4 deposit, or any part thereof, be paid to the person or persons entitled thereto,
5 on account of the compensation to which they may be entitled in the action;
6 provided, that if the judgment fixing such compensation be less than the
7 amount paid pursuant hereto, the person to whom such payment has been
8 made shall repay the same, together with interest at 6% from the date of
9 payment to such person, and the court, after hearing in a summary manner,
10 may enter judgment therefor; and provided, further, that if the judgment
11 fixing such compensation be more than the amount deposited, condemnor
12 shall pay the excess to the condemnee entitled thereto, with interest at 6%
13 from the date of the deposit, and the court, after hearing in a summary man-
14 ner, may enter judgment therefor against the condemnor. The court, upon
15 notice to all parties, shall enter appropriate orders distributing any balances
16 on deposit.

1 25. Revesting of title and restoration of possession. If, after the filing of
2 a declaration of taking, a judgment shall be entered dismissing the action, title
3 to and possession of the property shall revert in the condemnee, subject to

4 the same right, title, interest and liens as existed as of the date of the filing
5 of the declaration of taking. In such event, condemnor shall pay any
6 damages sustained by the condemnee as a result of the action of the con-
7 demnor, and the expenses of the condemnee.

1 26. Compelling condemnor to file declaration of taking. If within 3
2 months after the commencement of an action, the condemnor fails to file a
3 declaration of taking, the court, upon application of any condemnee, and on
4 notice to all parties in interest, may require the condemnor, at its election, to
5 either file a declaration of taking and make the deposit hereinabove provided,
6 or abandon the proceedings pursuant to section 42 hereof. For good cause
7 and upon terms, the court may extend the time for the filing of such declara-
8 tion of taking, but not more than 3 months after the commencement of the
9 action.

1 27. Expenses of condemnee. Should the compensation as finally de-
2 termined in the action, exclusive of interest, exceed the amount of the deposit
3 by 25% or more, the court, after hearing, may determine that in addition to
4 the amounts so determined to be payable, the condemnor shall pay the
5 expenses of the condemnee as herein defined, to be fixed by the court, but not
6 to exceed 10% of the compensation so determined.

1 28. Deposit and withdrawal of funds not prejudicial. Neither the making
2 of the deposit nor any withdrawal thereof pursuant to this article, shall affect
3 or prejudice the rights of either the condemnor or the condemnee in the
4 determination of compensation. The amount of such deposit and any with-
5 drawal thereof, shall not be evidential in such determination.

1 29. Fees of clerk of the court. The statutory fees and compensation of
2 the clerk of the court, payable by reason of the deposit and disbursement of
3 funds pursuant to this article, shall be paid by the condemnor.

ARTICLE VI

[JUST] COMPENSATION AND DATE OF DETERMINATION THEREOF

1 30. *[Just]* Compensation. The condemnee shall be entitled to *[just]*
2 compensation for the property, and damages, if any, to any remaining prop-
3 erty, together with such additional compensation as provided for herein, or
4 as may be fixed according to law.

1 31. Effect of amendment of proceedings. Any increase or decrease in
2 the value of property being condemned, caused by any administrative action
3 or public announcement of proposed public improvement, other than a de-
4 crease in value due to physical depreciation within the reasonable control of
5 the condemnee, shall be disregarded in determining the amount of just
6 compensation.

1 32. Elements of compensation. Without limiting the generality of the

2 foregoing, just compensation may be awarded for the following items of
3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
5 being condemned, relocation payments may be made to eligible persons as
6 herein defined, for their reasonable, necessary and actual moving expenses
7 to a location not in excess of 50 miles from the point of taking, but not in ex-
8 cess of \$300.00 in the case of an individual or family, and not in excess of
9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 "Eligible person" shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 "Moving expenses" shall include all costs of reinstatement of property
20 moved and damages thereto caused by or resulting from such removal.

21 "Family" means 2 or more persons living together in the same dwelling
22 unit.

23 "Business entity" means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)
25 for the manufacturing, processing or marketing of any such property; (3)
26 for the sale of services to the public, which entity vacates its place of busi-
27 ness after the effective date hereof as a result of the acquisition, or immi-
28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily
30 for the production of one or more agricultural product, products or commodi-
31 ties for sale or home use, and customarily sells such products or commodi-
32 ties in sufficient quantities to be capable of contributing materially to the sup-
33 port of the operator thereof, which operator vacates such property after the
34 effective date hereof as a result of the acquisition or imminence of acquisi-
35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
37 pensation which a condemnor may pay for relocation expenses in cases where,
38 under applicable Federal law or regulations, such compensation may be paid
39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
40 to condemnor out of Federal funds.

41 (b) A condemnee shall be entitled to compensation as provided in this
42 section, for damages resulting from loss of good will of, interference with

43 or damages to a business conducted on the property condemned, provided,
 44 that it is established that the loss, interference or damage has been or is being
 45 caused by the acquisition or imminence of acquisition of the property. Com-
 46 pensation hereunder shall be limited to the amount of the earnings of the
 47 business for one year, based upon the mathematical average of the 3 ^{**}cal-
 48 enday^{**} ^{**}calendar^{**} or fiscal^{*} years next preceding the date of ^{**}taking^{**}
 49 ^{*}commencement of the action^{*}. Federal tax returns shall be evidential in sup-
 50 port or defense of the claim for compensation, and the failure of the condemnee
 51 to exhibit the same to the condemnor when requested, shall bar the claim.

52 A tenant in the property having a right of possession for more than 3
 53 years from the date of taking, shall be paid such compensation by the con-
 54 demnor, although not otherwise entitled to any proceeds of the condemnation.

55 (c) In determining damages to property remaining after a partial taking,
 56 consideration shall be given to the use to which the property condemned shall
 57 be devoted, and the damages and benefits specially affecting such remaining
 58 property due to its proximity to the improvement for which the property is
 59 being taken. Future damages and general benefits which will affect prop-
 60 erty beyond that directly abutting the improvement shall not be considered
 61 in arriving at the after-value of the remaining property. Special benefits
 62 to remaining property shall, in no event, exceed the compensation for the
 63 land taken, exclusive of severance damages.

64 (d) Notwithstanding that no land has been or is being taken, compen-
 65 sation shall be paid for damages to property located within 200 feet from land
 66 taken for a public ^{**}improvement^{**} ^{*}purpose^{*}, resulting from, (1) a change
 67 of grade; (2) permanent interference with existing access; (3) injury to sur-
 68 face support; and (4) vacation of a public road, street or highway in actual use.

69 (e) If a condemnor does not require for its use, machinery, equipment or
 70 fixtures constituting a part of the property being condemned, it shall so
 71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
 73 tended time as may be fixed by the condemnor or the court, upon notice, the
 74 condemnee may elect, in writing, to remove such machinery, equipment and
 75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
 76 be reduced by the fair market value of such machinery, equipment and fix-
 77 tures being removed or severed from the property. The notices and elec-
 78 tion herein provided for and other procedure, shall be governed by the rules.

1 33. Date as of which compensation shall be determined. Just compensa-
 2 tion shall be determined as of the date of the earliest of the following events:
 3 (a) the date of the execution of an agreement of purchase between condemnor
 4 and condemnee; (b) the date possession of the property being condemned is
 5 taken by the condemnor in whole or in part; (c) the date of the commence-
 6 ment of the action; (d) the date on which action is taken by the condemnor

7 which substantially affects the use and enjoyment of the property by the
8 demnee *; (e) the date of declaration of blight*.

9 Where property is taken or is about to be taken pursuant to chapter 187
10 of the laws of 1949 or the "Local Housing Authorities Law" (R. S. 55:14A-1,
11 et seq.), or both, it shall be prima facie presumed that the declaration of
12 "blight" by the governing body pursuant to the provisions of chapter 187 of
13 the laws of 1949, and the declaration by a duly organized local housing
14 authority that the property is located in a "slum area" pursuant to the
15 provisions of the "Local Housing Authorities Law," substantially affects such
16 use and occupation and enjoyment of the property, and the burden of
17 establishing to the contrary shall be upon the condemnor.

ARTICLE VII

TAXES

1 34. The taxes which are the subject-matter of this article are the real
2 property taxes duly assessed by the taxing district in which the property being
3 condemned is located, for the tax year during which possession thereof is
4 taken or title thereto is acquired pursuant to this act, whichever is the earlier,
5 and are hereafter referred to in this article as "such taxes."

1 35. (a) The condemnation of property pursuant to this act shall not
2 affect the payment of such taxes to the taxing district, and the provisions of
3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
5 taxes other than as herein set forth, but no such agreement shall affect the
6 payment of such taxes to the taxing district.

1 36. (a) Where the entire property of a condemnee is being condemned
2 and such taxes have been paid, the condemnor shall pay to the condemnee, in
3 addition to the compensation payable hereunder, an amount of money which
4 bears the same ratio of the taxes so paid, as the part of the taxable year next
5 following the date on which possession is taken or title acquired hereunder
6 (whichever is earlier) bears to the entire taxable year.

7 (b) Where only a part of such property is being condemned, the amount
8 of money so to be paid by the condemnor shall be a sum which bears the same
9 ratio of taxes so paid on the part of the property condemned, as the part of
10 the taxable year next following the date on which possession is taken or title
11 acquired hereunder (whichever is earlier) bears to the entire taxable year.

1 37. (a) Where the entire property of the condemnee is being condemned
2 and such taxes have not been paid, the condemnor shall deduct from the
3 compensation payable hereunder, the proportionate share of such unpaid
4 taxes upon the entire property, allocable to the period between the first day
5 of the year in which possession is taken, or title acquired (whichever is
6 earlier), and the date when such possession is taken or title acquired (which-

7 ever is earlier). The condemnor shall pay to the taxing district on behalf
8 of the condemnee, (1) the amount so deducted; and (2) as additional compensa-
9 tion to the condemnee, the entire balance of such unpaid taxes for the entire
10 year.

11 (b) Where only a part of such property is being condemned and such
12 taxes have not been paid, condemnor shall deduct from the compensation
13 payable hereunder, the proportionate share of such unpaid taxes upon
14 the entire property allocable to the period between the first day of the year in
15 which possession is taken or title acquired (whichever is the earlier) and the
16 date when such possession is taken or title acquired, (whichever is earlier).
17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)
18 the amount so deducted; and (2) as additional compensation to the condemnee,
19 the proportionate share of such unpaid taxes for the balance of the tax year
20 allocable to the portion of the property taken.

1 38. Any dispute as to the apportionment of such taxes and the payment
2 thereof, shall be determined by the court in the action in a summary manner,
3 upon petition by any party to the action, or by the taxing district.

ARTICLE VIII

INTEREST

1 39. Payment of interest. Interest at 6% per annum upon the amount
2 of compensation determined to be payable hereunder shall be paid by the
3 condemnor from the date of the commencement of the action until the date
4 of payment of the compensation; provided, however, that there shall be ex-
5 cluded from the amount upon which interest shall be calculated, all moneys
6 deposited pursuant to Article V hereof; and provided, further, that interest
7 payable hereunder shall be subject to abatement for rents and profits de-
8 rived from the property by the condemnee during the period for which in-
9 terest is payable hereunder, and/or for the fair rental value of such prop-
10 erty or any portion thereof occupied by the condemnee during such period.

1 40. Disputes as to interest. Unless agreed upon by the parties, the
2 amount of such interest shall be fixed and determined by the court in a sum-
3 mary manner after final determination of compensation, and shall be added
4 to the amount of the award or judgment, as the case may be.

ARTICLE IX

MISCELLANEOUS

1 41. Deposit of funds where ownership in dispute. If the condemnee en-
2 titled to receive the award or judgment upon tender thereof, shall refuse to
3 receive the same, or shall be out of the State, or under any legal disability;
4 or in case several condemnees interested in the fund shall not agree as to
5 the distribution thereof; or in case the property condemned shall be encum-
6 bered by mortgage, judgment or other liens; or if for any other reason the

7 condemnor cannot safely pay the award or judgment to any person, the
8 amount thereof may be deposited with the clerk of the court, to be distributed
9 to the parties entitled thereto according to law. The procedure for distribut-
10 ing the funds shall be in accordance with the rules. The fees of the clerk,
11 if any, shall be paid out of the fund.

1 42. Abandonment of proceedings. Any action hereunder may be aban-
2 doned at any time before or within 30 days after the filing of the award of
3 commissioners; or in the event of an appeal from such award, at any time
4 before or within 30 days after the entry of judgment on such appeal; or in
5 the event that a hearing before commissioners shall have been waived, at
6 any time before or within 30 days after judgment has been entered in said
7 action; provided, however, that no such action shall be abandoned after the
8 filing of a declaration of taking pursuant to Article V hereof, or after the
9 vesting of title in any condemnor pursuant hereto; and provided further, that
10 (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor
11 shall pay the expenses of all condemnees who have appeared in the action.

1 43. Method of abandonment. The abandonment shall be effected by
2 filing and serving notice of abandonment in the manner, form and content
3 fixed by the rules.

1 44. Uneconomic remnants. If as a result of a partial taking of property,
2 the property remaining consists of a parcel or parcels of land having little
3 or no economic value, the condemnor, at the request of the condemnee, shall
4 acquire the entire parcel.

ARTICLE X

REPEALER

1 45. All acts or parts of act inconsistent herewith, are repealed as of the
2 effective date hereof; provided, however, that this act shall not affect stat-
3 utes regulating the ascertainment and payment of compensation for property
4 condemned or taken by bodies organized and administered as a result of or
5 under compacts between States.

ASSEMBLY, No. 26

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1968 SESSION

By Assemblymen GIMSON and LITTELL

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public use and revising and supplementing chapter 1 of Title 20 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 1968."

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public use under the
8 power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public use under the power of eminent domain;

11 (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any
13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof; (2) any article affixed or attached
15 to such property in such manner that it cannot be removed without material
16 injury to itself or to the property; (3) any article so designed, constructed,
17 or specially adapted to the purpose for which such property is used that (a)

18 it is an essential accessory or part of such property; (b) it is not acceptable
19 of use elsewhere; and (c) would lose substantially all its value if removed
20 from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable rules of court as promulgated from
23 time to time;

24 (g) "Action" mean the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation is
27 being fixed;

28 (3) the persons entitled to such compensation and their interests
29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnor
33 is required to pay and the condemnee is entitled to receive according to
34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commis-
36 sioners provided for herein;

37 (j) "Expenses of condemnee" means the reasonable fees and expenses
38 necessarily incurred by condemnee in the action, for attorney, engineering
39 and appraisal services;

40 (k) "Judgment" means the adjudication by the court of any issue of fact
41 or law, or both, arising under this act. The adjudication of the right to con-
42 demn shall be a final judgment. All other judgments shall be interlocutory
43 or final, according to law, or as may be prescribed by the rules;

44 (l) "Recording office" means the county office of each county in which
45 the property being condemned, or any part thereof, is located, in which office
46 conveyances of real property may be recorded;

47 (m) "Days" means calendar days, exclusive of Sundays or other full
48 legal holidays;

49 (n) Words used in the singular shall include the plural and vice versa.
50 Words used in the neuter gender shall include masculine and feminine
51 gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
2 thereof to any person or circumstance is held to be invalid, such invalidity
3 shall not affect other provisions or applications of the act, which can be given
4 effect without the invalid provision or application, and to this end, the provi-
5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect 60 days next following the
 2 approval thereof, and shall apply to all actions instituted thereafter, and to
 3 all steps taken subsequent thereto in all actions pending on such effective date;
 4 except that judgments theretofore entered or awards theretofore made under
 5 existing Title 20 of the Revised Statutes from which no appeal is pending on
 6 such effective date, shall not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
 2 demnation, and all matters incidental thereto and arising therefrom, includ-
 3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
 4 mine the authority to exercise the power of eminent domain; to compel the
 5 exercise of such power; to fix and determine the compensation to be paid and
 6 the parties entitled thereto, and to determine title to all property affected
 7 by the action.

1 6. Application of act. Whenever any condemnor shall have determined
 2 to acquire property pursuant to law, including public property already de-
 3 voted to public use, but cannot acquire title thereto or possession thereof by
 4 agreement with a prospective condemnee, whether by reason of disagreement
 5 concerning the compensation to be paid or for any other cause, the condem-
 6 nation of such property and the compensation to be paid therefor, and to
 7 whom payable, and all matters incidental thereto and arising therefrom shall
 8 be governed, ascertained and paid by and in the manner provided by this act;

9 Provided, however, that no action to condemn shall be instituted unless
 10 the condemnor is unable to acquire such title or possession through bona fide
 11 negotiations with the prospective condemnee, which negotiations shall include
 12 an offer in writing by the condemnor to the prospective condemnee holding
 13 the fee title of record to the property being condemned, setting forth the
 14 property and interest therein to be acquired, the compensation offered to be
 15 paid and a reasonable disclosure of the manner in which the amount of such
 16 offered compensation has been calculated, and such other matters as may be
 17 required by the rules. Such offer shall be served in accordance with the rules.
 18 A rejection of said offer or failure to accept the same within the period fixed
 19 by the rules shall be conclusive proof of the inability of the condemnor to ac-
 20 quire the property or possession thereof through negotiations. When the
 21 holder of the fee title is unknown, or resides out of the State, and for other
 22 good cause, the court may dispense with the necessity of such negotiations.
 23 Neither the offer nor the refusal thereof shall be evidential in the determi-
 24 nation of compensation.

1 7. (a) Nature of action. The court may proceed in a summary manner

2 pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New Jersey Stat-
3 utes, or otherwise.

4 (b) Rules of procedure. The procedure governing the action shall be in
5 accordance with the rules.

6 (c) Multiple proceedings. The condemnation of any number of parcels
7 of property lying wholly within the same county, may be joined in one action;
8 provided that a separate award, judgment and appeal shall be made, entered
9 and taken with respect to each parcel.

10 (d) Amendments. Amended and supplemental pleadings, descriptions,
11 surveys, plans, declarations of taking and the like, may be permitted and
12 parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
2 verified complaint in form and content specified by the rules. The complaint
3 shall include a prayer for judgment that condemnor is duly vested with and
4 has duly exercised its authority to acquire the property being condemned, and
5 for an order appointing commissioners to fix the compensation required to
6 be paid.

1 9. Process. Within 10 days after the filing of the complaint, condemnor
2 shall issue, and with due diligence, cause process to be served or published
3 in accordance with the rules. Notice given and process served or published
4 in accordance with the rules shall be effective to bind all condemnees.

