Final Report of the Task Force to Study Eminent Domain
August 1, 2006

"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..."

SB 167, 126th General Assembly

INTRODUCTION

The Legislative Task Force to Study Eminent Domain and its Use and Application in the State consists of 25 members appointed either jointly by the President of the Senate and Speaker of the House, or by the Attorney General of the State of Ohio, the Governor of the State of Ohio, the Director of the Department of Development, or the Director of the Department of Transportation.[i]

STRUCTURE AND ENABLING LANGUAGE

The Task Force was created by the 126th General Assembly in Amended Substitute Senate Bill 167.[ii] Section 4(A) of that legislation outlined the General Assembly's rationale in enacting the legislation.

> 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 allowed 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. The United States Supreme Court also, however, noted that each individual state is free to recognize its own laws regarding the protection of private property rights. As a result of this decision and in recognition of the Court's deference to local laws, the General Assembly expressed concern that 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.

Senate Bill 167 was enacted by unanimous votes in both the Ohio Senate and the Ohio House of Representatives. It was signed into law by the Governor on November 16, 2005, and took immediate effect by virtue of an emergency clause, which was included in the legislation. The bill placed a fourteen-month moratorium on the use of eminent domain to take unblighted private property from unwilling sellers for private development and created the Task Force. Section 3 of Senate Bill 167 outlined the duties of the Task Force, as follows:

> 3(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.

Following submission of the First Report,[iii] the Task Force formed two working groups that functioned as subcommittees. One subcommittee, chaired by Representative Seitz, looked at Blight and Constitutional Issues. The other subcommittee, chaired by Ms. McCloud and Judge Cissell, looked at Compensation and Procedure.[iv] The subcommittees met over the period of several weeks and made recommendations to the full Task Force for consideration as it made its final report and recommendations.[v]

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MEETINGS

The Task Force met a total of 13 times between February 16, 2006, and July 31, 2006.[vi] Meetings included those held in the Statehouse and traveling meetings held in Ashland, Lakewood, and Norwood, Ohio. In all, approximately 75 people testified before the Task Force.[vii]

SCOPE OF RESEARCH

The members of the Task Force amassed a large body of research relating to various aspects of Ohio's eminent domain law. The research was done primarily through the assistance of the Legislative Service Commission.[viii] either through their own professional efforts or with the assistance of noted experts. Although not all-inclusive, the Task Force felt it was appropriate to include some of that research with this report. Attached research includes:

EMINENT DOMAIN STATUTORY PROCEDURES
R-126-3154
Prepared by William Cramer, Legislative Service Commission
May 3, 2006

This document details the procedures in appropriating property in the State of Ohio, under Chapters 163. and 719. of the Revised Code. It includes several aspects of the appropriation of property including: negotiations, petitions, compensation determination, costs, quick takes/immediate possession, appropriating less than the whole, displaced persons and their rights, and exceptions to the general procedures. *This document has been attached as Appendix F.*

NONELECTED PERSON OR ENTITIES AUTHORIZED BY THE GENERAL ASSEMBLY TO EXERCISE EMINENT DOMAIN POWER IN OHIO

R-126-3453
Prepared by William Cramer, Legislative Service Commission
May 24, 2006

This chart details all nonelected persons and entities that have authority to appropriate property using eminent domain. It shows what persons and entities have the power, the section in the Ohio Revised Code in which their power is defined, in what manner they can exercise the power and the position's appointing authority. *This document has been attached as Appendix H*

EMINENT DOMAIN AUTHORITY OF PUBLIC AND PRIVATE CEMETERIES AND OF PRIVATE COLLEGES AND UNIVERSITIES

R-126-3476
Prepared by William Cramer, Legislative Service Commission
May 31, 2006

This memorandum analyzes the power of owners of private and public cemeteries to employ eminent domain authority. It specifies if and how townships, municipal corporations, union cemeteries and private cemeteries can appropriate land for cemetery purposesusing eminent domain.

