

AMENDED IN ASSEMBLY MAY 20, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 667

Introduced by Assembly Member Roger Hernández

February 21, 2013

An act to add Sections 65928.3, 65928.4, 65928.7, 65935, and 65957.3 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 667, as amended, Roger Hernández. Land use: development project review: superstores.

The Permit Streamlining Act within the Planning and Zoning Law requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within a specified number of days from the date of certification of an environmental impact report, the date of the adoption of a negative declaration, or the determination by the lead agency that the project is exempt from the California Environmental Quality Act.

This bill ~~would~~, in addition, *would* 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~~, or where a superstore would be the recipient of over \$100,000 in financial assistance, to cause 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 proposed superstore will have on ~~specified~~ designated economic

assistance areas, ~~as defined~~, and an assessment of the effect that the proposed superstore 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. *The bill would define certain terms for these purposes.* By increasing the duties of local public officials, the bill would impose a state-mandated local program. The bill would additionally find and declare that these provisions are an issue of statewide concern and not a municipal affair.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 in
3 particular in identified ~~Economic Assistance Areas~~, *economic*
4 *assistance areas*, with the goal of creating good jobs, economically
5 self-sustaining communities, and promoting a vibrant small
6 business sector. It is the intent of the Legislature to ensure that the
7 superstore retail model meets these goals and does not undermine
8 efforts toward those ends. Therefore, the Legislature finds and
9 declares all of the following:

10 (a) The state has identified geographically targeted economic
11 development areas. Each of these areas has related tax incentive
12 benefits as well as a variety of locally provided incentives and
13 benefits. The purpose of these benefits is to stimulate business
14 investment and job creation for qualified disadvantaged individuals
15 in state-designated economically distressed areas. Similarly, other
16 redevelopment plan areas have been developed by former
17 redevelopment agencies and their successor agencies pursuant to
18 the Community Redevelopment Law (Part 1 (commencing with
19 Section 33300) of Division 24 of the Health and Safety Code),
20 with the purpose of revitalizing the economy of local jurisdictions.

1 (b) The state and local governments have provided financial
2 assistance to certain businesses to stimulate business development
3 and job creation.

4 (c) It is in the interest of local governments to promote economic
5 development in their jurisdictions.

6 (d) Land use decisions are frequently linked to fiscal policy
7 because local governments receive a share of sales tax revenues
8 generated within their borders. California cities thus often seek
9 large sales tax revenue sources, such as superstores, without taking
10 into account all of the external economic effects that superstores
11 bring to communities.

12 (e) Transformations in the big box retail industry have altered
13 retail business nationwide. The engine of this change is the retail
14 format known as the superstore, a big box retail store that also
15 contains the equivalent of a full-service grocery store, with the
16 total floor space often three to four times as large as that of a
17 conventional supermarket.

18 (f) As a result of the restructuring of retail business, particularly
19 the grocery sector in California, the following effects may be seen:
20 local grocers, who yield a greater community return on investment,
21 are driven out of business; anchor stores to other local businesses
22 are closed down impacting many small businesses, and resulting
23 in less community access to viable superstore alternatives; lower
24 wages and benefits paid to grocery workers by superstore retailers;
25 and a host of complex land use, traffic, and fiscal impacts.

26 (g) Superstores typically combine a large variety of discount
27 general merchandise with full-service grocery sales to the general
28 public under one roof, thereby generating more intense land use
29 and environmental impacts than other large-scale retailers and
30 wholesale membership clubs.

31 (h) Industry and academic studies indicate superstores rarely
32 add any retail services not currently provided within a community,
33 and the majority of sales growth at a superstore comes from a
34 direct shift of dollars from existing retailers within a community,
35 primarily from grocery stores.

36 (i) Land use decisions regarding superstores fall to city and
37 county governments, even if the impacts will be regional as well
38 as local and may impact the efforts by the state and regions in
39 economic development areas.

1 (j) Currently, local governments that desire to perform due
 2 diligence for their constituents by performing an economic analysis
 3 are placed at a disadvantage because a neighboring city or county
 4 may not perform an economic analysis. This situation may result
 5 in the shifting of sales tax and destruction of the business
 6 community in a city or county that simply wants to study the
 7 impacts of the development project before making a final approval
 8 that the permitting of the superstore does not have a material
 9 adverse impact on the impact area.