1 10. Lis pendens. Within 10 days after the filing of the complaint, con-
2 demnor shall cause to be filed in the recording office, a notice of the pendency
3 of the action, in form and content specified by the rules. Such notice shall in-
4 clude the title of the action; the docket number thereof, if known; the date
5 of the commencement of the action, a description of the property and the
6 interests therein being condemned, as set forth in the complaint; and the
7 names and addresses of all condemnees known to the condemnor and the
8 nature of their alleged interests in said property. The lis pendens shall be
9 indexed by the recording official, listing the condemnees as grantors and the
10 condemnor as grantee. In default of such record, persons acquiring an in-
11 terest in or lien upon the property without actual notice of the action, shall
12 not be bound thereby.

1 11. Denial of authority to condemn. Failure to deny the authority of the
2 condemnor to condemn in the manner provided for by the rules, shall consti-
3 tute a waiver of such defense. When the authority to condemn is denied, all
4 further steps in the action shall be stayed until that issue has been finally de-
5 termined.

1 12. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in the
3 cause, condemnor and condemnee may waive the appointment of commis-

4 sioners and hearings before them hereafter referred to, and in such event, the
5 action shall proceed to trial before the court as in other actions at law.

6 (b) Appointment and qualification of commissioners. Upon determina-
7 tion that condemnor is authorized to and has duly exercised its power of
8 eminent domain, the court shall appoint 3 commissioners to determine the
9 compensation to be paid by reason of the exercise of such power. Such com-
10 missioners shall be residents of the county in which any part of the property
11 being condemned is located. One of such commissioners shall be an attorney,
12 admitted to practice in this State for at least 10 years, who shall preside at
13 all hearings and rule on all questions of evidence and procedure, subject to
14 a review by a majority of the commissioners. The commissioners shall take
15 and subscribe an oath faithfully and impartially to perform their duties,
16 and to make a true award to the best of their skills and understanding, which
17 oath shall be filed with their award. Should a commissioner die, become dis-
18 qualified, unable, neglect or refuse to act, the remaining 2 commissioners
19 shall perform the duties of office with the same authority as if all commis-
20 sioners were acting. The court may fill any vacancy in office, and for cause,
21 may vacate any appointment and appoint a successor in office.

22 (c) Hearings—subpoena. The commissioners shall hold hearings upon
23 notice required by the rules, at which the parties and their witnesses may
24 be heard, under oath, administered by any commissioner. The conduct of
25 the hearings and the compulsory attendance of witnesses and production of
26 records thereat, shall be governed by the rules. At the request of any party,
27 a stenographic record of the hearing shall be maintained. A majority of
28 commissioners shall be in attendance at all hearings.

29 At the hearing, the condemnor shall offer proof of the nature and extent
30 of the taking, and its opinion of the compensation payable by reason thereof.

31 (d) Inspection of property. Commissioners may inspect the property
32 being condemned, and shall so inspect when requested by any party. Such
33 inspection may be in the absence of the parties, unless attendance at inspec-
34 tion is requested by the parties, or any of them. This right of inspection shall
35 exist notwithstanding that the structures on the property may have been
36 demolished and the site altered.

37 (e) Award of commissioners. Within 4 months next following their ap-
38 pointment, or within any extended period fixed by the court on notice, or by
39 stipulation of the parties filed in the action, the commissioners, or a majority
40 of them, shall make and file in form and content fixed by the rules, an award
41 fixing and determining the compensation to be paid by the condemnor
42 because of the taking. The requirements respecting the time of filing of such
43 award shall be directory and not mandatory, and a failure to make and file
44 the same within the time specified, shall not invalidate the award or oust the

45 commissioners of jurisdiction to complete their duties. Upon its own motion,
 46 or on application of any party, made within 60 days after the filing of the
 47 award, the court may authorize the commissioners to amend, supplement,
 48 modify, or correct their award.

49 (f) Judgment. Any award as to which no appeal is taken in accordance
 50 with the rules, shall become final as of course, and shall constitute a final
 51 judgment. If not paid within 60 days after final judgment, execution may
 52 issue as in other actions at law.

53 (g) Commissioners' fees and expenses. The court, upon application of
 54 any party, including the commissioners, shall fix reasonable fees, costs and
 55 expenses of the commissioners, clerks and other persons performing any of
 56 their duties, all of which shall be paid by the condemnor.

1 13. (a) Appeal. Any party in interest who has appeared at the hearings
 2 of the commissioners, either personally or through attorney, may appeal from
 3 the award of the commissioners, whether or not an appeal has or may be given
 4 by the statute conferring the power of eminent domain. Such appeal shall be
 5 taken within the period and in the manner provided by the rules. The neces-
 6 sary parties to the appeal shall be only such parties as have so appeared at
 7 the commissioners' hearings. Other parties may be admitted by the court
 8 pursuant to rules.

9 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo,
 10 as in other actions at law, without a jury, unless a jury be demanded. The
 11 award of the commissioners shall not be admitted in evidence.

12 A valuation expert who has not testified at the hearing before the com-
 13 missioners shall not be permitted to testify at the trial de novo, unless,
 14 within such time and in such form as shall be fixed by the rules, the party
 15 offering such testimony has given notice to the other parties to the appeal of
 16 the name and address of such expert and his proposed opinion of the amount
 17 of compensation payable by reason of the condemnation.

1 14. Agreement as to compensation. At any time during the pendency of
 2 the action, the condemnor and the condemnees may agree upon all or any
 3 part or any item of compensation to be paid, and then proceed to have those
 4 parts or items not agreed upon, fixed and determined as herein provided.
 5 Condemnor may make payment of any part or item thereof agreed upon, and
 6 condemnees may accept such payment, without prejudice, and proceed to fix
 7 and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to individ-
 2 uals or private corporations vested with the authority of condemnation.

1 16. Preliminary entry. Prior to the commencement of any action, a
2 prospective condemnor and its employees and agents, during reasonable busi-
3 ness hours, may enter upon any property which it has authority to condemn
4 for the purpose of making studies, surveys, tests, soundings, borings and ap-
5 praisals. If an action to condemn is not commenced within one year after
6 such preliminary entry, any damages sustained as a result thereof, shall be
7 paid by the condemnor to the person or persons so damaged. The amount of
8 such damages, if any, and the person or persons entitled thereto, shall be de-
9 termined by the court in a summary action pursuant to sections 2A:16-50 to
10 2A:16-62 inclusive, of the New Jersey Statutes.

1 17. Possession of property and declaration of taking. At any time after
2 the institution of an action and service of process, condemnor may file in the
3 action, and if so filed, shall also file in the recording office, a declaration of
4 taking, duly executed by an executive official of the condemnor, in form and
5 **content specified by the rules, including the following:**

6 (a) a statement that possession of all or some part of the property being
7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
9 which the action and declaration of taking is authorized, including the date
10 when such authorization was given and the place where the record thereof
11 may be examined;

12 (c) a description and plot plan of the property being condemned, and, if
13 not the entire property, the portion thereof of which possession is being taken,
14 sufficient for identification thereof, specifying the municipality or municipal-
15 ities in which the same is located; the street number of the property, if any;
16 the lot and block number of the property as designated upon the current as-
17 sessment map, if any. In case of a partial taking, the information above
18 specified shall include the entire property of the condemnee, and the portion
19 thereof being taken;

20 (d) the names and addresses of all condemnees known to the condemnor
21 after reasonable investigation, and the nature of their interests in the prop-
22 erty;

23 (e) a statement of the estate or interest therein being condemned;

24 (f) a statement of the sum of money estimated by the condemnor to be
25 just compensation for the taking, which sum shall be not less than the amount
26 of the offer, in writing, provided for in section 7 hereof.

27 (g) Any other matter required by the rules.

1 18. Deposit of estimated compensation. Simultaneously with the filing of
2 the declaration of taking, the condemnor shall deposit the amount of such
3 estimated compensation either with the clerk of the court, or in a special
4 interest-bearing bank account in the name of the condemnor, in trust for

5 the benefit of the condemnees entitled thereto. The amount so deposited
6 shall be not less than the amount offered pursuant to section 6 hereof, and
7 if an award has been made by commissioners hereunder, or a judgment
8 determining compensation has been entered at the time of the filing of such
9 declaration, the amount so deposited shall be not less than the amount of such
10 award or judgment.

11 Upon application by any party in interest, and upon being satisfied that
12 the financial responsibility of the condemnor to satisfy any judgment that
13 may be entered in the action is uncertain, the court may require such con-
14 demnor to maintain an additional trust fund with a bank or trust company
15 authorized to do business in New Jersey, in an amount equal to $\frac{1}{2}$ of the
16 estimated compensation fund so deposited. Said trust fund shall consist of
17 cash, or securities which are legal investments for trust funds in New Jersey.

18 The fund originally deposited and the additional fund, if any, shall secure
19 the payment of compensation determined to be payable hereunder and may
20 be applied to such payment. After payment or satisfaction of such compensa-
21 tion, condemnor, with approval of the court, may withdraw any surplus cash
22 and securities.

1 19. Right to possession and vesting of title. A copy of the declaration
2 of taking and notice of the filing thereof and of the making of aforesaid
3 deposit, shall be served upon the condemnee and all occupants of the property
4 in accordance with the rules, and proof of such service shall be filed in the
5 cause. Thereupon, the right to the immediate and exclusive possession and
6 title to the property described in the declaration of taking shall vest in the
7 condemnor, free and discharged of the right, title and interest of all con-
8 demnees. Such right, title and interest shall be transferred and shall attach
9 to the compensation determined to be payable hereunder, to the same extent
10 and in the same order of priority as existed at the date of vesting of title in
11 condemnor. The pendency of an appeal from an award or judgment here-
12 under shall not interfere with such vesting of title.

1 20. Nature of title condemned. The title to property condemned and
2 acquired by the condemnor hereunder, shall be a title in fee simple, free and
3 discharged of all right, title, interest and liens of all condemnees, and shall
4 include all the right, title and interest of each condemnee therein, provided,
5 however, that if the complaint or any amendment thereof shall specify a
6 lesser title, the lesser title so specified shall be the title condemned and
7 acquired.

1 21. Date of vesting of title. Title to the property condemned shall vest
2 in the condemnor as of the earliest date of the happening of any of the follow-
3 ing events:

- 4 (a) Filing the declaration of taking and depositing funds pursuant to
5 Article V hereof;
- 6 (b) Recording in the recording office of conveyance by the condemnee to
7 the condemnor;
- 8 (c) Filing in the action and recording in the recording office, an agree-
9 ment between condemnor and condemnee fixing the date as of which title shall
10 vest;
- 11 (d) Paying and satisfying of record a final judgment fixing compensation
12 payable hereunder.

1 22. Order for possession and removal of property. The court, upon
2 notice, shall fix the time and terms upon which possession of said property
3 shall be delivered, and personal property thereon shall be removed, and may
4 enter writs of assistance directed to the sheriff of the county.

1 23. Appeal not to affect vesting of right to possession and title. The
2 pendency of an appeal with respect to any issue other than the authority to
3 condemn, shall not affect the vesting of right to possession and title in the
4 condemnor.

1 24. Withdrawal of funds. Upon application of any condemnee, or any
2 other party in interest, and on notice to all parties to the action, including
3 the condemnor, the court may direct that the estimated compensation on
4 deposit, or any part thereof, be paid to the person or persons entitled thereto,
5 on account of the compensation to which they may be entitled in the action;
6 provided, that if the judgment fixing such compensation be less than the
7 amount paid pursuant hereto, the person to whom such payment has been
8 made shall repay the same, together with interest at 6% from the date of
9 payment to such person, and the court, after hearing in a summary manner,
10 may enter judgment therefor; and provided, further, that if the judgment
11 fixing such compensation be more than the amount deposited, condemnor
12 shall pay the excess to the condemnee entitled thereto, with interest at 6%
13 from the date of the deposit, and the court, after hearing in a summary man-
14 ner, may enter judgment therefor against the condemnor. The court, upon
15 notice to all parties, shall enter appropriate orders distributing any balances
16 on deposit.

1 25. Revesting of title and restoration of possession. If, after the filing of
2 a declaration of taking, a judgment shall be entered dismissing the action, title
3 to and possession of the property shall revert in the condemnee, subject to
4 the same right, title, interest and liens as existed as of the date of the filing
5 of the declaration of taking. In such event, condemnor shall pay any
6 damages sustained by the condemnee as a result of the action of the con-
7 demnor, and the expenses of the condemnee.

1 26. Compelling condemnor to file declaration of taking. If within 3
 2 months after the commencement of an action, the condemnor fails to file a
 3 declaration of taking, the court, upon application of any condemnee, and on
 4 notice to all parties in interest, may require the condemnor, at its election, to
 5 either file a declaration of taking and make the deposit hereinabove provided,
 6 or abandon the proceedings pursuant to section 42 hereof. For good cause
 7 and upon terms, the court may extend the time for the filing of such declara-
 8 tion of taking, but not more than 3 months after the commencement of the
 9 action.

1 27. Expenses of condemnee. Should the compensation as finally de-
 2 termined in the action, exclusive of interest, exceed the amount of the deposit
 3 by 25% or more, the court, after hearing, may determine that in addition to
 4 the amounts so determined to be payable, the condemnor shall pay the
 5 expenses of the condemnee as herein defined, to be fixed by the court, but not
 6 to exceed 10% of the compensation so determined.

1 28. Deposit and withdrawal of funds not prejudicial. Neither the making
 2 of the deposit nor any withdrawal thereof pursuant to this article, shall affect
 3 or prejudice the rights of either the condemnor or the condemnee in the
 4 determination of compensation. The amount of such deposit and any with-
 5 drawal thereof, shall not be evidential in such determination.

1 29. Fees of clerk of the court. The statutory fees and compensation of
 2 the clerk of the court, payable by reason of the deposit and disbursement of
 3 funds pursuant to this article, shall be paid by the condemnor.

ARTICLE VI

JUST COMPENSATION AND DATE OF DETERMINATION THEREOF

1 30. Just compensation. The condemnee shall be entitled to just compensa-
 2 tion for the property, and damages, if any, to any remaining property,
 3 together with such additional compensation as provided for herein, or as may
 4 be fixed according to law.

1 31. Effect of amendment of proceedings. Any increase or decrease in
 2 the value of property being condemned, caused by any administrative action
 3 or public announcement of proposed public improvement, other than a de-
 4 crease in value due to physical depreciation within the reasonable control of
 5 the condemnee, shall be disregarded in determining the amount of just
 6 compensation.

1 32. Elements of compensation. Without limiting the generality of the
 2 foregoing, just compensation may be awarded for the following items of
 3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
 5 being condemned, relocation payments may be made to eligible persons as
 6 herein defined, for their reasonable, necessary and actual moving expenses

7 to a location not in excess of 50 miles from the point of taking, but not in ex-
8 cess of \$300.00 in the case of an individual or family, and not in excess of
9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 "Eligible person" shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 "Moving expenses" shall include all costs of reinstallation of property
20 moved and damages thereto caused by or resulting from such removal.

21 "Family" means 2 or more persons living together in the same dwelling
22 unit.

23 "Business entity" means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)
25 for the manufacturing, processing or marketing of any such property; (3)
26 for the sale of services to the public, which entity vacates its place of busi-
27 ness after the effective date hereof as a result of the acquisition, or immi-
28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily
30 for the production of one or more agricultural product, products or commodi-
31 ties for sale or home use, and customarily sells such products or commodi-
32 ties in sufficient quantities to be capable of contributing materially to the sup-
33 port of the operator thereof, which operator vacates such property after the
34 effective date hereof as a result of the acquisition or imminence of acquisi-
35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
37 pensation which a condemnor may pay for relocation expenses in cases where,
38 under applicable Federal law or regulations, such compensation may be paid
39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
40 to condemnor out of Federal funds.

41 (b) A condemnee shall be entitled to compensation as provided in this
42 section, for damages resulting from loss of good will of, interference with
43 or damages to a business conducted on the property condemned, provided,
44 that it is established that the loss, interference or damage has been or is being
45 caused by the acquisition or imminence of acquisition of the property. Com-
46 pensation hereunder shall be limited to the amount of the earnings of the
47 business for one year, based upon the mathematical average of the 3 years

48 next preceding the date of taking. Federal tax returns shall be evidential in
 49 support or defense of the claim for compensation, and the failure of the con-
 50 demnee to exhibit the same to the condemnor when requested, shall bar the
 51 claim.

52 A tenant in the property having a right of possession for more than 3
 53 years from the date of taking, shall be paid such compensation by the con-
 54 demnor, although not otherwise entitled to any proceeds of the condemnation.

55 (c) In determining damages to property remaining after a partial taking,
 56 consideration shall be given to the use to which the property condemned shall
 57 be devoted, and the damages and benefits specially affecting such remaining
 58 property due to its proximity to the improvement for which the property is
 59 being taken. Future damages and general benefits which will affect prop-
 60 erty beyond that directly abutting the improvement shall not be considered
 61 in arriving at the after-value of the remaining property. Special benefits
 62 to remaining property shall, in no event, exceed the compensation for the
 63 land taken, exclusive of severance damages.

64 (d) Notwithstanding that no land has been or is being taken, compen-
 65 sation shall be paid for damages to property located within 200 feet from land
 66 taken for a public improvement, resulting from, (1) a change of grade; (2)
 67 permanent interference with existing access; (3) injury to surface support;
 68 and (4) vacation of a public road, street or highway in actual use.

69 (e) If a condemnor does not require for its use, machinery, equipment or
 70 fixtures constituting a part of the property being condemned, it shall so
 71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
 73 tended time as may be fixed by the condemnor or the court, upon notice, the
 74 condemnee may elect, in writing, to remove such machinery, equipment and
 75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
 76 be reduced by the fair market value of such machinery, equipment and fix-
 77 tures being removed or severed from the property. The notices and elec-
 78 tion herein provided for and other procedure, shall be governed by the rules.

79 33. Date as of which compensation shall be determined. Just compensa-
 80 tion shall be determined as of the date of the earliest of the following events:
 81 (a) the date of the execution of an agreement of purchase between condemnor
 82 and condemnee; (b) the date possession of the property being condemned is
 83 taken by the condemnor in whole or in part; (c) the date of the commence-
 84 ment of the action; (d) the date on which action is taken by the condemnor
 85 which substantially affects the use and enjoyment of the property by the
 86 condemnee.