Private colleges and universities are able to appropriate land by abiding by the Appropriation of Property Law after applying and receiving approval from the Ohio Board of Regents. The Board must determine, among other things, if the planned use of land is in "the public interest." *This document has been attached as Appendix I.*

EMINENT DOMAIN LEGISLATION IN THE WAKE OF *KELO*

R-126-3466
Prepared by Suzanne Lindamood, Legislative Service Commission
June 6, 2006

This document addresses the question of whether a constitutional amendment is needed in order to ensure that the procedural and substantive rules concerning eminent domain takings apply to "home rule" municipal corporations, particularly concerning the definition of "blight." The memo indicates that a series of constitutional amendments would be necessary to *deprive* municipalities of their "home rule" power, that a statutory change would not be sufficient enough to do so.

The memo also addresses the question of how useful the power of the purse is when used by the state to encourage municipal corporation's compliance with state statutes governing eminent domain takings is also addressed. Essentially, this practice would not be an effective method of persuasion, and instead could potentially draw harmful attention to the matter.

This memorandum also gives information on what actions other states have taken, in the wake of *Kelo*, to redefine "blight" and the limitations they have placed on the practice of eminent domain. This legislation has already passed both houses in their respective state and has been signed by the Governor.

Finally, "distressed cities" is defined using the Ohio Revised Code. These definitions do not necessarily apply to eminent domain. *This document has been attached as Appendix J.*

Legislative Service Commission Memorandum
R-126-3571
Prepared by William Cramer and Bill Heaphy, Legislative Service Commission
June 8, 2006

This document lists the laws of 33 other states regarding attorney's fees and their applicability in eminent domain proceedings. All 33 states address attorney's fees awards in diverse and specific circumstances. *This document has been attached as Appendix K*

Legislative Service Commission Letter
R-126-3621
Prepared by Bill Heaphy, Legislative Service Commission
June 13, 2006

The letter answers the question of whether or not there is any difference between the inherent nature of the eminent domain authority of the state and the eminent domain authority of a municipality and their "home rule" powers. No major difference exists between these two entities, due to each having their own special powers that are derived from the Ohio Constitution and having been vested in a "sovereign" entity. In essence, the power of eminent domain possessed by the state and by a municipality is equal and bound by similar constitutional principles.

In addition to this letter, the case of *The State, ex rel. Bruestle, City Solicitor, v. Rich, Mayor, et al.*, is included for reference. *This document has been attached as Appendix L*

EMINENT DOMAIN LEGISLATION IN THE WAKE OF *KELO*: PART II
R-126-3619
Prepared by Katie Bentley, Legislative Service Commission
June 20, 2006

This is the second part of the memo prepared by Suzanne Lindamood entitled, Eminent Domain Legislation in the Wake of *Kelo*. It includes legislation in states that has been passed by both houses and is currently awaiting the Governor's signature as well as legislation in Nevada that was enacted prior to *Kelo*. *This document has been attached as Appendix M.*

EMINENT DOMAIN "ENACTED" LEGISLATION IN THE WAKE OF *KELO*
R-126-3618
Prepared by Bill Heaphy, Legislative Service Commission
June 20, 2006

This document illustrates the enacted legislation of other states in the wake of *Kelo*, shown in a comparative chart using the information from Eminent Domain Legislation in the Wake of *Kelo* (R-126-3466). *This document has been attached as Appendix N.*

ADDITIONAL "ENACTED" OR "PENDING" EMINENT DOMAIN LEGISLATION IN THE WAKE OF *KELO*

R-126-3662
Prepared by Bill Heaphy, Legislative Service Commission
June 20, 2006

This document illustrates the enacted or pending legislation of other states in the wake of *Kelo,* shown in a comparative chart using the information from R-126-3619. *This document has been attached as Appendix O.*

Legislative Service Commission Letter

R-126-3722
Prepared by Elizabeth K. Mase, Legislative Service Commission
June 26, 2006

This document provides the definition for "agricultural use" from the statutory zoning law of the Ohio Revised Code. *This document has been attached as Appendix P.*

Legislative Service Commission Letter

R-126-3731
Prepared by William Cramer, Legislative Service Commission
June 27, 2006

This letter answers the question as to whether other states allow property owners to testify as to the value of their property. There is a national consensus that allows property owners to testify as to the value of their property because they have special and unique knowledge of their property.

