

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 469

Introduced by Senator Vargas

February 17, 2011

An act to add Section ~~65964.5~~ 65957.3 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 469, as amended, Vargas. Land use: development project review: superstores.

(1) The Permit Streamlining Act requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within 6 months from the date of certification of an environmental impact report or within 3 months from the date of adoption of a negative declaration or the determination by the lead agency that the project is exempt from the California Environmental Quality Act, unless the project proponent requests an extension of time.

This bill would in addition require a city, county, or city and county, including a charter city, prior to approving or disapproving a proposed development project that would permit the construction of a superstore retailer, as defined, to require an economic impact report to be prepared, as specified, to be paid for by the project applicant, and that includes specified assessments and projections including, among other things, an assessment of the effect that the construction and operation of the proposed superstore retailer will have on retail operations and employment in the same market area. The bill would also require the governing body to provide an opportunity for public comment on the

economic impact report. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Planning and Zoning Law sets forth various requirements relating to the review of development project permit applications, and the issuance of development permits for, particular, specified classes of development projects.~~

~~This bill would require an applicant to a local government for a permit to develop a superstore, as defined, to submit to that local government an economic and community impact analysis report, including various, specified assessments, prior to the review of the permit application.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *It is the intent of the Legislature to promote*
- 2 *economic development in all communities of the state and to*
- 3 *address the impact on the state’s small businesses from the*
- 4 *superstore retail model. Therefore, the Legislature finds and*
- 5 *declares all of the following:*
- 6 (i) *It is in the interest of local governments to promote economic*
- 7 *development in their jurisdictions.*
- 8 (ii) *Land use decisions are frequently linked to fiscal policy*
- 9 *because local governments receive a share of sales tax revenues*
- 10 *generated within their borders. California cities thus often seek*
- 11 *large sales tax revenue sources, such as superstores, without taking*
- 12 *into account all of the external economic effects that superstores*
- 13 *bring to communities.*
- 14 (iii) *Transformations in the big box retail industry have altered*
- 15 *retail business nationwide. The engine of this change is the retail*
- 16 *format known as the superstore--a big box retail store that also*
- 17 *contains the equivalent of a full-size grocery store, with the total*
- 18 *floor space often three to four times as large as that of a*
- 19 *conventional supermarket.*

1 (d) As a result of the restructuring of retail business, particularly
2 the grocery sector in California, the following effects may be seen:
3 local grocers, who yield a greater community return on investment,
4 are driven out of business; less community access to viable
5 superstore alternatives; lower wages and benefits paid to grocery
6 workers by superstore retailers; and a host of complex land use,
7 traffic, and fiscal impacts.

8 (e) Superstores typically combine a large variety of discount
9 general merchandise with full service grocery sales to the general
10 public under one roof, thereby generating more intense land use
11 and environmental impacts than other large-scale retailers and
12 wholesale membership clubs.

13 (f) Industry and academic studies indicate superstores rarely
14 add any retail services not currently provided within a community,
15 and the majority of sales growth at a superstore comes from a
16 direct shift of dollars from existing retailers within a community,
17 primarily from grocery stores.

18 (g) Land use decisions regarding superstores fall to city and
19 county governments, even if the impacts will be regional as well
20 as local.

21 (h) Currently, local governments that desire to perform due
22 diligence for their constituents by performing an economic analysis
23 are placed at a disadvantage because a neighboring city or county
24 may not perform an economic analysis. This a situation may result
25 in the shifting of sales tax and destruction of the business
26 community in a city or county that simply wants to study the
27 impacts of the development project before making a final approval.

28 SEC. 2. Section 65957.3 is added to the Government Code, to
29 read:

30 65957.3. (a) As used in this section, “superstore” means a
31 business establishment that exceeds 90,000 square feet of gross
32 floor area, sells a wide range of consumer goods, and devotes 10
33 percent of the sales floor area to the sale of items that are exempted
34 from the Sales and Use Tax Law pursuant to Section 6359 of the
35 Revenue and Taxation Code. “Superstore” shall include retail
36 establishments with multiple tenants, and the cumulative sum of
37 related or successive permits that may be part of a larger project,
38 including piecemeal additions to a building, so long as consumer
39 goods and nontaxable items are sold under the same roof with
40 shared checkout stands, entrances, and exits. This definition

1 *excludes discount warehouses and discount retail stores that sell*
2 *more than half of their items in large quantities or bulk, and also*
3 *require shoppers to pay a membership or assessment fee.*

4 *(b) As used in this section, the term “market area” has the same*
5 *meaning as that term is defined in Section 53084.*

