
By Mr. Rourke of Lowell, petition of Raymond F. Rourke that provision be made for pro tanto payments in the taking by the Commonwealth of land by eminent domain for highway purposes. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT PROVIDING FOR PRO TANTO PAYMENTS IN LAND TAKING BY THE COMMONWEALTH FOR STATE HIGHWAY PURPOSES.

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

SECTION 1. Section 8A of chapter 79 of the General Laws is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— A board of officers who have made a taking under this chapter, except as provided in the following section, may at any time after the right to damages for such taking has become vested, and if so requested by a person entitled to damages at any time after the right to damages has become vested, shall before the expiration of nine months after the right to damages vested or, in the case of a request made more than three months after the right to damages vested, before the expiration of six months after such request, offer in writing to every person entitled to damages on account of such taking a reasonable amount such board is willing to pay either in settlement under section thirty-nine of all damages for such taking, with interest thereon and taxable costs, if any, or as a payment pro tanto which may be accepted and collected forthwith without prejudice to or waiver or surrender of any right to claim a larger sum by proceeding before an appropriate tribunal, but subject to the obligation imposed by this section to refund an amount equal to the difference between such payment and the damages subsequently assessed by such tribunal if such offer is accepted as a payment pro tanto and such payment shall prove to be in excess of the damages subsequently assessed by such tribunal.

1 SECTION 2. Chapter 79 of the General Laws is hereby
2 amended by inserting after section 8A the following section:—
3 *Section 8B.* In any case where the commonwealth shall make
4 a taking for state highway purposes, it shall within thirty days
5 after the right to damages for such taking has become vested
6 offer in writing to every person entitled to damages on account of
7 such taking an amount of not less than sixty-six and two thirds
8 per cent of an amount established as a reasonable settlement by
9 the real estate review board created by section six of chapter four
10 hundred and three of the acts of nineteen hundred and fifty-four
11 as a payment pro tanto which may be accepted and collected
12 forthwith without prejudice to or waiver or surrender of any
13 right to claim a larger sum by proceeding before an appropriate
14 tribunal but subject to the obligation imposed by this section
15 to refund an amount equal to the difference between such pay-
16 ment and the damages subsequently assessed by such tribunal
17 if such payment shall prove to be in excess of the damages subse-
18 quently assessed by such tribunal.

19 In the event a payment made under this section shall prove to
20 be in excess of damages subsequently assessed by an appropriate
21 tribunal, the petitioner shall be ordered by a proper decree to
22 refund to the commonwealth an amount equal to the difference
23 between the payment and the damages subsequently assessed,
24 plus costs and interest at the rate of four per cent per annum
25 from the date as of which damages were assessed.