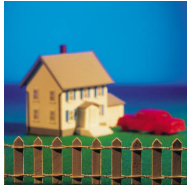




The “Buy-back” Provision



The Issue

While steps have been made to restore property rights that have been eroded through years of court rulings up through the *Kelo* decision, there are still problems that need to be addressed. The 82nd Texas Legislature’s SB 18 was the latest attempt by the Texas Legislature to protect private property rights.

Most of the provisions of SB 18 were well-founded and will move eminent domain law in the right direction. However, SB 18’s “buy-back” provision—while well intentioned—did nothing to advance the cause of property rights in Texas.

One of the problems in eminent domain law has been that once a property has been condemned, it can be used for just about any purpose—the condemnor is not required to use it for the purpose it was taken. This would seem to be contrary to the U.S. and Texas constitution’s requirement that property be taken only for a public use. The buy-back provision in SB 18 was supposed to fix this, but instead it will be completely ineffective.

Under SB 18, a condemnor is required to meet two of seven criteria within ten years of the taking that are supposed to demonstrate that the entity has made “actual progress ... toward the public use” for which the property was taken. However, the seven criteria that a condemnor must meet to keep the land are so easily achieved that any government entity will be able to keep all the land it takes without ever using one parcel for the use specified in the condemnation proceedings.

For instance, if a city simply acquires two tracts of land then applies for state or federal funds to develop the tracts for the purported public use, the city will have met the criteria. It makes no difference whether or not the city ever gets the funds or the permit. Or another government entity could just meet one criteria such as applying for a federal permit then avoid the second criteria altogether by adopting a resolution stating that it “will not complete more than one action ... within 10 years of acquisition of the property.”

The Facts

- Though the Texas Constitution allows property to be taken only for a public use, Texas law allows the government to take property and use it for any purpose.
- The San Antonio Water System acquired approximately 2,500 acres under the threat of eminent domain for the “Applewhite Reservoir.” The reservoir was never built, and much of that land today is being used for a Toyota truck manufacturing plant and a land heritage preserve.
- SB 18 from the 82nd Texas Legislature was supposed to solve this problem, but instead its “buy-back” provision is completely ineffective.

Recommendations

- Grant property owners the right to repurchase their property if the initial use of a property acquired from them through eminent domain is not the public use for which the property was acquired.
- Ban the initial use of property acquired through eminent domain for any use other than the use for which it was acquired.

Resources

The Initial Use Requirement: HB 1250 & SB 829 by Bill Peacock, Texas Public Policy Foundation (Mar. 2013).

The Buyback Provision by Bill Peacock, Texas Public Policy Foundation (Apr. 2013).

Senate Bill 18: The "Buy-back" Provision by Ryan Brannan and Bill Peacock, Texas Public Policy Foundation (Feb. 2011).

What's Next for Senate Bill 18? by Bill Peacock, Texas Public Policy Foundation (Apr. 2011).

Property Rights in Texas: Heading in the Right Direction by Bill Peacock, Texas Public Policy Foundation (Oct. 2011).