6 *(c) Prior to approving or disapproving a permit for the*
7 *construction or conversion of a superstore retailer, a city, county,*
8 *or city and county shall require an economic impact report.*

9 *(1) The city, county, or city and county shall contract with a*
10 *private consultant, other than the permit applicant, for the*
11 *preparation of the economic impact report. The consultant shall*
12 *be qualified by education, training, and experience to conduct*
13 *economic and fiscal impact analyses.*

14 *(2) The applicant for the development project shall pay the city,*
15 *county, or city and county for the costs of preparing the economic*
16 *impact report.*

17 *(3) The economic impact report shall include, but is not limited*
18 *to, all of the following:*

19 *(A) An assessment of the extent to which the proposed superstore*
20 *retailer will capture a share of retail sales in the market area.*

21 *(B) An assessment of how the construction and operation of the*
22 *proposed superstore will affect the supply and demand for retail*
23 *space in the market area.*

24 *(C) An assessment of how the construction and operation of the*
25 *proposed superstore will affect employment in the market area,*
26 *including all of the following:*

27 *(i) The number of persons employed in existing retail stores in*
28 *the market area.*

29 *(ii) An estimate of the number of people who will likely be*
30 *employed by the proposed superstore.*

31 *(iii) An analysis of whether the proposed superstore will result*
32 *in a net increase or decrease in employment in the market area.*

33 *(iv) The effect on wages and benefits of employees of other retail*
34 *businesses, and community income levels in the market area.*

35 *(D) A projection of the costs of public services and public*
36 *facilities resulting from the construction and operation of the*
37 *proposed superstore retailer and the incidence of those costs.*

38 *(E) A projection of the public revenues resulting from the*
39 *construction and operation of the proposed superstore retailer*
40 *and the incidence of those revenues.*

1 (F) An assessment of the effect that the construction and
2 operation of the proposed superstore retailer will have on retail
3 operations, including grocery or retail shopping centers, in the
4 same market area, including the potential for blight resulting from
5 retail business closures and the nature of any businesses displaced.

6 (G) An assessment of the effect that the construction and
7 operation of the proposed superstore will have on the ability of
8 the city, county, or city and county to implement the goals
9 contained in its general plan, including, but not limited to, local
10 policies and standards that apply to land use patterns, traffic
11 circulation, affordable housing, natural resources, including water
12 supplies, open-space lands, noise problems, and safety risks.

13 (H) An assessment of the effect that the construction and
14 operation of the proposed superstore will have on average total
15 vehicle miles traveled by retail customers in the same market area.

16 (I) An assessment of the potential for long-term vacancy of the
17 property on which the superstore is proposed in the event that the
18 business vacates the premises, including any restrictions that exist
19 on the subsequent use of the property on which the superstore is
20 proposed to be located, including the provisions of any lease that,
21 in the event the owner or operator of the superstore vacates the
22 premises, would require the premises to remain vacant for a
23 significant amount of time.

24 (J) An assessment of whether the superstore would require the
25 demolition of housing or any other action or change that would
26 result in a decrease or negative impact on the creation of extremely
27 low, very low, low-, or moderate-income housing.

28 (K) An assessment of whether the superstore would result in
29 the destruction or demolition of park or other green space,
30 playgrounds, child care facilities, or community centers.

31 (L) An assessment of whether the superstore would result in
32 any other adverse or positive economic impacts or blight.

33 (M) An assessment of whether any measures are available that
34 may mitigate any materially adverse economic impacts identified
35 by the applicant.

36 (d) This section shall not preclude a city, county, or city and
37 county from conducting additional studies of the effects of the
38 construction and operation of a proposed superstore retailer.

39 (e) At any regularly scheduled meeting or meetings of the city,
40 county, or city and county governing body, after the completion

1 of the economic impact report required by subdivision (b), and 30
2 days prior to the issuance of any entitlement, including, but not
3 limited to, a building permit, a city, county, or city and county
4 shall provide the opportunity for public comment on the economic
5 impact report and its findings.

6 (f) (1) The Legislature finds that the construction and operation
7 of a superstore retailer has land use, environmental, economic,
8 fiscal, and social equity effects that extend beyond the boundaries
9 of the city, county, or city and county in which it is located.

10 (2) The Legislature finds that it is essential for the statewide
11 public health, safety, and welfare to require cities, counties, and
12 cities and counties to understand the potential spillover effects of
13 approving the construction and operation of superstore retailers.

14 (3) The Legislature further finds and declares that the review
15 and regulation of superstore retailers is a matter of statewide
16 concern and not merely a municipal affair, as that term is used in
17 Section 5 of Article XI of the California Constitution. Therefore,
18 this section shall apply to charter cities and to charter cities and
19 counties.

