

**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

(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  
This prohibition does not apply to the use of eminent domain for 28  
the taking of private property to be used as follows: 29

(1) In the construction, maintenance, or repair of roads, 30  
including, but not limited to, such use pursuant to authority 31  
granted under Title LV of the Revised Code; 32

(2) For a public utility purpose; 33

(3) By a common carrier. 34

(B) Until December 31, 2006, if any public body uses eminent 35  
domain to take, without the consent of the owner, private property 36  
that is not within a blighted area, as determined by the public 37  
body, when the primary purpose for the taking is economic 38  
development that will ultimately result in ownership of that 39  
property being vested in another private person, each of the 40  
following shall apply: 41

(1) The Ohio Public Works Commission shall not award or 42  
distribute to the public body any funding under a capital 43  
improvement program created under Chapter 164. of the Revised 44  
Code. 45

(2) The Department of Development shall not award or 46  
distribute to the public body any funding under a shovel ready 47

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, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;	79 80 81
(8) One member who shall be an advocate for the use of parks and recreation, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;	82 83 84
(9) 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;	85 86 87 88
(10) 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;	89 90 91 92 93
(11) 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;	94 95 96 97
(12) 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;	98 99 100 101 102 103
(13) The Director of Development or the Director's designee;	104
(14) The Director of Transportation or the Director's designee;	105 106
(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.

**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*, 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.

(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* 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