

## Senate Bill 18

by Bill Peacock, Vice President of Research and Planning; Director, Center for Economic Freedom  
 & Ryan Brannan, Policy Analyst, Center for Economic Freedom

### Restoring the Constitutional Meaning of Public Use

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. SB 18 is the latest attempt by the Texas Legislature to protect private property rights. Most of the provisions of SB 18 are well-founded and will move eminent domain law in the right direction, including the provision that bans takings that are not for a public use.

#### *SB 18 Status*

- Contains provision banning takings not for a public use.

#### *SB 18 Recommendations*

- Alter existing SB 18 language to mirror the constitutional requirement that property cannot be taken unless it is *necessary* for a public use.
- Add a new section changing existing statutory authorizations for at least cities, counties, and school districts so that the exercise of eminent domain must be for a public use, not a public purpose.

### Presumption: Shifting the Burden of Proof from Property Owners to Condemnors

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. SB 18 is the latest attempt by the Texas Legislature to protect private property rights. Most of the provisions of SB 18 are well-founded and will move eminent domain law in the right direction. However, SB 18 does not contain a provision explicitly shifting the burden of proof in a condemnation proceeding from the landowner to the condemner.

#### *SB 18 Status*

- Does not address the problem of landowners bearing the burden of proof when a government entity claims that it is taking property that is necessary for a public use.

#### *SB 18 Recommendation*

- Require condemnors to bear the burden of proof that they are taking land for a public use, and that the taking of the land is necessary for that purpose.

### Property Taken—but Not Used—for a Public Use: Fixing the Government Land Speculation Problem

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. SB 18 is the latest attempt by the Texas Legislature to protect private property rights. Most of the provisions of SB 18 are well-founded and will move eminent domain law in the right direction. However, the “buyback” provision in SB 18 is at least as bad as current law, and will harm rather than improve property rights in Texas.

#### *SB 18 Status*

- Contains a provision that makes it easy for local governments and other condemnors to easily avoid the requirement to use condemned property for the purpose for which it is taken.

#### *SB 18 Recommendation*

- Change the language in SB 18 to allow property owners to repurchase their property if the development of the property for the public use for which it is taken has not begun within five years or if the public use for which the property is taken is not in operation within 10 years of the taking.