

As Passed by the House

126th General Assembly

Regular Session

2005-2006

Am. Sub. 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, Fedor, Coughlin**

**Representatives Seitz, Harwood, Wagoner, Willamowski, Latta, Core,
Oelslager, Coley, Book, Beatty, Mason, Allen, Aslanides, Barrett, Blasdel,
Blessing, Boccieri, Brinkman, Bubp, Buehrer, Calvert, Carano, Carmichael,
Cassell, Chandler, Collier, Combs, Daniels, DeBose, DeGeeter, DeWine,
Distel, Dolan, Domenick, Driehaus, Evans, C., Evans, D., Faber, Fende,
Fessler, Flowers, Garrison, Gibbs, Gilb, Hagan, Hartnett, Healy, Hood, Hoops,
Hughes, Key, Kilbane, Koziura, Law, Martin, McGregor, J., McGregor, R.,
Mitchell, Otterman, Patton, S., Patton, T., Perry, Peterson, Raga, Raussen,
Reidelbach, Sayre, Schaffer, Schlichter, Setzer, Smith, G., Stewart, D.,
Stewart, J., Taylor, Uecker, Ujvagi, Wagner, Webster, White, Widener,
Widowfield, Williams, Wolpert, Yates, Yuko, Brown**

—

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 Use and 10

Application in the State, and to declare an 11
emergency. 12

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

Section 1. As used in Sections 2 to 7 of this act: 13

(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
and any county, municipal corporation, township, commission, 18
district, authority, or other political subdivision of the state, 19
that has the power to take private property by eminent domain. 20

Section 2. (A) Notwithstanding any provision of the Revised 21
Code to the contrary, until December 31, 2006, no public body 22
shall use eminent domain to take, without the consent of the 23
owner, private property that is not within a blighted area, as 24
determined by the public body, when the primary purpose for the 25
taking is economic development that will ultimately result in 26
ownership of that property being vested in another private person. 27

(B)(1) Until December 31, 2006, if any public body uses 28
eminent domain to take, without the consent of the owner, private 29
property that is not within a blighted area, as determined by the 30
public body, when the primary purpose for the taking is economic 31
development that will ultimately result in ownership of that 32
property being vested in another private person, each of the 33
following shall apply: 34

(a) The Ohio Public Works Commission shall not award or 35
distribute to the public body any funding under a capital 36
improvement program created under Chapter 164. of the Revised 37

Code.	38
(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.	39 40 41
(c) The public body shall not receive any funding designated for capital purposes in any act of the General Assembly.	42 43
(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.	44 45 46 47 48 49
(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:	50 51 52
(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;	53 54 55 56 57
(2) For a public utility purpose;	58
(3) By a common carrier;	59
(4) For parks or recreation areas open to the public;	60
(5) In the construction, maintenance, or repair of buildings and grounds used for governmental purposes.	61 62
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:	63 64 65 66

(1) Three members of the House of Representatives, appointed 67
by the Speaker of the House of Representatives in consultation 68
with the Minority Leader of the House of Representatives. The 69
Speaker of the House of Representatives shall designate one of the 70
members the Speaker appoints to serve as co-chairperson of the 71
Task Force. 72

(2) Three members of the Senate, appointed by the President 73
of the Senate in consultation with the Minority Leader of the 74
Senate. The President of the Senate shall designate one of the 75
members the President appoints to serve as co-chairperson of the 76
Task Force. 77

(3) One member representing the home building industry in the 78
state, appointed jointly by the Speaker of the House of 79
Representatives and the President of the Senate; 80

(4) One member who shall be a statewide advocate on the 81
issues raised in *Kelo v. City of New London* (2005), 125 S. Ct. 82
2655, insofar as they affect eminent domain, appointed jointly by 83
the Speaker of the House of Representatives and the President of 84
the Senate; 85

(5) One member representing the agricultural industry in the 86
state, appointed jointly by the Speaker of the House of 87
Representatives and the President of the Senate; 88

(6) One member representing the commercial real estate 89
industry in the state, appointed jointly by the Speaker of the 90
House of Representatives and the President of the Senate; 91

