FINAL REPORT

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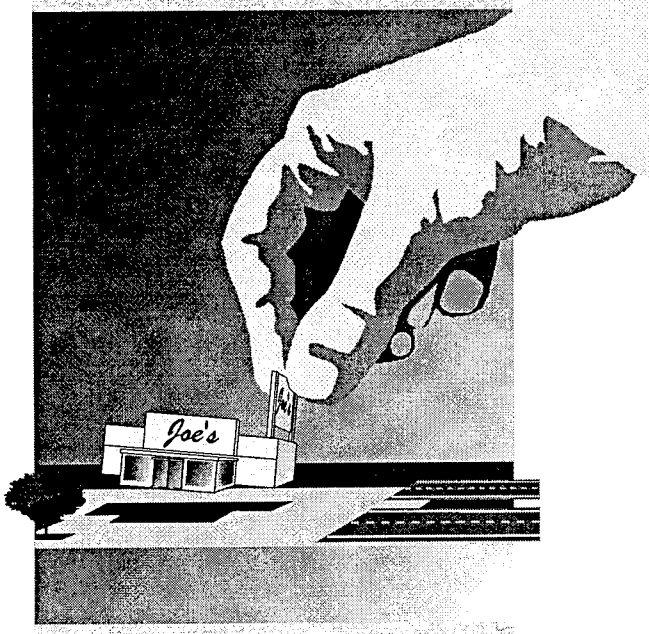
A REVIEW OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION'S BUSINESS RELOCATION PROCESS



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16. Abstract

This report details a study that reviewed the Virginia Department of Transportation's (VDOT) business relocation program, with a focus on the relocation difficulties of retail gasoline service stations operating on leased property, as mandated by House Joint Resolution 490 passed by the Virginia General Assembly in 1999. The researchers reviewed reports and legislation related to business relocations and conducted interviews with VDOT field relocation agents, senior FHWA staff, and a representative of the Virginia Gasoline Marketers Council. The study also included a mail survey of businesses relocated by VDOT between 1993 and 1999 and surveys and interviews of relocation agents in other state DOTs. Statistical analyses were performed on relocation payment data for 262 Virginia businesses to estimate what the average payments would have been in the absence of the limits in the federal Uniform Act and how much higher the limits would need to be to ensure that the majority of relocated businesses were compensated appropriately.

The recommendations were:

1. FHWA should strongly consider increasing the federal maximums for reestablishment and in lieu of (actual moving costs} (ILO) payments, given the evidence from Virginia and numerous other states.
2. FHWA should index their reestablishment and ILO payment maximums to the Consumer Price Index to account for inflation. Virginia should also index its relocation payment ceilings to inflation.
3. As long as relocation payment ceilings exist, Virginia should monitor actual payments to businesses and conduct analyses similar to those done in this study every few years.
4. VDOT may wish to consider the potential value of conducting a prospective study of business displacees. Ideally, any future study of the impact of displacement on businesses would follow a sample of businesses from initiation of negotiations to the conclusion of displacement process.

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EXECUTIVE SUMMARY

Introduction

The Virginia Department of Transportation (VDOT) relocates businesses when necessary to make way for new roads or other road-related improvements. VDOT makes a number of kinds of payments to displaced businesses within a policy framework that includes the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) and VDOT policies closely modeled on the Uniform Act.

House Joint Resolution 490 (HJR 490) (Appendix A), passed by the 1999 Session of Virginia's General Assembly, requested that VDOT conduct a review of its business relocation process. The resolution specifically mentioned the relocation difficulties of displaced gasoline service stations operating on leased land and the compensation they could receive. At the request of VDOT's Right of Way & Utilities Division, the Virginia Transportation Research Council conducted the review and expanded the study to include all types of relocated businesses.

A displaced business has two options for receiving a relocation payment: (1) the actual moving costs and reestablishment option or (2) the in lieu of (actual moving costs) (ILO) option. A displaced business owner can receive payment for "actual, reasonable, moving costs and related expenses" under § 24.303 of the Uniform Act; these payments do not have a specific monetary limit. Moving costs include items such as expenses incurred in moving the business equipment, inventory, or other personal property; finding a replacement site; and disconnecting equipment or machinery and reconnecting it at the new site.

In addition to reasonable moving expenses, a business may be eligible to receive a reestablishment payment for expenses incurred in reestablishing a small business, farm, or non-profit organization at a replacement site. A wide range of items are eligible for reimbursement as reestablishment expenses including repairs or improvements to the new property as required by local codes and ordinances; modifications to make the replacement property suitable for the operation of the business; new exterior business signs; and increased operating costs at the replacement site, such as higher rent and higher utility costs. Under the Uniform Act, reestablishment payments may not exceed $10,000. Although a state may establish a higher reestablishment payment ceiling (and some states have), reestablishment payments in excess of $10,000 are the responsibility of the state.

Alternatively, a business may choose to receive an ILO payment. To be eligible for this option, a business must meet particular criteria (e.g., a business must contribute materially to the income of the displaced business owner), although some of the criteria may be waived in specific cases. The ILO payment itself must be at least $1,000 and not more than $20,000 under the Uniform Act. The precise amount is based on the average net (i.e., after-tax) business income over the most recent 2-year period. There is no specific prohibition in the law against a business owner choosing the ILO payment option and later reopening the displaced business.

When this study began, VDOT's reestablishment and ILO payments were limited to the federal maximums in the Uniform Act. After this study was underway, the Virginia General Assembly passed Senate Bill 63 (SB 63) (Appendix B) in the 2000 Session. SB 63 raised Virginia's reestablishment payment maximum from $10,000 to $25,000 and its ILO payment maximum from $20,000 to $50,000. The Commonwealth is responsible for paying any amounts greater than $10,000 for reestablishment or greater than $20,000 for ILO payments, and this will continue to be the case until new limits are presented in the Uniform Act. The last change in any of these federal payment ceilings occurred in 1987, 14 years ago.

Purpose and Scope

The objectives of this study were as follows:

1. to assess whether relocated Virginia businesses are compensated adequately under current state and federal law, with particular attention devoted to the special relocation difficulties (if any) of retail gasoline service stations

2. to assess the adequacy of the ILO and reestablishment payment ceilings in the federal Uniform Act.

At the request of VDOT's Right of Way & Utilities Division, the scope of the study included all types of businesses relocated in Virginia.

Methods

In the course of the study, the researchers interviewed relocation professionals in each of VDOT's nine construction districts and in 23 other states. This was done to obtain expert opinions and knowledge as to whether any shortcomings in the federal or state relocation policies existed and to determine if gasoline service stations were burdened by any special difficulties. A mail survey of Virginia business owners and business tenants relocated by VDOT between 1993 and 1999 was also conducted to ask about their relocation experiences and to solicit their suggestions for improving VDOT's relocation policy and procedures. As required by HJR 490, the researchers contacted the Virginia Gasoline Marketers Council and the Small Business Association to obtain their input. The researchers also performed multiple statistical analyses of past VDOT business relocation transactions to determine trends in reestablishment and ILO payments and to calculate what the average payouts for each would have been in the absence of ceilings and adjusting for inflation since 1987.

Conclusions and Recommendations

A number of common themes emerged from the interview and survey data. Most important, the interviews with relocation agents, the survey of relocated businesses, and the statistical analysis of 1993-1999 payments revealed that the increases in Virginia's

reestablishment and ILO payment ceilings under SB 63 are warranted. Specific recommendations are as follows:

1. *The federal ceilings for reestablishment and ILO payments in the Uniform Act should be increased.* Based on the analyses of Virginia data alone, increases of at least $10,000 in the federal payment ceilings are indicated (and larger increases might be indicated if data were analyzed for additional states).

2. *Because of the eroding power of inflation, indexing ceilings to a measure of inflation, such as the Consumer Price Index, should be considered. Virginia, as well as other states, may also wish to consider indexing payment ceilings, regardless of what action is taken by FHWA.*

3. *As long as federal or state relocation payment ceilings exist, payments to businesses should be monitored and an analysis similar to the one done in this study should be conducted every few years.* In light of the data censoring that occurs because of payment ceilings, such an analysis would assess the appropriateness of compensation.

4. *VDOT may wish to consider the potential value of conducting a prospective study of business displacees.* The special difficulties faced by leased service stations seem to originate with the possible loss of franchise after a displacement, which is a decision made by the oil companies. The new limits instituted by SB 63 may alleviate some of these difficulties since station operators would be eligible for a higher ILO payment.

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INTRODUCTION AND BACKGROUND

The Virginia Department of Transportation (VDOT) relocates businesses when necessary to make way for new roads or other road-related improvements. Virginia's current relocation benefits program is governed by policies established initially by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), which specifies the categories of payments and maximum amounts that relocated businesses may receive. Virginia complied with the act in 1972, with the passage of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (*Code of Virginia,* § 25-235).

Under the federal Uniform Act and the *Code of Virginia,* Virginia businesses compelled to relocate because of new highway construction or roadway improvements may choose one of two payment options:

1. *The actual moving expenses and reestablishment option.* Under this option, the actual moving expenses are paid after the move, and there is no limit on actual, reasonable moving costs (as long as they can be documented). Some of the items eligible for reimbursement as moving costs include costs associated with actually moving the business equipment, inventory, and personal property; hooking up utilities at the new location; searching for a replacement site ($1,000 ceiling); disconnecting and reconnecting machinery; obtaining required local licenses and certifications; obtaining professional moving assistance; and re-lettering signs and stationery.

   The limit for the (business) reestablishment component is $10,000. Typical items eligible for reimbursement under reestablishment include modifying the replacement real property to comply with local building codes and to make the structures suitable for the conduct of the business; providing exterior signing; paying utility impact fees; and replacing worn surfaces at the replacement site. Other licenses and fees, the cost of advertising the new business location, and the increased costs of operation (such as higher rent and utility costs) during the first 2 years at the new location are also

considered elements of reestablishment. A number of expenses are not eligible for reimbursement under the reestablishment option, e.g., the purchase of capital assets, such as furniture, machinery, and trade fixtures, and interest on money borrowed to make the move or to purchase the replacement property.

2. *The in lieu of (moving costs) (ILO) payment option.* Specific criteria must be met for a business to be eligible for this payment, e.g., it cannot be relocated without a substantial loss in its existing patronage. A business is assumed to meet this test unless the department of transportation (DOT) can show otherwise. A business must also contribute materially to the income of the displaced business owner, although this test can be waived in some cases. In addition, a business must not be part of an enterprise with more than three other entities that are not being displaced by the DOT. The ILO payment itself must be at least $1,000 and not more than $20,000 under the Uniform Act. The precise amount of the payment is based on the average net (i.e., after-tax) business income over the most recent 2-year period. If this time period is determined to be non-representative, the DOT may use another time period that reflects business activity.

Over the years, specific provisions of the Uniform Act have changed, but the maximum payments have remained essentially the same since the last significant changes in 1987. At that time, the amendments created the reestablishment payment and increased the ILO payment ceiling from $10,000 to the current $20,000.