Also addressed is the question of whether the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution would be violated if there were different procedures for different types of takings. In general, the Equal Protection Clause would not be violated by establishing different condemnation procedures. *This document has been attached as Appendix Q.*

Miscellaneous Eminent Domain Issues (Supplemental)

R-126-3741
Prepared by William Cramer, Legislative Service Commission
July 7, 2006

This memo discusses the ability of the General Assembly to create preferences for development rights, and to grant the property owner a right-of-first refusal. It also discussed multi-agency condemnation actions, and current requirements for nonelected entities to hold public hearings prior to a condemnation action. *This document has been attached as Appendix R*

FINAL RECOMMENDATIONS

Quick Take

Majority Task Force Recommendation:

The Task Force recommends that the Constitutional power of quick take should stay the same.

Minority Task Force Opinion:

Unanimously agreed upon: no minority opinion.

Public Input

Majority Task Force Recommendation:

All public agencies should be required to have a process allowing for public input before exercising their power of eminent domain. The General Assembly should examine the practicability of extending the public input requirements to purely private entities with eminent domain authority.

Minority Task Force Opinion:

A minority position was supported by Gearhardt, Brown, and Grendell that public agencies with non-elected boards should be required to have a public hearing, with notice to the affected landowners, prior to commencing eminent domain proceedings. Public agencies that appoint members of non-elected boards should be required to hold public hearings before non-elected boards exercise eminent domain authority as a matter of due process. The General Assembly should also consider whether a decision to use eminent domain by unelected public officials other than those with powers for quick take, should be required to have approval by the elected authority that appointed the nonelected official.

Sharing of Appraisals

Majority Task Force Recommendation:

Governmental agencies should be required to disclose the full appraisal or, if the land value is under $10,000, the summary with the landowner at the time of making their first offer for the land. The General Assembly should look at the practicality of requiring all condemning authorities to share full appraisal or summary of value.

Minority Task Force Opinion:

A minority position was expressed by Brown that the governmental entity should also be required to work with the landowner to find a mutually agreed upon appraiser. There is no one appraiser who can accurately evaluate property value throughout the State. When an appraiser is used who has first hand knowledge of the market, the more reliable the appraisal will be. This requirement would ensure that both parties involved in the taking would have an appraiser who

would more likely be familiar with the real estate market within the county, municipality, community, neighborhood, etc. where the taking is going to occur, thus better ensuring a fair appraisal.

Right to Repurchase

Majority Task Force Recommendation:

If the project is abandoned in an early phase before transfer of title from the governmental agency, the landowner should be permitted to purchase the real estate. In the event that the General Assembly considers the validity of a right to repurchase/right of first refusal the General Assembly should consider that it only be applicable after the appropriating agency has issued a legislative decree of abandonment. Notwithstanding an event of abandonment, the right of repurchase should be extinguished at law upon the occurrence of either (i) The authorization of a redevelopment contract or other public arrangement commencing an urban renewal project; or (ii) Upon the grant or transfer of the property interest from the appropriating agency to any subsequent grantee or transferee.

Minority Task Force Opinion:

A minority position was supported by Cannon, Ditchman, Papsidero, and Janik that although the majority report would provide a right of repurchase if the project is abandoned in an early phase, this right of repurchase raises significant issues which would potentially adversely affect the financing of such public projects, particularly if the parcel subject to the right of repurchase has been assembled into a larger parcel and/or significantly modified in some respect, such as through demolition of a structure. Given the very small number of cases in which this right is likely to be exercised, it is not merited in light of the potential uncertainties it will create.