87 Where property is taken or is about to be taken pursuant to chapter 187
 88 of the laws of 1949 or the "Local Housing Authorities Law" (R. S. 55:14A-1,
 89 et seq.), or both, it shall be prima facie presumed that the declaration of

12 "blight" by the governing body pursuant to the provisions of chapter 187 of
 13 the laws of 1949, and the declaration by a duly organized local housing
 14 authority that the property is located in a "slum area" pursuant to the
 15 provisions of the "Local Housing Authorities Law," substantially affects such
 16 use and occupation and enjoyment of the property, and the burden of
 17 establishing to the contrary shall be upon the condemnor.

ARTICLE VII

TAXES

1 34. The taxes which are the subject-matter of this article are the real
 2 property taxes duly assessed by the taxing district in which the property being
 3 condemned is located, for the tax year during which possession thereof is
 4 taken or title thereto is acquired pursuant to this act, whichever is the earlier,
 5 and are hereafter referred to in this article as "such taxes."

1 35. (a) The condemnation of property pursuant to this act shall not
 2 affect the payment of such taxes to the taxing district, and the provisions of
 3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
 5 taxes other than as herein set forth, but no such agreement shall affect the
 6 payment of such taxes to the taxing district.

1 36. (a) Where the entire property of a condemnee is being condemned
 2 and such taxes have been paid, the condemnor shall pay to the condemnee, in
 3 addition to the compensation payable hereunder, an amount of money which
 4 bears the same ratio of the taxes so paid, as the part of the taxable year next
 5 following the date on which possession is taken or title acquired hereunder
 6 (whichever is earlier) bears to the entire taxable year.

7 (b) Where only a part of such property is being condemned, the amount
 8 of money so to be paid by the condemnor shall be a sum which bears the same
 9 ratio of taxes so paid on the part of the property condemned, as the part of
 10 the taxable year next following the date on which possession is taken or title
 11 acquired hereunder (whichever is earlier) bears to the entire taxable year.

1 37. (a) Where the entire property of the condemnee is being condemned
 2 and such taxes have not been paid, the condemnor shall deduct from the
 3 compensation payable hereunder, the proportionate share of such unpaid
 4 taxes upon the entire property, allocable to the period between the first day
 5 of the year in which possession is taken, or title acquired (whichever is
 6 earlier), and the date when such possession is taken or title acquired (which-
 7 ever is earlier). The condemnor shall pay to the taxing district on behalf
 8 of the condemnee, (1) the amount so deducted; and (2) as additional compensa-
 9 tion to the condemnee, the entire balance of such unpaid taxes for the entire
 10 year.

11 (b) Where only a part of such property is being condemned and such
 12 taxes have not been paid, condemnor shall deduct from the compensation
 13 payable hereunder, the proportionate share of such unpaid taxes upon
 14 the entire property allocable to the period between the first day of the year in
 15 which possession is taken or title acquired (whichever is the earlier) and the
 16 date when such possession is taken or title acquired, (whichever is earlier).
 17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)
 18 the amount so deducted; and (2) as additional compensation to the condemnee,
 19 the proportionate share of such unpaid taxes for the balance of the tax year
 20 allocable to the portion of the property taken.

1 38. Any dispute as to the apportionment of such taxes and the payment
 2 thereof, shall be determined by the court in the action in a summary manner,
 3 upon petition by any party to the action, or by the taxing district.

ARTICLE VIII

INTEREST

1 39. Payment of interest. Interest at 6% per annum upon the amount
 2 of compensation determined to be payable hereunder shall be paid by the
 3 condemnor from the date of the commencement of the action until the date
 4 of payment of the compensation; provided, however, that there shall be ex-
 5 cluded from the amount upon which interest shall be calculated, all moneys
 6 deposited pursuant to Article V hereof; and provided, further, that interest
 7 payable hereunder shall be subject to abatement for rents and profits de-
 8 rived from the property by the condemnee during the period for which in-
 9 terest is payable hereunder, and/or for the fair rental value of such prop-
 10 erty or any portion thereof occupied by the condemnee during such period.

1 40. Disputes as to interest. Unless agreed upon by the parties, the
 2 amount of such interest shall be fixed and determined by the court in a sum-
 3 mary manner after final determination of compensation, and shall be added
 4 to the amount of the award or judgment, as the case may be.

ARTICLE IX

MISCELLANEOUS

1 41. Deposit of funds where ownership in dispute. If the condemnee en-
 2 titled to receive the award or judgment upon tender thereof, shall refuse to
 3 receive the same, or shall be out of the State, or under any legal disability;
 4 or in case several condemnees interested in the fund shall not agree as to
 5 the distribution thereof; or in case the property condemned shall be encum-
 6 bered by mortgage, judgment or other liens; or if for any other reason the
 7 condemnor cannot safely pay the award or judgment to any person, the
 8 amount thereof may be deposited with the clerk of the court, to be distributed
 9 to the parties entitled thereto according to law. The procedure for distribut-

ing the funds shall be in accordance with the rules. The fees of the clerk, if any, shall be paid out of the fund.

1 42. Abandonment of proceedings. Any action hereunder may be aban-
2 doned at any time before or within 30 days after the filing of the award of
3 commissioners; or in the event of an appeal from such award, at any time
4 before or within 30 days after the entry of judgment on such appeal; or in
5 the event that a hearing before commissioners shall have been waived, at
6 any time before or within 30 days after judgment has been entered in said
7 action; provided, however, that no such action shall be abandoned after the
8 filing of a declaration of taking pursuant to Article V hereof, or after the
9 vesting of title in any condemnor pursuant hereto; and provided further, that
10 (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor
11 shall pay the expenses of all condemnees who have appeared in the action.

1 43. Method of abandonment. The abandonment shall be effected by
2 filing and serving notice of abandonment in the manner, form and content
3 fixed by the rules.

1 44. Uneconomic remnants. If as a result of a partial taking of property,
2 the property remaining consists of a parcel or parcels of land having little
3 or no economic value, the condemnor, at the request of the condemnee, shall
4 acquire the entire parcel.

ARTICLE X

REPEALER

1 45. All acts or parts of act inconsistent herewith, are repealed as of the
2 effective date hereof; provided, however, that this act shall not affect stat-
3 utes regulating the ascertainment and payment of compensation for property
4 condemned or taken by bodies organized and administered as a result of or
5 under compacts between States.

STATEMENT

FISCAL DATA

This bill designated the "Eminent Domain Act of 1968," would regulate the ascertainment and payment of compensation for property condemned or taken for public use.

This bill, if enacted, will require additional costs on the part of the condemnor over and above that required under the present statute. The exact amount can not be determined, since conditions prevailing concerning the particular property to be taken would determine the amount of the costs that may be involved.

SENATE COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 26
(SECOND OFFICIAL COPY REPRINT)

STATE OF NEW JERSEY

ADOPTED JUNE 10, 1968

Amend page 1, title, lines 2-3, omit "revising and supplementing" insert "repealing".

Amend page 1, title, section 3, after "Statutes" insert "and chapter 14 of the laws of 1942".

Amend page 2, section 2, after line 48, insert a new subparagraph as follows:

"(n) 'Public Utility' means and includes every public utility, as the same are enumerated in R. S. 48:2-13, and every natural gas pipeline utility as defined in P. L. 1952, c. 166 (C. 48:10-2 et seq.) vested with the power of eminent domain and subject to regulation under State or Federal law."

Amend page 2, section 2, line 49, omit "(n)" insert "(o)".

Amend page 3, section 5, line 7, add a sentence as follows:
"Where authority to condemn has been granted by a State or Federal regulatory body having original supervisory jurisdiction over the condemnor, review of such determination shall be by appeal according to law."

Amend page 3, section 6, line 13, omit "fee".

Amend page 3, section 6, line 17, omit "in accordance with the rules" insert "by certified mail".

Amend page 3, section 6, line 19, omit "by the rules" insert "in the written offer, which shall in no case be less than 14 days from the mailing of the offer,".

Amend page 3, section 6, line 21, omit "fee".

Amend page 4, section 10, line 12, after "thereby" insert "but the failure to comply with the provisions of this section shall not otherwise affect such proceedings".

Amend page 5, section 11, line 5, after "terminated" insert "except where such authority has been determined by a State or Federal regulatory body having original jurisdiction with respect thereto".

Amend page 7, section 15, line 2, after "condemnation" insert "nor shall the provisions of sections 17 through 29 of this article be applicable to condemnation of property owned or used by a public utility",

Amend page 7, section 16, line 5B, after "thereto." insert "No tests, soundings or borings shall be made on property in which there exists a pipeline or other underground utility installation except in the presence of a representative designated by the public utility owning or using the same.".

Amend page 10, section 29, lines 1-3, omit and insert:

"29. Fees of clerk of the court. Where the clerk of the court is authorized to charge and deduct statutory fees or commissions by reason of the deposit and disbursement of funds pursuant to this article, such fees and commissions shall be paid by the condemnor."

Amend page 14, section 41, line 1, insert new section 41 as follows:

"41. Possession by Individuals or Private Corporations. Individuals and private corporations vested with the authority of condemnation may, upon the filing of the report of the commissioners and upon payment, to the parties entitled thereto or into court, of the amount awarded as provided in this act, take possession of the land or other property for the purposes for which the same was authorized to be taken.

The report of the commissioners, together with the order or judgment appointing them, or a copy thereof certified by the clerk of the court, and proof of such payment of the amount awarded shall be plenary evidence of the right of the condemnor to have, hold, use, occupy, possess and enjoy the land and other property."

Amend pages 14, 15, sections 41-44, renumber sections 41 through 44 as 42 through 45.

Amend page 15, section 44, after line 4, insert a new section in Article IX, as follows:

"46. Any reference to Title 20 of the Revised Statutes or to any section or sections thereof or any amendment or supplement thereof in any other statute, in effect on the effective date of this act, shall hereafter be given effect as though reference therein were made to this act or the applicable provisions thereof."

Amend page 15, section 45, line 1, omit "45. All acts and parts of acts inconsistent herewith," insert "47. Chapter 1 of Title 20 of the Revised Statutes and P. L. 1942, c. 14".

SECOND SENATE AMENDMENTS TO
ASSEMBLY, No. 26
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED JUNE 20, 1968

Amend pages 11 and 12, section 32, lines 41 through 54, omit lines 41 through 54 in their entirety.

Amend page 12, section 32, line 55, omit "(c)", insert "(b)".

Amend page 12, section 32, line 64, omit "(d)", insert "(c)".

Amend page 12, section 32, line 65, omit "200", insert "100".

Amend page 12, section 32, line 69, omit "(e)", insert "(d)".

Amend page 13, section 33, line 8, omit "; (e) the date of declaration of blight".

Amend page 13, section 33, lines 9 through 17, omit lines 9 through 17 in their entirety.

SENATE, No. 234

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 14, 1966

By Senators CRABIEL, MUSTO, KELLY and STAMLER

Referred to Committee on Highways, Transportation and Public Utilities

AN ACT concerning eminent domain and revising parts of the statutory law.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Do-
2 main Act of 1966."

ARTICLE II

DEFINITIONS

1 2. As used in this act, unless the context otherwise requires, the follow-
2 ing words shall have the meanings ascribed to them in this section:

3 (a) "Condemn" means to take property for a public purpose under
4 the power of eminent domain;

5 (b) "Condemnor" means the entity, public or private, including the
6 State of New Jersey, which is condemning property for a public use under
7 the power of eminent domain;

8 (c) "Condemnee" means the owner of property or an interest therein
9 being condemned;

10 (d) "Property" means land, or any interest in land, and includes (1)
11 any building, structure or other improvement thereon, and any article so
12 affixed or attached to such building, structure or improvement as to be an

13 essential and integral part thereof; (2) any article affixed or attached to
14 such building, structure or improvement in such manner that it cannot be
15 removed without material injury to itself or to the building, structure or
16 improvement; (3) any article so designed, constructed, or specially adapted
17 to the purpose for which such building, structure or improvement is used,
18 (a) as to be an essential accessory or part of such building, structure or
19 improvement; or (b) as to be substantially valueless if removed from such
20 building, structure or improvement;

21 (e) "Court" means the appropriate division or divisions of the Su-
22 perior Court of New Jersey;

23 (f) "Rules" means the applicable rules of court of this State as pro-
24 mulgated from time to time;

25 (g) "Action" means the legal proceeding in which

26 (1) the property is to be condemned or required to be condemned;

27 (2) the right to condemn is to be adjudicated;

28 (3) the amount of compensation to be paid for the condemned
29 property is to be fixed;

30 (4) the persons entitled to such compensation and their interests
31 therein are to be determined, and

32 (5) all other matters incidental thereto or arising therefrom are
33 to be adjudicated.

34 (h) "Compensation" means the just compensation which the con-
35 demnor is adjudged to pay and the condemnee is entitled to receive accord-
36 ing to law;

37 (i) "Expenses of the condemnee" means the reasonable fees and dis-
38 bursements necessarily incurred by the condemnee in the action for legal,
39 engineering and appraisal services;

40 (j) "Award" means the award of compensation by the commissioners
41 herein provided for;

42 (k) "Judgment" means the adjudication by the court of any issue of
43 fact or law, or both in the action. The adjudication of the right to condemn

44 shall be deemed to be a final judgment. All other judgments shall be inter-
 45 locutory or final, as provided by law and the rules;

46 (l) "Recording office" means the respective county recording offices in
 47 which conveyances of real property may be recorded;

48 (m) "Days" means calendar days, exclusive of Sundays and legal
 49 holidays.

ARTICLE III

SEVERABILITY

EFFECT OF ACT

1 3. Severability. If any provision or clause of this act or the application
 2 thereof to any person or circumstance is held to be invalid, such invalidity
 3 shall not affect other provisions or applications of the act, which can be
 4 given effect without the invalid provision or application, and to this end,
 5 the provisions of this act are declared to be severable.

1 4. Effect of act. This act shall apply to all actions instituted after the
 2 effective date of this act, and to all steps taken subsequent thereto in all
 3 actions pending on such effective date; except that judgments theretofore
 4 entered or condemnation awards theretofore made pursuant to existing law
 5 from which no appeals have been taken, shall not be affected by this act.

ARTICLE IV

COURT JURISDICTION; COMMISSIONERS; AND PROCEDURAL MATTERS

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
 2 demnation, and all matters incidental thereto and arising therefrom, including,
 3 but without limiting the generality of the foregoing, jurisdiction to determine
 4 the authority to exercise the power of eminent domain and the necessity
 5 for such exercise; to compel the exercise of such power; to adjudge the
 6 compensation to be paid and the parties entitled thereto and questions of
 7 title to the property involved in the action. Where authority to condemn
 8 has been granted by the Board of Public Utility Commissioners pursuant to
 9 chapter 198 of the laws of 1962 (N. J. S. A. 48:3-17.6 to 17.8) jurisdiction

10 to determine the authority to exercise such power shall be limited to a re-
11 view of such determination by said commissioners according to law.

1 6. Application of act. Whenever any prospective condemnor shall have
2 determined to acquire property pursuant to law, including public property
3 already devoted to public use when such acquisition is permitted by law,
4 but is unable to acquire title thereto or possession thereof by agreement
5 with the prospective condemnee, whether by reason of disagreement con-
6 cerning the compensation to be paid or any other cause, the condemnation
7 of such property, the compensation to be paid therefor, to whom payable,
8 and all matters incidental thereto and arising therefrom shall be in accord-
9 ance with the provisions of this act.

1 7. Condition precedent to action. No action to condemn shall be insti-
2 tuted unless the prospective condemnor is unable to acquire title or posses-
3 sion through bona fide negotiations with the prospective condemnee, which
4 shall include an offer in writing by the prospective condemnor to the pros-
5 pective condemnee holding the record fee title to the property to be con-
6 demned, setting forth the property to be acquired, the compensation offered
7 to be paid and a reasonable disclosure of the manner in which the amount
8 of such offered compensation has been calculated, and such other matters
9 as may be deemed to be relevant to the prospective condemnor. Such offer
10 shall be transmitted to the prospective condemnee. A rejection of said
11 offer or failure to accept the same after a reasonable period to be speci-
12 fied in the offer, shall be deemed to be conclusive proof of the inability
13 of the condemnor to acquire the property or possession thereof through
14 negotiations. When the said holder is unknown, or resides out of the
15 State, or there is reason to believe that negotiations would serve no useful
16 purpose, such negotiations may, with the approval of the court be omitted.
17 Neither the offer nor its nonacceptance, nor any negotiations relating thereto,
18 shall be evidential in the determination of compensation.

1 8. (a) Nature of action. The court may proceed in a summary manner
2 pursuant to Rule 4-85, or otherwise as the court shall direct.

3 (b) Rules of procedure. The action shall be governed by the rules.

4 (c) Multiple proceedings. The condemnation of any number of parcels
5 of property lying wholly in the same county, and the condemnation of any
6 number of parcels of the same condemnee lying in adjacent counties may
7 be joined in one action; provided however, that a separate award, judg-
8 ment and appeal shall be made, entered and taken with respect to each
9 parcel.

10 (d) Amendments and parties. Amended and supplemental pleadings,
11 descriptions, surveys, plans, declarations of taking and the like, may be per-
12 mitted and required, and parties added or dismissed, in accordance with the
13 rules.

1 9. Commencement of action. The action shall be instituted by filing of
2 a verified complaint conforming to the rules. The complaint shall include
3 a prayer for judgment that condemnor is vested with and has duly exercised
4 its authority to acquire the property being condemned, and for a judgment
5 adjudicating the compensation required to be paid.

1 10. Process. Within 10 days after the filing of the complaint, condem-
2 nor shall issue, and with due diligence, cause process to be served in ac-
3 cordance with the rules. Process served in accordance with the rules shall
4 be effective to bind all condemnees so served.

1 11. Lis pendens. Within 10 days after the filing of the complaint, the
2 condemnor shall cause to be filed in the recording office a notice of the
3 pendency of the action in accordance with the rules. Such notice shall in-
4 clude the title of the action; the docket number thereof; the date of the
5 filing of the complaint; a description of the property being condemned as
6 set forth in the complaint; the names and addresses of all condemnees known
7 to the condemnor and the general nature of their alleged interests in the
8 property. The lis pendens shall be indexed by the recording officer, listing
9 the condemnees as grantors and the condemnor as grantee. Such notice
10 from the time it is filed shall be constructive notice to persons acquiring
11 an interest in or encumbrance upon the property from and against any con-

12 demnee named in the notice. In default of such filing, persons acquiring an
13 interest in or lien upon the property without actual notice of the action,
14 shall not be bound thereby.

