

# HOUSE . . . . . No. 3407

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, April 7, 1964.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 175) of Nathaniel J. Young, Jr., and Oliver F. Ames for legislation to establish a "one-price" method of eminent domain damage settlement; and the petition (accompanied by bill, House, No. 1522) of Edward W. Brooke, Mary B. Newman, Albert A. Gammal, Jr., Thomas C. Wojtkowski and another relative to proceedings for the taking of real estate and interests therein by eminent domain, report the accompanying bill (House, No. 3407).

For the committee,

THOMAS C. WOJTKOWSKI.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Four.

### AN ACT RELATING TO PROCEEDINGS FOR THE TAKING OF REAL ESTATE AND INTERESTS THEREIN BY EMINENT DOMAIN.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 79 of the General Laws is hereby  
2 amended by striking out the third, fourth and fifth sentences  
3 of the first paragraph of section 3, as most recently amended  
4 by section 1 of chapter 626 of the acts of 1959, and inserting  
5 in place thereof the following sentence: — Upon the recording  
6 of an order of taking under this section, title to the fee of the  
7 property taken or to such other interest therein as has been  
8 designated in such order shall vest in the body politic or cor-  
9 porate on behalf of which the taking was made; and the right  
10 to damages for such taking shall thereupon vest in the persons  
11 entitled thereto unless otherwise provided by law.

1 SECTION 2. Chapter 79 of the General Laws is hereby further  
2 amended by striking out section 6 and inserting in place thereof  
3 the following section: —

4 *Section 6.* When a taking is made on behalf of a body politic  
5 or corporate other than a corporation described in section seven,  
6 the board of officers by whom the order of taking is adopted  
7 shall, at the time of the adoption thereof, award the damages  
8 sustained by every person in his property by reason of such  
9 taking. Such award may be amended by said board of officers  
10 at any time prior to the payment thereof by reason of a change  
11 in ownership or value of said property before the right to  
12 damages therefor has become vested or for other good cause  
13 shown. Such damages shall be paid by such body politic or  
14 corporate unless other provision is made by law.

1 SECTION 3. Chapter 79 of the General Laws is hereby fur-  
2 ther amended by inserting after section 7 the following sec-  
3 tions: —

4 *Section 7A.* An award of damages made pursuant to either  
5 of the two preceding sections shall be determined on the basis  
6 of not less than one appraisal made in accordance with section  
7 twelve.

8 *Section 7B.* Immediately after the right to damages be-  
9 comes vested, the board of officers who have made a taking  
10 under this chapter shall do all things and execute all docu-  
11 ments necessary and within their lawful authority for the  
12 prompt payment of all damages awarded in the order of  
13 taking. In the event that authority to make or approve such  
14 payments, or to perform any act necessary thereto, is con-  
15 ferred by law upon any person other than said board of officers,  
16 such person shall do all things and execute all documents neces-  
17 sary and within his lawful authority for such prompt payment.  
18 Any check for the payment of such damages shall be issued  
19 either within sixty days after the right thereto becomes vested,  
20 or within fifteen days after demand therefor by any person  
21 entitled thereto is made, as said board of officers shall deter-  
22 mine, and shall, except as provided in section seven D, be  
23 made immediately available to the persons entitled thereto at  
24 such time and place as may be designated by said board of  
25 officers.

26 *Section 7C.* Immediately after the right to damages be-  
27 comes vested, the board of officers who have made a taking  
28 under this chapter shall give notice thereof to every person,  
29 including every mortgagee of record, whose property has been  
30 taken or who is otherwise entitled to damages on account of  
31 such taking. Such notice shall be in writing and shall describe  
32 in general terms the purpose and extent of the taking, and shall  
33 state the amount of damages, if any, awarded for such taking  
34 and the time and place at which he may obtain payment  
35 thereof, or, if no damages have been awarded, the time within  
36 which he may petition for an award of the same, and in either  
37 case the time within which he may request an offer under sec-  
38 tion eight A and the time within which he may petition the  
39 superior court to determine his damages under section fourteen.  
40 Such notice may be served by personal service, or by leaving

41 an attested copy thereof at the last and usual place of abode  
42 of the person to be notified if he is a resident of the common-  
43 wealth, by any person authorized to serve civil process, or  
44 notice may be given to persons within or without the common-  
45 wealth, by registered mail or other suitable means. Failure to  
46 give notice shall not affect the time within which a petition  
47 for damages may be filed, except as provided by section sixteen.

48 *Section 7D.* If the board of officers which has made a taking  
49 under this chapter is unable, upon reasonable investigation, to  
50 determine the name of any person entitled to damages awarded  
51 under section six, or if said board of officers determines that  
52 any person entitled to such damages is under a legal dis-  
53 ability from receiving payment thereof, any check on account  
54 of such damages shall be made payable to the justices of the  
55 superior court for the benefit of the person or persons entitled  
56 thereto. If said board of officers determines that damages  
57 awarded under section six must be apportioned between two  
58 or more persons having an estate or interest in a single parcel  
59 of land, any check on account of such damages may be made  
60 payable to the justices of the superior court for the benefit of  
61 the persons entitled thereto. Said board of officers shall file,  
62 in the superior court of any county in which a petition under  
63 section fourteen may be brought, a petition for leave to de-  
64 posit the amount of such damages in a savings bank or other  
65 like institutions, or in savings accounts in a trust company, or  
66 to invest the same in share accounts of a federal savings and  
67 loan association or a savings and loan association located in  
68 the commonwealth, as the court orders, to accumulate for the  
69 benefit of the person entitled thereto, and the court may in its  
70 discretion, and after such notice as it may order, direct such  
71 amount to be so deposited or invested. Such deposit or in-  
72 vestment shall be made in the name of the justices of the  
73 superior court for the time being and shall be subject to the  
74 order of said justices and of their successors in office as herein-  
75 after provided. The board of officers making such deposit or in-  
76 vestment shall file in the superior court a memorandum thereof,  
77 with the original certificates or other evidences of title thereto,  
78 which shall be allowed as a sufficient voucher for payment of  
79 such amount. When the person entitled to such amount or  
80 any portion thereof satisfies the court of his right to receive it,  
81 the court shall after such notice as it may order cause such

