



S.5144-B (Gianaris) / A.6539-B (Kelles)

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BILL S.5144-B (Gianaris) / A.6539-B (Kelles)
SUBJECT Personal Liability Provisions in Certain Commercial Leases
DATE January 01, 2022
OPPOSE

The Business Council opposes S.5144-B (Gianaris) / A.6539-B (Kelles), which relieves certain guarantors of their obligations on behalf of tenants who face difficulties as a result of the COVID-19 pandemic. Under this bill, commitments to pay the rent, utility, taxes, or other payments would be relieved if they became liable through personal liability provisions in commercial leases. It states that if a business was required to close or had in-person limitations under the direction of Executive Order 202.7 of 2020 or if they were impacted by an event that took place between March 7, 2020, and August 31, 2021, they are no longer responsible for those liabilities.

Personal liability provisions became more commonplace thirty years ago providing an opportunity for less established and less-capitalized small businesses to enter more favorable leases without a property owner taking on excessive risk. Personal liability guarantees often provide the primary motivating factor for an owner to enter a lease with an unestablished or high-risk tenant. To prohibit enforcement of the personal liability guarantee alters the expectations of one party in favor of the other without a clearly articulated public purpose. Limiting the ability for personal liability provisions to exist will limit opportunities for new small businesses to enter into agreeable leases and will result in property owners prioritizing highly capitalized chains or franchise tenants. It should also be of note that this the bill allows all tenants to benefit regardless of how well-capitalized they are (or in comparison with the owner) or their ability to fulfill the guarantee.

Real estate has dealt with many challenges during the pandemic and this proposal would ultimately add another obstacle to an industry that is seeking to recover from this episode. In New York City, many office buildings have become vacant where causes range from tenants not paying their rent to allowing their commercial lease to expire. Lost in translation is that the state has yet to help property owners who are still responsible for their bills which include water, sewage, and property taxes. Currently, the commercial real

estate market is stagnant resulting in a large amount of available inventory. This bill, like many others proposed in this legislative session, addresses tenant concerns but leaves the real estate industry on their own to resolve these challenges.

It fails to understand that many of New York's commercial owners are small businesses themselves. Many often need protections from their tenants to prevent technical defaults on their loan for their buildings which can result in more difficulty for them obtaining commercial financing which can cause additional closures and potential bankruptcies. Some federal aid has helped, but if commercial values do not stabilize, we will cause irreparable harm to a sector that will have to deal with reduced economic activity, lower price points during the recovery and now, no ability to recoup funds from agreements that were entered into with guarantors. The proposed legislation will result in rental income being reduced further and ultimately, less tax revenue to fund government operations and overall slow in economic growth and recovery.

The Legislature should at least wait until the Second Circuit determines the Constitutionality of NYC Council's enactment of similar laws prohibiting enforcement of personal liability guarantees in the pending case of *Melendez v City of New York*.

For these reasons, the Business Council strongly opposes S.5144-B (Gianaris) / A.6539-B (Kelles).