

As Reported by the House Civil and Commercial Law Committee

126th General Assembly

Regular Session

2005-2006

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**

—

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 39
distribute to the public body any funding under a shovel ready 40
sites program created under section 122.083 of the Revised Code. 41

(c) The public body shall not receive any funding designated 42
for capital purposes in any act of the General Assembly. 43

(2) Until December 31, 2006, any public body seeking to 44
obtain funds described in division (B)(1) of this section, shall 45
certify in writing to the grantor of the funds that the public 46

body has not used its eminent domain authority on or after the 47
effective date of this act to take private property in violation 48
of the moratorium established by this act. 49

(C) Divisions (A) and (B) of this section do not apply to the 50
use of eminent domain for the taking of private property to be 51
used as follows: 52

(1) In the construction, maintenance, or repair of streets, 53
roads, or walkways, paths, or other ways open to the public's use, 54
including rights of way immediately adjacent to those public ways, 55
including, but not limited to, such use pursuant to authority 56
granted under Title LV of the Revised Code; 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 61
and grounds used for governmental purposes. 62

Section 3. (A) There is hereby created the Legislative Task 63
Force to Study Eminent Domain and Its Use and Application in the 64
State. The Task Force shall consist of the following twenty-five 65
members: 66

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

(2) Three members of the Senate, with two members appointed 73
by the President of the Senate and one member appointed by the 74
Minority Leader of the Senate. The President of the Senate shall 75

designate one of the members the President appoints to serve as	76
co-chairperson of the 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 <i>Kelo v. City of New London</i> (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	129
<i>Kelo v. City of New London</i> (2005), 125 S. Ct. 2655, affects state	130
law governing the use of eminent domain in the state;	131
(c) The overall impact of state laws governing the use of	132
eminent domain on economic development, residents, and local	133
governments in Ohio.	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.

(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 166
person. As a result of this decision, the General Assembly 167
believes the interpretation and use of the state's eminent domain 168
law could be expanded to allow the taking of private property that 169
is not within a blighted area, ultimately resulting in ownership 170
of that property being vested in another private person in 171
violation of Sections 1 and 19 of Article I, Ohio Constitution, 172
which protect the rights of Ohio citizens to maintain property as 173
inviolate, subservient only to the public welfare. Thus, the 174
General Assembly finds it is necessary to enact a moratorium on 175
any takings of this nature by any public body until further 176
legislative remedies may be considered. 177

(B) The General Assembly finds that it is a matter of 178
statewide concern to enact the moratorium. The moratorium is 179
necessary to protect the general welfare and the rights of 180
citizens under Sections 1 and 19 of Article I, Ohio Constitution, 181
and to ensure that these rights are not violated due to the *Kelo* 182
decision. In enacting this provision, the General Assembly wishes 183
to ensure uniformity throughout the state. 184

Section 5. Section 2 of this act applies only to taking 185
actions initiated on or after the effective date of this act. As 186
used in this section, "initiated" means the adoption of a 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