Necessity Trial

Majority Task Force Recommendation:

The Task Force recommends that the issue of the necessity for the taking should be decided by a judge. The Legislature should also request that the Supreme Court amend Appellate Rule 11 to allow for an expedited appeal within 30 days of briefing, with an expedited decision.

Limitations on challenges to necessity in quick take situations as outlined in R.C. 163.08 and R.C. 163.09 should remain unchanged.

Minority Task Force Opinion:

No minority opinion.

Burden of Proof

Majority Task Force Recommendation:

The Task Force recommends that the Legislature review and consider R.C. 163.09 in light of the *Norwood* decision because items brought up in that decision and footnote 16 of that decision were not discussed by the Task Force in the context of the footnote/decision. The General Assembly should consider in the alternative an initial presumption that the government's necessity finding is valid. Should the person whose property is to be appropriated make a prima facie showing that the appropriation does not meet the necessity or public use/public purpose requirement, the burden shifts to the government to prove necessity by a preponderance of the evidence.

Minority Task Force Opinion:

A minority opinion was expressed by Grendell, Pine, and Zurz that R.C. 163.08 (quick take) should be included in the above recommendation.

Traffic Flow

Majority Task Force Recommendation:

The Task Force recommends that the General Assembly not make a recommendation on changes to Ohio law with respect to traffic flow compensation.

Minority Task Force Opinion:

A minority opinion was expressed by Ingram, Grendell, Bohardt, Coughlin, Gearhardt, Gibbs, Ingram, Krebs, Pine, Tranter, Wanless, Zurz, and Winburn that landowners abutting main roads and highways who are deprived of direct access to a main road but are provided indirect service via a service or frontage road should be entitled to recover damages for such loss of access. Moreover, the erection of median strips, conversion of two-way to one-way streets, diversion of traffic, etc., should also be compensated. The diminishment or impairment of access is a serious source of damage to the landowner, now uncompensated under state law.

Lost Business, Lost Goodwill

Majority Task Force Recommendation:

Businesses should be compensated for lost business and loss of goodwill when their business is taken. Any such compensation and restrictions, if any, should be considered by the General Assembly.

Minority Task Force Opinion:

A minority opinion was expressed by McCloud, Proctor, Papsidero, Johnson, and Long that companies should not be compensated for alleged loss of business and goodwill when their land is acquired through the exercise of the power of eminent domain, as lost business is too uncertain and depends on too many contingencies

(market forces and other business factors) to be accepted as evidence of the usable value of the property. Lost goodwill is a metaphysical, incalculable, unappropriated value of reputation, hard work, and acumen of the business owner, which the business carries with it to another location. Instead of paying for lost business and goodwill, all acquiring agencies should be made to provide relocation services and benefits in the form of: business replacement site search expenses, re-establishment expenses, all costs to move personal property, incidental expenses, or "in-lieu of" moving expenses as noted under the "relocation costs and moving expenses" policy recommendation."

Non-economic Damages

Majority Task Force Recommendation:

Landowners should not receive compensation for any emotional stress they endure when their property is taken. The Task Force does not recommend additional compensation solely for the heritage of homestead value of property that has a particular sentimental value to a family. Nothing in this recommendation is intended to change current law permitting a property owner to testify as to the value of his or her property.

Minority Task Force Opinion:

A minority opinion was expressed by Pine and Brown that non-economic damage awards are a concept used in Ohio's tort system to compensate injured parties for items such as pain, suffering or mental anguish when they are injured or wronged. This committee has recommended that the pain, suffering and mental anguish felt as a result of a person's own government taking private property against a landowner's will is not worthy of non-economic damage awards. We recommend that non-economic damage awards be available to those whose home has been taken unwillingly, but not to exceed the limitation set forth in Senate Bill 80 of the 125th General Assembly.