PURPOSE AND SCOPE

This study was initially undertaken in response to House Joint Resolution 490 (HJR 490) (Appendix A), which was passed in the 1999 Session of Virginia's General Assembly. HJR 490 stated that Virginia's relocation process "fails to provide sufficient compensation to permit certain businesses located and operating on leased property to relocate." The "certain businesses" that were the focus of HJR 490 were retail gasoline service stations. HJR 490 also stated that when a gasoline service station owner or operator is unable to relocate his or her business, the Commonwealth might suffer a loss of tax revenue. The language in HJR 490 required VDOT to study the provision of relocation benefits and assistance to businesses generally and the particular relocation difficulties of gasoline service station owners. HJR 490 also specified that the Small Business Administration and/or an organization representing the gasoline industry (retailers, refiners, or distributors) be included in the study.

After this study was underway, the Virginia General Assembly passed Senate Bill 63 (SB 63) in its 2000 session (Appendix B). SB 63 raised the maximum amounts VDOT can pay to relocated businesses. The maximum reestablishment payment was raised from $10,000 to $25,000, and the maximum ILO payment was raised from $20,000 to $50,000. These new limits became effective July 1, 2000. Since the limits exceed those established by the federal Uniform Act, the Commonwealth is financially responsible for any payments above and beyond the federal maximums. Consequently, VDOT's Right of Way & Utilities Division requested that

the study's purpose be expanded to include an assessment of the adequacy of the federal payment ceilings of $10,000 for reestablishment and $20,000 for ILO payments.

The relocation payments available to business owners (i.e., owners of land or buildings used for a business) generally exceed those available to business tenants (i.e., renters of land or building space). Also, many kinds of businesses can have difficulty finding a suitable replacement site, for varied reasons. Discussions with staff of VDOT's Right of Way & Utilities Division revealed that leased service stations represent only one type of tenant business that can be adversely affected by relocation. For those reasons, the Right of Way & Utilities Division requested that the study be expanded to include an assessment of all types of relocated businesses.

The specific objectives of the study were as follows:

1. to assess whether relocated Virginia businesses are compensated adequately under current state and federal law, with particular attention to the special relocation difficulties (if any) of retail gasoline service stations, in response to HJR 490
2. to assess the adequacy of the ILO and reestablishment payment ceilings in the federal Uniform Act, in light of SB 63.

METHODOLOGY

To achieve the study's objectives, the researchers obtained information from a variety of sources: displaced Virginia businesses, other states, VDOT relocation agents in the field, staff of the Federal Highway Administration (FHWA), and other researchers investigating the business relocation payments aspects of the Uniform Act.

The research was composed of the following tasks:

1. Literature and policy review. The researchers reviewed the literature on relocation, including *VDOT's Relocation Assistance and Payments Procedure Manual* (VDOT, 1992), to gain an understanding of the relocation process and the policies that govern it. Although there was considerable literature on the residential relocation program, literature on the business program was relatively scarce. O. R. Colan and Associates, a national consulting firm that specializes in right-of-way acquisition and relocation for public projects, conducted a relocation retrospective study in 1996. Although the focus of their study was residential relocations, the study included a section on business relocations.

2. Interviews with VDOT staff and industry representatives. The researchers conducted lengthy face-to-face interviews with relocation agents in all nine VDOT construction district offices to gain a deeper understanding of VDOT's business relocation program. By interviewing staff in all areas of the Commonwealth, the researchers could capture all of the variables that might affect the ability of a business to relocate, e.g., rural and urban differences and differences in local economies, real estate markets, and county zoning requirements.

These interviews had several objectives:

- to investigate the agents' experiences with businesses that chose to move and reestablish
- to assess their experiences with businesses that chose ILO payments
- to find out about their experiences with relocating service stations and oil businesses, in particular
- to solicit their views on the provisions of the Uniform Act, including eligible expenses and payment maximums, given their years of experience in relocating businesses
- to obtain suggestions, if any, on how the program could be improved.

The majority of the agents interviewed had conducted business relocations for VDOT for 15 or more years and knew about many specific cases in detail. Most of those interviewed were the senior relocation agent(s) in the district, and, in most cases, the researchers had the opportunity to interview more than one agent in a district office.

Interviews in three VDOT districts were conducted in July 2000—after the new reestablishment and ILO payment maximums enacted by the 2000 General Assembly became effective. Agents mentioned only one case that was being handled with the newly increased payment ceilings. Thus, the views expressed by the agents reflected their longstanding experience with reestablishment payments of not more than $10,000 and ILO payments of not more than $20,000 (still the provisions of the federal Uniform Act).

Telephone interviews were also conducted with a representative of the Virginia Gasoline Marketers Council to understand the impetus behind the legislation. The Small Business Association was also contacted.

3. *Survey of other states.* The researchers initially contacted other state DOTs via email using the American Association of State Highway and Transportation Officials' (AASHTO's) right-of-way electronic list server. These initial contacts enabled the researchers to identify the experiences of responding states with business relocations and made it possible to identify contact persons for follow-up information gathering.

A follow-up telephone survey was conducted with the initial (listserv) respondents and additional contacts they suggested. This process resulted in interviews with representatives from a total of 23 states. Issues explored in the interviews included details about each state's program, a discussion of any specific problems the state was experiencing with its relocation program, the types of businesses that tended to fare more poorly than others during the relocation, and specific components they would like to change about their state's business relocation program.

4. Survey of relocated businesses in Virginia. The researchers conducted a mail survey of businesses relocated by VDOT from the summer of 1993 through the spring of 1999. VDOT's Right of Way & Utilities Division provided hard copy data on the identity of 262 businesses and relocation payments to these businesses. This time interval was used as the

sampling frame because the last modification to the federal policy on business relocations (the removal of some internal caps) occurred in 1993. Specific data about each relocation transaction were entered into spreadsheets for easier analysis. Addresses for the sample of businesses were obtained from an Internet directory because of time constraints. This exercise resulted in addresses for 172 displaced businesses or their owners/tenants (if the business itself was not listed in the directory). Multiple versions of a business relocation survey were developed (Appendix D): one version for business owners or tenants that chose ILO payments, one version for those that chose moving cost payments only, and a third version for those that qualified for both moving cost and reestablishment payments. The surveys consisted of 11 to 15 questions (depending on ILO or moving costs, and whether owner or tenant) aimed at obtaining first-hand information from displaced business owners about the relocation experience. The surveys were mailed with cover letters, and each included a self-addressed stamped envelope to facilitate return.

5. Statistical analysis of VDOT relocation payments. Additional statistical analyses of relocation payments were done using the hard copy data provided by VDOT's Right of Way & Utilities Division. The sample included data on 262 businesses relocated from 1993 through 1999. These data were analyzed to identify broad trends, such as average payments in various categories. Standard statistical (econometric) techniques were employed to identify what reestablishment and ILO payments would have been without a specified ceiling. For the purpose of analysis over time, the payment limits were also adjusted for inflation.

6. Discussions with other researchers examining business relocations. O. R. Colan and Associates is currently conducting another nationwide business relocation study for FHWA. Although the study was incomplete when this report was prepared, the researchers exchanged information on multiple occasions with Colan staff.

RESULTS AND DISCUSSION

Literature Review

The relocation study by O. R. Colan and Associates (1996) consisted of data derived from interviews with agency officials from nine states and the Dallas Area Rapid Transit. The study team conducted face-to-face and telephone interviews with business relocatees who were selected from lists provided by states. The focus of the interviews was to ascertain whether the relocation expenses incurred by businesses were adequately reimbursed. Specific questions included whether the moving expense payment was sufficient, whether the reestablishment payment or ILO payment was sufficient, and, if not, what other expenses were incurred. Displacees were also questioned about the (replacement site) search cost limit and asked to make suggestions regarding the various aspects of the relocation process.

Two of the states surveyed (Delaware and Wisconsin) provide reestablishment payments that exceed the federal maximum, a nuance that likely affected the opinions of their respondents about the adequacy of payments. Of the 88 businesses surveyed, most (72%) believed that the

moving costs payments they received were sufficient. However, 51% of businesses that responded to the reestablishment questions reported that those (reestablishment) payments were not sufficient to cover the expenses they incurred. Other uncompensated expenses reported by responding businesses included rent differentials (21%), remodeling costs (14%), business downtime, signage, and facilities for the handicapped. A majority of the responding businesses (76%) reported that payments received for replacement site search costs were adequate. Respondents' suggestions by the states and Dallas Area Rapid Transit included compensation for lost business (12 respondents) and business downtime (7 respondents).

The 1996 Colan report recommended that the FHWA "may wish to seek legislative changes that would permit adjustment to the ceiling of reestablishment payments to at least match inflation." At the time, FHWA's position was to maintain the $10,000 reestablishment payment and to leave the search cost payment ceiling at $1,000 until more convincing evidence showed that increases were warranted (FHWA, 2000).

Colan is currently conducting another relocation study for FHWA that focuses specifically on displaced businesses. As part of the study, the Colan researchers are conducting field interviews with displaced business owners in seven states.

Interviews with VDOT Relocation Agents and Industry Representatives

VDOT Relocation Agents

The VDOT agents interviewed made a number of consistent observations, which are summarized here. The most frequent comment by far from all 15 agents interviewed was that the maximum reestablishment payment needed to be increased to more than $10,000.

Business versus Residential Relocations

Many of the VDOT relocation agents contrasted the benefits for residential and business relocations in the Uniform Act as evidence that businesses should receive more assistance and/or compensation in the relocation process than was allowable at the time of this study. They made the following comments:

- Under the Uniform Act, a relocated homeowner is eligible to receive a (temporary) replacement housing payment of $22,500, compared to the maximum payment of $10,000 for a business wishing to reestablish.

- State DOTs are required to find a replacement location for a homeowner but not for a displaced business.

- There is no maximum payment for housing of last resort for businesses (i.e., replacement housing when a comparable property cannot be found); no comparable benefit is extended to businesses that have great difficulty finding another site.

- For the most part, homeowners display a high degree of satisfaction with their relocation experience. In contrast, relocated business owners and tenants have a much higher degree of dissatisfaction, feeling that harm has been done that has not been ameliorated.

Special Problems Businesses Experience in Relocating

The agents identified a number of problems that business owners and tenants experience in the relocation process, many of which greatly increase the costs to reestablish the business:

- Business tenants' modifications and improvements to the building in which they rent space (e.g., ventilation hoods for restaurants) become the property of the building owners when the business must be relocated. Tenants frequently lose all "trade fixtures" from the wallpaper out when they move. Thus, there can be a considerable loss to the tenant and a considerable gain for the owner of the property.

- Even if a business's equipment could be used at a new location, changes in health department regulations or local code requirements often make this impossible.

- Many tenant businesses go out of business because rent at other potential business locations is so much higher they cannot sustain payment of rent after the reimbursable rent differential period is over.

- Counties or cities frequently require business owners to comply with many requirements (e.g., landscaping) at the new location that were not required at their former location.

- In some parts of Virginia, replacement sites for particular types of businesses do not exist. As a result, business owners and tenants incur substantial debt financing new buildings.

- Businesses that handle materials that pose contamination risk (e.g., oil, used asphalt) have a very difficult time relocating. Localities typically want these kinds of businesses as far away from populated areas as possible.