1 12. Denial of authority to condemn. Unless the authority of the con-
2 demnor to condemn is denied in the manner provided for by the rules, such
3 a defense shall be deemed to be waived. When the authority to condemn
4 is denied, the court may stay all further steps in the action until that issue
5 has been finally determined.

1 13. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in
3 the action, condemnor and condemnee may waive the appointment of and
4 hearing before commissioners and, in such event, the action shall proceed
5 to trial before the court as in other actions at law.

6 (b) Appointment and qualification of commissioners. Upon a waiver
7 of the defense of want of authority or a determination that the condemnor
8 is authorized to and has duly exercised its power of eminent domain, the
9 court shall appoint 3 commissioners to determine the compensation to be
10 paid for the property. Such commissioners shall be residents of the county
11 in which any part of the property being condemned is located. One of such
12 commissioners shall be an attorney-at-law, admitted to practice in this State,
13 who shall preside at all hearings and rule on all legal questions, subject
14 to a review by the commissioners. The commissioners shall take and sub-
15 scribe an oath faithfully and impartially to perform their duties, and to
16 make just award and a true report to the best of their skill and under-
17 standing, which oath shall be filed with their report. Should a commissioner
18 die, become disqualified, or unable to act, or neglect or refuse to act, the
19 remaining 2 commissioners shall perform the duties of their office with the
20 same authority as if all commissioners were acting. The court may fill any
21 vacancy in such office, and for cause, may revoke any appointment and ap-
22 point a successor.

23 (c) Hearings—subpoena. The commissioners shall hold hearings upon
24 such notice as shall be required by the rules, at which the parties and their
25 witnesses shall be heard, under oath, administered by any commissioner.
26 The conduct of the hearings and the compulsory attendance of witnesses
27 and production of records thereat, shall be governed by the rules. At the
28 request of any party, a stenographic record of the hearing shall be made.
29 A majority of the commissioners shall attend all hearings.

30 At the hearing, the condemnor shall offer proof of the nature and ex-
31 tent of the taking, and its estimate of the compensation to be paid.

32 (d) Inspection of property. Commissioners may inspect the property
33 being condemned, and shall so inspect when requested so to do. Such in-
34 spection may be in the absence of the parties, but any party shall have the
35 right to attend at such inspection. This right of inspection or duty of in-
36 spection and of attendance shall exist notwithstanding that the structures
37 on the land may have been demolished and the site altered.

38 (e) Award of commissioners. Within 4 months next following their
39 appointment, or within any extended period fixed by the court on notice, or
40 by stipulation of the parties filed in the action, the commissioners, or a
41 majority of them, shall make, file with the clerk and record in the recording
42 office an award in form according to the rules, setting forth the parties in
43 interest who have appeared at the hearings, and fixing and determining the
44 compensation to be paid by the condemnor. The requirement respecting the
45 time of filing of such report shall be directory and not mandatory, and a
46 failure to make and file the same within the time specified, shall not in-
47 validate the award or oust the commissioners of jurisdiction to complete
48 the performance of their duties. Within 30 days after the filing thereof, the
49 court may authorize or direct the commissioners to amend, supplement,
50 modify, or correct their award.

51 (f) Judgment. Any award as to which no appeal is taken in accord-
52 ance with the rules, shall become final as of course and shall constitute a
53 final judgment. If not paid within 30 days after such judgment, payment

54 thereof may be enforced according to law. Until paid, the judgment shall
55 constitute a lien against the property taken.

56 (g) Commissioners' fees and expenses. The court, upon application of
57 the commissioners or of any party shall fix reasonable fees, costs and ex-
58 penses of the commissioners and of any person performing any duty im-
59 posed by law or by the court in the action, all of which shall be paid by the
60 condemnor.

1 14. (a) Appeal. Any party in interest duly served with process who has
2 appeared at the hearings of the commissioners, either personally or by at-
3 torney, may appeal from the award of the commissioners, whether or not an
4 appeal has or may be given by the statute conferring the power of eminent
5 domain. Such appeal shall be taken to the division of the court and within
6 the time and in the manner provided by the rules. The necessary parties to
7 the appeal shall be only those duly served with process who appeared at the
8 commissioners' hearings either personally or by an attorney. Other parties
9 may be included by the parties or admitted by the court in accordance with
10 the rules.

11 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo
12 as in other actions at law without a jury, unless a jury be demanded by any
13 party. The award of the commissioners shall not be admissible in evidence.

14 A valuation expert who shall not have testified at the hearing before the
15 commissioners shall not be permitted to testify at the trial de novo, unless,
16 within such time and in such manner as shall be prescribed by the rules,
17 the party offering such testimony shall have given notice in accordance with
18 the rules to the other parties to the appeal of the name and address of such
19 expert and his opinion of the amount of compensation payable by reason of
20 the condemnation.

1 15. Agreement as to compensation. At any time during the pendency
2 of the action, by instrument filed in the action, the condemnor and condemnee
3 may agree upon the nature and extent of the title to be acquired by con-
4 demnor, and the date of vesting thereof, and upon all or any part of any

5 item of compensation to be paid and then proceed to have those parts or
 6 items not agreed upon fixed and determined as herein provided. Condemnor
 7 may make payment of any part or item thereof agreed upon, and the con-
 8 demnee may accept such payment without prejudice to its right to proceed
 9 to fix and determine compensation for the parts and items remaining.

ARTICLE V

POSSESSION OF PROPERTY IN ADVANCE

OF DETERMINATION OF COMPENSATION

1 16. Exclusion. The provisions of this article pertaining to preliminary
 2 entry and possession of property pursuant to a declaration of taking shall
 3 not apply to individuals or private corporations having the power of
 4 eminent domain, nor to property owned or used by a public utility, as de-
 5 fined in section 48:2-13 of the Revised Statutes.

1 17. Preliminary entry. Prior to the commencement of any action, a
 2 prospective condemnor and its agents and servants, during reasonable
 3 business hours may, upon reasonable notice to the occupant, enter upon any
 4 property which it has authority to condemn for the purpose of making
 5 studies, surveys, tests, soundings, borings and appraisals. If an action to
 6 condemn is not commenced within 1 year after such preliminary entry, any
 7 damages sustained as a result thereof shall be paid by the prospective con-
 8 demnor to the person sustaining such damage. The amount of such dam-
 9 ages, if any, and the person entitled thereto shall be determined by the court
 10 in a summary manner pursuant to the rules.

1 18. Declaration of taking and possession of property. At any time after
 2 the institution of an action and service of process, the condemnor may file in
 3 the action and shall record in the recording office, a declaration of taking,
 4 duly executed by the condemnor, conforming to the rules and including the
 5 following:

6 (a) a statement that possession of all or some part of the property
 7 being condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
9 which the action and declaration of taking is authorized, including the date
10 when such authorization was exercised and the place where the record
11 thereof may be examined;

12 (c) a description and plot of the property being condemned and, if not
13 the entire property, the portion thereof of which possession is being taken,
14 sufficient for identification thereof, specifying the municipality in which the
15 same is located; the street number of the property, if any; the lot and block
16 number of the property as designated upon the current assessment map, if
17 any. In the case of a partial taking, the information above specified shall
18 include the entire property, and the portion thereof being taken;

19 (d) the names and addresses of all condemnees known to the condem-
20 nor after reasonable investigation, and the nature of their interests in the
21 property;

22 (e) a statement of the estate or interest therein being condemned;

23 (f) a statement of the sum of money estimated by the condemnor to
24 be just compensation for the taking; which sum shall not be less than the
25 amount of the offer in writing provided for herein;

26 (g) Any other matter required by the rules.

1 19. Deposit of estimated compensation. Simultaneously with the filing
2 of the declaration of taking, the condemnor shall deposit the amount of
3 such estimated compensation either with the clerk of the court, or in a
4 special interest-bearing account with a bank or trust company authorized
5 to do business in New Jersey, in the name of the condemnor, in trust for
6 the benefit of the condemnee entitled thereto. The amount so deposited shall
7 be not less than the amount offered pursuant to this act; and if an award
8 has been made by commissioners hereunder, or a judgment determining
9 compensation has been entered at the time of the filing of such declaration,
10 the amount so deposited shall be not less than the amount of such award or
11 judgment.

12 Upon application by any party in interest, and upon it being deter-
13 mined that the financial responsibility of the condemnor to satisfy any
14 judgment that may be entered in the action is uncertain, the court may re-
15 quire such condemnor to maintain an additional trust fund with a bank or
16 trust company authorized to do business in New Jersey, in an amount equal
17 to $\frac{1}{2}$ of the estimated compensation fund so deposited. Said trust fund
18 shall consist of cash, or securities which are legal investments for trust funds
19 in New Jersey.

20 The fund originally deposited and the additional fund, if any, shall
21 secure the payment of compensation determined to be payable and may be
22 applied to such payment. After payment or satisfaction of such compensa-
23 tion, condemnor, with approval of the court, may withdraw any surplus
24 cash and securities.

1 20. Possession of property.

2 (a) A copy of the declaration of taking and notice of the filing thereof
3 and of making the aforesaid deposit shall be served upon the condemnee
4 and all occupants of the property in accordance with the rules, and proof
5 of such service shall be filed in the action. Thereupon, the condemnor shall
6 be entitled to the immediate and exclusive possession of the property de-
7 scribed in the declaration of taking.

8 (b) Condemnor shall also be entitled to such possession upon payment
9 to the parties entitled thereto, or upon deposit pursuant to paragraph 49
10 hereof, of the amount of any award or judgment. Such deposit may be
11 withdrawn without prejudice as provided in paragraphs 22 and 23 hereof.

12 (c) Possession by individuals or private corporations. Individuals and
13 private corporations vested with the power of condemnation may, upon the
14 filing of the award of commissioners and upon payment to the parties en-
15 titled thereto or into court pursuant to paragraph 49 hereof, take im-
16 mediate and exclusive possession of the property for the purposes for
17 which the same were authorized to be condemned. The award of the com-
18 missioners together with the order or judgment appointing them, or a copy

19 thereof certified by the clerk of the court, and proof of such payment and
20 deposit shall be plenary evidence of the right of the condemnor to such
21 possession.

1 21. Order for possession and removal of property. The court, upon
2 notice, may fix the time when and the terms upon which possession of said
3 property shall be delivered, and personal property thereon removed, and
4 may grant appropriate writs directed to the sheriff of the county or other
5 officer.

1 22. Withdrawal of funds. Upon application of any condemnee, or any
2 other party in interest, and on notice to all parties to the action, including
3 the condemnor, the court shall direct that the estimated compensation fund
4 on deposit, or any part thereof, be paid to the person or persons entitled
5 thereto, on account of the compensation to which he or they may become
6 entitled in the action, but if the judgment fixing such compensation shall be
7 less than the amount paid pursuant hereto, the person to whom such pay-
8 ment has been made shall repay the same, together with interest at 6%
9 per annum from the date of payment to such person, and the court, after
10 a summary hearing, may enter judgment therefor; and if the judgment
11 fixing such compensation shall be more than the amount deposited, condem-
12 nor shall pay the excess to the condemnee entitled thereto, with interest at
13 6% from the date of the deposit, and the court, after a summary hearing,
14 may enter judgment therefor against the condemnor. The court, upon notice
15 to all parties, shall enter appropriate orders distributing any balance on
16 deposit.

1 23. Deposit and withdrawal of funds not prejudicial. Neither the making
2 of the deposit nor any withdrawal thereof, shall affect or prejudice the
3 rights of either the condemnor or the condemnee in the determination of
4 compensation. The amount of such deposit and any withdrawal thereof,
5 shall not be evidential in such determination.

1 24. Fees of clerk of the court. The statutory fees and compensation of
2 the clerk of the court, payable by reason of the deposit and disbursement
3 of funds pursuant hereto, shall be paid by the condemnor.

1 25. Compelling condemnor to file declaration of taking. If within 3
2 months after the commencement of an action the condemnor shall not have
3 filed a declaration of taking, the court, upon application of any condemnee,
4 and on notice to all parties in interest, may require the condemnor, at its
5 election, to either file a declaration of taking and make the deposit, or aban-
6 don the proceedings, as herein provided. The court shall fix the time within
7 which the condemnor shall make such election.

1 26. Appeal not to affect right to possession. The pendency of an appeal
2 with respect to any issue other than the authority to condemn shall not
3 affect the right to possession herein provided for.

1 27. If, after the taking of possession hereunder, judgment shall be entered
2 dismissing the action, the right to possession shall be restored to the con-
3 demnee. In such event, condemnor shall pay the damages and the expenses
4 of the condemnee sustained as a result of the action and the taking of
5 possession; to be fixed by the court in a summary proceeding upon notice.

ARTICLE VI

VESTING OF TITLE

1 28. Nature of title acquired by condemnation. The title to the property
2 condemned and acquired by the condemnor shall be a title in fee simple, free
3 and discharged of any right, title, interest and liens of the condemnee, and
4 such right, title, interest and liens shall attach to the compensation deter-
5 mined to be payable, and be satisfied and paid to the same extent and order
6 of priority as existed at the time of such vesting of title; provided, however,
7 that if the complaint or any amendment thereof, or the deed of conveyance
8 shall specify a lesser title, the lesser title so specified shall be the title
9 acquired.

1 29. Date of vesting of title. Title to the property condemned shall vest
2 in the condemnor as of the earliest date of the happening of any of the fol-
3 lowing events:

4 (a) Recording in the recording office, a conveyance by the condemnee to
5 the condemnor;

6 (b) The date fixed in any agreement entered into and filed pursuant to
7 paragraph 15 hereof;

8 (c) Upon filing and service of the complaint and declaration of taking
9 and making the deposit and filing proof thereof, as herein required;

10 (d) Paying and satisfying of record the award or judgment fixing the
11 compensation payable.

1 30. Appeal not to affect vesting of title. The pendency of an appeal with
2 respect to any issue other than the authority to condemn shall not affect the
3 vesting of title in the condemnor.

1 31. Revesting of title. If, after the vesting of title, judgment shall be
2 entered dismissing the action, title to the property shall revert in condemnee
3 subject to the same right, title, interest and liens existing as of the date of
4 vesting of title in condemnor. In such event, condemnor shall pay any dam-
5 ages sustained by condemnee and the expenses of the condemnee as a result
6 of the action to be fixed by the court in a summary proceeding upon notice.

ARTICLE VII

JUST COMPENSATION

1 32. Just compensation. The condemnee shall be paid just compensation
2 for the property condemned, damages, if any, to any remaining property and
3 such additional compensation as may be provided for herein or by law.

1 33. Effect of imminence of condemnation. There shall be excluded from
2 the valuation of property being condemned, any increase or decrease in
3 value substantially due to the general knowledge of the imminence of con-
4 demnation, other than a decrease due to physical deterioration of the prop-
5 erty within the reasonable control of the condemnee.

1 34. Date as of which compensation shall be determined. Compensation
2 shall be determined as of the date of the earliest of the following events:

3 (a) the date of the execution of an agreement of purchase between the
4 condemnor or condemnee;

5 (b) the date of the commencement of the action;

6 (c) the date possession of the property is taken by the condemnee in
7 whole or in part;

8 (d) the date on which an act concerning acquisition is taken by the
9 condemnor which substantially affects the use, occupation and enjoyment of
10 the property by the condemnee.

11 Where property is condemned or about to be condemned pursuant to
12 chapter 19, of the laws of 1938 (N. J. S. A. 55:14A-1 et seq.), or chapter
13 187 of the laws of 1949 (N. J. S. A. 40:55-21.1 et seq.), or both, as amended
14 or supplemented, it shall be prima facie presumed that a declaration that the
15 property is located in a "slum area," or the declaration of "blight," or
16 both, pursuant to the provisions of either or both of said statutes, substan-
17 tially affects the use, occupation and enjoyment of the property, and the
18 burden of establishing to the contrary shall be upon the condemnor.

1 35. Uneconomic remnants. If as a result of a partial taking, the remaining
2 property shall consist of a parcel or parcels of land having little or no eco-
3 nomic value, the condemnor may, and at the request of condemnee shall
4 acquire the entire parcel. Any dispute arising hereunder shall be determined
5 by the court in accordance with the rules.

1 36. Condemnor's election not to acquire machinery, fixtures and equip-
2 ment. If a condemnor does not require machinery, equipment or fixtures
3 constituting a part of the property being condemned, it shall so notify the
4 condemnee. Within 60 days thereafter, or within such extended time as may
5 be fixed by the condemnor or the court upon notice, the condemnee may elect,
6 in writing to remove such machinery, equipment and fixtures in whole or in
7 part. If the condemnee so elects, the compensation shall be reduced by the
8 fair market value of such machinery, equipment and fixtures so elected to
9 be removed, as if severed from the property. The notices and election herein
10 provided for shall be in accordance with the rules.

1 37. Damages and benefits to remaining lands. In determining damages
2 to property remaining after a partial taking, consideration shall be given to
3 the project to which the property being condemned shall be devoted, and the
4 damages and benefits specifically affecting such remaining property due to
5 its proximity to the project for which the property is being condemned.

6 General benefits shall not be considered in determining the after value of
 7 the remaining property. Special benefits to remaining property shall not
 8 exceed the compensation for damages to remaining property.

ARTICLE VIII

RELOCATION AND REMOVAL EXPENSES

1 38. When incurred because of removal from property being condemned,
 2 relocation payments shall be made to eligible persons as herein defined,
 3 for their reasonable, necessary and actual moving expenses to a location not
 4 in excess of 25 miles from the property condemned, but not in excess of
 5 \$250.00 in the case of an individual or family, and not in excess of \$15,000.00
 6 in the case of a business entity, (including operation of a farm or a project
 7 of a nonprofit organization). By agreement with such eligible person, con-
 8 demnor may pay not in excess of \$150.00 to such person or family, and
 9 \$1,000.00 to such business entity, in lieu of such actual expenses.