Relocation/Moving Expenses

Majority Task Force Recommendation:

Landowners should be compensated for actual moving and relocation expenses and services in all types of takings. In implementing this recommendation, the General Assembly should consider the manner in which ODOT handles relocation and moving expenses. A guideline on the ODOT process has been included as Attachment 1.

Minority Task Force Opinion:

Unanimously agreed upon; no minority opinion.

Assemblage Value

Majority Task Force Recommendation:

The Task Force recommends that there be no change from current law.

Minority Task Force Opinion:
Unanimously agreed upon; no minority opinion.

Mediation

Majority Task Force Recommendation:
Individuals should contract for any mediation process voluntarily, on a case-by-case basis. There should not be a statutory right to mediation. The State should not establish a mediation process for landowners to use.

Minority Task Force Opinion:
Unanimously agreed upon; no minority opinion.

Attorney's Fees

Majority Task Force Recommendation:
Landowners should be awarded reasonable attorney's fees and costs, including appraisal fees, in cases where the final amount of compensation is greater than 125% of the government's original offer for the property, except for properties taken through quick take. In the event that the landowner prevails in the final ruling of necessity in a final, unappealable order, the landowner shall receive reasonable attorney's fees and costs.

Minority Task Force Opinion:
A minority opinion was expressed by Ingram that excluding the most frequent instances of eminent domain from recovering attorney's fees (quick take) is discriminatory towards small businesses, farmers, homeowners, minorities, and the underprivileged. There is no rational basis to exclude ODOT from paying attorneys' fees when it is wrong in its valuation. All Ohio landowners, not just a select few, deserve protection from artificial or disingenuously low offers.

Minority Task Force Opinion:
A second minority position was supported by Cannon that the majority's recommendation reverses the normal American rule that attorneys fees are not paid except in extremely limited circumstances. This dramatic change is not justified, particularly when it excludes all roadway takes, by far the majority of all takes. At a minimum, a higher threshold should be established than the 125%, an award should be based upon a clearly defined standard, and any award should be decided by the judge, taking into account all of the circumstances of the case.

Minority Task Force Opinion:
A third minority position was supported by Gearhardt, Grendell, Zurz, Gibbs, and Brown that agencies with the power of quick-take eminent domain authority should be required to pay attorney's fees and costs if an award of damages is 25 percent higher than the first offer of settlement by the agency. This would help to ensure fair negotiations, equal the disparity of landowners having to fight actions funded through their own tax dollars, and satisfy the constitutional concept of "just compensation" due to landowners.

Use of Eminent Domain Solely for Revenue Generation Purposes
Majority Task Force Recommendation:

Either by statute or constitutional amendment, Ohio should go on record as forbidding the use of eminent domain *solely* for government revenue generation purposes, and should further go on record as stating that an increase in tax revenues as a result of a take is not a basis for a finding of blight. This reasoning is consistent with the Ohio Supreme Court's ruling in the *Norwood* case.

> It is necessary that we recognize the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. A government entity should be required, however, to rigorously explore and objectively evaluate all reasonable alternatives to achieving public purposes that would "avoid" the taking of private property. Eminent domain should be used as a means of "last resort". The use of eminent domain "solely" for government revenue purposes and for increasing tax revenues as a result of the taking are not criteria for finding blight. This reasoning is consistent with the Ohio Supreme Court's ruling in the *Norwood* case.

Minority Task Force Opinion:

No minority opinion prepared.

Blighted Parcels
Majority Task Force Recommendation:

Ohio should retain the use of eminent domain as a tool for the elimination of blight, even if the property that is taken is converted to another private use.

> The potential for abuse in the use of eminent domain is government's failure to put in place mechanisms that ensure there is sufficient public control that the stated public benefits will, in fact, be realized. The entity taking a property needs to demonstrate how the taking will clearly benefit the community as a whole more than the private entity to whom it is given. Therefore, Ohio should retain the use of eminent domain as a tool for the elimination of blight, even if the property that is taken is converted to another private use; provided that government be required to define and establish public need by a development plan through a government funded, comprehensive planning process, except in instances of removal of spot blight. The comprehensive planning process should include specific studies that document public need (i.e., a regional economic development plan). The local legislative bodies should publicly affirm this public need.

