Real Estate & Land Use

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Governor Vetoes Economic Impact Report Requirement for Superstores

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One of this year's most controversial bills was vetoed by Governor Brown in the final minutes of October 9, 2011, his last day to act on the bill. SB 469 (Vargas), the Small & Neighborhood Business Protection Act, would have required a city or county to prepare an "economic impact report" before approving or disapproving the construction or conversion of a "superstore retailer."

The economic impact report that was proposed by SB 469 would have been a separate and distinct document unrelated to the "urban decay" and other studies typically conducted for superstores in environmental impact reports (EIRs) required under the California Environmental Quality Act (CEQA). Unlike CEQA, which applies only to discretionary actions, the economic impact report would have been required even for ministerial superstore-related permit approvals, such as building permits. If it had been signed, SB 469 would have added significant time and expense to the development process by requiring the preparation and approval of the economic impact reports, additional public hearings and, of course, new opportunities for litigation.

In his veto message, Governor Brown stated "[w]hile I recognize that the merits of large-scale projects need to be carefully considered, plenty of laws are already on the books that enable and in some cases require cities and counties to carefully assess whether these projects are in a community's best interests. This bill would add yet another layer of review to an already cumbersome process."

SB 469 defined a "superstore" as a "business establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer goods, and devotes 10% of the sales floor area to the sale of items that are exempted from the Sales and Use Tax Law." Retail establishments with multiple tenants under the same roof were also included in the definition of "superstore," but discount warehouses and retail stores that sell more than half of their items in large quantities and require shoppers to pay a membership or assessment fee (e.g., Costco and Sam's Club) were excluded.

The economic impact report required by SB 469 would have been much more onerous than preparation of a fiscal impact report that many developers prepare for their projects, or even the "urban decay" analyses already prepared by many superstore retailers because it would have required detailed assessments of not only economic considerations but also land use policy, traffic and housing impacts. Among the lengthy list of required assessments were: (a) the extent to which the proposed superstore retailer would capture a share of retail sales in the market area and affect the supply and demand for retail

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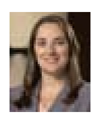

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space in the market area; (b) whether the superstore would result in the demolition of housing, including affordable housing, or the loss of park or green space; (c) how the construction and operation of the proposed superstore would affect employment in the market area; and (d) the effect that the construction and operation of the proposed superstore will have on average total vehicle miles traveled by retail customers in the same market area.

This was the latest unsuccessful attempt by the Legislature to impose a statewide economic impact report requirement. Two similar bills were passed by the Legislature in 2004 and 2006 but were vetoed by Governor Schwarzenegger.

Similar to the previous economic impact report bills, SB 469 was overwhelmingly opposed by business and tax organizations, such as the California Retail Association and local chambers of commerce, as well as by local officials and municipalities. Opponents argued that SB 469 would negatively impact job creation and impose a requirement on municipalities that would put California at a competitive disadvantage by making development even more difficult and uncertain. Opponents also argued that the bill was vague and confusing, interfered with local zoning authority, and was unnecessary given CEQA’s safeguards

On the other hand, supporters of the bill, including the California Small Business Association, union groups and employee groups, countered that the bill would have provided local communities with increased information to empower local governments to make the best decisions for their constituents claiming there is “no down side to increased information and well-informed decision making.” Unless all cities and counties are mandated to require such a report, they claim, local governments that choose to perform this type of economic impact analysis are placed at a disadvantage because superstores will be more likely to go into cities that do not require such a report, thus shifting the sales taxes out of that city or county.

Given that three bills have made it through the Legislature only to die on the Governor’s desk, it is likely that supporters will continue their efforts to impose additional restrictions on superstores, including further proposals for “economic impact reports” and other similar documents.