

## What's Next for Senate Bill 18?

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**T**he Texas House of Representatives recently passed SB 18, this session's omnibus eminent domain reform bill. In fact, SB 18 is really the product of the last three legislative sessions. Texans have been waiting a long time for this bill.

What's the next step to finalizing these long-awaited reforms?

Since the bill was amended in the House, the Texas Senate has to decide whether to accept the changes and send the bill to the governor or go to a conference committee to work out the differences between the House and Senate versions.

While there were quite a few amendments to SB 18 in the Texas House, almost all of them improved the bill. In particular, these two amendments significantly improved the bill:

- **The “Buyback” amendment:** A major flaw with Texas eminent domain law is that once a property has been condemned, it can be used for just about any purpose—the condemner is not required to use it for the purpose it was taken. SB 18 currently contains a buyback provision that attempts to address this problem by letting a property owner repurchase her property under certain circumstances. However, in most cases a condemner can get around the buyback provision even if it does not use the property for the use specified in the condemnation proceedings. **This amendment adds a new trigger to the buyback provision that would grant property owners the right to repurchase their property if the initial use of the taken property is not the public use for which the property was taken.** It applies in all situations and is not tied to the 10 year time frame currently in SB 18, so avoids the concerns that both property rights advo-

cates and condemners have with the current provision. We have a full explanation of the buyback provision on our website.

- **The “Public Use” amendment:** According to the United States and Texas constitutions, eminent domain can only be used for a public use. However, the Texas Legislature and Texas courts have closely followed the national trend of blurring the distinction between public use and public purpose. For instance, Sec. 251.001 of the Texas Local Government Code states: “When the governing body of a municipality considers it necessary, the municipality may exercise the right of eminent domain for a *public purpose* to acquire public or private property, whether located inside or outside the municipality, for any of the following *purposes*.” This confusion between public use and public purpose is what led the Supreme Court in its *Kelo* decision to allow takings for the purposes of increasing tax revenue and economic development, rather than limiting takings to public uses like building public schools and roads. This amendment simply inserts the constitutional term “public use” in place of “public purpose” in the provisions in statute that authorize the use of eminent domain for cities, counties and school districts. This is the next step—after banning takings for economic development purposes—to ensure that takings conform with the original vision of public use as contained in the Texas and U.S. constitutions. We have a full explanation of public use versus public purpose on our website.

SB 18 is good legislation that will improve the property rights of all Texas. It is worthy of becoming the law of the land. ★