Special Relocation Problems of Oil and Gasoline Businesses

HJR 490 specifically mentions that petroleum operations such as gasoline stations, oil distributors, and similar businesses have special difficulties when they must relocate. The researchers identified these difficulties during the course of this study. Some occur because of the nature of the petroleum business itself and the accompanying environmental requirements and not from actual displacement by VDOT. The reader should keep in mind that gasoline businesses vary in important respects: whether they have repair facilities at the same site and whether they have "mini-marts" on site, to name two. Several of the VDOT agents interviewed

had relocated a number of petroleum businesses and identified specific difficulties these businesses face in the relocation process:

- Relocating underground gasoline tanks is often very costly because of site (ground) contamination and associated cleanup. This cost poses a big obstacle to the relocation of small ("mom and pop") stations.

- Even if a station operator manages to find an existing site suitable for relocating the station (with tanks in place), ground contamination and cleanup requirements at the new location may nonetheless render the relocation financially infeasible.

- Relocated gas stations frequently need new underground gasoline tanks to comply with environmental regulations. In these cases, the $10,000 reestablishment maximum specified in the Uniform Act does not cover these expenses.

- As mentioned previously, county zoning practices tend to be very restrictive for gasoline and oil businesses, and, thus, the advantageous high-volume location may be scarce.

- If a gas station is a franchise (e.g., Exxon, Texaco), the corporation often owns the land, buildings, and tanks. Hence, a station operator may not be eligible for a number of kinds of relocation payments that would help defray the costs of relocating and any necessary cleanup. If a station operator has a lease arrangement, the corporation can terminate the lease if it judges the volume of gasoline sales to be unacceptably low after the station relocates.

Although a number of the VDOT agents identified specific problems that oil and gasoline businesses have when relocating, one of the most senior relocation agents interviewed commented that although gasoline retailers that need to be relocated experience special kinds of problem, many other types of tenant businesses suffer the same sorts of, if not more, difficulties than gasoline operations.

VDOT Agents' Suggestions for Improving the Moving Costs and Reestablishment Program

The VDOT relocation agents offered a number of ideas on how moving costs and reestablishment benefits could be made better and fairer for displaced businesses. Many of their comments focused on the need to increase the federal Uniform Act's $10,000 maximum for reestablishment payments. Other comments by VDOT agents concerned business relocation expenses that are not reimbursed under current federal law or VDOT policy.

The reasons agents gave for increasing the $10,000 maximum reestablishment payment included:

- Considerable inflation has occurred since the $10,000 cap was established in 1987; in other words, $10,000 could buy much more in 1987 than it can in 2001.

- A $10,000 payment may cover only a portion of the actual reestablishment expenses incurred by larger businesses. In particular, agents said that the cost of producing site plans alone or the cost of bringing utilities to the new business location may consume the entire $10,000 reestablishment payment authorized under the Uniform Act.

- In the case of tenant-operated businesses, the entire reestablishment payment may be consumed by the increase in rent at the new site.

- It is the belief of many agents that the $10,000 reestablishment cap established was originally targeted at small (mom and pop) businesses, and that, therefore, it is increasingly inadequate for larger businesses.

Relocation professionals had a number of other thoughts about how the reestablishment program could be improved and made fairer, including the following:

- Implement a graduated scale of benefits; it is difficult to compare businesses that are very different in size.

- Change the definition of *small business* to mean something other than having between 1 and 500 employees.

- Qualify more new construction items as expenses eligible for reimbursement (currently, only site preparation is eligible).

- Increase the number of categories of expenses that are eligible for reestablishment payments.

- Make new business signs a moving expense, rather than a reestablishment expense.

- Allow appraisers to identify the value of tenants' improvements to the property, and separate these items from payments that are paid to the building owner.

- Compensate businesses for the "value in place" of any trade fixtures that cannot be used in the "after" situation (so that the business will not have to opt for the seldom-used loss of tangible personal property process).

- Provide more notice to businesses that they will be relocated.

- Do more to cover increased rent expenses for businesses.

- Make something similar to residential "housing of last resort" available to businesses.

When VDOT's right-of-way agents were asked how VDOT's overall business relocation policy could be improved, there were recurring themes:

- *Business downtime.* Virtually all of the agents interviewed mentioned that businesses believe they should be compensated for the income they lose while they are in the process of relocating.

- *Interest differentials.* A mortgage interest differential is available to residential displacees but not to business displaces, which generally must take out loans to build a replacement site.

- *Loss of tenant income.* Building owners suffer loss of rent when their tenants are forced to relocate.

- *Capital assets.* Relocation may force a business to acquire capital assets, but these expenses are not eligible for reimbursement under the Uniform Act. Agents mentioned cases in which business owners had to buy storage sheds and had to have truck service bays reconstructed to operate their business in the same manner as prior to the relocation.

Views of Relocation Agents About the In Lieu of Process and Suggested Improvements

The researchers also asked the relocation agents several questions about the ILO process, having discovered that numerous businesses shown as recipients of ILO payments in VDOT's database were still in business (there is no prohibition against doing so). Under the Uniform Act (and VDOT policy, until 7/1/2000), ILO payments cannot exceed $20,000. The agents noted that the ILO payment option has special attributes:

- Business owners do not have to make the case that they are eligible for ILO payments (i.e., that the business cannot be relocated without a substantial loss of existing patronage), as they did in the past. A relatively large number of businesses choose the ILO option.

- The ILO payment option is often most attractive to mom and pop businesses and to tenants because it is simpler to pursue, is less time-consuming, and involves significantly less paperwork than the actual moving costs and reestablishment option.

- Nonprofit businesses often lack the kind of financial information (i.e., net income shown on tax returns) that they could use to qualify for ILO payments.

VDOT agents had several ideas for improving the ILO payment policy, though not so many as for improving business reestablishment benefits. These ideas included:

- *Increase the ILO maximum payment.* Agents interviewed before the 2000 General Assembly session suggested that the ILO cap needed to be more than the $20,000 ceiling in the Uniform Act. They noted that the $20,000 maximum had been around for a long time and that some businesses forced to close had net earnings in excess of $20,000. Although many agents said the recently established $50,000 maximum in Virginia would help considerably, they added that $50,000 may still not be sufficient

if a business owner could not avoid going out of business, had dependents to support, etc.

- *Simplify the process.* Agents said that some relocation staff lacks the accounting background to be comfortable with the current process, which can be quite complex.

- *Factor in gross business income, rather than just net income, in the ILO payment calculation.* Some equipment businesses take heavy depreciation that lowers their net income. At least one agent interviewed after the 2000 General Assembly's actions, however, cautioned that the new $50,000 maximum might open the possibility of VDOT paying some businesses more than they were losing (i.e., overpaying them), since the amount of the payment is based on net profit.

- *The policy should provide more specifics about the kinds of losses businesses must have to qualify to receive ILO payments,* including a more specific definition of "substantial loss of patronage."

Additional Input from Industry Representatives and FHWA

Virginia Gasoline Marketers Council

The representative of the Virginia Gasoline Marketers Council explained that the main difficulty for service stations is that the majority are franchise dealers that have a lease with an oil company. Under such agreements, the oil company owns the gas pumps, the underground tanks, and the building and may own or at least lease the land. In a relocation, therefore, the oil company receives the business relocation payments and the property owner, which is sometimes also the oil company, receives compensation for the property. Under this arrangement, the franchisee or operator may not be eligible for reestablishment payments. The problem is exacerbated further should the oil company use relocation as an opportunity to reevaluate and possibly terminate its lease with the franchisee.

Service stations also face difficulties with strict local zoning requirements, the costs to purchase new underground tanks (if necessary), and/or the costs that arise from having to comply with other environmental regulations. Depending on the region in the state, finding a replacement site can be particularly difficult for service stations. Stations along the interstates, such as the I-95/I-64 crescent, can be vulnerable. In short, the cost of purchasing another franchise and reestablishing a retail gasoline business is often prohibitive. VDOT, like other states, does not compensate businesses for the loss of a franchise under the Uniform Act.

The displacement of a service station could mean a loss of tax revenue for the Commonwealth, primarily in terms of corporate tax if the station does not relocate within the state. Given the relative rarity of this occurrence (only a handful of retail gas station relocations appeared in the VDOT records for the study period), any potential tax loss does not appear to be substantial. Motor fuel tax revenues would not be affected by an inability to relocate since consumers would still require the product and would likely purchase it at another location in the

state (B. Jessie, personal communication, 2000). This would not be the case only if, say, a service station along an interstate serving mostly non-local motorists chose to relocate to another state.

The representative stated that given the unique set of difficulties a service station owner faces during displacement, especially when the property is leased and the station is a franchise, the station operator should be eligible for reestablishment funds.

Small Business Association

The Richmond District Office of the Small Business Association knew very little about relocations, the payment maximums, or any of the issues underlying the legislation. The researchers provided the office with the research proposal for this study and a copy of HJR 490 with the request that someone in the office contact the researchers. There was no response to the communication.

FHWA Representatives

The researchers discussed the history of federal relocation policy beginning with the first relocation advisory assistance legislation in 1962 through the most recent changes in the Uniform Act in a conference call with several senior FHWA staff. It was learned that the federal program has become more generous since its inception in that more options and larger payments to displaced businesses are now available. The discussion centered on the need for further improvement in the business relocation program and the best means to achieve it. Some modifications to the program, it was agreed, could be achieved through regulatory changes. Other changes, depending upon their scope, might require amendments to the Uniform Act.

The FHWA representatives pointed out that several European nations do not have payment maximums. Instead, they pay whatever is reasonable and required to displaced businesses. In these cases, if a business incurs legitimate expenses, the government agency reimburses those expenses. The European experience with business relocation may have the potential to provide additional enlightenment and important information about the displacement of businesses. An investigation of European practices went beyond the scope of this research but may be an important resource for future research on business relocation.

Survey of Displaced Businesses in Virginia

Of the 172 surveys mailed, 34 completed surveys were returned. An additional 34 surveys were returned by the U.S. Postal Service as undeliverable, and 5 surveys were returned by individuals who had never owned a business or had never been relocated. Subtraction of the returned envelopes and non-relocatees from the total yielded a 26% response rate for the survey. Although a higher response rate would have been desirable, some of the relocations had occurred nearly 7 years earlier, which made it difficult to locate many business owners.

Several survey respondents wrote that businesses can face many obstacles when they are displaced. Some respondents pointed out that even when a business reestablishes, it may be less profitable than before. Other obstacles mentioned by the respondents included difficulty finding a suitable replacement site, loss of clientele, business downtime, and loss of employee base.

In response to a question concerning how satisfied the respondents were with the process once the relocation details were worked out and payments were received, 29% of the respondents were either very satisfied or satisfied, 53% were dissatisfied or very dissatisfied, and the remaining 18% were neither satisfied nor dissatisfied. Because the response rate was relatively low, it was difficult to do in-depth, meaningful statistical analysis. Dissatisfied individuals may also be over-represented in the responses. Selected comments reflect the feelings of the respondents regarding their relocation experiences. The reader should note that because of the relatively small number of respondents, most of the comments received are presented here.

- A business owner who chose the moving cost option commented: "Not enough time or capital to relocate my business to a feasible location."

- A business owner who chose the ILO payment commented: "Relocating my business really had devastating results on my business income, not only for the 1½ year I relocated but for 2 or 3 years after. Getting customers back is hard to do. I am just now rebounding."