10 SEC. 2. Section 65928.3 is added to the Government Code, to
 11 read:

12 65928.3. “Economic assistance areas” means existing economic
 13 development areas, that may be amended from time to time by the
 14 Legislature, including an enterprise zone established pursuant to
 15 Chapter 12.8 (commencing with Section 7070) of Division 7 of
 16 Title 1, a local agency military base recovery area established
 17 pursuant to Chapter 12.97 (commencing with Section 7105) of
 18 Division 7 of Title 1, a manufacturing incentive area designated
 19 pursuant to Section 7073.8, a targeted tax area designated pursuant
 20 to Section 7097, or any redevelopment area identified by any
 21 successor or agency to a former redevelopment agency, or
 22 recipients of over one hundred thousand dollars (\$100,000) of
 23 financial assistance as defined in this chapter. *agency.*

24 SEC. 3. Section 65928.4 is added to the Government Code, to
 25 read:

26 65928.4. “Financial assistance” includes, but is not limited to,
 27 any of the following in the amount of one hundred thousand dollars
 28 (\$100,000) or greater:

29 (a) Any appropriation of public funds, including, but not limited
 30 to, loans, grants, or subsidies or the payment for or construction
 31 of parking improvements.

32 (b) Any tax incentive, including, but not limited to, tax
 33 exemptions, rebates, reductions, or moratoria of a tax, including
 34 any rebate or payment based upon the amount of sales tax generated
 35 from the superstore.

36 (c) The sale or lease of real property at a cost that is less than
 37 fair market value.

38 (d) Payment for, forgiveness of, or reduction of fees.

39 SEC. 4. Section 65928.7 is added to the Government Code, to
 40 read:

1 65928.7. “Impact area” means a five-mile radius surrounding
2 the proposed location of a superstore.

3 SEC. 5. Section 65935 is added to the Government Code, to
4 read:

5 65935. “Superstore” means a business establishment that
6 exceeds 90,000 square feet of gross floor area, sells a wide range
7 of consumer goods, and devotes 10,000 square feet or more of the
8 sales floor area to the sale of items that are exempted from the
9 Sales and Use Tax Law (Part 1 (commencing with Section 6001)
10 of Division 2 of the Revenue and Taxation Code), pursuant to
11 Section 6359 of the Revenue and Taxation Code. “Superstore”
12 shall include a retail establishment with multiple tenants, and the
13 cumulative sum of related or successive permits that may be part
14 of a larger project, including piecemeal additions to a building,
15 where consumer goods and nontaxable items are sold under the
16 same roof with shared checkout stands, entrances, and exits.
17 “Superstore” does not include a discount warehouse or retail store
18 where more than one-half of the items carried by the discount
19 warehouse or retail store are sold in large quantities or in bulk,
20 and the discount warehouse or retail store requires shoppers to pay
21 a membership or assessment fee.

22 SEC. 6. Section 65957.3 is added to the Government Code, to
23 read:

24 65957.3. (a) Prior to the permitting of the construction of, the
25 addition to, or the alteration of, any buildings or structures ~~which~~
26 *that* would create a superstore in an economic assistance area, *or*
27 *where a superstore would be the recipient of over one hundred*
28 *thousand dollars (\$100,000) in financial assistance*, in addition
29 to the findings otherwise required by any ordinance or regulation
30 of the city, county, or city and county, the legislative body of the
31 city, county, or city and county shall make a finding that, based
32 on consideration of all economic benefits and costs, the superstore
33 will not materially adversely affect the economic welfare of the
34 impact area. This finding shall be based upon information contained
35 in an economic impact report, any other information received or
36 obtained by the designated agency of the city, county, or city and
37 county, and any other information received before or at a public
38 hearing conducted as required by this section.

39 (b) The city, county, or city and county may prepare the
40 economic impact report or contract with a private entity, other than

1 the permit applicant, or with another public agency for the
2 preparation of the report. Any private entity or other public agency
3 contracted to prepare the economic impact report shall be qualified
4 by education, training, and experience to conduct economic and
5 fiscal impact analyses.

6 (c) The applicant for the proposed superstore shall pay the city,
7 county, or city and county for the costs of preparing the economic
8 impact report.