(7) One member representing licensed realtors in the state, 92
appointed jointly by the Speaker of the House of Representatives 93
and the President of the Senate; 94

(8) One member representing the Ohio Prosecuting Attorneys 95
Association or the Ohio Association of Probate Judges, appointed 96

jointly by the Speaker of the House of Representatives and the	97
President of the Senate;	98
(9) One member who shall be an attorney who is knowledgeable	99
on the issues confronting the Task Force and who represents	100
persons who own property and reside within Ohio, appointed jointly	101
by the Speaker of the House of Representatives and the President	102
of the Senate;	103
(10) One member knowledgeable on the issues confronting the	104
Task Force who represents persons who own property and reside	105
within Ohio, appointed jointly by the Speaker of the House of	106
Representatives and the President of the Senate;	107
(11) One member representing the planning industry in the	108
state, one member representing an Ohio labor organization, one	109
member representing a statewide historic preservation organization	110
that works within commercial districts, one member representing	111
municipal corporations, one member representing counties, and one	112
member representing townships, each appointed by the Governor;	113
(12) The Director of Development or the Director's designee;	114
(13) The Director of Transportation or the Director's	115
designee;	116
(14) Two members who shall be attorneys with expertise in	117
eminent domain issues, each appointed by the Attorney General;	118
(15) One member representing small businesses, appointed	119
jointly by the Speaker of the House of Representatives and the	120
President of the Senate.	121
(B) Appointments to the Task Force shall be made not later	122
than thirty days after the effective date of this section. Any	123
vacancy in the membership of the Task Force shall be filled in the	124
same manner as the original appointment. Members of the Task Force	125
shall serve without compensation.	126

(C)(1) The Task Force shall study each of the following:	127
(a) The use of eminent domain and its impact on the state;	128
(b) How the decision of the United States Supreme Court in <i>Kelo v. City of New London</i> (2005), 125 S. Ct. 2655, affects state law governing the use of eminent domain in the state;	129 130 131
(c) The overall impact of state laws governing the use of eminent domain on economic development, residents, and local governments in Ohio.	132 133 134
(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.	135 136 137 138 139 140 141 142
(D) The Legislative Service Commission shall provide any technical, professional, and clerical employees that are necessary for the Task Force to perform its duties.	143 144 145
(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	146 147 148 149 150 151 152 153 154 155 156 157

such notification.

158

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

159

160

(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
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.

161

162

163

164

165

166

167

168

169

170

171

172

173

174

175

176

177

(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.

178

179

180

181

182

183

184

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

185

186

187

resolution or ordinance of necessity by the public body or filing 188
of a court action, but excludes taking actions for which a 189
resolution or ordinance of necessity or other official action of a 190
public body has been taken and public funds have been expended in 191
connection with that taking action prior to the effective date of 192
this act. 193

Section 6. If any item of law that constitutes the whole or 194
part of an uncodified section of law contained in this act, or if 195
any application of any item of law that constitutes the whole or 196
part of an uncodified section of law contained in this act, is 197
held invalid, the invalidity does not affect other items of law or 198
applications of items of law that can be given effect without the 199
invalid item of law or application. To this end, the items of law 200
of which the uncodified sections contained in this act are 201
composed, and their applications, are independent and severable. 202

Section 7. Nothing in this act shall be construed to imply 203
that any public body with eminent domain authority has prior to 204
the enactment of this act abused that authority or engaged in any 205
wrongdoing in the exercise of its eminent domain authority 206
conferred by statute or the Ohio Constitution. 207

Section 8. This act is hereby declared to be an emergency 208
measure necessary for the immediate preservation of the public 209
peace, health, and safety. The reason for the necessity is that 210
the United States Supreme Court decision in *Kelo v. City of New* 211
London (2005), 125 S. Ct. 2655, could allow the taking of private 212
property that is not within a blighted area, ultimately resulting 213
in ownership of that property being vested in another private 214
person in violation of Sections 1 and 19 of Article I, Ohio 215
Constitution, and, as a result, warrants a moratorium on any 216
takings of this type until further legislative remedies may be 217

considered. Therefore, this act shall go into immediate effect.

218