- A business that qualified for the maximum ILO payment commented: "I owned my building . . . after building at new location I owe $300,000 and it is not as good a location as I had."

- One business owner who moved commented: "You told me what I had to do. There was no give or take. It was your way or no way."

- A business that took moving expenses and reestablishment commented: "It will take us years to reestablish the business we once had."

- Another displaced business commented: "Not only do you take property unfairly, the delay in the little compensation that is received is so long you are out of business by the time VDOT pays you."

- A company that chose moving costs commented: "I found the experience to be the best it could [be]. Everyone was very cooperative to work with."

- A business that received moving costs and reestablishment commented: "My business failed as a result of the forced move."

Other comments included:

- "I would rather have kept my business."

- "It [the process] was too long and expensive to reach a conclusion."

In response to the open-ended question "How was the volume of your business affected in the first 2 years after you moved?," some respondents wrote in additional comments in the space provided. Of those who replied, several commented the volume had fallen after the move.

- A business that moved commented: "New location too far from clientele, employees went to work elsewhere and new business location was too small."

- A company that chose moving expenses commented: "Company was and is continuing to grow. Growth is not related to move but it helped to move to a larger building."

- A business owner who chose the moving cost and reestablishment option commented: "Over the first 2 years business remained the same. Our business was greatly affected during the time we were trying to negotiate with VDOT on the property. We lost some customers due to them not knowing if we were staying in business or not."

- A company that took moving costs responded that their volume had decreased somewhat after the move and that "we were in a high traffic area and the new location wasn't."

- A business that took moving costs and reestablishment option commented: "Business was located facing state road. New building located on hill facing side road. More people stop when it is easily accessible."

Another question in the survey asked respondents to suggest ways that VDOT could improve its business relocation program. Several respondents suggested VDOT do more to help businesses find a replacement site. A number of respondents suggested the agency offer larger amounts for ILO payments. The following responses are indicative of the degree to which business displacees think the program can be improved:

- A business that chose moving costs and relocated suggested: "Help businesses find a suitable new location. The money I received was only enough to compensate me for about one month's income."

- A business that took the maximum ILO payment commented: "Pay more for relocating and help the business move in finding a location similar to what they have."
- A business that chose moving costs responded: "Provide the business with assistance toward finding a new location and paying more for moving cost expenditure."

- A business owner who chose the ILO option responded: "More assistance in finding a relocation site of equal potential. Losing the building and location set me back years in my financial plans."

- A business owner who qualified for the maximum ILO amount suggested: "VDOT's appraisal and their private [contracted] appraisals should be available to the land owner before the first offer is made. There should be a business replacement fund to reestablish a business. There should be better laws to protect the land owner." The owner also said that the $20,000 limit "was an insult."

- One respondent who had taken the maximum ILO payment specifically mentioned business downtime. "Help them to relocate or find another place. Help pay for expenses and lost time in business."

- Another business that took the maximum ILO payment responded: "It was 12 years from the time we learned of potential site acquisition to final settlement. This left the business in limbo with no possible changes, improvements or additions able to occur. Timing and scheduling is evidently VDOT's major problem."

- A business that qualified for moving costs and reestablishment commented: "That the relocated be treated as human beings instead of numbers."

- Another relocated business owner suggested: "To pay people what their property is worth, and not having to go to court, where the lawyers make the money, the business loses all way around."

- Another business owner who chose ILO responded: "Most important is helping the business to find another place that the owner can pay for with the money they received for their place. "

- An individual who chose ILO payments recommended: "Do things in a timely fashion. Settle with landowners before you start construction. People I met from VDOT I think acted in a professional manner and did their jobs very well and I feel they did try to help me."

- A business owner who moved inventory himself commented: "You should go out and acquire a suitable location and pay all expenses in that process. If and when we end up in court, if you lose, VDOT should be required to pay all expenses related to that court action!"

Although the low response rate did not enable the researchers to glean many meaningful statistics, for the most part, the comments and suggestions provided by the respondents indicated dissatisfaction with the compensation aspects of the program. The reader should keep in mind that, at the time of the survey, Virginia's reestablishment and ILO payment ceilings were the same as those in the Uniform Act. Some respondents said that relocation had a dampening effect on their business volume and income. The suggestion mentioned most frequently for improvement was that VDOT provide more assistance to the displaced business looking for a suitable replacement site. As also mentioned previously, a number of respondents suggested increasing the ILO payment in particular.

Statistical Analysis of VDOT Relocation Payments

Statistical (econometric) analysis of the data from 1993 through 1999 obtained from VDOT's Right-of-Way & Utilities Division provided insight into recent payment trends for displaced businesses. The data set had complete payment data on 262 displaced businesses. During this time, 160 businesses received moving cost reimbursements, 59 received reestablishment payments, and 105 received ILO payments. The series contains three cases of a business receiving ILO payments and moving costs, a fact attributed to data entry errors. The reader should remember that moving costs were often reimbursed in conjunction with reestablishment payments. A portion of the payment analysis is broken out by tenant and owner for informational purposes.

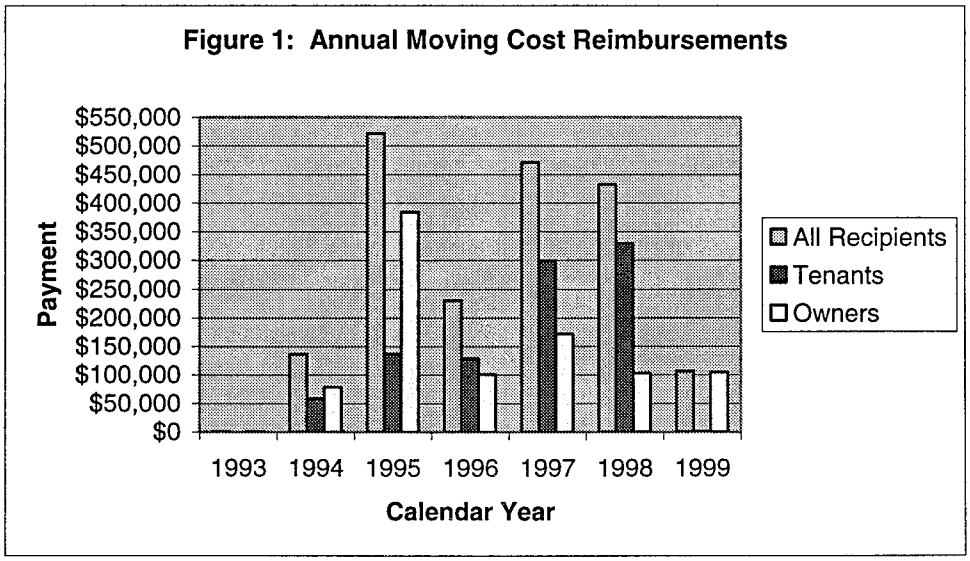
Moving Costs

Reimbursements for reasonable moving costs are not subject to a monetary limit. Business owners and tenants are required to provide VDOT with evidence of actual moving expenses, however (i.e., document expenses). Table 1 displays average and total moving costs for the sample years.

The average moving cost reimbursement was $11,863. The total for moving cost reimbursements was $1,898,002. The standard deviation of moving costs (a measure of the variation in the payments) was $23,623, indicating substantial variability in the payments relative to the average. Figure 1 illustrates payments for moving costs for all businesses in the sample

Table 1. Moving Costs Paid to Relocated Businesses by VDOT, 1993-1999

Type	Average Payment ($)	Total Payment ($)	No. in Sample
All	11,863	1,898,002	160
Tenants	9,360	954,711	102
Owners	16,264	943,291	58



for the years 1993 to 1999. Note that 1993 and 1999 are partial (calendar) years of data for two reasons. The Uniform Act was revised in 1993; the data set includes 1993 VDOT relocation payments after the revisions became effective. The study's legislative reporting timeline also dictated ending the case data collection by mid-1999. The years 1995, 1997, and 1998 had larger individual payments than the other years in the sample (reflecting, to some degree, the size or types of businesses relocated in those years).

Reestablishment Payments: What If There Were No Ceiling?

At the time the VDOT data were provided to the researchers, the maximum payment a business could receive for reestablishment was $10,000. Therefore, the statistics show an "artificial" upper bound, or ceiling, on payments. In other words, any measure of deviation or average will statistically underestimate the true or unrestricted dispersion or value of the reestablishment payments without a limit. A simple calculation of the average reestablishment payment does not tell the whole story: that calculation indicates only the average payment, constrained by the $10,000 limit. With that in mind, Table 2 shows that the average reestablishment payment was $7,851 and the total for reestablishment payments was $463,237 for the 59 businesses in the sample who received them. The standard deviation of the reestablishment payments was $3,240.

Table 3 displays how often reestablishment payments reached the $10,000 limit for the sample, i.e., how often the maximum amount was paid to businesses during these years. VDOT paid the maximum amount 63% of the time for this sample of cases.

Since the payments do have an upper limit, the reestablishment data set is "censored" in econometric terms (i.e., has a ceiling). What this means is that all the values in a particular range (in this case, actual reestablishment expenditures above $10,000) are reported as a single value ($10,000). Another example of a censored data problem is a case where one wants to determine how many concert tickets would have been sold if the stadium seating had been unlimited. In cases like this, statisticians typically adjust artificially restricted values based on the known statistical properties of the data. To determine how much would have been paid in the absence of a limit, the researchers employed two econometric techniques. These techniques attempt to capture the fact that, if there were no ceiling, there would be payment amounts exceeding

Table 2. Business Reestablishment Payments by VDOT, 1993-1999

Type	Average Payment ($)	Total Payments ($)	No. in Sample
All	7,851	463,237	59
Tenants	7,610	334,839	44
Owners	8,560	128,398	15

Table 3. Maximum ($10,000) Reestablishment Payment Rates

Type	No. of Maximum Payments	No. of Cases	% of Maximum Payments
All	37	59	63
Tenants	27	44	61
Owners	10	15	67

$10,000. The fact that 63% of the businesses in the sample were reimbursed amounts of $10,000 statistically indicates that some would have spent (or actually did spend) more than the limit, as evidenced by the clustering of data values around the maximum. Comments obtained from VDOT district right-of-way staff reflect this statistical assertion. In several cases, displaced businesses incurred eligible reestablishment expenses greater than the maximum amount.

To get a clearer picture of the range of values, the researchers employed more robust statistical techniques than a simple average. These techniques enabled the calculation of an adjusted mean and standard deviation of the censored distribution in order to estimate what payments would have been if the limits did not exist. For ease of reference, the adjusted mean is called the true mean. The first statistical approach is the censored data technique and allows the user to take what is known about the sample and estimate its average in the absence of any limit (Greene, 1990). The technique assumes a standard normal distribution. The calculation determined that the true or actual mean re-establishment payment in the absence of the ceiling would be $12,071 and the standard deviation would be $6,207. This estimates only the true average value. If $12,071 became the new ceiling, 50% of the data values would still exceed the ceiling (by definition of an average). In other words, 50% of the payments would still be low in relation to their true (unrestricted) values.

