



Promoting Balanced and Responsible Growth
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Issue Paper: Senate Bill 448 Position

I. Executive Summary-The Council for Quality Growth Position on Senate Bill 448

The Council for Quality Growth has concerns with Senate Bill 448 in its current form with the Constitutional questions that arise from the legislation and the possible “law of unintended consequences” if the bill is enacted. The Council sees a protracted battle in the Courts that will benefit no one if this bill becomes law. We believe reform is needed and offer the resources of the Council to promote legislation that addresses the issue while promoting growth in the small business and development communities.

II. Current Situation

The United States has faced an economic downturn since 2008 with a declining housing market that has impacted banks and developers in our local towns and communities all throughout Georgia. The effects of these hardships and bank closings, where Georgia leads the nation, have created a market to allow successor creditors to purchase these loans for pennies on the dollar, while pursuing full recovery judgments against the guarantor of the loan. Many of these guarantors are small business owners who are struggling to keep their doors open in a slow to recover economy. Advocates of reform believe legislation is needed in order to prevent “vulture creditors” from preying on small business owners and developers.

III. Issue: Constitutionality and Unintended Consequences

The Georgia Constitution, in Article 1, Section 1, Paragraph X provides that *“No bill attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed.”* The United States Constitution provides that *“No State shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...”*

Lines 40 through 42 specifically point to the retroactive intent of the legislation in the case when applied to the sale, assignment or transfer of judgments. Senate Bill 448 takes from one party (successor creditors) the rights that have been contractually entered into by limiting the full amount of debt obligation that can be collected. Further, limiting the ability of banks to negotiate with purchasers for agreeable terms on the purchase of debt obligations also infringes on the constitutional prohibitions on impairment of contract by prohibiting Banks from realizing the full benefit of their bargain in their original agreements with the debtors that actually received the full loan amounts from the bank.

Additionally, the legislation has the unintended consequence of limiting if not eliminating the market for these security interests in several respects: (1) the original creditors will be limited in their ability to sell these securities leaving them to pursue the other remedies, such as foreclosure or seeking deficiency judgments, which can make it worse for the guarantors, not better as advocates are seeking; (2) the original creditors will be unable or at least restricted in

their ability to liquidate their debt obligations, making it difficult for small businesses to obtain loans due to the shrinking market of the sale of debt obligations. Limiting the marketability for banks to sell these debt obligations to successor creditors will increase the cost of credit due to the loss of potential income, making it even more difficult on small business borrowers, the exact opposite intention of SB 448; and (3) with the increased costs and restrictions of SB 448, lending institutions will require an inflated amount of equity before making loans to insure they are protected in the event the loan goes in to default – this increased equity requirement will further tighten the loan market causing a slow down in commercial development across the state, thus ensuring a stagnant or depressed real estate market for the foreseeable future – our effort should be to get money held by banks into the hands of entrepreneurs, not hindering that effort.

IV. Council for Quality Growth Recommendation

We support the need for reform in this area and are sympathetic to the changes this legislation seeks to address. With this in mind, the Council asks that a joint committee be appointed to study the issue and find a course of action that protects small business owners, while advocating for growth within the investment industry. The Council for Quality Growth would like to work with the General Assembly and provide any expertise we can offer to draft legislation that is good for all citizens in this state.

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