Minority Task Force Opinion:

No minority opinion prepared.

Definition of Blight

Majority Task Force Recommendation:

Ohio's blight definition should be rewritten and tightened to prevent eminent domain abuse that could occur under the current statutory definition. The Task Force recommends that the definition of blight contained in Attachment 2 to this report (R-126-3937) be adopted by the General Assembly.

In writing for the Ohio Supreme Court, Justice Maureen O'Connor states: "We have never found economic benefit alone to be a sufficient public use for a taking". Therefore, Ohio law does need to clearly define "blight" in order to permit a taking by eminent domain. Because blight has been and is a subjective term and difficult to define qualitatively, it can be interpreted to include property that some may not perceive to be blighted. Furthermore, subjective and vague concepts used to defend a taking such as "deteriorating" can no longer be a standard for a taking per the Ohio Supreme Court's *Norwood* ruling. Therefore, identifying blight by requiring at least two or more of the commonly recognized conditions of blight exist in the property is needed. In taking this approach, a reasonable determination can be made for any property if more than one of the definitions of blight applies to that property, thus achieving a more objective, quantitative approach.

Minority Task Force Opinion:

A minority opinion was expressed by Grendell and Pine that the General Assembly should instead support the alternate definition of blight identified as RC 126-3899 and included in this report as Attachment 3.

Percentage of Area Blighted

Majority Task Force Recommendation:

Ohio should not require that every parcel that is taken be blighted; so long as a majority of the parcels to be taken for economic development purposes are blighted.

First, an objective measurement as outlined above that is not susceptible to an abuse of discretion by the governmental entity seeking to exercise eminent domain authority needs to be in place in order to determine if an area is blighted. If such a measurement reveals that at least 50% of the properties in an area meet the blight definition, Ohio law should support a taking.

Minority Task Force Opinion:

No minority opinion prepared.

Farmland

Majority Task Force Recommendation:

Ohio should go on record as stating that farmland is incapable of being taken under a blight standard absent specific environmental or public health hazards that are beyond generally acceptable agricultural practices that are documented to be present on the farmland.

State and local law should prohibit agricultural land (including land enrolled in the Current Agricultural Use Value (CAUV) real property tax program) to be considered blighted. To do otherwise would not find support in the definition of blight.

Minority Task Force Opinion:

No minority opinion proposed.

Consistency

Majority Task Force Recommendation:

The revised definition of blight should be consistent throughout the Revised Code, and all statutes that now address "blight" in the eminent domain context should use the same definition.

A consistent definition of blight within an eminent domain context needs to be found throughout the Revised Code and in all statutes. Uniformity is imperative.

Minority Task Force Opinion:

No minority opinion prepared.

Constitutional Amendment

Majority Task Force Recommendation:

Ohio should submit to voters a constitutional amendment that permits cities to exercise the same eminent domain powers as the State itself, provided that each city must be obligated to follow State statute (as same applies equally to the State itself and cities) on procedural and substantive eminent domain issues.

A constitutional amendment is necessary for several reasons: One, the Ohio Constitution needs to clearly define blight as it relates to the use of eminent domain powers. Two, the Ohio Constitution needs to clearly define the use of the powers of eminent domain and not unduly restrict the legitimate exercise of eminent domain. And three, a consistent standard of the use of eminent domain powers needs to be applied throughout the State. What is defined as blight in Northeast Ohio should also be the same standard by which blight is judged in Southwest Ohio; the definition of blight used by one governmental authority

should be the same "set of rules" for every governmental entity. A constitutional amendment would clarify all of these conditions.

The Task Force moved that the General Assembly consider the Joint Resolution identified as LSC 126 2249-1 and included in this report as Attachment 4.