To determine what the maximum payment should be so that the great majority of businesses (not just 50%) would be reimbursed appropriately, a statistical confidence interval around the mean was calculated. Using the standard deviation, one can find the upper limit for the payments for a 99% (one-sided) confidence interval. (A confidence interval uses information from a sample to identify a range of values that will encompass 95 percent or 99 percent of all data observations.) In this case, one can be 99% statistically certain that all unrestricted payments would fall within the interval:

$$\$12,071 + 2.33(\$6,207.4) = \$26,534.$$

Thus, the maximum payment would need to be $26,534 to ensure that all businesses' compensation would equal their true reestablishment expenses.

To double-check the first method, the researchers calculated the true average reestablishment payment by another common iterative econometric method called bootstrapping. This calculation was based on replacing any payment hitting the $10,000 maximum with an approximation of what that the true payment would have been in the absence of the artificial $10,000 limit. The bootstrapping technique repeats this estimation 100 times to eliminate approximation error, which is the standard approach. The bootstrapping results suggest a true average payment of $11,472. In other words, in the absence of a payment ceiling, the average payment would have been $11,472. Again, this is an average value; 50% of the unrestricted data values would exceed this mean.

ILO Payments

At the time data were assembled for this study, ILO payments were limited to a maximum of $20,000. As shown in Table 4, about half of the relocated businesses received the maximum payment.

Table 4. Maximum ILO Payment Rates

Type	No. of Maximum Payments	No. in Sample	%
All	51	105	49
Tenants	28	59	47
Owners	23	46	50

Since the data values were also censored, or restricted, the researchers used the same methods to find the true mean and standard deviation for ILO payments as if there were no ceiling. Employing the same standard statistical techniques for dealing with censoring as in the reestablishment case resulted in a mean ILO payment of $19,804 and a standard deviation of $4,842. Again, estimation of a 99% one-sided confidence interval yielded

$$\$19{,}830.5 + 2.33(\$4{,}842) = \$31{,}112.$$

Thus, to achieve 99% statistical certainty that ILO payments matched the costs of relocation to businesses, the ceiling would need to be increased to $31,112. To verify the mean, the researchers repeated the bootstrapping calculation, which resulted in a mean ILO payment of $19,789. Again, though, it should be remembered that fully 50% of the true, unrestricted values would exceed $19,789 (by definition of an average). From a policy standpoint, it seems undesirable to have an ILO ceiling that is less than the costs of relocation to fully half of the businesses.

Given the extent of the censoring in the data, the theoretical limits represent only a first pass and require more analysis in the future. As long as there are payment ceilings, a similar analysis could be repeated for any data set. The analysis does provide an objective, statistical basis for what the reestablishment and ILO payment ceilings should be to ensure that businesses are compensated adequately. In Virginia's case, the calculations indicate that the reestablishment ceiling should be no lower than $26,534 and the ILO ceiling should be no lower than $31,112. Another consideration, addressed in the next section, is the value or purchasing power of these payment amounts over time.

Consumer Price Index Adjustment

The current federal payment ceilings for reestablishment and ILO payments were established in 1987 and have not been adjusted upwards significantly since that time. Because of this, the time value of money (inflation) has not been taken into consideration. In 1987, the Consumer Price Index (CPI) was 340.4. The CPI for 1999 was 499. Hence, the prices of goods and services were almost 1.5 times what they were in the mid 1980s. Converting the maximum payments from 1987 to 1999 dollars is accomplished by multiplying the payment amounts by 1.466 (499/340.4). Simply adjusting the payment ceilings in the Uniform Act for inflation,

therefore, yields a ceiling of $14,659 for reestablishment and of $29,318 for ILO payments. This exercise illustrates the need to index the payment limits to inflation.

If one looks beyond the $10,000 and $20,000 limits and adjusts the new limits calculated in the previous section for inflation, the estimated, inflation-adjusted payment ceilings are $38,899 for reestablishment and $45,610 for ILO payments. Interestingly, the $45,610 ceiling for ILO payments approximates the $50,000 ceiling passed by Virginia's General Assembly in 2000, but the calculated, inflation-adjusted $38,899 ceiling for reestablishment is well above Virginia's new $25,000 ceiling. These results suggest that even a $25,000 ceiling is low for reestablishment (unless some items currently categorized as reestablishment expenses were to be recategorized as moving costs, as was done in the FHWA Rhode Island experiment, which is discussed later). Clearly, any new payment limits should be indexed to the CPI to ensure inflation does not erode the purchasing power of the payment over time.

Survey of Other States

The 21 state DOTs responding to the initial AASHTO list server survey were Alaska, Arkansas, California, Delaware, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, and Wyoming. The follow-up telephone survey of the state DOT respondents yielded in-depth conversations with right-of-way professionals from 14 states (Arkansas, California, Delaware, Idaho, Iowa, Louisiana, Maryland, Minnesota, Nebraska, New York, Ohio, Oregon, Texas, and Wisconsin). Right-of-way professionals from a total of 23 states were interviewed. Several themes emerged from the initial emails and follow-up telephone interviews.

Themes from the Interviews with Other States

Specific comments made by right-of-way professionals in other states are listed in Appendix C. These are included to give the reader a flavor of the anecdotal information supplied by the respondents. The researchers did uncover recurring themes during these discussions, many of which mirrored some of the themes that were uncovered during interviews with VDOT agents. These themes represent views of experienced right-of-way agents in 23 states, several of whom offered specific recommendations for changes in the provisions for business relocations in the Uniform Act.

1. The federal maximum of $10,000 for reestablishment expenses should be increased. The interviews revealed that the reestablishment costs businesses incur often exceed $10,000, especially if a business is relatively large. Modifications and repairs to the replacement site can often be quite costly. According to some respondents, many businesses use all or most of their reestablishment payment to offset increased operating expenses such as rent differentials and advertising, particularly in high-growth areas. Interviewees cited numerous instances where legitimate claims for reestablishment expenses that far exceeded the $10,000 limit had been submitted.

2. *In many cases, the federal maximum of $20,000 for ILO payments is insufficient.* As is the case in Virginia, many relocated businesses elsewhere qualify for more than the maximum. Some businesses opt for the ILO payment rather than the moving costs plus reestablishment option, even if they qualify for more with the latter, because they view the ILO option as a simpler process. Many small businesses choose the ILO payment because they lack the time and resources to find a suitable replacement business site that might offer a market niche similar to the one they had prior to displacement. A few respondents from the more rural states said, however, that the federal ILO payment limit was sufficient for small businesses in their state.

The relocation professionals also reported other difficulties with the reestablishment and ILO payments including the fact that displaced businesses cannot apply reestablishment monies toward building a new facility. In addition, since many displaced businesses are small or show a lower than average net income, they cannot qualify for any significant ILO payment. Because income tax documents are required to determine the amount of ILO payments, businesses that rely heavily on cash sales may have difficulty qualifying for a substantial ILO payment.

3. *A dichotomy between the residential and business relocation programs appears to exist.* The residential program frequently leaves people better off after the relocation whereas the business program, more often than not, tends to leave them worse off. Respondents cited as one failing of the business relocation program the fact that there is no legal requirement that the DOT help find a replacement site, as there is with the residential program. One respondent mentioned that even to replace what a business owner had can cost quite a bit more than what is computed as a reestablishment payment. Because of the amount of replacement housing payments for which residential relocatees can qualify, this is hardly ever the case in a residential relocation.

4. *Some types of businesses seem to have particular difficulty relocating.* Some have trouble finding a suitable replacement site. A business that has visible inventory and equipment, such as a junkyard or an auto repair shop, or a business that deals with hazardous materials, such as a dry cleaning business, can have a very difficult time finding a replacement site. Restrictive county and city zoning codes also limit the ability of such businesses to find replacement sites. Larger businesses tend to have difficulty reestablishing, too, but for a very different reason. They tend to use up all reestablishment payment potential or qualify for much more of an ILO payment than is permitted under the federal limit.

5. *Relocation benefits paid are reimbursements.* Business owners have to spend money first to receive reimbursement. They are not paid anything above what they spend themselves. A respondent from one state recalled that the state used to have a "displacement allowance" of $1,000 given to a business in an attempt to compensate it somewhat for the inconvenience of moving, but this practice has been discontinued.

6. *The $1,000 replacement site search cost maximum is too low for many businesses.* Since some businesses have great difficulty finding a suitable replacement site, search costs tend to exceed the $1,000 limit considerably.

7. *Tenant businesses and owner-occupied businesses fare quite differently under the current federal program.* More often than not, smaller tenant businesses fare worse. This is

mostly because improvements and modifications made by the tenant usually become the owner's property unless carefully separated out during the appraisal process. Tenants also face the problem of having to find another location to rent. If their rent is reasonable and they have been at their current location a long time, they have difficulty finding similar rent elsewhere. Respondents observed that owners have the added advantage of the building acquisition monies from the DOT to help finance a building at another site.

Respondents were nearly unanimous in recommending increasing (or eliminating) the reestablishment and ILO payment caps and making more items reimbursable as reestablishment costs. Particular suggestions included:

- Adjust reestablishment maximums annually for inflation.
- Establish dollar limits for reestablishment ranging from $20,000 to $50,000.
- Establish ILO payments ranging from $20,000 to $50,000.
- Provide a rental supplement to cover potentially large differentials in rent at the new location.

Some respondents felt that their state legislatures would not act to increase payment maximums unless the federal limits were changed. In addition, some respondents elaborated on the special problems service stations tend to face during relocation. Most of these problems seem to stem from the nature of the retail gasoline business. Respondents said that displaced service stations have difficulty finding new sites and that the costs to purchase new underground tanks can be very high. The fact that many service station operators have franchise agreements with oil companies magnifies the difficulty in some cases. The franchise agreement is sometimes discontinued once a relocation is announced. The result here is that reestablishment payments are not sufficient to purchase another franchise.

Many of the themes that emerged during these interviews correspond to observations and suggestions the researchers heard from the 15 VDOT relocation agents interviewed. This finding is consistent for the large number of states where relocation policies conform to the Uniform Act (as Virginia's did until the reestablishment and ILO payment ceilings were increased in 2000).

States Where Policies Differ From Federal Policy or Policy Changes Are Being Considered

States whose business relocation policies differ from those required in the Uniform Act or those considering policy changes include Delaware, Wisconsin, Nebraska, Iowa, and Rhode Island.

Delaware

Delaware's maximum reestablishment payment is $22,500, compared to the $10,000 federal maximum. This limit became effective in 1989 but was made retroactive to 1987.

Despite the higher ceiling, owner occupants often incur expenses in excess of the $22,500 limit. The majority of the relocated owner occupants in Delaware receive this maximum payment. Since so many businesses are receiving the maximum payment, from a statistical standpoint, this may indicate that the ceiling is too low.

Wisconsin

Wisconsin offers relocation payments, called supplements, to business owners and tenants in addition to the traditional moving cost, reestablishment, and ILO payments. Owners can receive up to an extra $50,000, and tenants can receive up to an extra $30,000. This relocation supplement policy has been in place for more than 20 years. The amounts of the supplemental payments are based on differentials. In the owner-occupant case, the payment is based upon the difference between the value of a comparable business and how much it costs to pay for the relocated business (up to the limit). For tenants, the program covers rent increases up to the limit for up to 4 years (versus the 2-year limit under federal policy). A tenant choosing to buy a property can do so by using the supplement. The business must move and spend the money in order to claim the payment, but the payment does not cover all the costs in some cases. The Wisconsin respondent asserted that the program is working fairly well, in that the payments are helping businesses relocate and can help tenants become owners.

