

AN ACT

To establish, until December 31, 2006, a moratorium on the use of eminent domain by any entity of the state government or any political subdivision of the state to take, without the owner's consent, private property that is in an unblighted area when the primary purpose for the taking is economic development that will ultimately result in ownership of the property being vested in another private person, to create the Legislative Task Force to Study Eminent Domain and Its Use and Application in the State, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. As used in Sections 2 to 7 of this act:

(A) "Blighted area" has the same meaning as in section 303.26 of the Revised Code, but also includes an area in a municipal corporation.

(B) "Public body" means any entity of the state government, and any county, municipal corporation, township, commission, district, authority, or other political subdivision of the state, that has the power to take private property by eminent domain.

SECTION 2. (A) Notwithstanding any provision of the Revised Code to the contrary, until December 31, 2006, no public body shall use eminent domain to take, without the consent of the owner, private property that is not within a blighted area, as determined by the public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person.

(B)(1) Until December 31, 2006, if any public body uses eminent domain to take, without the consent of the owner, private property that is not within a blighted area, as determined by the public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person, each of

the following shall apply:

(a) The Ohio Public Works Commission shall not award or distribute to the public body any funding under a capital improvement program created under Chapter 164. of the Revised Code.

(b) The Department of Development shall not award or distribute to the public body any funding under a shovel ready sites program created under section 122.083 of the Revised Code.

(c) The public body shall not receive any funding designated for capital purposes in any act of the General Assembly.

(2) Until December 31, 2006, any public body seeking to obtain funds described in division (B)(1) of this section, shall certify in writing to the grantor of the funds that the public body has not used its eminent domain authority on or after the effective date of this act to take private property in violation of the moratorium established by this act.

(C) Divisions (A) and (B) of this section do not apply to the use of eminent domain for the taking of private property to be used as follows:

(1) In the construction, maintenance, or repair of streets, roads, or walkways, paths, or other ways open to the public's use, including rights of way immediately adjacent to those public ways, including, but not limited to, such use pursuant to authority granted under Title LV of the Revised Code;

(2) For a public utility purpose;

(3) By a common carrier;

(4) For parks or recreation areas open to the public;

(5) In the construction, maintenance, or repair of buildings and grounds used for governmental purposes.

SECTION 3. (A) There is hereby created the Legislative Task Force to Study Eminent Domain and Its Use and Application in the State. The Task Force shall consist of the following twenty-five members:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives. The Speaker of the House of Representatives shall designate one of the members the Speaker appoints to serve as co-chairperson of the Task Force.

(2) Three members of the Senate, appointed by the President of the Senate in consultation with the Minority Leader of the Senate. The President of the Senate shall designate one of the members the President appoints to serve as co-chairperson of the Task Force.

(3) One member representing the home building industry in the state,

appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(4) One member who shall be a statewide advocate on the issues raised in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, insofar as they affect eminent domain, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(5) One member representing the agricultural industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(6) One member representing the commercial real estate industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(7) One member representing licensed realtors in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(8) One member representing the Ohio Prosecuting Attorneys Association or the Ohio Association of Probate Judges, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(9) One member who shall be an attorney who is knowledgeable on the issues confronting the Task Force and who represents persons who own property and reside within Ohio, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(10) One member knowledgeable on the issues confronting the Task Force who represents persons who own property and reside within Ohio, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(11) One member representing the planning industry in the state, one member representing an Ohio labor organization, one member representing a statewide historic preservation organization that works within commercial districts, one member representing municipal corporations, one member representing counties, and one member representing townships, each appointed by the Governor;

(12) The Director of Development or the Director's designee;

(13) The Director of Transportation or the Director's designee;

(14) Two members who shall be attorneys with expertise in eminent domain issues, each appointed by the Attorney General;

(15) One member representing small businesses, appointed jointly by the Speaker of the House of Representatives and the President of the Senate.

(B) Appointments to the Task Force shall be made not later than thirty days after the effective date of this section. Any vacancy in the membership

of the Task Force shall be filled in the same manner as the original appointment. Members of the Task Force shall serve without compensation.

(C)(1) The Task Force shall study each of the following:

(a) The use of eminent domain and its impact on the state;

(b) How the decision of the United States Supreme Court in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, affects state law governing the use of eminent domain in the state;

(c) The overall impact of state laws governing the use of eminent domain on economic development, residents, and local governments in Ohio.

(2) The Task Force shall prepare and submit to the General Assembly by not later than April 1, 2006, a report that shall include the findings of its study and recommendations concerning the use of eminent domain and its impact on the state, and by not later than August 1, 2006, a report that shall include findings and recommendations regarding the updating of state law governing eminent domain. On submission of the report due not later than August 1, 2006, the Task Force shall cease to exist.

(D) The Legislative Service Commission shall provide any technical, professional, and clerical employees that are necessary for the Task Force to perform its duties.

(E) All meetings of the Task Force are declared to be public meetings open to the public at all times. A member of the Task Force shall be present in person at a meeting that is open to the public in order to be considered present or to vote at the meeting and for the purposes of determining whether a quorum is present. The Task Force shall promptly prepare and maintain the minutes of its meetings, which shall be public records under section 149.43 of the Revised Code. The Task Force shall give reasonable notice of its meetings so that any person may determine the time and place of all scheduled meetings. The Task Force shall not hold a meeting unless it gives at least twenty-four hours advance notification to the news media organizations that have requested such notification.

SECTION 4. The General Assembly hereby makes the following statements of findings and intent:

(A) On June 23, 2005, the United States Supreme Court rendered its decision in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, which allows the taking of private property that is not within a blighted area by eminent domain for the purpose of economic development even when the ultimate result of the taking is ownership of the property being vested in another private person. As a result of this decision, the General Assembly

believes the interpretation and use of the state's eminent domain law could be expanded to allow the taking of private property that is not within a blighted area, ultimately resulting in ownership of that property being vested in another private person in violation of Sections 1 and 19 of Article I, Ohio Constitution, which protect the rights of Ohio citizens to maintain property as inviolate, subservient only to the public welfare. Thus, the General Assembly finds it is necessary to enact a moratorium on any takings of this nature by any public body until further legislative remedies may be considered.

(B) The General Assembly finds that it is a matter of statewide concern to enact the moratorium. The moratorium is necessary to protect the general welfare and the rights of citizens under Sections 1 and 19 of Article I, Ohio Constitution, and to ensure that these rights are not violated due to the *Kelo* decision. In enacting this provision, the General Assembly wishes to ensure uniformity throughout the state.

SECTION 5. Section 2 of this act applies only to taking actions initiated on or after the effective date of this act. As used in this section, "initiated" means the adoption of a resolution or ordinance of necessity by the public body or filing of a court action, but excludes taking actions for which a resolution or ordinance of necessity or other official action of a public body has been taken and public funds have been expended in connection with that taking action prior to the effective date of this act.

SECTION 6. If any item of law that constitutes the whole or part of an uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of an uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the uncodified sections contained in this act are composed, and their applications, are independent and severable.

SECTION 7. Nothing in this act shall be construed to imply that any public body with eminent domain authority has prior to the enactment of this act abused that authority or engaged in any wrongdoing in the exercise of its eminent domain authority conferred by statute or the Ohio Constitution.

SECTION 8. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the necessity is that the United States Supreme Court decision in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, could allow the taking of private property that is not within a blighted area, ultimately resulting in ownership of that property being vested in another private person in violation of Sections 1 and 19 of Article I, Ohio Constitution, and, as a result, warrants a moratorium on any takings of this type until further legislative remedies may be considered. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. S. B. No. 167

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____