



S.2892-B (Salazar)

MEMORANDUM IN OPPOSITION

This Memorandum is submitted in strong opposition to S.2892-B, which grants tenants throughout the entirety of New York State a lease for life with a cap on annual rent increases. Under the sugar-coated guise of requiring “good cause” for an eviction, S.2892-B would, for all practical purposes, create a Statewide system of rent regulation for all buildings other than owner-occupied rental properties with fewer than four units.

This bill overrides common sense, constitutionally-protected property rights and pre-existing contractual leases which have been the foundation of landlord-tenant relationships in New York State ever since the State was established. Existing lease agreements with tenants would become unenforceable. The rights of an owner of a rental property who would be prohibited from refusing to renew a tenant’s lease would be subordinated to the rights of the tenant. The most basic right of an owner- to set the term of the rental period for the use of their own property- would be abrogated. Upon executing a lease, the owner’s rights with regard to his or her own property would be rendered null and void.

The adverse impacts of this bill are cascading, impacting personal family arrangements in every part of New York, and the economy of every region. For example, if an owner of a single-family home, for whatever reason, decides to rent their otherwise vacant home for one year, this bill would enable the tenant to remain in occupancy for their lifetime. The tenant would not be obligated to surrender the premises at the end of the lease, thereby compelling the owner to go to court so that they can live in their own home.

The bill applies not only to year-round leases but to seasonal and short-term leases as well where the owner does not occupy the premises. It would be too risky for an owner to rent in those situations knowing that the tenant might choose to remain. This bill would eliminate an enormous segment of the rental market, causing economic devastation in every region of the State.

Under this bill, owners surrender control of their property to the tenant. An owner would not be permitted to change the use of her premises as the tenant effectively has a life estate. An owner of a single-family home who purchases a newer single-family home and rented their initial home would be required to continue to rent to the tenant for the tenant’s life. Any sale of the home would be as subject to the right of the tenant continuing in perpetual occupancy.

This bill is harmful not only to property owners but also to localities. Its enactment would result in a reduction in the value of real property when subject to a tenancy for life. Property taxes would be reduced on single-family and other rental properties from the prior valuation of the

property based on the difference in market value resulting from the lease for life and cap on rents. Significant increases in taxes for non-rental properties are inevitable.

In New York City and Nassau County, tax increases would need to be absorbed by Class 1, 3, 4 and non-rental co-op and condo properties in order to close the enormous property tax gap that would result from this legislation. Further, in apartment buildings with both regulated and unregulated apartments, the unregulated rents would no longer be able to subsidize the regulated rents because the unregulated units would be subject to the rent cap contained in this bill.

This bill has been justified on grounds that it is intended to prevent retaliatory evictions. But this bill- and that argument- conveniently ignores that residential evictions are already subject to a complex web of requirements, limitations and legal protections. This bill is a solution looking for a problem that is already heavily regulated and legislated.

The Housing Stability Tenant Protection Act (HSTPA) enacted in 2019 authorized municipalities throughout the State to adopt the rent regulatory system that has been in place for decades in New York City and certain municipalities in Westchester, Nassau and Rockland counties. A number of municipalities are considering adoption of rent regulation. This bill effectively mandates the adoption of a Statewide system before allowing that process to go forward and instead of waiting for local governments to make their own decisions. As a result, this bill commandeers local decision making, the functions of local legislatures, and local choice. This bill circumvents the legal predicates for adoption of rent regulation: a survey demonstrating a vacancy rate below 5% and home rule based on adoption by the local municipality.

At a time when investment in both existing and new housing should be encouraged, this legislation- on top of the HSTPA- would have the opposite effect, negatively impacting both single-family and multi-family homes. Investment options are regional, national and global, and it is inevitable that investors will shift to areas which do not have a cap on rent, particularly a cap which is not related to the market cost structure, and tied to permanent tenancies.

One of the justifications for this bill is that a lease for life is necessary to protect tenants from retaliation for reporting housing code violations. The proper response to such a claim is not to create a lease for life. Instead, the answer is to allocate appropriate funding and personnel to ensure aggressive code enforcement occurs throughout the State, regardless of the regulated status of the tenant. Further, HSTPA already has specific provisions covering complaints of housing code violations and habitability and, in addition, there is no shortage of criminal and civil remedies outside of the HSTPA which have been enacted over the years to protect tenants from such retaliatory or coercive conduct. Creating tenancies in perpetuity is a misdirected response to this claim.

The rent-setting formula in S.2692-B is also fundamentally flawed. Tenants would be able to assert in a non-payment proceeding that the amount of rent resulted from an “unreasonable” increase. The bill establishes a rebuttable presumption that the rent is unreasonable if it has been increased in any calendar year by a percentage exceeding 3% or 1.5 times the annual percentage change in the Consumer Price Index for the region where the rental unit is located, as established in August of the preceding calendar year, whichever is greater. The burden of proof would shift to the owner to rebut the presumption that an increase beyond the amount of the formula is unreasonable.

This bill will vest the determination of whether a rent increase is “reasonable” with the courts. A court-driven process, requiring retention of counsel, to determine whether an increase in excess of the amount allowed by the formula under this bill will, all by itself, thwart any incentive by an owner to invest further in the property. Already hampered and disincentivized by the HSPTA, this bill would create even more uncertainty with a court potentially invalidating rent increases necessary to cover the cost of improvements. A rent cap which simply ignores the financial reality that rent increases are integrally related to the ability of an owner to pay for improvements is fundamentally flawed. Even worse, the rent cap limits an owner’s rental income and their ability to pay for the costs of improvements without regard to the tenant’s income or financial circumstances.

The use of a 3% threshold for a reasonable rent increase for both multiple dwellings and mobile home parks speaks directly to the lack of credibility of this proposal. There is no parallel between the operating expenses, real property taxes, and capital needs, for example, of a 75-year old multi-family dwelling in New York City considered alongside a mobile home park.

In summary, this bill would cause a radical departure from existing law by transferring a lease for life to tenants without regard to the need of the tenant, permitting rents to be determined by the courts, by removing local choice and local control and voiding any lease agreement in force on its effective date. Setting aside the glaring and obvious constitutional claims which would defeat this legislation upon judicial review, no public policy rationale has been offered to justify voiding contracts which were negotiated and entered into in good faith and to bind the owner to a lease for the life of the tenant.

Based on the foregoing, it is respectfully requested that S.2892-B be defeated.