The Wisconsin law does say that a replacement site must be identified if a business is forced to move. Sometimes the business will claim that the replacement site is not satisfactory and refuse to move. If other states consider such an approach, the Wisconsin respondent suggested ensuring that the policy state that the DOT, rather than the business owner, will always make the determination of whether a replacement site is suitable.

Nebraska

A bill was introduced in Nebraska's state legislature in January 1999 that proposed raising the reestablishment payment to a maximum of $13,000 and the ILO payment to a minimum of $1,300 and a maximum of $26,000. The legislation was not enacted that year but may be reintroduced in the 2001 session if its sponsors so desire.

Iowa

At present, business relocation payments in Iowa remain within the federal limits. However, officials there report that they have done research on what they have paid for reestablishment and what businesses have qualified for historically. A presentation by Iowa's Chief Relocation Agent at the 2000 Annual FHWA Region 7 Meeting summarized their findings (Banker, 2000). Data on 165 relocation files from 1994 through 1998 were examined. It was determined that a large percentage of businesses had spent more than the maximum reestablishment payment. In fact, 67% of the 75 businesses in the sample that opted for reestablishment spent $10,000 or more. A large number (29) of reestablishment expenditures

were clustered between $9,000 and $12,000. The Iowa agent said that these findings indicate that the reestablishment ceiling is not high enough. Once business owners approached the limit, they stopped spending to reestablish their businesses. Iowa also conducted an inflation analysis and pointed out that the purchasing power of the statutory maximum of $10,000 has diminished since they adopted the maximum in 1989. Their inflation adjustment brought the maximum up to $13,667 for 1999 for that 10-year period. Iowa officials are proposing to increase the reestablishment ceiling to $15,000 in 2001. The DOT also plans to survey displaced businesses to determine, among other things, whether the businesses incurred expenses that did not qualify for reimbursement.

The Iowa respondent believes that the $10,000 limit is often unworkable for many businesses. The DOT frequently receives $30,000 and $50,000 claims for legitimate reestablishment expenses, he reported. Officials there are concerned that they may be shortchanging businesses, and the agent professed that "It is not in our best interest to be the catalyst in putting a small business, farm, or non-profit organization out of business."

Rhode Island: The FHWA Pilot Project

FHWA is conducting a pilot business relocation experiment on I-95 in Providence, Rhode Island (Coil, personal communication, 2000). The expanded portion of the roadway will traverse a business/industrial area with 75 or more businesses, both tenant and owner operated. The businesses vary in type from 60 tenants in one office building to several nightclubs to a large manufacturing company that produces saw blades. As of mid-July 2000, only about 8% to 10% of the relocations were underway.

The crux of the pilot program is new payment limits. The program managers obtained permission to undertake the pilot from FHWA financial managers on the basis that changing the limits in this case is for research purposes. The experimental limits were developed by looking at the programs of states where the benefits paid exceed those specified in the Uniform Act. In establishing what these limits would be, officials were trying to determine a reasonable amount that would meet the needs of both small and large businesses.

Specifically, the experiment entails moving a number of items out of the reestablishment category and into the moving costs category, with a new limit of $75,000. Items moved include estimated increases in the cost of operations; modifications to the replacement site; and any repairs and improvements required by codes, laws, or ordinances. Remaining actual moving costs are still without a monetary limit. Items remaining in the reestablishment category still fall under a $10,000 cap. There are no specific limits on individual items (which has historically characterized the Uniform Act), but the overall ceiling is $75,000, so businesses gain flexibility under the cap.

The pilot program also increases the amount a displaced business can be reimbursed for utility impact fees. In this context, impact fees are one-time, up-front assessments charged by utility companies for installing new equipment or providing new services to a relocated business. Such fees are already eligible for reimbursement under the current reestablishment program, but

the pilot permits businesses to spend more on them if it is deemed necessary to reestablish the business. The limit on such impact fee reimbursement is $25,000.

The experiment also allows for business replacement payments to owners. This payment is limited to $75,000 and is based on an analysis of what the DOT has paid for comparable business properties. The payment is based on expenditures; it is the lesser of $75,000 or the amount the business actually had to pay to purchase another facility. Also included under the business replacement payment umbrella are refinancing costs or interest rate differentials. In the case of tenants, they can use reimbursement for increased costs of operation toward the purchase or construction of a new facility, which enables them to become owners rather than tenants. In addition, the $1,000 limit on replacement site search costs was eliminated, but search costs must still meet reasonable agency criteria.

The effectiveness of the pilot project will be evaluated by Projects Management Institute, Inc., with O. R. Colan as the subcontractor. Specifically, the evaluation will determine how these expanded benefits compare with the needs that have been documented in the rest of the nation. To date, anecdotal evidence is promising. One displaced tenant was able to use the experimental payment limits to purchase a building and tailor it to his business needs. Another business owner was able to move from an older building to a newer industrial area. Both had spent more than they were paid, but the modified payments allowed them to come much closer to being reimbursed for their actual expenditures.

FINDINGS AND CONCLUSIONS

- *The information obtained through the interviews with VDOT relocation agents, right-of-way officials in other state DOTs, and the survey of displaced Virginia businesses provides substantial evidence that the federal limits on reestablishment and ILO payments are too low.* Displaced businesses in Virginia and in other states have been incurring legitimate reestablishment expenses well above the federal maximums. The maximum ILO payment has also become insufficient. The evidence gathered and examined from all sources clearly points to the need for higher reestablishment and ILO maximums in the Uniform Act.

- *According to VDOT district right-of-way staff, VDOT's previous limits on reestablishment and ILO payments were too low.* The staff stated that businesses frequently exceeded the $10,000 reestablishment limits with eligible expenses and that a number of business owners who chose the ILO payment qualified for more than the $20,000 maximum. The survey of displaced businesses also indicated that owners of displaced businesses were dissatisfied with VDOT's previous payment ceilings. Surveyed businesses and right-of-way staff had several suggestions for improving VDOT's business relocation process. These suggestions may be considerations for future VDOT policy improvements.

- *This study's statistical analyses show that, in the case of Virginia data, a maximum reestablishment payment of $26,534 and a maximum ILO payment of $31,112 (both values unadjusted for inflation since 1987) would provide much more assurance that most*

businesses were being compensated for their true costs to relocate than is now the case. These figures indicate appropriate and adequate payment amounts above the current federal ceiling, but they do not account for the eroding effect of inflation since 1987. Since then, prices have increased about 1.5 times. The new limits that became effective in Virginia in July 2000 ($25,000 for reestablishment and $50,000 for ILO payments) are relatively similar to these payment ceilings unadjusted for inflation. However, they do not account for the generally rising prices in the intervening years. Rather, the new Virginia ceilings were implemented as a means of providing fairer compensation to displaced businesses than the ceilings in the Uniform Act allowed.

- *Gasoline service stations do seem to face a special set of difficulties when it comes to relocations, especially in terms of maintaining a franchise arrangement in the face of relocation.* Interviews with officials of the Virginia Gasoline Marketers Council indicate that franchise agreements are the source of many relocation difficulties for service stations. Other difficulties arise from the high costs that can be associated with complying with environmental laws and policies and the scarcity of suitable replacement sites for stations. Although the new Virginia limits for reestablishment and ILO payments may alleviate some of these problems, they will not alleviate them all. Since there were only a small number of service stations displaced in Virginia during the study period, further study would be needed to corroborate this assertion.

- *The researchers had difficulty locating many business owners who had been displaced by VDOT.* Accordingly, the totality of the "after effects" of business relocations is difficult to ascertain. For more cases than not, the information needed to determine what happened to these businesses after the displacement transaction is completed is not accessible.

RECOMMENDATIONS

1. *FHWA should strongly consider increasing the federal limits for reestablishment and ILO payments.* To make a determination of what the limits ought to be, states could be asked what they would have paid businesses in the absence of limits: legitimate expenses that may exceed the current maximums provide information as to what new limits should be. Since changes in the Uniform Act require an act of Congress, FHWA may wish to consider, as a temporary measure, shifting some of the particularly expensive items in the reestablishment category to the moving costs category (e.g., code compliance modifications and utility costs). A close eye should be kept on the outcomes rendered in the pilot program in Rhode Island. Although the temporary measure recommended here might be a short-term solution, it may be insufficient to solve all of the shortcomings in the current business relocation benefits program.

2. *FHWA should also consider indexing its reestablishment and ILO payment ceilings to the CPI to account for inflation.* This would also be a positive move for Virginia.

3. *As long as relocation payment ceilings exist, VDOT should monitor actual payments to businesses and perform analyses similar to those done in this study every few years.* Given the extent of censoring in the Virginia relocation data attributable to the existence of limits, payments should be analyzed periodically to ensure that businesses are receiving appropriate compensation. Even though VDOT has higher payment ceilings under SB 63, the difficulty with data censoring continues.

4. *VDOT may wish to consider the potential value of conducting a prospective study of business displacees.* Ideally, any future study of the impact of displacement on businesses would follow a sample of businesses from initiation of negotiations to the conclusion of displacement process.

ACKNOWLEDGMENTS

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REFERENCES

Banker, B. *Reestablishment Expenses.* Presented at the Federal Highway Administration's Region 7 Meeting, Council Bluffs, IA, April 2000.

Federal Highway Administration. *Relocation Retrospective Study.* http://fhwa.dot.gov/realestate/relorvw.htm. Accessed August 30, 2000.

Greene, W. H. *Econometric Analysis.* McMillan, New York, 1990.

O. R. Colan and Associates, Inc. *Relocation Retrospective Study.* St. Louis, MO, 1996.

Virginia Department of Transportation, Right of Way & Utilities Division. *Virginia Department of Transportation Relocation Assistance and Payments Procedure Manual.* Richmond, 1992.

APPENDIX A
HOUSE JOINT RESOLUTION NO. 490

Requesting the Department of Transportation to study certain right-of-way acquisition issues.
Agreed to by the House of Delegates, February 25, 1999
Agreed to by the Senate, February 23, 1999

WHEREAS, the Commonwealth has established procedures to provide for reasonable compensation to property owners whose land is taken by the Virginia Department of Transportation for public purposes; and

WHEREAS, Virginia's process fails to provide sufficient compensation to permit certain businesses located and operating on leased property to relocate; and

WHEREAS, when the property leased by a service station operator is taken by the Department and the service station operator is unable to relocate his business, his inability to relocate his business may result in reduced tax revenue to the Commonwealth, including but not limited to state motor fuel taxes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Transportation be requested to study certain right-of-way acquisition issues and the process by which it provides benefits and relocation assistance to businesses as defined and provided for under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972 (§ 25-235). In carrying out this study, the Department shall specifically consider and make recommendations concerning means to protect the interests of the Commonwealth and those of the land owner while also providing for compensation to gasoline retail outlet owners and operators who are unable, with reasonable facility, to relocate their businesses displaced as the result of the Department's acquisition of the property on which the businesses were located. The Department shall include representatives of organizations such as the Small Business Administration and an organization representing either gasoline retailers, refiners, or petroleum distributors in the conduct of its study.

