

As Introduced

**126th General Assembly
Regular Session
2005-2006**

S. B. No. 167

**Senators Grendell, Zurz, Harris, Jacobson, Cates, Mallory, Brady, Amstutz,
Armbruster, Carey, Dann, Gardner, Goodman, Miller, Roberts, Schuler,
Schuring, Spada, Wachtmann, Wilson, Padgett, Austria, Clancy, Mumper,
Hottinger, Niehaus, Jordan**

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A B I L L

To establish, until December 31, 2006, a moratorium	1
on the use of eminent domain by any entity of the	2
state government or any political subdivision of	3
the state to take, without the owner's consent,	4
private property that is in an unblighted area	5
when the primary purpose for the taking is	6
economic development that will ultimately result	7
in ownership of the property being vested in	8
another private person, to create the Legislative	9
Task Force to Study Eminent Domain and Its Impact	10
on Land Use Planning in the State, and to declare	11
an emergency.	12

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. As used in Sections 2 to 4 of this act:	13
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(A) "Blighted area" has the same meaning as in section 303.26	14
of the Revised Code, but also includes an area in a municipal	15
corporation.	16

(B) "Public body" means any entity of the state government,	17
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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.
This prohibition does 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 roads,
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.

(B) 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:

(1) 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.

(2) 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. 48

(3) The public body shall not receive any funding provided in 49
any act that makes appropriations for capital purposes. 50

Section 3. (A) There is hereby created the Legislative Task 51
Force to Study Eminent Domain and Its Impact on Land Use Planning 52
in the State. The Task Force shall consist of the following 53
twenty-five members: 54

(1) Three members of the House of Representatives, with two 55
members appointed by the Speaker of the House of Representatives 56
and one member appointed by the Minority Leader of the House of 57
Representatives. The Speaker of the House of Representatives shall 58
designate one of the members the Speaker appoints to serve as 59
co-chairperson of the Task Force. 60

(2) Three members of the Senate, with two members appointed 61
by the President of the Senate and one member appointed by the 62
Minority Leader of the Senate. The President of the Senate shall 63
designate one of the members the President appoints to serve as 64
co-chairperson of the Task Force. 65

(3) One member representing the home building industry in the 66
state, appointed jointly by the Speaker of the House of 67
Representatives and the President of the Senate; 68

(4) One member who shall be a statewide advocate for 69
intelligent land use in the state, appointed jointly by the 70
Speaker of the House of Representatives and the President of the 71
Senate; 72

(5) One member representing the agricultural industry in the 73
state, appointed jointly by the Speaker of the House of 74
Representatives and the President of the Senate; 75

(6) One member representing the commercial real estate 76
industry in the state, appointed jointly by the Speaker of the 77

House of Representatives and the President of the Senate;	78
(7) One member representing licensed realtors in the state,	79
appointed jointly by the Speaker of the House of Representatives	80
and the President of the Senate;	81
(8) One member who shall be an advocate for the use of parks	82
and recreation, appointed jointly by the Speaker of the House of	83
Representatives and the President of the Senate;	84
(9) One member representing the Ohio Prosecuting Attorneys	85
Association or the Ohio Association of Probate Judges, appointed	86
jointly by the Speaker of the House of Representatives and the	87
President of the Senate;	88
(10) One member who shall be an attorney who is knowledgeable	89
on the issues confronting the Task Force and who represents	90
persons who own property and reside within Ohio, appointed jointly	91
by the Speaker of the House of Representatives and the President	92
of the Senate;	93
(11) One member knowledgeable on the issues confronting the	94
Task Force who represents persons who own property and reside	95
within Ohio, appointed jointly by the Speaker of the House of	96
Representatives and the President of the Senate;	97
(12) One member representing the planning industry in the	98
state, one member representing an Ohio labor organization, one	99
member representing a statewide historic preservation organization	100
that works within commercial districts, one member representing	101
municipal corporations, one member representing counties, and one	102
member representing townships, each appointed by the Governor;	103
(13) The Director of Development or the Director's designee;	104
(14) The Director of Transportation or the Director's	105
designee;	106
(15) Two members who shall be attorneys with expertise in	107

eminent domain issues, each appointed by the Attorney General. 108

(B) Appointments to the Task Force shall be made not later 109
than thirty days after the effective date of this section. Any 110
vacancy in the membership of the Task Force shall be filled in the 111
same manner as the original appointment. Members of the Task Force 112
shall serve without compensation. 113

(C)(1) The Task Force shall study each of the following: 114

(a) The use of eminent domain and its impact on land use 115
planning in the state; 116

(b) How the decision of the United States Supreme Court in 117
Kelo v. City of New London, 125 S. Ct. 2655 (2005) affects state 118
law governing the use of eminent domain and the law's impact on 119
land use in the state; 120

(c) The overall impact of state law governing the use of 121
eminent domain on land use, economic development, residents, and 122
local governments in Ohio. 123

(2) The Task Force shall prepare and submit to the General 124
Assembly by not later than April 1, 2006, a report that shall 125
include the findings of its study and recommendations concerning 126
the use of eminent domain and the updating of state law governing 127
land use that is impacted by eminent domain. On submission of its 128
report, the Task Force shall cease to exist. 129

(D) The Legislative Service Commission shall provide any 130
technical, professional, and clerical employees that are necessary 131
for the Task Force to perform its duties. 132

(E) All meetings of the Task Force are declared to be public 133
meetings open to the public at all times. A member of the Task 134
Force shall be present in person at a meeting that is open to the 135
public in order to be considered present or to vote at the meeting 136
and for the purposes of determining whether a quorum is present. 137

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.

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

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(A) On June 23, 2005, the United States Supreme Court
rendered its decision in *Kelo v. City of New London*, 125 S. Ct.
2655 (2005), 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
inviolable, 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.

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(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,

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and to ensure that these rights are not violated due to the *Kelo* 169
decision. In enacting this provision, the General Assembly wishes 170
to ensure uniformity throughout the state. 171

Section 5. This act is hereby declared to be an emergency 172
measure necessary for the immediate preservation of the public 173
peace, health, and safety. The reason for the necessity is that 174
the United States Supreme Court decision in *Kelo v. City of New* 175
London, 125 S. Ct. 2655 (2005) could allow the taking of private 176
property that is not within a blighted area, ultimately resulting 177
in ownership of that property being vested in another private 178
person in violation of Sections 1 and 19 of Article I, Ohio 179
Constitution, and, as a result, warrants a moratorium on any 180
takings of this type until further legislative remedies may be 181
considered. Therefore, this act shall go into immediate effect. 182