1 39. As used in this section:

2 "Eligible person" means an individual, family, or business entity, who
 3 has occupied, either as owner or tenant, the property acquired, or to be
 4 acquired within at least 180 days prior to the date when condemnor shall
 5 have given written notice to the owner of record and such tenants that the
 6 property is to be acquired;

7 "Moving expenses" shall include all costs of reinstallation of property
 8 moved and damages thereto caused by or resulting from such removal;

9 "Family" means 2 or more persons living together in the same dwelling
 10 unit;

11 "Business entity" means any lawful activity conducted primarily (1)
 12 for the purchase and resale of products, commodities, or other property;
 13 (2) for the manufacturing, processing or marketing of any such property;
 14 (3) for the sale of service to the public, which entity vacates its place of
 15 business after the effective date hereof as a result of the acquisition, or
 16 imminence of acquisition of such property in whole or in part by the con-
 17 demnor;

18 "Operation of a farm" means any activity conducted solely or pri-
 19 marily for the production of one or more agricultural products, products or
 20 commodities for sale or home use, and whose operator customarily sells
 21 such products or commodities in sufficient quantities to be capable of con-
 22 tributing materially to the support of the operator thereof, where the oper-
 23 ator vacates such property after the effective date hereof as a result of the
 24 acquisition or imminence of acquisition of such property, in whole or in part,
 25 by the condemnor.

1 40. Nothing herein contained shall be construed to limit the amount of
 2 compensation which a condemnor may pay for relocation expenses in cases
 3 where, under applicable Federal law or regulations, such compensation may
 4 be paid wholly or partly out of Federal funds, or will be wholly or partly
 5 reimbursed to condemnor out of Federal funds.

1 41. The payment of moving and relocation expenses provided for in
 2 this Article VIII shall be in addition to the payment of just compensation in
 3 this act otherwise provided for. Condemnor may make such payment in
 4 whole or in part in advance of actual removal or relocation. Any dispute
 5 as to amount or person or persons entitled thereto shall be determined in
 6 accordance with the rules.

ARTICLE IX

TAXES

1 42. The taxes which are the subject-matter of this article are the real
 2 property taxes duly assessed by the taxing district in which the property
 3 being condemned is located, for the tax year during which possession thereof
 4 is taken or title thereto is acquired pursuant to this act, whichever is the
 5 earlier, and are hereafter referred to in this article as "such taxes."

1 43. (a) The condemnation of property shall not affect the payment of
 2 such taxes to the taxing district, and the provisions of this article shall be
 3 liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
 5 taxes other than as herein set forth, but no such agreement shall affect the
 6 payment of such taxes to the taxing district.

1 44. (a) Where the entire property of a condemnee is being condemned
2 and such taxes have been paid, the condemnor shall pay to the condemnee,
3 in addition to the compensation payable hereunder, an amount of money
4 which bears the same ratio of the taxes so paid, as the part of the taxable
5 year next following the date on which possession is taken or title acquired
6 hereunder (whichever is earlier) bears to the entire taxable year.

7 (b) Where only a part of such property is being condemned, the amount
8 of money so to be paid by the condemnor shall be a sum which bears the
9 same ratio of taxes so paid on the part of the property condemned, as the
10 part of the taxable year next following the date on which possession is taken or
11 title acquired hereunder (whichever is earlier) bears to the entire taxable
12 year.

1 45. (a) Where the entire property of the condemnee is being condemned
2 and such taxes have not been paid, the condemnor shall deduct from the com-
3 pensation payable hereunder, the proportionate share of such unpaid taxes
4 upon the entire property, allocable to the period between the first day of the
5 year in which possession is taken, or title acquired (whichever is earlier),
6 and the date when such possession is taken or title acquired (whichever is
7 earlier). The condemnor shall pay to the taxing district on behalf of the
8 condemnee, (1) the amount so deducted; and (2) as additional compensation
9 to the condemnee, the entire balance of such unpaid taxes for the entire
10 year.

11 (b) Where only a part of such property is being condemned and such
12 taxes have not been paid, condemnor shall deduct from the compensation
13 payable hereunder, the proportionate share of such unpaid taxes upon the
14 entire property allocable to the period between the first day of the year in
15 which possession is taken or title acquired (whichever is the earlier) and the
16 date when such possession is taken or title acquired (whichever is earlier).
17 The condemnor shall pay to the taxing district on behalf of the condemnee,
18 (1) the amount so deducted; and (2) as additional compensation to the con-
19 demnee, the proportionate share of such unpaid taxes for the balance of the
20 tax year allocable to the portion of the property taken.

1 46. Any dispute as to the apportionment of such taxes and the payment
2 thereof, shall be determined by the court in accordance with the rules.

ARTICLE X

INTEREST

1 47. Interest at 6% per annum upon the amount of compensation de-
2 termined to be payable hereunder shall be paid by the condemnor from the
3 date of the commencement of the action until the date of payment of com-
4 pensation; provided, that there shall be excluded from the sum upon which
5 interest is calculated, all moneys deposited pursuant to this act; and pro-
6 vided, further, that the interest payable hereunder shall be subject to abate-
7 ment for rents and income actually received from the property by the con-
8 demnee during the period for which interest is payable hereunder; and for
9 the fair rental value of such property or any portion thereof occupied by the
10 condemnee during such period.

1 48. Disputes as to interest. The amount of any interest in dispute shall
2 be fixed and determined by the court in accordance with the rules.

ARTICLE XI

MISCELLANEOUS

1 49. Deposit of funds where ownership in dispute. If the condemnee
2 entitled to receive payment of the award or judgment upon tender of the
3 amount thereof, shall refuse to receive the same, or shall be out of the
4 State, or under any legal disability; or in case several condemnees in-
5 terested in the fund shall not agree as to the distribution thereof; or in
6 case the property condemned shall be encumbered by mortgage, judgment
7 or other lien; or if for any other reason the condemnor cannot safely pay
8 the amount of the award or judgment to any person, the amount thereof
9 may be deposited with the clerk of the court, to be distributed to the parties en-
10 titled thereto according to law. The procedure for distributing the funds
11 shall be in accordance with the rules. The fees of the clerk, if any, shall be
12 paid out of the fund.

1 50. (a) Abandonment of proceedings. Any action hereunder may be
2 abandoned at any time before or within 30 days after the filing of the award
3 of commissioners; or in the event of an appeal from such award, at any
4 time before or within 30 days after entry of judgment on such appeal; or
5 in the event that a hearing before commissioners shall have been waived,
6 at any time before or within 30 days after judgment has been entered in
7 said action; but no such action shall be abandoned after the filing of a
8 declaration of taking pursuant to this act, or after the vesting of title in
9 any condemnor pursuant hereto; provided, that (a) a discharge of the notice
10 of lis pendens is filed, and (b) the condemnor shall pay the expenses of all
11 condemnees who have appeared in the action.

12 (b) Method of abandonment. The abandonment shall be effected by
13 filing and serving notice of abandonment in accordance with the rules.

1 51. Indexing of instruments required to be recorded in the recording
2 office. All instruments herein required to be recorded in the recording office
3 shall be indexed by the recording officer in the names of condemnees as
4 grantors and in the names of condemnors as grantees.

ARTICLE XII

REPEALER

1 52. The following sections, chapters and acts, together with all amend-
2 ments and supplements thereto, are hereby repealed:

3 Revised Statutes Sections 20:1-1; 20:1-2; 20:1-4; 20:1-6; 20:1-9 to
4 20:1-13 inclusive; 20:1-15; 20:1-16; 20:1-18; 20:1-20; 20:1-23 to 20:1-26 in-
5 clusive; 20:1-28 to 20:1-30 inclusive; 20:1-33; and laws of 1942, chapter 14.

ARTICLE XIII

EFFECTIVE DATE

1 53. This act shall take effect immediately but shall be inoperative dur-
2 ing the 60 days next following its effective date.

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 388

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1969

By Assemblymen GIMSON, LITTELL, DICKEY, W. L. SMITH,
HEILMANN and IRWIN

Referred to Committee on Revision and Amendment of Laws

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public purposes and ***[revising and supplementing]*** **repealing** chapter 1 of Title 20 of the Revised Statutes **and chapter 14 of the laws of 1942.**

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 1969."

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public purpose
8 under the power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public purpose under the power of eminent domain;

11 (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any
13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof; (2) any article affixed or attached
15 to such property in such manner that it cannot be removed without material

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted
and is intended to be omitted in the law.

16 injury to itself or to the property; (3) any article so designed, constructed,
 17 or specially adapted to the purpose for which such property is used that (a)
 18 it is an essential accessory or part of such property; (b) it is not capable
 19 of use elsewhere; and (c) would lose substantially all its value if removed
 20 from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable rules governing the courts of the State
 23 of New Jersey as promulgated from time to time by the Supreme Court of
 24 New Jersey;

24A (g) "Action" means the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation is
 27 being fixed;

28 (3) the persons entitled to such compensation and their interests
 29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
 31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnor
 33 is required to pay and the condemnee is entitled to receive according to
 34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commis-
 36 sioners provided for herein;

37 (j) "Expenses of condemnee" means the reasonable fees and expenses
 38 necessarily incurred by condemnee in the action, for attorney, engineering
 39 and appraisal services;

40 (k) "Judgment" means the adjudication by the court of any issue of fact
 41 or law, or both, arising under this act. The adjudication of the right to con-
 42 demn shall be a final judgment. All other judgments shall be interlocutory
 43 or final, according to law, or as may be prescribed by the rules;

44 (l) "Recording office" means the county office of each county in which
 45 the property being condemned, or any part thereof, is located, in which office
 46 conveyances of real property may be recorded;

47 (m) "Days" means calendar days, calculated in accordance with the
 48 rules of court;

49 **(n) "Public utility" means and includes every public utility, as the same*
 50 *are enumerated in Revised Statutes 48:2-13, and every natural gas pipeline*
 51 *utility as defined in P. L. 1952, chapter 166 (C. 48:10-2 et seq.) vested with*
 52 *the power of eminent domain and subject to regulation under State or Federal*
 53 *law.**

54 ***[(n)]* *(o)*** Words used in the singular shall include the plural and vice
 55 versa. Words used in the neuter gender shall include masculine and femi-
 56 nine gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
2 thereof to any person or circumstance is held to be invalid, such invalidity
3 shall not affect other provisions or applications of the act, which can be given
4 effect without the invalid provision or application, and to this end, the provi-
5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect 60 days next following the
2 approval thereof, and shall apply to all actions instituted thereafter, and to
3 all proceedings taken subsequent thereto in all actions pending on such effec-
4 tive date; except that judgments theretofore entered or awards theretofore
5 made pursuant to law from which no appeal is pending on such effective
6 date, shall not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
2 demnation, and all matters incidental thereto and arising therefrom, includ-
3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
4 mine the authority to exercise the power of eminent domain; to compel the
5 exercise of such power; to fix and determine the compensation to be paid and
6 the parties entitled thereto, and to determine title to all property affected
7 by the action. **Where authority to condemn has been granted by a State or*
8 *Federal regulatory body having original supervisory jurisdiction over the*
9 *condemnor, review of such determination shall be by appeal according to*
10 *law.**

1 6. Application of act. Whenever any condemnor shall have determined
2 to acquire property pursuant to law, including public property already de-
3 voted to public purpose, but cannot acquire title thereto or possession thereof
4 by agreement with a prospective condemnee, whether by reason of disagree-
5 ment concerning the compensation to be paid or for any other cause, the con-
6 demnation of such property and the compensation to be paid therefor, and to
7 whom payable, and all matters incidental thereto and arising therefrom shall
8 be governed, ascertained and paid by and in the manner provided by this act;
9 provided, however, that no action to condemn shall be instituted unless
10 the condemnor is unable to acquire such title or possession through bona
11 fide negotiations with the prospective condemnee, which negotiations shall in-
12 clude an offer in writing by the condemnor to the prospective condemnee hold-
13 ing the ***[fee]*** title of record to the property being condemned, setting forth
14 the property and interest therein to be acquired, the compensation offered to be
15 paid and a reasonable disclosure of the manner in which the amount of such
16 offered compensation has been calculated, and such other matters as may be

17 required by the rules. Such offer shall be served ***[in accordance with the**
 18 **rules]*** **by certified mail.** A rejection of said offer or failure to accept the
 19 same within the period fixed ***[by the rules]*** **in the written offer, which shall*
 20 *in no case be less than 14 days from the mailing of the offer,** shall be conclu-
 21 sive proof of the inability of the condemnor to acquire the property or pos-
 22 session thereof through negotiations. When the holder of the ***[fee]*** title is
 23 unknown, resides out of the State, or for other good cause, the court may dis-
 24 pense with the necessity of such negotiations. Neither the offer nor the re-
 25 fusal thereof shall be evidential in the determination of compensation.

1 7. (a) Nature of action. The court may proceed in a summary manner
 2 pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New Jersey Stat-
 3 utes, or otherwise.

4 (b) Rules of procedure. The procedure governing the action shall be in
 5 accordance with the rules.

6 (c) Multiple proceedings. The condemnation of any number of parcels
 7 of property lying wholly within the same county, may be joined in one action;
 8 provided that a separate award, judgment and appeal shall be made, entered
 9 and taken with respect to each parcel.

10 (d) Amendments. Amended and supplemental pleadings, descriptions,
 11 surveys, plans, declarations of taking and the like, may be permitted and
 12 parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
 2 verified complaint in form and content specified by the rules and shall demand
 3 judgment that condemnor is duly vested with and has duly exercised its au-
 4 thority to acquire the property being condemned, and for an order appoint-
 5 ing commissioners to fix the compensation required to be paid.

1 9. Process. Within 10 days after the filing of the complaint, **the** con-
 2 demnor shall issue, and with due diligence, cause process to be served or pub-
 3 lished in accordance with the rules. Notice given and process served or
 4 published in accordance with the rules shall be effective to bind all condemnees.

1 10. Lis pendens. Within 10 days after the filing of the complaint, **the** con-
 2 demnor shall cause to be filed in the recording office, a notice of the pendency
 3 of the action, in form and content specified by the rules. Such notice shall in-
 4 clude the title of the action; the docket number thereof, if known; the date
 5 of the commencement of the action, a description of the property and the
 6 interests therein being condemned, as set forth in the complaint; and the
 7 names and addresses of all condemnees known to the condemnor and the
 8 nature of their alleged interests in said property. The lis pendens shall be
 9 indexed by the recording official, listing the condemnees as grantors and the
 10 condemnor as grantee. In default of such record, persons acquiring an in-
 11 terest in or lien upon the property without actual notice of the action, shall

12 not be bound thereby **but the failure to comply with the provisions of this*
13 *section shall not otherwise affect such proceedings.**

1 11. Denial of authority to condemn. Failure to deny the authority of the
2 condemnor to condemn in the manner provided for by the rules, shall consti-
3 tute a waiver of such defense. When the authority to condemn is denied, all
4 further steps in the action shall be stayed until that issue has been finally de-
5 termined **except where such authority has been determined by a State or Fed-*
6 *eral regulatory body having original jurisdiction with respect thereto.**

1 12. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in the
3 cause, the condemnor and all condemnees may waive the appointment of com-
4 missioners and hearings before them hereafter referred to, and in such event,
5 the action shall proceed to trial before the court as in other actions at law.

6 (b) Appointment and qualification of commissioners. Upon determina-
7 tion that the condemnor is authorized to and has duly exercised its power of
8 eminent domain, the court shall appoint 3 commissioners to determine the
9 compensation to be paid by reason of the exercise of such power. Such com-
10 missioners shall be residents of the county in which any part of the property
11 being condemned is located or, in the case of the commissioner who must be
12 an attorney, be actively engaged in the practice of law in the county. One of
13 such commissioners shall be an attorney, admitted to practice in this State
14 for at least 10 years, who shall preside at all hearings and rule on all ques-
15 tions of evidence and procedure, subject to a review by a majority of the com-
16 missioners. The commissioners shall take and subscribe an oath faithfully
17 and impartially to perform their duties, and to make a true award to the best
18 of their skills and understanding, which oath shall be filed with their award.
19 Should a commissioner die, become disqualified, unable, neglect or refuse to
20 act, the remaining 2 commissioners shall perform the duties of office with the
21 same authority as if all commissioners were acting. The court may fill any
21A vacancy in office, and for cause, may vacate any appointment and appoint a
21B successor in office.

22 (c) Hearings—subpoena. The commissioners shall hold hearings upon
23 notice required by the rules, at which the parties and their witnesses may
24 be heard, under oath, administered by any commissioner. The conduct of
25 the hearings and the compulsory attendance of witnesses and production of
26 records thereat, shall be governed by the rules. At the request of any party,
27 a stenographic record of the hearing shall be maintained. A majority of
28 commissioners shall be in attendance at all hearings.

29 At the hearing, the condemnor shall offer proof of the nature and extent
30 of the taking, and its opinion of the compensation payable by reason thereof.

31 (d) Inspection of property. Commissioners may inspect the property

32 being condemned, and shall so inspect when requested by any party. Such
33 inspection may be in the absence of the parties, unless attendance at inspec-
34 tion is requested by the parties, or any of them. This right of inspection shall
35 exist notwithstanding that the structures on the property may have been
36 demolished and the site altered.

37 (e) Award of commissioners. Within 4 months next following their ap-
38 pointment, or within any extended period fixed by the court on notice, or by stip-
39 ulation of all the parties filed in the action, the commissioners, or a majority
40 of them, shall make and file in form and content fixed by the rules, an award
41 fixing and determining the compensation to be paid by the condemnor
42 because of the taking. The requirements respecting the time of filing of such
43 award shall be directory and not mandatory, and a failure to make and file
44 the same within the time specified, shall not invalidate the award or oust the
45 commissioners of jurisdiction to complete their duties. Upon its own motion,
46 or on application of any party, made within 60 days after the filing of the
47 award, the court may authorize the commissioners to amend, supplement,
48 modify, or correct their award.

49 (f) Judgment. Any award as to which no appeal is taken in accordance
50 with the rules, shall become final as of course, and shall constitute a final
51 judgment. If not paid within 60 days after final judgment, execution may
52 issue as in other actions at law.

53 (g) Commissioners' fees and expenses. The court, upon application of
54 any party, including the commissioners, shall fix reasonable fees, costs and
55 expenses of the commissioners, clerks and other persons performing any of
56 their duties, all of which shall be paid by the condemnor.

1 13. (a) Appeal. Any party who has appeared at the hearings of the
2 commissioners, either personally or through attorney, may appeal from the
3 award of the commissioners, whether or not an appeal has or may be given
4 by the statute conferring the power of eminent domain. Such appeal
5 shall be taken within the period and in the manner provided by the rules.
6 The necessary parties to the appeal shall be only such parties as have so
7 appeared at the commissioners' hearings. Other parties may be admitted by
8 the court pursuant to rules.

9 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo,
10 as in other actions at law, without a jury, unless a jury be demanded. The
11 award of the commissioners shall not be admitted in evidence.