20 SEC. 3. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 a local agency or school district has the authority to levy service
23 charges, fees, or assessments sufficient to pay for the program or
24 level of service mandated by this act, within the meaning of Section
25 17556 of the Government Code.

26 SECTION 1. ~~Section 65964.5 is added to the Government~~
27 ~~Code, to read:~~

28 ~~65964.5. (a) It is the intent of the Legislature to do both of the~~
29 ~~following:~~

30 ~~(1) Encourage local governments to provide minimum standards~~
31 ~~applicable to the review and approval of a permit to develop a~~
32 ~~superstore.~~

33 ~~(2) Assist local communities in assessing whether the~~
34 ~~development of a superstore would cause adverse impacts on small~~
35 ~~businesses, traffic congestion, and air quality by requiring that an~~
36 ~~applicant to develop a superstore submit an economic and~~
37 ~~community impact analysis report to the appropriate permitting~~
38 ~~agency prior to the initiation of the review of the permit for~~
39 ~~approval.~~

- 1 ~~(b) (1) For purposes of this section, “superstore” means either~~
2 ~~of the following:~~
- 3 ~~(A) A single tenant retail establishment that exceeds 90,000~~
4 ~~square feet gross floor area.~~
- 5 ~~(B) A multiple tenant retail establishment that exceeds 90,000~~
6 ~~square feet gross floor area, more than 10 percent of the sales floor~~
7 ~~area is devoted to the sale of nontaxable merchandise, and the~~
8 ~~multiple tenants share common check stands, a controlling interest,~~
9 ~~storage areas, warehouses, or distribution facilities.~~
- 10 ~~(2) “Superstore” does not include wholesale clubs or other~~
11 ~~discount retail establishments that primarily sell bulk merchandise~~
12 ~~and that charge membership dues or otherwise restrict merchandise~~
13 ~~sales to customers paying a periodic assessment fee.~~
- 14 ~~(c) An applicant to a local government for a permit to develop~~
15 ~~a superstore shall submit to that local government an economic~~
16 ~~and community impact analysis report prior to the review of the~~
17 ~~permit application. The economic and community impact analysis~~
18 ~~report shall include, but not be limited to, all of the following:~~
- 19 ~~(1) An assessment of the extent to which the proposed superstore~~
20 ~~will capture a share of retail sales in the economic and community~~
21 ~~impact area.~~
- 22 ~~(2) An assessment of how the construction and operation of the~~
23 ~~proposed superstore will affect the supply and demand for retail~~
24 ~~space in the economic and community impact area.~~
- 25 ~~(3) An assessment of the number of persons employed in~~
26 ~~existing retail stores in the economic and community impact area,~~
27 ~~including, but not limited to, an estimate of the number of persons~~
28 ~~who will likely be employed by the proposed superstore, an~~
29 ~~analysis of whether the proposed superstore will result in a net~~
30 ~~increase or decrease in employment in the economic and~~
31 ~~community impact area, and a projection of the costs of public~~
32 ~~services and public facilities that will result from the construction~~
33 ~~and operation of the proposed superstore and a description of how~~
34 ~~those services and facilities will be financed.~~
- 35 ~~(4) An assessment of how the development of the proposed~~
36 ~~superstore conforms to an applicable general plan and the goals~~
37 ~~and policies of that general plan.~~
- 38 ~~(5) An assessment of the effect that the construction and~~
39 ~~operation of the proposed superstore will have on average total~~

- 1 vehicle miles traveled by retail customers in the same economic
- 2 and community impact area.
- 3 ~~(6) An assessment of whether there will be any restrictions on~~
- 4 ~~the subsequent use of the proposed superstore project site,~~
- 5 ~~including, but not limited to, restrictions hindering or preventing~~
- 6 ~~residential and small business uses.~~
- 7 ~~(7) An assessment of whether the proposed superstore would~~
- 8 ~~require the demolition of housing, or any other action or change~~
- 9 ~~that results in a decrease in or negative impact on the creation of~~
- 10 ~~extremely low, very low, low-, or moderate-income housing in the~~
- 11 ~~jurisdiction.~~
- 12 ~~(8) An assessment of whether the proposed superstore would~~
- 13 ~~result in the destruction or demolition of park and other open green~~
- 14 ~~space, playground, childcare facility, or community center.~~
- 15 ~~(9) An assessment of whether the proposed superstore would~~
- 16 ~~result in any other adverse or positive impacts to neighborhood~~
- 17 ~~and small businesses.~~
- 18 ~~(10) An assessment of whether any measures are available that~~
- 19 ~~would mitigate any material adverse impact of the proposed~~
- 20 ~~superstore.~~