Due to the lateness of the hour and the length of the Task Force meeting, several members were not present for the vote on this issue. After a preliminary vote that 10 members opposed the constitutional amendment and 9 supported the amendment, the chairmen moved to hold the roll open until noon on August 1, to permit the members who had to leave for the evening an opportunity to weigh in on this important question before the Task Force.

Additional votes were submitted to the chairmen's offices to result in a final vote that 12 members are in favor of recommending the constitutional amendment to the General Assembly and 11 are opposed.

Minority Task Force Opinion:

A minority position expressed a strong opinion that a constitutional amendment was unnecessary following the Ohio Supreme Court's decision in *Norwood* and that municipalities should continue to address matters of blight in ways that are locally determined and consistent with the concept of home rule.

Majority Task Force Recommendation:

In response to the Ohio Supreme Court's decision in *Norwood,* the Task Force recommends that the General Assembly change R.C. 163.19 to allow the court to issue a stay, pursuant to the issuance of a supersedeas bond.

Minority Task Force Opinion:

No minority opinion prepared.

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[i] Membership listing attached as Appendix A.
[ii] A copy of SB 167 has been attached as Appendix B.
[iii] A copy of the First Report is attached as Appendix C.
[iv] A copy of the Subcommittee membership is attached as Appendix D.
[v] A copy of the Subcommittee recommendations has been attached as Appendix E.
[vi] A copy of all Task Force and Subcommittee minutes has been attached as Appendix F.
[vii] Copies of submitted testimony have been included in the Committee record, which will be on file with the Senate Clerk.
[viii] The Task Force sent a letter of appreciation to the Legislative Service Commission in recognition of the efforts of LSC staff in providing research to the Task Force. A copy of that letter has been attached as Appendix G.

CONCLUDING REMARKS

To permit each member an opportunity to voice an opinion or a recommendation that was not necessarily embraced by the entire Task Force, each member of the Task Force was given the opportunity to include final remarks to this Task Force. These remarks were submitted by the member (or members) to whom they are attributed and are for the benefit of the General Assembly and other interested parties, although they do not represent the consensus of the Task Force.

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Committee Assignments

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Agriculture
Environment and Natural Resources
Judiciary – Criminal Justice

The Ohio Supreme Court, in its *Norwood* decision, is correct: private property ownership is a "revered" original and fundamental right that existed before the formation of government. That "right" is now protected by the Ohio Constitution.

Eminent domain should not be used solely for economic development purposes. However, eminent domain should be available for traditional "public" uses (e.g. roads, sewers, public buildings) and legitimate quasi-public uses (e.g. utilities). Eminent domain also should be available to permit urban renewal in truly blighted urban areas. Ohio should adopt a statewide definition of blight, defined by objective standards and subject to heightened scrutiny. Subjective standards (e.g. "deteriorated") should not be used as such standards can lead to potential abuse of eminent domain powers (e.g. Lakewood, Norwood).

A constitutional amendment is necessary to provide uniform protection of this private property right throughout Ohio. The failure to pass such an amendment would jeopardize the value of any statutory changes and allow for the diminution of state statutory property rights safeguards by local governments. Private property rights of an Ohioan in a "Home Rule" city are the same and deserve the same eminent domain protection as the private property rights of Ohioans in a township or village.

The Task Force members were extremely dedicated and they performed an excellent job in reviewing this complicated issue. I extend my personal thanks to all the Task Force members and my staff for their dedication and hard work.

Assistant Majority Whip

Committees
Civil & Commercial Law
Criminal Justice
Commerce & Labor

Bill Seitz
State Representative, 30th House District

Separate Statement of Task Force Co-Chairman Representative Bill Seitz

I commend the work of this Task Force. We have tackled a tremendously emotional matter in a very intellectual and professional manner. Our Subcommittee recommendations in many ways presaged the unanimous Supreme Court decision in *Norwood v. Horney*.