12 A valuation expert who has not testified at the hearing before the com-
13 missioners shall not be permitted to testify at the trial de novo, unless,
14 within such time and in such form as shall be fixed by the rules, the party
15 offering such testimony has given notice to the other parties to the appeal of
16 the name and address of such expert and his proposed opinion of the amount
17 of compensation payable by reason of the condemnation.

1 14. Agreement as to compensation. At any time during the pendency of
 2 the action, the condemnor and the condemnees may agree upon all or any
 3 part or any item of compensation to be paid, and then proceed to have those
 4 parts or items not agreed upon, fixed and determined as herein provided.
 5 The condemnor may make payment of any part or item thereof agreed upon,
 6 and condemnees may accept such payment, without prejudice, and proceed
 7 to fix and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to individ-
 2 uals or private corporations vested with the authority of condemnation **nor*
 3 *shall the provisions of sections 17 through 29 of this article be applicable to*
 4 *condemnation of property owned or used by a public utility.**

1 16. Preliminary entry. Prior to the commencement of any action, a
 2 prospective condemnor and its employees and agents, during reasonable busi-
 3 ness hours, may enter upon any property which it has authority to condemn
 4 for the purpose of making studies, surveys, tests, soundings, borings and ap-
 5 praisals, provided notice of the intended entry for such purpose is sent to the
 5A owner and the occupant of the property by certified mail at least 10 days prior
 5B thereto. **No tests, soundings or borings shall be made on property in which*
 5C *there exists a pipeline or other underground utility installation except in the*
 5D *presence of a representative designated by the public utility owning or using*
 5E *the same.** If an action to condemn is not commenced within 1 year after
 6 such preliminary entry, any damages sustained as a result thereof, shall be
 7 paid by the condemnor to the person or persons so damaged. The amount of
 8 such damages, if any, and the person or persons entitled thereto, shall be de-
 9 termined by the court in a summary action pursuant to sections 2A:16-50 to
 10 2A:16-62 inclusive, of the New Jersey Statutes.

1 17. Possession of property and declaration of taking. At any time after
 2 the institution of an action and service of process, the condemnor may file in
 3 the action, and if so filed, shall also file in the recording office, a declaration of
 4 taking, duly executed by an executive official of the condemnor, in form and
 5 content specified by the rules, including the following:

6 (a) a statement that possession of all or some part of the property being
 7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
 9 which the action and declaration of taking is authorized, including the date
 10 when such authorization was given and the place where the record thereof
 11 may be examined;

12 (c) a description and plot plan of the property being condemned, and, if
 13 not the entire property, the portion thereof of which possession is being taken,
 14 sufficient for identification thereof, specifying the municipality or municipal-

ities in which the same is located; the street number of the property, if any; the lot and block number of the property as designated upon the current assessment map, if any. In case of a partial taking, the information above specified shall include the entire property of the condemnee, and the portion thereof being taken;

(d) the names and addresses of all condemnees known to the condemnor after reasonable investigation, and the nature of their interests in the property;

(e) a statement of the estate or interest therein being condemned;

(f) a statement of the sum of money estimated by the condemnor to be just compensation for the taking, which sum shall be not less than the amount of the offer, in writing, provided for in section 6 hereof.

(g) Any other matter required by the rules.

18. Deposit of estimated compensation. Simultaneously with the filing of the declaration of taking, the condemnor shall deposit the amount of such estimated compensation either with the clerk of the court, or in a special interest-bearing bank account in the name of the condemnor, in trust for the benefit of the condemnees entitled thereto. The amount so deposited shall be not less than the amount offered pursuant to section 6 hereof, and if an award has been made by commissioners hereunder, or a judgment determining compensation has been entered at the time of the filing of such declaration, the amount so deposited shall be not less than the amount of such award or judgment.

Upon application by any party in interest, and upon being satisfied that the financial responsibility of the condemnor to satisfy any judgment that may be entered in the action is uncertain, the court may require such condemnor to maintain an additional trust fund with a bank or trust company authorized to do business in New Jersey, in an amount equal to $\frac{1}{2}$ of the estimated compensation fund so deposited. Said trust fund shall consist of cash, or securities which are legal investments for trust funds in New Jersey.

The fund originally deposited and the additional fund, if any, shall secure the payment of compensation determined to be payable hereunder and may be applied to such payment. After payment or satisfaction of such compensation, condemnor, with approval of the court, may withdraw any surplus cash and securities.

19. Right to possession and vesting of title. A copy of the declaration of taking and notice of the filing thereof and of the making of the aforesaid deposit, shall be served upon the condemnee and all occupants of the property in accordance with the rules, and proof of such service shall be filed in the action. Thereupon, the right to the immediate and exclusive possession and title to the property described in the declaration of taking shall vest in the condemnor, free and discharged of all right, title, interest and liens of all

8 condemnees. Such right, title and interest shall be transferred and shall at-
9 tach to the compensation determined to be payable hereunder, to the same
10 extent and in the same order of priority as existed at the date of vesting of
11 title in condemnor. The pendency of an appeal from an award or judgment
12 hereunder shall not interfere with such vesting of title.

1 20. Nature of title condemned. The title to property condemned and
2 acquired by the condemnor hereunder, shall be a title in fee simple, free and
3 discharged of all right, title, interest and liens of all condemnees, and shall
4 include all the right, title and interest of each condemnee therein, provided,
5 however, that if the complaint or any amendment thereof shall specify a
6 lesser title, the lesser title so specified shall be the title condemned and
7 acquired.

1 21. Date of vesting of title. Title to the property condemned shall vest
2 in the condemnor as of the earliest date of the happening of any of the follow-
3 ing events:

4 (a) Filing the declaration of taking and depositing funds pursuant to
5 sections 17 and 18 of this act;

6 (b) Recording in the recording office of conveyance by the condemnee to
7 the condemnor;

8 (c) Filing in the action and recording in the recording office, an agree-
9 ment between condemnor and condemnee fixing the date as of which title shall
10 vest;

11 (d) Paying and satisfying of record a final judgment fixing compensation
12 payable hereunder.

1 22. Order for possession and removal of property. The court, upon
2 notice, shall fix the time and terms upon which possession of said property
3 shall be delivered, and personal property thereon shall be removed, and may
4 enter writs of assistance directed to the sheriff of the county.

1 23. Appeal not to affect vesting of right to possession and title. The
2 pendency of an appeal with respect to any issue other than the authority to
3 condemn, shall not affect the vesting of right to possession and title in the
4 condemnor.

1 24. Withdrawal of funds. Upon application of any condemnee, or any
2 other party in interest, and on notice to all parties to the action, including
3 the condemnor, the court may direct that the estimated compensation on
4 deposit, or any part thereof, be paid to the person or persons entitled thereto,
5 on account of the compensation to which they may be entitled in the action;
6 provided, that if the judgment fixing such compensation be less than the
7 amount paid pursuant hereto, the person to whom such payment has been
8 made shall repay the same, together with interest at 6% from the date of
9 payment to such person, and the court, after hearing in a summary manner,

10 may enter judgment therefor; and provided, further, that if the judgment
11 fixing such compensation be more than the amount deposited, condemnor
12 shall pay the excess to the condemnee entitled thereto, with interest at 6%
13 from the date of the deposit, and the court, after hearing in a summary man-
14 ner, may enter judgment therefor against the condemnor. The court, upon
15 notice to all parties, shall enter appropriate orders distributing any balances
16 on deposit.

1 25. Revesting of title and restoration of possession. If, after the filing of
2 a declaration of taking, a judgment shall be entered dismissing the action, title
3 to and possession of the property shall revert in the condemnee, subject to
4 the same right, title, interest and liens as existed as of the date of the filing
5 of the declaration of taking. In such event, condemnor shall pay any
6 damages sustained by the condemnee as a result of the action of the con-
7 demnor, and the expenses of the condemnee.

1 26. Compelling condemnor to file declaration of taking. If within 3
2 months after the commencement of an action, the condemnor fails to file a
3 declaration of taking, the court, upon application of any condemnee, and on
4 notice to all parties in interest, may require the condemnor, at its election, to
5 either file a declaration of taking and make the deposit hereinabove provided,
6 or abandon the proceedings pursuant to section 42 hereof. For good cause
7 and upon terms, the court may extend the time for the filing of such declara-
8 tion of taking, but not more than 3 months after the commencement of the
9 action.

1 27. Expenses of condemnee. Should the compensation as finally de-
2 termined in the action, exclusive of interest, exceed the amount of the deposit
3 by 25% or more, the court, after hearing, may determine that in addition to
4 the amounts so determined to be payable, the condemnor shall pay the
5 expenses of the condemnee as herein defined, to be fixed by the court, but not
6 to exceed 10% of the compensation so determined.

1 28. Deposit and withdrawal of funds not prejudicial. Neither the making
2 of the deposit nor any withdrawal thereof pursuant to this article, shall affect
3 or prejudice the rights of either the condemnor or the condemnee in the
4 determination of compensation. The amount of such deposit and any with-
5 drawal thereof, shall not be evidential in such determination.

1 ***[**29. Fees of clerk of the court. The statutory fees and compensation of
2 the clerk of the court, payable by reason of the deposit and disbursement of
3 funds pursuant to this article, shall be paid by the condemnor.**]***

4 *29. Fees of clerk of the court. Where the clerk of the court is authorized
5 to charge and deduct statutory fees or commissions by reason of the deposit
6 and disbursement of funds pursuant to this article, such fees and commissions
7 shall be paid by the condemnor.*

ARTICLE VI

COMPENSATION AND DATE OF DETERMINATION THEREOF

1 30. Compensation. The condemnee shall be entitled to compensation for
2 the property, and damages, if any, to any remaining property, together with
3 such additional compensation as provided for herein, or as may be fixed ac-
4 cording to law.

1 31. Effect of amendment of proceedings. Any increase or decrease in
2 the value of property being condemned, caused by any administrative action
3 or public announcement of proposed public improvement, other than a de-
4 crease in value due to physical depreciation within the reasonable control of
5 the condemnee, shall be disregarded in determining the amount of just
6 compensation.

1 32. Elements of compensation. Without limiting the generality of the
2 foregoing, just compensation may be awarded for the following items of
3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
5 being condemned, relocation payments may be made to eligible persons as
6 herein defined, for their reasonable, necessary and actual moving expenses
7 to a location not in excess of 50 miles from the point of taking, but not in ex-
8 cess of \$300.00 in the case of an individual or family, and not in excess of
9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 "Eligible person" shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 "Moving expenses" shall include all costs of reinstallation of property
20 moved and damages thereto caused by or resulting from such removal.

21 "Family" means 2 or more persons living together in the same dwelling
22 unit.

23 "Business entity" means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)
25 for the manufacturing, processing or marketing of any such property; (3)
26 for the sale of services to the public, which entity vacates its place of busi-
27 ness after the effective date hereof as a result of the acquisition, or immi-
28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily

30 for the production of one or more agricultural product, products or commodi-
 31 ties for sale or home use, and customarily sells such products or commodi-
 32 ties in sufficient quantities to be capable of contributing materially to the sup-
 33 port of the operator thereof, which operator vacates such property after the
 34 effective date hereof as a result of the acquisition or imminence of acquisi-
 35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
 37 pensation which a condemnor may pay for relocation expenses in cases where,
 38 under applicable Federal law or regulations, such compensation may be paid
 39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
 40 to condemnor out of Federal funds.

41-55 (b) In determining damages to property remaining after a partial taking,
 56 consideration shall be given to the use to which the property condemned shall
 57 be devoted, and the damages and benefits specially affecting such remaining
 58 property due to its proximity to the improvement for which the property is
 59 being taken. Future damages and general benefits which will affect prop-
 60 erty beyond that directly abutting the improvement shall not be considered
 61 in arriving at the after-value of the remaining property. Special benefits
 62 to remaining property shall, in no event, exceed the compensation for the
 63 land taken, exclusive of severance damages.

64 (c) Notwithstanding that no land has been or is being taken, compen-
 65 sation shall be paid for damages to property located within 100 feet from land
 66 taken for a public purpose, resulting from, (1) a change of grade; (2) per-
 67 manent interference with existing access; (3) injury to surface support; and
 68 (4) vacation of a public road, street or highway in actual use.

69 (d) If a condemnor does not require for its use, machinery, equipment or
 70 fixtures constituting a part of the property being condemned, it shall so
 71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
 73 tended time as may be fixed by the condemnor or the court, upon notice, the
 74 condemnee may elect, in writing, to remove such machinery, equipment and
 75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
 76 be reduced by the fair market value of such machinery, equipment and fix-
 77 tures being removed or severed from the property. The notices and elec-
 78 tion herein provided for and other procedure, shall be governed by the rules.

1 33. Date as of which compensation shall be determined. Just compensa-
 2 tion shall be determined as of the date of the earliest of the following events:
 3 (a) the date of the execution of an agreement of purchase between condemnor
 4 and condemnee; (b) the date possession of the property being condemned is
 5 taken by the condemnor in whole or in part; (c) the date of the commence-
 6 ment of the action; (d) the date on which action is taken by the condemnor
 7 which substantially affects the use and enjoyment of the property by the
 8 condemnee.

ARTICLE VII

TAXES

1 34. The taxes which are the subject-matter of this article are the real
2 property taxes duly assessed by the taxing district in which the property being
3 condemned is located, for the tax year during which possession thereof is
4 taken or title thereto is acquired pursuant to this act, whichever is the earlier,
5 and are hereafter referred to in this article as "such taxes."

1 35. (a) The condemnation of property pursuant to this act shall not
2 affect the payment of such taxes to the taxing district, and the provisions of
3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
5 taxes other than as herein set forth, but no such agreement shall affect the
6 payment of such taxes to the taxing district.

1 36. (a) Where the entire property of a condemnee is being condemned
2 and such taxes have been paid, the condemnor shall pay to the condemnee, in
3 addition to the compensation payable hereunder, an amount of money which
4 bears the same ratio of the taxes so paid, as the part of the taxable year next
5 following the date on which possession is taken or title acquired hereunder
6 (whichever is earlier) bears to the entire taxable year.

7 (b) Where only a part of such property is being condemned, the amount
8 of money so to be paid by the condemnor shall be a sum which bears the same
9 ratio of taxes so paid on the part of the property condemned, as the part of
10 the taxable year next following the date on which possession is taken or title
11 acquired hereunder (whichever is earlier) bears to the entire taxable year.

1 37. (a) Where the entire property of the condemnee is being condemned
2 and such taxes have not been paid, the condemnor shall deduct from the
3 compensation payable hereunder, the proportionate share of such unpaid
4 taxes upon the entire property, allocable to the period between the first day
5 of the year in which possession is taken, or title acquired (whichever is
6 earlier), and the date when such possession is taken or title acquired (which-
7 ever is earlier). The condemnor shall pay to the taxing district on behalf
8 of the condemnee, (1) the amount so deducted; and (2) as additional compensa-
9 tion to the condemnee, the entire balance of such unpaid taxes for the entire
10 year.

11 (b) Where only a part of such property is being condemned and such
12 taxes have not been paid, condemnor shall deduct from the compensation
13 payable hereunder, the proportionate share of such unpaid taxes upon
14 the entire property allocable to the period between the first day of the year in
15 which possession is taken or title acquired (whichever is the earlier) and the
16 date when such possession is taken or title acquired, (whichever is earlier).
17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)

18 the amount so deducted; and (2) as additional compensation to the condemnee,
 19 the proportionate share of such unpaid taxes for the balance of the tax year
 20 allocable to the portion of the property taken.

1 38. Any dispute as to the apportionment of such taxes and the payment
 2 thereof, shall be determined by the court in the action in a summary manner,
 3 upon petition by any party to the action, or by the taxing district.

ARTICLE VIII

INTEREST

1 39. Payment of interest. Interest at 6% per annum upon the amount
 2 of compensation determined to be payable hereunder shall be paid by the
 3 condemnor from the date of the commencement of the action until the date
 4 of payment of the compensation; provided, however, that there shall be ex-
 5 cluded from the amount upon which interest shall be calculated, all moneys
 6 deposited pursuant to Article V hereof; and provided, further, that interest
 7 payable hereunder shall be subject to abatement for rents and profits de-
 8 rived from the property by the condemnee during the period for which in-
 9 terest is payable hereunder, and/or for the fair rental value of such prop-
 10 erty or any portion thereof occupied by the condemnee during such period.

1 40. Disputes as to interest. Unless agreed upon by the parties, the
 2 amount of such interest shall be fixed and determined by the court in a sum-
 3 mary manner after final determination of compensation, and shall be added
 4 to the amount of the award or judgment, as the case may be.

ARTICLE IX

MISCELLANEOUS

1 *41. *Possession by individuals or private corporations. Individuals and*
 2 *private corporations vested with the authority of condemnation may, upon*
 3 *the filing of the report of the commissioners and upon payment, to the parties*
 4 *entitled thereto or into court, of the amount awarded as provided in this act,*
 5 *take possession of the land or other property for the purposes for which the*
 6 *same was authorized to be taken.*

7 *The report of the commissioners, together with the order or judgment*
 8 *appointing them, or a copy thereof certified by the clerk of the court, and*
 9 *proof of such payment of the amount awarded shall be plenary evidence of*
 10 *the right of the condemnor to have, hold, use, occupy, possess and enjoy the*
 11 *land and other property.**

1 ***[41.]*** *42.* **Deposit of funds where ownership in dispute.** If the con-
 2 demnee entitled to receive the award or judgment upon tender thereof, shall
 3 refuse to receive the same, or shall be out of the State, or under any legal dis-
 4 ability; or in case several condemnees interested in the fund shall not agree as
 5 to the distribution thereof; or in case the property condemned shall be encum-
 6 bered by mortgage, judgment or other liens; or if for any other reason the
 7 condemnor cannot safely pay the award or judgment to any person, the

8 amount thereof may be deposited with the clerk of the court, to be distributed
9 to the parties entitled thereto according to law. The procedure for distribut-
10 ing the funds shall be in accordance with the rules. The fees of the clerk,
11 if any, shall be paid out of the fund.

1 *~~[42.]~~* *43.* Abandonment of proceedings. Any action hereunder may be
2 abandoned at any time before or within 30 days after the filing of the award of
3 commissioners; or in the event of an appeal from such award, at any time
4 before or within 30 days after the entry of judgment on such appeal; or in
5 the event that a hearing before commissioners shall have been waived, at
6 any time before or within 30 days after judgment has been entered in said
7 action; provided, however, that no such action shall be abandoned after the
8 filing of a declaration of taking pursuant to Article V hereof, or after the
9 vesting of title in any condemnor pursuant hereto; and provided further, that
10 (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor
11 shall pay the expenses of all condemnees who have appeared in the action.