The Department shall complete its work in time to submit its findings and recommendations to the Governor and the 2001 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

APPENDIX B

VIRGINIA ACTS OF ASSEMBLY: 2000 SESSION
CHAPTER 851

An Act to amend and reenact §§ 15.2-729, 25-46.36, 25-236, 25-238, 25-239 and 25-248 of the Code of Virginia, relating to the Uniform Relocation Assistance Act.

(S 63)
Approved April 9, 2000
Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-729, 25-46.36, 25-236, 25-238, 25-239 and 25-248 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-729. Relocation assistance programs.
The board may *shall* provide by local ordinance for the application of Chapter 6 (§ 25-235 et seq.) of Title 25 to displaced persons as defined in § 25-238 or as more narrowly defined by the board, in cases of acquisition of real property for use in projects or programs in which only local funds are used.

§ 25-46.36. Cities to pay relocation costs.
Notwithstanding the provisions of Chapter 6 (§ 25-235 et seq.) of this title, the governing body of any city may *shall* authorize the payment of relocation costs in connection with federally assisted programs *the exercise of the power of eminent domain as provided in Chapter 6 (§ 25-235 et seq.) of this title* under such rules and regulations as the program *such chapter* may require.

§ 25-236. Application of chapter.
A. The provisions of any municipal charter notwithstanding, the provisions of this chapter shall be applicable to the acquisition of real property by any state agency as hereinafter defined for use in projects or programs in which federal or state funds are used; provided, however, that for the purposes of this chapter, federal guarantees or insurance shall not be deemed to be federal funds.
B. This chapter shall not apply to acquisitions by a state agency, as hereinafter defined, *(i)* which are voluntarily initiated or negotiated by the seller under no threat of condemnation, *(ii)* where property is dedicated pursuant to the provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, or *(iii)* where property is voluntarily dedicated or donated for no consideration unless compliance with the provisions of this chapter in such instances is a prerequisite to the receipt, and expenditure of federal funds on the projects for which such property is acquired; provided, however, that:
C. The provisions of this chapter relating to relocation assistance shall apply for the benefit of persons, other than the owner, who are actually and lawfully occupying the real property to be acquired and who have been occupants thereof for at least ninety days prior to the initiation of negotiations for acquisition.

§ 25-238. Definitions.
As used in this chapter the term:
"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 § 25-239 A 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.
"Comparable replacement dwelling" means any dwelling that is decent, safe and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent; in an area not subject to unreasonable adverse environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.
"Displaced person" means any person who moves (i) from real property, or moves his personal property from real property, (a) as a direct result of a written notice of intent to acquire or the 2 acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (b) on which such person is a residential tenant, or conducts a small business, or a farm operation or a business defined in this article as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and (ii) solely for the purposes of §§ 25-239 A and B and 25-242, as a direct result of a written notice of intent to acquire or the acquisition of real property on which such person conducts a business or farm operation, for such program or project; or as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent.
The term "displaced person" does not include (i) a person who has been determined, according to criteria established by the state agency to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or (ii) in any case which the state agency acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.
"Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
"Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.
"Nonprofit organization" means an organization that is exempt from paying federal income taxes under § 501 of the Internal Revenue Code (26 U.S.C. § 501).
"Person" means any individual, partnership, corporation or association.
"State agency" means any *(i)* department, agency or instrumentality of the Commonwealth; or any *(ii)* public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth; or any department, agency or instrumentality of any public authority, municipal corporation, local government unit, political subdivision of the Commonwealth, or two or more of any of the aforementioned and *thereof; (iii)* any person who has the authority to acquire property by eminent domain under state law and who*; or (iv) two or more of the aforementioned, which* carries out projects with federal or state financial assistance that cause people to be displaced.

§ 25-239. Payments for moving and relocation expenses.
A. Whenever the acquisition of real property for a program or project undertaken by a state agency will result in the displacement of any person, such agency shall make fair and reasonable relocation payments to displaced persons as required by this chapter for:
1. Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

2. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency;
3. Actual reasonable expenses in searching for a replacement business or farm; and
4. Actual reasonable expenses necessary to reestablish *necessarily incurred in reestablishing* a displaced farm, nonprofit organization or small business at its new site, but not to exceed $10,000 *25,000* in accordance with criteria established by the state agency.
B. Any displaced person eligible for payments under subsection A of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection A of this section may receive a moving expense allowance, determined according to a schedule established by the state agency.
C. Any displaced person eligible for payments under subsection A of this section who is displaced from his place of business or farm operation and who is eligible under criteria established by the state agency may elect to accept the payment authorized by this subsection in lieu of the payment 3 authorized by subsection A of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the state agency, except that such payment shall not be less than $1,000 nor more than $20,000 *$50,000*. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

§ 25-248. General rules for conduct of acquisition.
Whenever real property is acquired by a state agency, on or after April 10, 1972, in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:
(a) An agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
(b) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.
(c) Before the initiation of negotiations for real property, the state agency concerned shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for the amount it established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.
(d) No owner shall be required to surrender possession of real property before the agency concerned pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.
(e) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation, without at least ninety days' written notice from the agency concerned, of the date by which such move is required.

(f) If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term for a period subject to termination by the state agency on a short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
(g) In no event shall the agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.
(h) If any interest in real property is to be acquired by exercise of the power of eminent domain, the agency concerned shall institute formal condemnation proceedings. No agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
(i) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency concerned shall offer to acquire the entire property.
The provisions of this section requiring the agency to obtain or rely upon an appraisal shall not apply to the acquisition of real property by a public service corporation, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof, or two or more of the aforementioned if the official responsible for the acquisition determines that the value of the property being acquired is less than $10,000, based on assessment records or other objective evidence.
2. That the provisions of this act shall not apply to the acquisition of real property by a public service corporation, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof, or two or more of the aforementioned, (i) that is the subject of a certificate recorded prior to January 1, 2001, in the clerk's office where deeds are recorded; (ii) that is the subject of a petition for condemnation filed prior to January 1, 2001; or (iii) that is required to construct a project funded by bonds approved prior to July 1, 2000.

APPENDIX C

COMMENTS MADE BY INTERVIEW RESPONDENTS FROM OTHER STATES

On Current Federal Limits

- Adequate for very small businesses.
- Doesn't take much for a business to reach the limit when businesses have to make modifications or repairs to the replacement site, which often occurs.
- Lack of a limit on moving costs means sometimes an item can be classified as moving costs rather than reestablishment.
- Take a fair and uniform interpretation of the statement "other moving–related expenses that are not listed as ineligible under 23.305 as the Agency determines to be reasonable and necessary."
- About half the displaced businesses used all of the reestablishment payments to offset operating expenses such as rent increases.
- The $10,000 limit should be reviewed by the FHWA. At times the maximum does not begin to address the hardship and out of pocket expenses that a displaced business incurs in reestablishing at a new location.
- In favor of raising the limits for reestablishment. In lieu of may not necessarily be a problem at $20,000 for some states but if one is raised the other probably should be raised too since the Code would require changing anyway.
- The in lieu of payment alone is not sufficient and should be increased.
- Larger businesses sometimes incur more expense than the program allows for reimbursement.
- We are seriously considering allowing the in lieu of payment to be in addition to the other payments instead of either or. Thus allowing a displaced business to be paid a reestablishment, moving cost, and an in lieu.
- The maximum federal law should be increased. My experience with business tells me that the cost of reestablishing a business for many exceeds the federal maximum. Government regulation at state and local levels and professional services used in conjunction with the purchase or leasing of a replacement site are the major expenses that drive beyond the maximum.

- Reestablishment is too low. People want to rebuild and want to use the reestablishment money for new construction but they cannot.

- In lieu of is too low too. They run into many incomes above the limit.

- The reestablishment limit is too low. Not even sure they should have a limit.

- In lieu of seems sufficient. They have not had a lot of problems with businesses demanding more than $20,000.

- We tell people to call their congressman if they are eligible for more than we can give them.

- We take a liberal interpretation of the reestablishment guidelines since so many expenses are on the borderline.

- 21 CFR 304 may not be adequate for large businesses due to amount of expense they might incur while reestablishing the business in a new location. Businesses are constantly submitting claims for expenses in excess of the $10,000 reestablishment limit.

- Some businesses opt for the in lieu of payment to avoid the bureaucracy involved with getting paid for eligible moving expenses.

- Small businesses that have been at the displaced site for a long period of time have trouble matching their existing rent and the reestablishment limit does not provide enough of a boost to recover the replacement rents in an active market.

- The reestablishment payment is not good for businesses.

- The $20,000 limit for in lieu of is outdated. Any successful business would hopefully be making more than $20,000.

- Since the in lieu of assessment is based on tax returns and some businesses "hide" income from the IRS.

- Reestablishment limits are too low. This is the biggest complaint businesses have. Advertising expenses and rent differentials can exceed the limits quickly. They try to fit items under moving costs if they can justify doing so.

- $20,000 for in lieu of payment is not much. It doesn't go far. They have always been flexible on whether or not they use the immediate prior 2 years of tax records - this is at the agency's discretion.

- They hit very few large businesses and the majority of those they hit qualify for the maximum in lieu of payment. For them the in lieu of is sufficient.

- Biggest complaint is that the reestablishment is not enough. $10,000 is not enough to reestablish a business. Even a small business can eat up $10,000 fast. The rent differential can use up all of the reestablishment payment.

- The current federal regulations are restrictive and are made even more so by the reestablishment and in lieu of limits.

- Many of the smaller businesses depend on location and a move is a major upheaval. It may have taken all they had to get into business and they now face displacement. When you displace a smaller business, a lot will just take the in lieu of. There is not enough time or money to enable them to find the same niche.

- A lot of the businesses they displace are marginal so they have trouble qualifying for any significant in lieu of payment.

Recommendations for Improving the Federal Uniform Act

- Reestablishment should be adjusted annually for inflation, at least to $15,000.

- Reestablishment limits should be $20,000 to $50,000.

- In lieu of payments should be $20,000 to $40,000.

- Increase the limits on reestablishment. In favor of increasing in lieu of payments too, say to $50,000.

- Recommends increasing reestablishment to $50,000 and in lieu of to $30,000-$50,000.

- A respondent said that a lot of states recommend a $100,000 cap on reestablishment. Also, they recommend removing the limit on search expenses. He is not in favor of that–search costs could get out of hand.

- The respondent is not in agreement with the business supplement concept–it would require a lot more training and legwork for staff.

- Ideally, there would be either a rental supplement or a purchase supplement like we have in the residential program.

- Increase reestablishment. Be more lenient with what qualifies for reestablishment–loosen up the regulations.

On Relocating Service Stations

- One state did have a similar circumstance with service station franchises. If a service station franchisee was not reaching some limit set by the oil company the company would take the displacement as an opportunity to reevaluate the lease. Some of the oil companies seem to routinely use DOT involvement as a justification for canceling all of their leases and re-negotiating the operators' terms in the new location. Others relocate their profitable operators, but cancel the poor performers.

- If displaced service stations can find a new site and they need new tanks, their expenses can increase significantly.

- Run into difficulty with the removal of underground storage tanks.

- A $10,000 reestablishment payment is not enough to purchase another franchise. If the individual cannot afford another franchise, how is he to remain in business?