82 amount or such portion thereof, or the proceeds of its invest-  
83 ment, to be transferred to him. Amounts deposited or in-  
84 vested under this section shall be subject to the provisions of  
85 chapter two hundred A of the general laws, relating to aban-  
86 doned property, and the clerk of court shall, insofar as prac-  
87 ticable, make such reports and give such notice concerning the  
88 same as are required respectively by sections seven and eight  
89 of said chapter two hundred A.

90 *Section 7E.* If any check issued in accordance with section  
91 seven B remains unclaimed by any person entitled thereto for  
92 a period of sixty or more days after notice to such person in  
93 accordance with section seven C, such check shall be withdrawn  
94 and a new check issued in like amount. Such new check shall  
95 be made payable to the justices of the superior court, and shall  
96 be deposited, held and disposed of in accordance with the pre-  
97 ceding section.

98 *Section 7F.* The board of officers by whom an order of taking  
99 has been adopted under this chapter shall, immediately upon  
100 giving notice in accordance with section seven C or upon filing  
101 a petition in accordance with section seven D, send a copy of  
102 such notice or such petition, as the case may be, to the collector  
103 of taxes of the city or town in which the land to which such  
104 notice or petition pertains is located.

105 *Section 7G.* A person who receives a payment in accordance  
106 with section seven B, or who withdraws an amount deposited  
107 in accordance with section seven D, may accept the same  
108 without prejudice to or waiver of any right to claim a larger  
109 sum by proceeding before an appropriate tribunal. No interest  
110 shall be recovered except upon such amount of damages as  
111 shall, upon final adjudication, be in excess of the amount of  
112 such payment or amount deposited.

113 In the event that the amount of such payment or deposit  
114 shall prove to be in excess of damages subsequently assessed  
115 by an appropriate tribunal, the petitioner shall be ordered by  
116 a proper decree to refund to the body politic or corporate an  
117 amount equal to the difference between the amount of such  
118 payment or deposit and the damages subsequently assessed,  
119 plus costs and interest at the rate of six per cent per annum  
120 from the date as of which damages were assessed.

121 In the event that a payment is made to a person not entitled  
122 thereto, the body politic or corporate may recover the same

123 from such person in an action at law or by bill in equity, and  
124 the board of officers, upon recovery of such payment, shall dis-  
125 pose of the same in accordance with section seven B or section  
126 seven D, as said board of officers shall determine.

1 SECTION 4. Chapter 79 of the General Laws is hereby further  
2 amended by striking out section 8, as most recently amended  
3 by chapter 49 of the acts of 1960.

1 SECTION 5. Chapter 79 of the General Laws is hereby further  
2 amended by inserting after section 10 the following section:—  
3 *Section 10A.* Compliance with the provisions of sections  
4 six, seven seven A, seven B, seven C, seven D, eight A, nine  
5 and ten may be enforced against any person having a duty of  
6 compliance therewith by writ of mandamus issued upon the  
7 petition of any person adversely affected by noncompliance  
8 therewith. The body politic or corporate on behalf of which  
9 the taking was made shall be joined in any such petition, and  
10 the petitioner shall be entitled to recover therefrom in the same  
11 proceeding all damages sustained by reason of such noncom-  
12 pliance, with costs, including reasonable attorney's fees.

13 Notwithstanding the foregoing provisions, noncompliance  
14 with said sections six, seven, seven A, seven B, seven C, seven  
15 D, eight A, nine and ten shall not affect the validity of the  
16 proceedings under this chapter.

1 SECTION 6. Chapter 79 of the General Laws is hereby further  
2 amended by striking out the second paragraph of section 16,  
3 as most recently amended by section 1 of chapter 797 of the  
4 acts of 1962.

1 SECTION 7. Chapter 79 of the General Laws is hereby further  
2 amended by inserting after section 36 the following section:—  
3 *Section 36A.* The body politic or corporate against which  
4 an award is made under section seven, nine or ten, or against  
5 which a judgment is entered under section fourteen, shall,  
6 within thirty days after all rights of appeal therefrom have  
7 been exhausted or waived, make payment in accordance with  
8 such award or judgment. Compliance with this section may be  
9 enforced against any person having a duty of compliance there-

10 with by writ of mandamus issued upon the petition of any person  
11 adversely affected by noncompliance therewith. Such body  
12 politic or corporate shall be joined in any such petition, and  
13 the petitioner shall be entitled to recover therefrom in the same  
14 proceeding all damages sustained by reason of such noncom-  
15 pliance, with costs, including reasonable attorney's fees.