1 *~~[43.]~~* *44.* Method of abandonment. The abandonment shall be effected
2 by filing and serving notice of abandonment in the manner, form and content
3 fixed by the rules.

1 *~~[44.]~~* *45.* Uneconomic remnants. If as a result of a partial taking of
2 property, the property remaining consists of a parcel or parcels of land
3 having little or no economic value, the condemnor, at the request of the con-
4 demnee, shall acquire the entire parcel.

ARTICLE X

REPEALER

1 *46. Any reference to Title 20 of the Revised Statutes or to any section
2 or sections thereof or any amendment or supplement thereof in any other
3 statute, in effect on the effective date of this act, shall hereafter be given
4 effect as though reference therein were made to this act or the applicable
5 provisions thereof.*

1 *~~[45. All acts or parts of act inconsistent herewith,]~~* *47. Chapter 1 of
2 Title 20 of the Revised Statutes and P. L. 1942, chapter 14* are repealed as
3 of the effective date hereof; provided, however, that this act shall not affect
4 statutes regulating the ascertainment and payment of compensation for prop-
5 erty condemned or taken by bodies organized and administered as a result
6 of or under compacts between States.

ASSEMBLY, No. 388

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1969

By Assemblymen GIMSON, LITTELL, DICKEY, W. L. SMITH,
HEILMANN and IRWIN

Referred to Committee on Revision and Amendment of Laws

AN ACT to regulate the ascertainment and payment of compensation for property condemned or taken for public purposes and revising and supplementing chapter 1 of Title 20 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

ARTICLE I

SHORT TITLE

1 1. This act shall be known and may be cited as the "Eminent Domain Act
2 1969."

ARTICLE II

DEFINITIONS

1 2. When used in this act, unless the context or subject matter otherwise
2 requires, the following words shall have the meanings ascribed to them under
3 this section:

4 (a) "Condemn" means to take private property for a public purpose
5 under the power of eminent domain;

6 (b) "Condemnor" means the entity, public or private, including the State
7 of New Jersey, which is condemning private property for a public purpose
8 under the power of eminent domain;

9 (c) "Condemnee" means the owner of an interest in the private property
10 being condemned for a public purpose under the power of eminent domain;

11 (d) "Property" means land, or any interest in land, and (1) any build-
12 ing, structure or other improvement imbedded or affixed to land, and any
13 article so affixed or attached to such building, structure or improvement as
14 to be an essential and integral part thereof; (2) any article affixed or attached
15 to such property in such manner that it cannot be removed without material

16 injury to itself or to the property; (3) any article so designed, constructed,
 17 or specially adapted to the purpose for which such property is used that (a)
 18 it is an essential accessory or part of such property; (b) it is not capable
 19 of use elsewhere; and (c) would lose substantially all its value if removed
 20 from such property;

21 (e) "Court" means Superior Court of New Jersey;

22 (f) "Rules" means the applicable rules governing the courts of the State
 23 of New Jersey as promulgated from time to time by the Supreme Court of
 24 New Jersey;

24A (g) "Action" means the legal proceeding in which

25 (1) property is being condemned or required to be condemned;

26 (2) the amount of compensation to be paid for such condemnation is
 27 being fixed;

28 (3) the persons entitled to such compensation and their interests
 29 therein are being determined; and

30 (4) all other matters incidental to or arising therefrom are being
 31 adjudicated.

32 (h) "Compensation" means the just compensation which the condemnor
 33 is required to pay and the condemnee is entitled to receive according to
 34 law as the result of the condemnation of property;

35 (i) "Award" means the award of compensation made by the commis-
 36 sioners provided for herein;

37 (j) "Expenses of condemnee" means the reasonable fees and expenses
 38 necessarily incurred by condemnee in the action, for attorney, engineering
 39 and appraisal services;

40 (k) "Judgment" means the adjudication by the court of any issue of fact
 41 or law, or both, arising under this act. The adjudication of the right to con-
 42 demn shall be a final judgment. All other judgments shall be interlocutory
 43 or final, according to law, or as may be prescribed by the rules;

44 (l) "Recording office" means the county office of each county in which
 45 the property being condemned, or any part thereof, is located, in which office
 46 conveyances of real property may be recorded;

47 (m) "Days" means calendar days, calculated in accordance with the
 48 rules of court;

49 (n) Words used in the singular shall include the plural and vice versa.
 50 Words used in the neuter gender shall include masculine and feminine
 51 gender, as the case may be.

ARTICLE III

SEVERABILITY—EFFECTIVE DATE

1 3. Severability. If any provision or clause of this act, or the application
 2 thereof to any person or circumstance is held to be invalid, such invalidity

3 shall not affect other provisions or applications of the act, which can be given
4 effect without the invalid provision or application, and to this end, the provi-
5 sions of this act are declared to be severable.

1 4. Effective date. This act shall take effect 60 days next following the
2 approval thereof, and shall apply to all actions instituted thereafter, and to
3 all proceedings taken subsequent thereto in all actions pending on such effec-
4 tive date; except that judgments theretofore entered or awards theretofore
5 made pursuant to law from which no appeal is pending on such effective
6 date, shall not be affected by the provisions hereof.

ARTICLE IV

COURT JURISDICTION AND PROCEDURE

1 5. Jurisdiction. The court shall have jurisdiction of all matters in con-
2 demnation, and all matters incidental thereto and arising therefrom, includ-
3 ing, but without limiting the generality of the foregoing, jurisdiction to deter-
4 mine the authority to exercise the power of eminent domain; to compel the
5 exercise of such power; to fix and determine the compensation to be paid and
6 the parties entitled thereto, and to determine title to all property affected
7 by the action.

1 6. Application of act. Whenever any condemnor shall have determined
2 to acquire property pursuant to law, including public property already de-
3 voted to public purpose, but cannot acquire title thereto or possession thereof
4 by agreement with a prospective condemnee, whether by reason of disagree-
5 ment concerning the compensation to be paid or for any other cause, the con-
6 demnation of such property and the compensation to be paid therefor, and to
7 whom payable, and all matters incidental thereto and arising therefrom shall
8 be governed, ascertained and paid by and in the manner provided by this act;
9 provided, however, that no action to condemn shall be instituted unless
10 the condemnor is unable to acquire such title or possession through bona
11 fide negotiations with the prospective condemnee, which negotiations shall in-
12 clude an offer in writing by the condemnor to the prospective condemnee hold-
13 ing the fee title of record to the property being condemned, setting forth the
14 property and interest therein to be acquired, the compensation offered to be
15 paid and a reasonable disclosure of the manner in which the amount of such
16 offered compensation has been calculated, and such other matters as may be
17 required by the rules. Such offer shall be served in accordance with the rules.
18 A rejection of said offer or failure to accept the same within the period fixed
19 by the rules shall be conclusive proof of the inability of the condemnor to ac-
20 quire the property or possession thereof through negotiations. When the
21 holder of the fee title is unknown, resides out of the State, or for other good
22 cause, the court may dispense with the necessity of such negotiations. Neither
23 the offer nor the refusal thereof shall be evidential in the determination of
24 compensation.

1 7. (a) Nature of action. The court may proceed in a summary manner
2 pursuant to sections 2A:16-50 to 2A:16-62, inclusive, of the New Jersey Stat-
3 utes, or otherwise.

4 (b) Rules of procedure. The procedure governing the action shall be in
5 accordance with the rules.

6 (c) Multiple proceedings. The condemnation of any number of parcels
7 of property lying wholly within the same county, may be joined in one action;
8 provided that a separate award, judgment and appeal shall be made, entered
9 and taken with respect to each parcel.

10 (d) Amendments. Amended and supplemental pleadings, descriptions,
11 surveys, plans, declarations of taking and the like, may be permitted and
12 parties added or eliminated, in accordance with the rules.

1 8. Commencement of action. The action shall be instituted by filing of a
2 verified complaint in form and content specified by the rules and shall demand
3 judgment that condemnor is duly vested with and has duly exercised its au-
4 thority to acquire the property being condemned, and for an order appoint-
5 ing commissioners to fix the compensation required to be paid.

1 9. Process. Within 10 days after the filing of the complaint, **the** con-
2 demnor shall issue, and with due diligence, cause process to be served or pub-
3 lished in accordance with the rules. Notice given and process served or
4 published in accordance with the rules shall be effective to bind all condemnees.

1 10. Lis pendens. Within 10 days after the filing of the complaint, **the** con-
2 demnor shall cause to be filed in the recording office, a notice of the pendency
3 of the action, in form and content specified by the rules. Such notice shall in-
4 clude the title of the action; the docket number thereof, if known; the date
5 of the commencement of the action, a description of the property and the
6 interests therein being condemned, as set forth in the complaint; and the
7 names and addresses of all condemnees known to the condemnor and the
8 nature of their alleged interests in said property. The lis pendens shall be
9 indexed by the recording official, listing the condemnees as grantors and the
10 condemnor as grantee. In default of such record, persons acquiring an in-
11 terest in or lien upon the property without actual notice of the action, shall
12 not be bound thereby.

1 11. Denial of authority to condemn. Failure to deny the authority of the
2 condemnor to condemn in the manner provided for by the rules, shall consti-
3 tute a waiver of such defense. When the authority to condemn is denied, all
4 further steps in the action shall be stayed until that issue has been finally de-
5 termined.

1 12. Appointment of commissioners and hearings.

2 (a) Waiver of appointment of commissioners. By stipulation filed in the
3 cause, the condemnor and all condemnees may waive the appointment of com-
4 missioners and hearings before them hereafter referred to, and in such event,

5 the action shall proceed to trial before the court as in other actions at law.

6 (b) Appointment and qualification of commissioners. Upon determina-
7 tion that the condemnor is authorized to and has duly exercised its power of
8 eminent domain, the court shall appoint 3 commissioners to determine the
9 compensation to be paid by reason of the exercise of such power. Such com-
10 missioners shall be residents of the county in which any part of the property
11 being condemned is located or, in the case of the commissioner who must be
12 an attorney, be actively engaged in the practice of law in the county. One of
13 such commissioners shall be an attorney, admitted to practice in this State
14 for at least 10 years, who shall preside at all hearings and rule on all ques-
15 tions of evidence and procedure, subject to a review by a majority of the com-
16 missioners. The commissioners shall take and subscribe an oath faithfully
17 and impartially to perform their duties, and to make a true award to the best
18 of their skills and understanding, which oath shall be filed with their award.
19 Should a commissioner die, become disqualified, unable, neglect or refuse to
20 act, the remaining 2 commissioners shall perform the duties of office with the
21 same authority as if all commissioners were acting. The court may fill any
21A vacancy in office, and for cause, may vacate any appointment and appoint a
21B successor in office.

22 (c) Hearings—subpoena. The commissioners shall hold hearings upon
23 notice required by the rules, at which the parties and their witnesses may
24 be heard, under oath, administered by any commissioner. The conduct of
25 the hearings and the compulsory attendance of witnesses and production of
26 records thereat, shall be governed by the rules. At the request of any party,
27 a stenographic record of the hearing shall be maintained. A majority of
28 commissioners shall be in attendance at all hearings.

29 At the hearing, the condemnor shall offer proof of the nature and extent
30 of the taking, and its opinion of the compensation payable by reason thereof.

31 (d) Inspection of property. Commissioners may inspect the property
32 being condemned, and shall so inspect when requested by any party. Such
33 inspection may be in the absence of the parties, unless attendance at inspec-
34 tion is requested by the parties, or any of them. This right of inspection shall
35 exist notwithstanding that the structures on the property may have been
36 demolished and the site altered.

37 (e) Award of commissioners. Within 4 months next following their ap-
38 pointment, or within any extended period fixed by the court on notice, or by stip-
39 ulation of all the parties filed in the action, the commissioners, or a majority
40 of them, shall make and file in form and content fixed by the rules, an award
41 fixing and determining the compensation to be paid by the condemnor
42 because of the taking. The requirements respecting the time of filing of such
43 award shall be directory and not mandatory, and a failure to make and file
44 the same within the time specified, shall not invalidate the award or oust the

45 commissioners of jurisdiction to complete their duties. Upon its own motion,
 46 or on application of any party, made within 60 days after the filing of the
 47 award, the court may authorize the commissioners to amend, supplement,
 48 modify, or correct their award.

49 (f) Judgment. Any award as to which no appeal is taken in accordance
 50 with the rules, shall become final as of course, and shall constitute a final
 51 judgment. If not paid within 60 days after final judgment, execution may
 52 issue as in other actions at law.

53 (g) Commissioners' fees and expenses. The court, upon application of
 54 any party, including the commissioners, shall fix reasonable fees, costs and
 55 expenses of the commissioners, clerks and other persons performing any of
 56 their duties, all of which shall be paid by the condemnor.

1 13. (a) Appeal. Any party who has appeared at the hearings of the
 2 commissioners, either personally or through attorney, may appeal from the
 3 award of the commissioners, whether or not an appeal has or may be given
 4 by the statute conferring the power of eminent domain. Such appeal
 5 shall be taken within the period and in the manner provided by the rules.
 6 The necessary parties to the appeal shall be only such parties as have so
 7 appeared at the commissioners' hearings. Other parties may be admitted by
 8 the court pursuant to rules.

9 (b) Hearing on appeal. The hearing on appeal shall be a trial de novo,
 10 as in other actions at law, without a jury, unless a jury be demanded. The
 11 award of the commissioners shall not be admitted in evidence.

12 A valuation expert who has not testified at the hearing before the com-
 13 missioners shall not be permitted to testify at the trial de novo, unless,
 14 within such time and in such form as shall be fixed by the rules, the party
 15 offering such testimony has given notice to the other parties to the appeal of
 16 the name and address of such expert and his proposed opinion of the amount
 17 of compensation payable by reason of the condemnation.

1 14. Agreement as to compensation. At any time during the pendency of
 2 the action, the condemnor and the condemnees may agree upon all or any
 3 part or any item of compensation to be paid, and then proceed to have those
 4 parts or items not agreed upon, fixed and determined as herein provided.
 5 The condemnor may make payment of any part or item thereof agreed upon,
 6 and condemnees may accept such payment, without prejudice, and proceed
 7 to fix and determine the parts and items remaining in dispute.

ARTICLE V

POSSESSION OF PROPERTY AND VESTING OF TITLE

1 15. Exclusion. The provisions of this article shall not apply to individ-
 2 uals or private corporations vested with the authority of condemnation.

1 16. Preliminary entry. Prior to the commencement of any action, a
 2 prospective condemnor and its employees and agents, during reasonable busi-
 3 ness hours, may enter upon any property which it has authority to condemn
 4 for the purpose of making studies, surveys, tests, soundings, borings and ap-
 5 praisals, provided notice of the intended entry for such purpose is sent to the
 5A owner and the occupant of the property by certified mail at least 10 days prior
 5B thereto. If an action to condemn is not commenced within 1 year after
 6 such preliminary entry, any damages sustained as a result thereof, shall be
 7 paid by the condemnor to the person or persons so damaged. The amount of
 8 such damages, if any, and the person or persons entitled thereto, shall be de-
 9 termined by the court in a summary action pursuant to sections 2A:16-50 to
 10 2A:16-62 inclusive, of the New Jersey Statutes.

1 17. Possession of property and declaration of taking. At any time after
 2 the institution of an action and service of process, the condemnor may file in
 3 the action, and if so filed, shall also file in the recording office, a declaration of
 4 taking, duly executed by an executive official of the condemnor, in form and
 5 content specified by the rules, including the following:

6 (a) a statement that possession of all or some part of the property being
 7 condemned is thereby being taken by the condemnor;

8 (b) a specific reference to the statute, article and section thereof, under
 9 which the action and declaration of taking is authorized, including the date
 10 when such authorization was given and the place where the record thereof
 11 may be examined;

12 (c) a description and plot plan of the property being condemned, and, if
 13 not the entire property, the portion thereof of which possession is being taken,
 14 sufficient for identification thereof, specifying the municipality or municipal-
 15 ities in which the same is located; the street number of the property, if any;
 16 the lot and block number of the property as designated upon the current as-
 17 sessment map, if any. In case of a partial taking, the information above
 18 specified shall include the entire property of the condemnee, and the portion
 19 thereof being taken;

20 (d) the names and addresses of all condemnees known to the condemnor
 21 after reasonable investigation, and the nature of their interests in the prop-
 22 erty;

23 (e) a statement of the estate or interest therein being condemned;

24 (f) a statement of the sum of money estimated by the condemnor to be
 25 just compensation for the taking, which sum shall be not less than the amount
 26 of the offer, in writing, provided for in section 6 hereof.

27 (g) Any other matter required by the rules.

1 18. Deposit of estimated compensation. Simultaneously with the filing of
 2 the declaration of taking, the condemnor shall deposit the amount of such
 3 estimated compensation either with the clerk of the court, or in a special

4 interest-bearing bank account in the name of the condemnor, in trust for
5 the benefit of the condemnees entitled thereto. The amount so deposited
6 shall be not less than the amount offered pursuant to section 6 hereof, and
7 if an award has been made by commissioners hereunder, or a judgment
8 determining compensation has been entered at the time of the filing of such
9 declaration, the amount so deposited shall be not less than the amount of such
10 award or judgment.

11 Upon application by any party in interest, and upon being satisfied that
12 the financial responsibility of the condemnor to satisfy any judgment that
13 may be entered in the action is uncertain, the court may require such con-
14 demnor to maintain an additional trust fund with a bank or trust company
15 authorized to do business in New Jersey, in an amount equal to $\frac{1}{2}$ of the
16 estimated compensation fund so deposited. Said trust fund shall consist of
17 cash, or securities which are legal investments for trust funds in New Jersey.

18 The fund originally deposited and the additional fund, if any, shall secure
19 the payment of compensation determined to be payable hereunder and may
20 be applied to such payment. After payment or satisfaction of such compensa-
21 tion, condemnor, with approval of the court, may withdraw any surplus cash
22 and securities.

1 19. Right to possession and vesting of title. A copy of the declaration
2 of taking and notice of the filing thereof and of the making of the aforesaid
3 deposit, shall be served upon the condemnee and all occupants of the property
4 in accordance with the rules, and proof of such service shall be filed in the
5 action. Thereupon, the right to the immediate and exclusive possession and
6 title to the property described in the declaration of taking shall vest in the
7 condemnor, free and discharged of all right, title, interest and liens of all
8 condemnees. Such right, title and interest shall be transferred and shall at-
9 tach to the compensation determined to be payable hereunder, to the same
10 extent and in the same order of priority as existed at the date of vesting of
11 title in condemnor. The pendency of an appeal from an award or judgment
12 hereunder shall not interfere with such vesting of title.