On Relocating Tenant Businesses

- Smaller tenant businesses tend to do worse under the program than owner occupied businesses. Some tenants have a condemnation clause in their leases, under which all fixtures go to the owner. In some cases, tenants have figured they would be there for years and have even taken out second home mortgages to buy business fixtures. In these cases, the tenants lost everything they had. Owners tend to do better and can usually buy a new property with the payment they receive for their property and fixtures.

- One respondent state has a unique situation–often they pay the owner and the tenant for the same business fixtures.

- In some cases tenants have put considerable money into their leased space–much more than $10,000 worth. They tend to relax reestablishment rules somewhat and are more sympathetic to the modifications made to personal property. Some modifications to the replacement site may be moved over to moving costs if they can be tied in with the continued use of personal property.

- If the tenants have a strong lease that accounts for improvements they make to a building they can come out all right. But most leases are not written that way. They are hit hardest in the acquisition of these improvements.

- Owner gets compensated for tenant improvements unless the appraiser separates them. They try to get agreement between the tenant and owner on what each owns.

How Different Business Types Fare

- Bigger businesses tend to do badly. A large factory, for example, would use up all its reestablishment money fast. Moving costs help but if the owner chooses not to move they can only qualify for $20,000 under in lieu of. They get the short end of the stick.

- Businesses that need to store equipment or inventory outside can run into problems with the county. Finding a new site with the necessary zoning is difficult.

- Restaurants seem to suffer the most but it is not really a major issue. Owners seem to do okay on the fair market value of their property.

- Some businesses have difficulties relocating due to the nature of the business. We have displaced businesses that could not get local approval to relocate to any adjoining area, e.g., a junk-yard, a sand blasting operation.

- Businesses with potentially hazardous inputs or products have a hard time finding replacement sites. Had a couple of businesses (auto-body business) that went out of business because they could not find a place with suitable zoning. It is difficult for any business to find a suitable replacement site.

- Any type of larger business does not do well because of the $10,000 limit.

Other Comments Regarding the Federal Program

- Under the federal limits, we are not really giving businesses anything. We are merely reimbursing them for money they spend out of their own pocket. We don't give them anything for their trouble.

- Dichotomy between the residential program and the business program. Under the residential program, people generally end up better off than they were before. This is not the case with the current business relocation program. This is true for tenants, large businesses, and mom n' pop establishments. Even owners–even though they are compensated through acquisition there is still depreciation, etc. To replace what they had may cost several times more than they receive from acquisition.

- Relocation is good for residences but not for businesses.

- Should ask for better statistical data in the annual report. Ask "How many businesses did you displace that chose in lieu of because the reestablishment payment limitations?" The FHWA only collects displacement data on projects with some federal money in them. This means a lot of important information is lost.

Miscellaneous Comments

- Some states are bound by state law so that even if the federal limits were raised they would still need a change in state law to implement any change. It is difficult to get the legislature's attention.

- The state won't change but will wait for the feds to do it first.

- The issue is not important to the legislature at this point.

- Home based businesses are difficult to separate from the residence portion of the move and it is also difficult to determine if it is a bona-fide business. Home-based businesses should not be eligible for the in lieu of payment.

- Doesn't think the legislature would increase state limits beyond the federal maximum. This would increase the costs of projects.

- State law says there will be no payments made in excess of the federal maximums.

APPENDIX D

SURVEYS FOR RELOCATED BUSINESSES RECEIVING MOVING COSTS AND REESTABLISHMENT PAYMENTS AND IN LIEU OF PAYMENTS

BUSINESS OWNERS RELOCATION SURVEY
Virginia Transportation Research Council

Purpose: The Research Council is conducting a survey of all businesses that have been relocated due to road improvements since 1993. VDOT and the Virginia General Assembly are very interested in business owners' opinions about how well the relocation program served them and how adequate the payments to them were. All answers are confidential and will not be summarized with any identifying information about individual businesses. A postage-paid return envelope is enclosed for your convenience. Please return your completed survey by **May 15.**

Instructions: Please check (✔) your answers or write in an answer as indicated. For some questions, you may check more than one answer.

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Business name: *(Business Name from VDOT Records)*

Relocated in year: *(Year of Relocation from VDOT Records)*

VDOT computer records show the following business relocation payments to you:

- *($ Amount from VDOT Records)* For commercial moving services
- *($ Amount from VDOT Records)* To move business items yourself
- *($ Amount from VDOT Records)* To re-establish the business

~~~~~~

1. Type of business you had at former location (convenience store, for example) *(please write in)*

   _____

2. How long were you in business at that location? _____ years

3. Number of employees at that location: _____

4. Was the business a franchise? ❒ Yes ❒ No

5. Did you move your business to

   ❒ An existing business site, or ❒ A newly built site?

6. Did you have business moving expenses that were *not* covered by the payment(s) you received from the state? Please list what those types of expenses were (write in).

   _____

7. How much "down time" did your business experience during its move?

   _____ days

8. How was the *volume* of your business affected in the first 2 years after you moved? Did it

   ❒ Increase a lot ❒ Increase some ❒ Stay about the same

   ❒ Decrease some ❒ Decrease a lot ❒ Don't know

   Any additional comments you have about why the *volume* of your business was affected this way (optional):

   _____

   _____

9. How were your *costs of doing business* affected in your first 2 years after you relocated? Did your costs

   ❒ Increase a lot ❒ Increase some ❒ Stay about the same

   ❒ Decrease some ❒ Decrease a lot ❒ Don't know

   Any additional comments you wish to write in about why your *costs of doing business* were affected this way (optional):

   _____

   _____

   _____

10. Did your *actual* business re-establishment expenses exceed the state's re-establishment payment? ❒ Yes ❒ No

    ↓

    Compared to the re-establishment payment you received from the state, were your *actual* re-establishment expenses

    ❒ A little higher, ❒ Somewhat higher, or ❒ Much higher?

11. What types of business re-establishment expenses did the state reimburse you for at least partially? (please check all that apply) Note: "replacement site" is the location your business moved to.

❒ Improvements to the replacement site required by lawordinance **(1)**

❒ Improvements to the replacement site to make it suitable for your business **(2)**

❒ Exterior signing **(3)**

❒ Replacement of worn surfaces, paint, or carpet at the replacement site **(4)**

❒ Advertising the new location **(5)**

❒ Required licenses or permits **(6)**

- ❒ Connecting utilities to improvements at the replacement site **(7)**
- ❒ Estimated higher costs (such as higher taxes, utilities or rent) to operate the business for the first 2 years at the replacement site **(8)**
- ❒ Soil testing, marketing surveys, or feasibility surveys **(9)**
- ❒ Other re-establishment expenses *(please write in)* _____

_____

_____

12. Did you have any types of business re-establishment expenses that exceeded the state's re-establishment payment to you? What were they?

    (Please use the numbers beside items in Question 11 to indicate the type of expense, or describe the expense)

    _____

    _____

    _____

13. Currently, federal regulations specify that re-establishment payments to businesses cannot exceed $10,000. For a business such as yours, do you think that $10,000 maximum payment for re-establishment is:

    ❒ More than enough ❒ About right ❒ Too low ❒ Much too low

    What do you think would be a more adequate *maximum* re-establishment payment for a business like yours?

    _____ (amount in dollars)

14. After you had finalized the relocation details and payments with VDOT agents, were you

    - ❒ Very satisfied
    - ❒ Satisfied
    - ❒ Neither satisfied nor dissatisfied
    - ❒ Dissatisfied, or
    - ❒ Very dissatisfied with the business relocation program?

    Additional comments (optional):

    _____

    _____

    _____

15. What suggestions, if any, do you have for making the business relocation program better? *(please write in)*

_____

_____

_____

_____

THANK YOU VERY MUCH FOR YOUR HELP!

✉ Survey can be mailed in the enclosed postage-paid envelope ✉

~~~~~~

❖ If you would be willing to talk further with us by phone about your business relocation experience, please fill in the information below:

- Name: _____
- Phone number to call: _____
- Preferred time(s) for us to call: _____
~~~~~~

BUSINESS OWNERS RELOCATION SURVEY
Virginia Transportation Research Council

Purpose: The Research Council is conducting a survey of all businesses that have been relocated due to road improvements since 1993. VDOT and the Virginia General Assembly are very interested in business owners' opinions about how well the relocation program served them and how adequate the payments to them were. All answers are confidential and will not be summarized with any identifying information about individual businesses. A postage-paid return envelope is enclosed for your convenience. Please return your completed survey by **May 15.**

Instructions: Please check (✔) your answers or write in an answer as indicated. For some questions, you may check more than one answer.

~~~~~~

Business name: *(Business Name from VDOT Records)*

Relocated in year: *(Relocation Year from VDOT Records)*

VDOT computer records show the following relocation payments to you:

- *($ Amount)* as a payment *in lieu of* moving costs

~~~~~~

1. Type of business you had at former location (convenience store, for example) *(please write in)*

   _____

2. How long were you in business at that location? _____ years

3. Number of employees at that location: _____

4. Was the business a franchise? ❒ Yes ❒ No

5. In the 2 years *after* you received the in lieu of payment from the state, did you *(check all that apply)*

   ❒ Continue the same business at another location?

   ❒ Retire?

   ❒ Work for someone else's business?

   ❒ Establish a different kind of business at another location? or

   ❒ Do something else? _____
   (please write in)

6. Which (if any) of the following factors influenced you to take an *in lieu of* payment from VDOT? (check all that apply)

   ❒ I was ready to retire

   ❒ I would have lost too many customers by moving the business

   ❒ It would have cost me too much to move the business

   ❒ It would have been too hard to move the business equipment or inventory

   ❒ I could not find another suitable location for the business

   ❒ In lieu of process was a easier way to get payment

   ❒ In lieu of process was the way to get the most money for my business

   ❒ I had other reason(s) for taking in lieu of payment (*please write in*)

   _____

   _____

7. In lieu of payments are based on a business's average net earnings *before* taxes. Compared to what you thought your business was worth, did the state's *in lieu of* payment seem:

   ❒ More than enough ❒ Enough ❒ Too little ❒ Far too little

   Additional comments (optional): _____

   _____

   _____

8. Currently, federal regulations specify that *in lieu of* payments to businesses cannot exceed $20,000. Do you think the $20,000 limit for *in lieu of* payments is:

   ❒ More than enough ❒ Enough ❒ Too little ❒ Far too little

   ↓ ↓

   What do you think the maximum *in lieu of* payment should be?

   $ _____ (amount)

   Additional comments about what you think the maximum *in lieu of* payment should be and why (optional):

   _____

   _____

9. After you had finalized all of the relocation details and payment amount with VDOT representatives, were you

- ❒ Very satisfied
- ❒ Satisfied
- ❒ Neither satisfied nor dissatisfied
- ❒ Dissatisfied, or
- ❒ Very dissatisfied with the business relocation process?

Additional comments *(optional):* _____

_____

_____

_____

10. What suggestions, if any, do you have for making VDOT's business relocation program better? *(please write in)*

_____

_____

_____

_____

THANK YOU VERY MUCH FOR YOUR HELP!

✉ Survey can be mailed in the enclosed postage-paid envelope ✉

~~~~~~

❖ If you would be willing to talk further with us by phone about your business relocation experience, please fill in the information below:

- Name: _____
- Phone number to call: _____
- Best time(s) for us to call: _____
~~~~~~