Of all the good recommendations made by the Task Force, none is more important than the proposed constitutional amendment. Without it, none of the other pro-propertyowner reforms will have any binding effect on propertyowners whose homes are taken by cities. Why should propertyowners be entitled to relocation and moving expenses, attorney fees, business lost profits, and other compensation when their homes are taken by the State, a township, or county—but not when they are taken by a city? Why should the State use an objective, clear, and constitutional definition of "blighted property" for itself, but allow hundreds of different cities to adopt their own subjective standards? In a word, private property rights must be protected the same in Ashtabula as in Zanesville. The public deserves the right to ensure that this protection will exist by voting on the proposed constitutional amendment. And if municipal elected officials truly care about private property rights, they should not hesitate to endorse a proposal that constitutionally guarantees them the same eminent domain powers as the State itself, subject only to following the rules the State imposes on itself for the protection of those rights.

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Dear ED Task Force Members:

The Eminent Domain Task Force has abdicated its responsibility to the vast majority of Ohio landowners whose property is taken by eminent domain. The Task Force has recommended that in certain cases attorneys' fees be awarded when a landowner demonstrates that the state's valuation is wrong. However, the Task Force **excluded** from this recovery the largest group of landowners who are also the most abused by eminent domain—those subject to the quick take power of local governments and agencies like ODOT. Quick take powers are frequently abused by the agency's use of "low ball" appraisals.

This discrimination against quick take landowners is wrong. Quick takes disproportionately impact small businesses, farmers, homeowners, minorities and the underprivileged. No rational basis exists to exclude such landowners. The only reason offered by proponents of this discrimination is that it will cost state and local agencies, like ODOT, more money to compensate landowners.

The fact is, in Florida, **less than 10% of the right of way budget in 2004-2005 went to landowner attorneys' fees and appraiser expenses.** ODOT's claim before this committee that it would have to "*double*" its budget to compensate landowners for these expenses is not borne out in Florida.

The fact is, forcing quick take agencies like ODOT to pay attorneys' fees **when it is wrong in its valuation** is good public policy. The incentive to try to steal property from a landowner goes down as the penalty for doing so goes up. All Ohio landowners, not just a select few, deserve this protection.

Respectfully submitted,

s/ Bruce L. Ingram

Bruce L. Ingram

BLI:nmm

Steve Brown: Ohio Association of Realtors

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and 14th Amendments of the United States Constitution. Furthermore, every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without the owner's express consent or just compensation.

The necessity to "take" private property for the public benefit is recognized for all levels of government, however, the potential for abuse in the use of eminent domain is government's failure to put in place mechanisms that ensure there is sufficient public control that the stated public benefits will, in fact, be realized. The use of the power of eminent domain should be a tool of "last resort". The use of eminent domain "solely" for government revenue purposes and for increasing tax revenues as a result of the taking are not criteria for the finding of blight and/or a taking. But the use of eminent domain to eliminate blight even if the property taken is transferred to another private use is recognized. In any case, government should be required to define and establish public need by a comprehensive development plan through a government funded, thorough planning process that provides persuasive, objective evidence that the project and resulting public use will in fact be realized. Such a plan should publicly affirm the public benefit.

When property is taken, Ohio, like every state must have in place legislation that implements the 5th Amendment's guarantee of compensation.
In addition, legislation must provide property owners the right to a public hearing in the earliest stages of the taking process and expeditious access to administrative and judicial systems at all levels – local, state and federal – to pursue Fifth Amendment takings claims and/or relief from property rights violations thus insuring just and fair compensation.

When a government entity exercises its eminent domain power to condemn private property for public use, the government should provide – as required by the 5th Amendment – "just" compensation to affected property owners that covers not only the value of the property condemned but also all other reasonable and necessary costs generated by the condemnation action – including, but not limited to, hiring legal counsel, obtaining temporary housing, lost business revenue, severance damages, relocation expenses.

Therefore, overall the Ohio Association of Realtors does affirm the Task Force report with the ***caveat*** that the process of the taking of private property and the process after the taking of private property, law must forever protect and defend the private property rights of our citizens.