1 20. Nature of title condemned. The title to property condemned and
2 acquired by the condemnor hereunder, shall be a title in fee simple, free and
3 discharged of all right, title, interest and liens of all condemnees, and shall
4 include all the right, title and interest of each condemnee therein, provided,
5 however, that if the complaint or any amendment thereof shall specify a
6 lesser title, the lesser title so specified shall be the title condemned and
7 acquired.

1 21. Date of vesting of title. Title to the property condemned shall vest
2 in the condemnor as of the earliest date of the happening of any of the follow-
3 ing events:

- 4 (a) Filing the declaration of taking and depositing funds pursuant to
5 sections 17 and 18 of this act;
- 6 (b) Recording in the recording office of conveyance by the condemnee to
7 the condemnor;
- 8 (c) Filing in the action and recording in the recording office, an agree-
9 ment between condemnor and condemnee fixing the date as of which title shall
10 vest;
- 11 (d) Paying and satisfying of record a final judgment fixing compensation
12 payable hereunder.

1 22. Order for possession and removal of property. The court, upon
2 notice, shall fix the time and terms upon which possession of said property
3 shall be delivered, and personal property thereon shall be removed, and may
4 enter writs of assistance directed to the sheriff of the county.

1 23. Appeal not to affect vesting of right to possession and title. The
2 pendency of an appeal with respect to any issue other than the authority to
3 condemn, shall not affect the vesting of right to possession and title in the
4 condemnor.

1 24. Withdrawal of funds. Upon application of any condemnee, or any
2 other party in interest, and on notice to all parties to the action, including
3 the condemnor, the court may direct that the estimated compensation on
4 deposit, or any part thereof, be paid to the person or persons entitled thereto,
5 on account of the compensation to which they may be entitled in the action;
6 provided, that if the judgment fixing such compensation be less than the
7 amount paid pursuant hereto, the person to whom such payment has been
8 made shall repay the same, together with interest at 6% from the date of
9 payment to such person, and the court, after hearing in a summary manner,
10 may enter judgment therefor; and provided, further, that if the judgment
11 fixing such compensation be more than the amount deposited, condemnor
12 shall pay the excess to the condemnee entitled thereto, with interest at 6%
13 from the date of the deposit, and the court, after hearing in a summary man-
14 ner, may enter judgment therefor against the condemnor. The court, upon
15 notice to all parties, shall enter appropriate orders distributing any balances
16 on deposit.

1 25. Revesting of title and restoration of possession. If, after the filing of
2 a declaration of taking, a judgment shall be entered dismissing the action, title
3 to and possession of the property shall revert in the condemnee, subject to
4 the same right, title, interest and liens as existed as of the date of the filing
5 of the declaration of taking. In such event, condemnor shall pay any
6 damages sustained by the condemnee as a result of the action of the con-
7 demnor, and the expenses of the condemnee.

1 26. Compelling condemnor to file declaration of taking. If within 3
2 months after the commencement of an action, the condemnor fails to file a

3 declaration of taking, the court, upon application of any condemnee, and on
 4 notice to all parties in interest, may require the condemnor, at its election, to
 5 either file a declaration of taking and make the deposit hereinabove provided,
 6 or abandon the proceedings pursuant to section 42 hereof. For good cause
 7 and upon terms, the court may extend the time for the filing of such declara-
 8 tion of taking, but not more than 3 months after the commencement of the
 9 action.

1 27. Expenses of condemnee. Should the compensation as finally de-
 2 termined in the action, exclusive of interest, exceed the amount of the deposit
 3 by 25% or more, the court, after hearing, may determine that in addition to
 4 the amounts so determined to be payable, the condemnor shall pay the
 5 expenses of the condemnee as herein defined, to be fixed by the court, but not
 6 to exceed 10% of the compensation so determined.

1 28. Deposit and withdrawal of funds not prejudicial. Neither the making
 2 of the deposit nor any withdrawal thereof pursuant to this article, shall affect
 3 or prejudice the rights of either the condemnor or the condemnee in the
 4 determination of compensation. The amount of such deposit and any with-
 5 drawal thereof, shall not be evidential in such determination.

1 29. Fees of clerk of the court. The statutory fees and compensation of
 2 the clerk of the court, payable by reason of the deposit and disbursement of
 3 funds pursuant to this article, shall be paid by the condemnor.

ARTICLE VI

COMPENSATION AND DATE OF DETERMINATION THEREOF

1 30. Compensation. The condemnee shall be entitled to compensation for
 2 the property, and damages, if any, to any remaining property, together with
 3 such additional compensation as provided for herein, or as may be fixed ac-
 4 cording to law.

1 31. Effect of amendment of proceedings. Any increase or decrease in
 2 the value of property being condemned, caused by any administrative action
 3 or public announcement of proposed public improvement, other than a de-
 4 crease in value due to physical depreciation within the reasonable control of
 5 the condemnee, shall be disregarded in determining the amount of just
 6 compensation.

1 32. Elements of compensation. Without limiting the generality of the
 2 foregoing, just compensation may be awarded for the following items of
 3 damage, if established to exist:

4 (a) When incurred because of removal from property condemned or
 5 being condemned, relocation payments may be made to eligible persons as
 6 herein defined, for their reasonable, necessary and actual moving expenses
 7 to a location not in excess of 50 miles from the point of taking, but not in ex-
 8 cess of \$300.00 in the case of an individual or family, and not in excess of

9 \$15,000.00 in the case of a business entity, including operation of a farm or
10 nonprofit organization. By agreement with such eligible person, condemnor
11 may pay not in excess of \$150.00 to such person or family, and \$1,000.00 to
12 such business entity, in lieu of such actual expenses.

13 As used in this section:

14 "Eligible person" shall mean such individual, family, or business entity,
15 as have occupied, either as owner or tenant, the property acquired, or to be
16 acquired within at least 180 days prior to the date when condemnor gives
17 written notice to the owner of record and such tenants that the property is
18 to be acquired.

19 "Moving expenses" shall include all costs of reinstatement of property
20 moved and damages thereto caused by or resulting from such removal.

21 "Family" means 2 or more persons living together in the same dwelling
22 unit.

23 "Business entity" means any lawful activity conducted primarily (1)
24 for the purchase and resale of products, commodities, or other property; (2)
25 for the manufacturing, processing or marketing of any such property; (3)
26 for the sale of services to the public, which entity vacates its place of busi-
27 ness after the effective date hereof as a result of the acquisition, or immi-
28 nence of acquisition of such property in whole or in part by the condemnor;

29 "Operation of a farm" means any activity conducted solely or primarily
30 for the production of one or more agricultural product, products or commodi-
31 ties for sale or home use, and customarily sells such products or commodi-
32 ties in sufficient quantities to be capable of contributing materially to the sup-
33 port of the operator thereof, which operator vacates such property after the
34 effective date hereof as a result of the acquisition or imminence of acquisi-
35 tion of such property, in whole or in part, by the condemnor.

36 Nothing herein contained shall be construed to limit the amount of com-
37 pensation which a condemnor may pay for relocation expenses in cases where,
38 under applicable Federal law or regulations, such compensation may be paid
39 wholly or partly out of Federal funds, or will be wholly or partly reimbursed
40 to condemnor out of Federal funds.

41-55 (b) In determining damages to property remaining after a partial taking,
56 consideration shall be given to the use to which the property condemned shall
57 be devoted, and the damages and benefits specially affecting such remaining
58 property due to its proximity to the improvement for which the property is
59 being taken. Future damages and general benefits which will affect prop-
60 erty beyond that directly abutting the improvement shall not be considered
61 in arriving at the after-value of the remaining property. Special benefits
62 to remaining property shall, in no event, exceed the compensation for the
63 land taken, exclusive of severance damages.

64 (c) Notwithstanding that no land has been or is being taken, compen-
 65 sation shall be paid for damages to property located within 100 feet from land
 66 taken for a public purpose, resulting from, (1) a change of grade; (2) per-
 67 manent interference with existing access; (3) injury to surface support; and
 68 (4) vacation of a public road, street or highway in actual use.

69 (d) If a condemnor does not require for its use, machinery, equipment or
 70 fixtures constituting a part of the property being condemned, it shall so
 71-72 notify the condemnee. Within 60 days after such notice, or within such ex-
 73 tended time as may be fixed by the condemnor or the court, upon notice, the
 74 condemnee may elect, in writing, to remove such machinery, equipment and
 75 fixtures, in whole or in part. If the condemnee so elects, the damages shall
 76 be reduced by the fair market value of such machinery, equipment and fix-
 77 tures being removed or severed from the property. The notices and elec-
 78 tion herein provided for and other procedure, shall be governed by the rules.

1 33. Date as of which compensation shall be determined. Just compensa-
 2 tion shall be determined as of the date of the earliest of the following events:

3 (a) the date of the execution of an agreement of purchase between condemnor
 4 and condemnee; (b) the date possession of the property being condemned is
 5 taken by the condemnor in whole or in part; (c) the date of the commence-
 6 ment of the action; (d) the date on which action is taken by the condemnor
 7 which substantially affects the use and enjoyment of the property by the
 8 condemnee.

ARTICLE VII

TAXES

1 34. The taxes which are the subject-matter of this article are the real
 2 property taxes duly assessed by the taxing district in which the property being
 3 condemned is located, for the tax year during which possession thereof is
 4 taken or title thereto is acquired pursuant to this act, whichever is the earlier,
 5 and are hereafter referred to in this article as "such taxes."

1 35. (a) The condemnation of property pursuant to this act shall not
 2 affect the payment of such taxes to the taxing district, and the provisions of
 3 this article shall be liberally construed to effectuate such payment.

4 (b) The parties to any action may agree upon an apportionment of such
 5 taxes other than as herein set forth, but no such agreement shall affect the
 6 payment of such taxes to the taxing district.

1 36. (a) Where the entire property of a condemnee is being condemned
 2 and such taxes have been paid, the condemnor shall pay to the condemnee, in
 3 addition to the compensation payable hereunder, an amount of money which
 4 bears the same ratio of the taxes so paid, as the part of the taxable year next
 5 following the date on which possession is taken or title acquired hereunder
 6 (whichever is earlier) bears to the entire taxable year.

7 (b) Where only a part of such property is being condemned, the amount
8 of money so to be paid by the condemnor shall be a sum which bears the same
9 ratio of taxes so paid on the part of the property condemned, as the part of
10 the taxable year next following the date on which possession is taken or title
11 acquired hereunder (whichever is earlier) bears to the entire taxable year.

1 37. (a) Where the entire property of the condemnee is being condemned
2 and such taxes have not been paid, the condemnor shall deduct from the
3 compensation payable hereunder, the proportionate share of such unpaid
4 taxes upon the entire property, allocable to the period between the first day
5 of the year in which possession is taken, or title acquired (whichever is
6 earlier), and the date when such possession is taken or title acquired (which-
7 ever is earlier). The condemnor shall pay to the taxing district on behalf
8 of the condemnee, (1) the amount so deducted; and (2) as additional compensa-
9 tion to the condemnee, the entire balance of such unpaid taxes for the entire
10 year.

11 (b) Where only a part of such property is being condemned and such
12 taxes have not been paid, condemnor shall deduct from the compensation
13 payable hereunder, the proportionate share of such unpaid taxes upon
14 the entire property allocable to the period between the first day of the year in
15 which possession is taken or title acquired (whichever is the earlier) and the
16 date when such possession is taken or title acquired, (whichever is earlier).
17 The condemnor shall pay to the taxing district on behalf of the condemnee, (1)
18 the amount so deducted; and (2) as additional compensation to the condemnee,
19 the proportionate share of such unpaid taxes for the balance of the tax year
20 allocable to the portion of the property taken.

1 38. Any dispute as to the apportionment of such taxes and the payment
2 thereof, shall be determined by the court in the action in a summary manner,
3 upon petition by any party to the action, or by the taxing district.

ARTICLE VIII

INTEREST

1 39. Payment of interest. Interest at 6% per annum upon the amount
2 of compensation determined to be payable hereunder shall be paid by the
3 condemnor from the date of the commencement of the action until the date
4 of payment of the compensation; provided, however, that there shall be ex-
5 cluded from the amount upon which interest shall be calculated, all moneys
6 deposited pursuant to Article V hereof; and provided, further, that interest
7 payable hereunder shall be subject to abatement for rents and profits de-
8 rived from the property by the condemnee during the period for which in-
9 terest is payable hereunder, and/or for the fair rental value of such prop-
10 erty or any portion thereof occupied by the condemnee during such period.

1 40. Disputes as to interest. Unless agreed upon by the parties, the
2 amount of such interest shall be fixed and determined by the court in a sum-

3 mary manner after final determination of compensation, and shall be added
4 to the amount of the award or judgment, as the case may be.

ARTICLE IX

MISCELLANEOUS

1 41. Deposit of funds where ownership in dispute. If the condemnee en-
2 titled to receive the award or judgment upon tender thereof, shall refuse to
3 receive the same, or shall be out of the State, or under any legal disability;
4 or in case several condemnees interested in the fund shall not agree as to
5 the distribution thereof; or in case the property condemned shall be encum-
6 bered by mortgage, judgment or other liens; or if for any other reason the
7 condemnor cannot safely pay the award or judgment to any person, the
8 amount thereof may be deposited with the clerk of the court, to be distributed
9 to the parties entitled thereto according to law. The procedure for distribut-
10 ing the funds shall be in accordance with the rules. The fees of the clerk,
11 if any, shall be paid out of the fund.

1 42. Abandonment of proceedings. Any action hereunder may be aban-
2 doned at any time before or within 30 days after the filing of the award of
3 commissioners; or in the event of an appeal from such award, at any time
4 before or within 30 days after the entry of judgment on such appeal; or in
5 the event that a hearing before commissioners shall have been waived, at
6 any time before or within 30 days after judgment has been entered in said
7 action; provided, however, that no such action shall be abandoned after the
8 filing of a declaration of taking pursuant to Article V hereof, or after the
9 vesting of title in any condemnor pursuant hereto; and provided further, that
10 (a) a discharge of the notice of lis pendens is filed, and (b) the condemnor
11 shall pay the expenses of all condemnees who have appeared in the action.

1 43. Method of abandonment. The abandonment shall be effected by
2 filing and serving notice of abandonment in the manner, form and content
3 fixed by the rules.

1 44. Uneconomic remnants. If as a result of a partial taking of property,
2 the property remaining consists of a parcel or parcels of land having little
3 or no economic value, the condemnor, at the request of the condemnee, shall
4 acquire the entire parcel.

ARTICLE X

REPEALER

1 45. All acts or parts of act inconsistent herewith, are repealed as of the
2 effective date hereof; provided, however, that this act shall not affect stat-
3 utes regulating the ascertainment and payment of compensation for property
4 condemned or taken by bodies organized and administered as a result of or
5 under compacts between States.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 388

STATE OF NEW JERSEY

ADOPTED APRIL 10, 1969

Amend page 1, title, line 2, omit "revising and supplementing", insert "repealing".

Amend page 1, title, line 3, after "Statutes", insert "and chapter 14 of the laws of 1942".

Amend page 2, section 2, line after 48, insert a new subparagraph as follows:

"(n) 'Public Utility' means and includes every public utility, as the same are enumerated in Revised Statutes 48:2-13, and every natural gas pipeline utility as defined in P. L. 1952, chapter 166 (C. 48:10-2 et seq.) vested with the power of eminent domain and subject to regulation under State or Federal Law."

Amend page 2, section 2, line 49, omit "(n)", insert "(o)".

Amend page 3, section 5, line 7, add a new sentence as follows:

"Where authority to condemn has been granted by a State or Federal regulatory body having original supervisory jurisdiction over the condemnor, review of such determination shall be by appeal according to law."

Amend page 3, section 6, line 13, before "title", omit "fee".

Amend page 3, section 6, line 17, omit "in accordance with the rules", insert "by certified mail".

Amend page 3, section 6, line 19, omit "by the rules", insert "in the written offer, which shall in no case be less than 14 days from the mailing of the offer,".

Amend page 3, section 6, line 21, before "title", omit "fee".

Amend page 4, section 10, line 12, after "thereby," insert "but the failure to comply with the provisions of this section shall not otherwise affect such proceedings".

Amend page 4, section 11, line 5, after "terminated", insert "except where such authority has been determined by a State or Federal regulatory body having original jurisdiction with respect thereto".

Amend page 6, section 15, line 2, after "condemnation", insert "nor shall the provisions of sections 17 through 29 of this article be applicable to condemnation of property owned or used by a public utility".

Amend page 7, section 16, line 5B, after "thereto.", insert "No tests, soundings or borings shall be made on property in which there exists a pipeline or other underground utility installation except in the presence of a representative designated by the public utility owning or using the same.".

Amend page 10, section 29, lines 1 to 3, omit and insert:

"29. Fees of clerk of the court. Where the clerk of the court is authorized to charge and deduct statutory fees or commissions by reason of the deposit and disbursement of funds pursuant to this article, such fees and commissions shall be paid by the condemnor."

Amend page 14, section 41, line 1, insert a new section 41 as follows:

"41. Possession by individuals or private corporations. Individuals and private corporations vested with the authority of condemnation may, upon the filing of the report of the commissioners and upon payment, to the parties entitled thereto or into court, of the amount awarded as provided in this act, take possession of the land or other property for the purposes for which the same was authorized to be taken.

The report of the commissioners, together with the order or judgment appointing them, or a copy thereof certified by the clerk of the court, and proof of such payment of the amount awarded shall be plenary evidence of the right of the condemnor to have, hold, use, occupy, possess and enjoy the land and other property."

Amend page 14, sections 41 to 44, renumber sections 41 through 44 as 42 through 45.

Amend page 14, section 44, after line 4, insert a new section in Article IX, as follows:

"46. Any reference to Title 20 of the Revised Statutes or to any section or sections thereof or any amendment or supplement thereof in any other statute, in effect on the effective date of this act, shall hereafter be given effect as though reference therein were made to this act or the applicable provisions thereof."

Amend page 14, section 45, line 1, omit "45. All acts and parts of acts inconsistent herewith," insert "47. Chapter 1 of Title 20 of the Revised Statutes and P. L. 1942, chapter 14".