9 (d) The economic impact report shall include, but is not limited
10 to, all of the following:

11 (1) An assessment of whether the proposed superstore will meet
12 the purposes of any designated economic assistance—areas,
13 including an enterprise zone, a local agency military base recovery
14 area, a manufacturing enhancement area, a targeted tax area, or
15 any plan area administered by a successor agency to a former
16 redevelopment agency, *area* in which the superstore is proposed
17 to be located.

18 (2) An assessment of whether the proposed superstore will
19 negatively impact any retailer that is the beneficiary of any benefits
20 from any program adopted in connection with any—designated
21 economic development area, including an enterprise zone, a local
22 agency military base recovery area, a manufacturing enhancement
23 area, a targeted tax area, or any program adopted by a successor
24 agency to a former redevelopment agency, *economic assistance*
25 *area* in which the superstore is proposed to be located.

26 ~~(3) An assessment of the extent to which the proposed superstore~~
27 ~~will capture a share of retail sales in the impact area.~~

28 ~~(4) An assessment of the extent to which the construction and~~
29 ~~operation of the proposed superstore will affect the supply and~~
30 ~~demand for retail space in the impact area.~~

31 ~~(5)~~

32 (3) An assessment of the extent to which the construction and
33 operation of the proposed superstore will affect employment in
34 the impact area, including all of the following:

35 (A) The number of persons employed in existing retail stores
36 in the impact area.

37 (B) An estimate of the number of people who will likely be
38 employed by the proposed superstore.

39 (C) An analysis of whether the proposed superstore will result
40 in a net increase or decrease in employment in the impact area.

1 (D) The effect on wages and benefits of employees of other
2 retail businesses, and community income levels in the impact area.

3 ~~(6)~~

4 (4) A projection of the costs of public services and public
5 facilities resulting from the construction and operation of the
6 proposed superstore and the incidence of those costs, including
7 the cost to the state, city, or county of any public assistance that
8 employees of the proposed superstore will be eligible for based
9 on the wages and benefits to be paid by the proposed superstore.

10 ~~(7)~~

11 (5) A projection of the public revenues resulting from the
12 construction and operation of the proposed superstore retailer and
13 the incidence of those revenues.

14 ~~(8)~~

15 (6) An assessment of the effect that the construction and
16 operation of the proposed superstore will have on retail operations,
17 including grocery stores or retail shopping centers, in the impact
18 area, including the potential for blight resulting from retail business
19 closures and the nature of any businesses displaced.

20 ~~(9) An assessment of the effect that the construction and~~
21 ~~operation of the proposed superstore will have on the ability of~~
22 ~~the city, county, or city and county to implement the goals~~
23 ~~contained in its general plan, including, but not limited to, local~~
24 ~~policies and standards that apply to land use patterns, traffic~~
25 ~~circulation, affordable housing, and natural resources, including~~
26 ~~water supplies, open-space lands, noise problems, and safety risks.~~

27 ~~(10) An assessment of the effect that the construction and~~
28 ~~operation of the proposed superstore will have on average total~~
29 ~~vehicle miles traveled by retail customers in the same impact area.~~

30 ~~(11)~~

31 (7) An assessment of the potential for long-term vacancy of the
32 property on which the superstore is proposed ~~in the event that~~ *if*
33 the business vacates the premises, including any restrictions that
34 exist on the subsequent use of the property on which the superstore
35 is proposed to be located, including the provisions of any lease
36 that, in the event the owner or operator of the proposed superstore
37 vacates the premises, would require the premises to remain vacant
38 for a significant amount of time: *premises.*

39 ~~(12)~~

1 (8) An assessment of whether the superstore would require the
2 demolition of housing or any other action or change that would
3 result in a decrease or negative impact on the creation of extremely
4 low, very low, low-, or moderate-income housing.

5 ~~(13) An assessment of whether the superstore would result in~~
6 ~~the destruction or demolition of park or other green space,~~
7 ~~playgrounds, child care facilities, or community centers.~~

8 ~~(14)~~

9 (9) An assessment of whether the superstore would result in
10 any other adverse or positive economic impacts or blight in the
11 impact area.

12 ~~(15)~~

13 (10) An assessment of whether any measures identified by the
14 superstore are available that may mitigate any materially adverse
15 economic impacts of the superstore.

16 (e) At any regularly scheduled meeting or meetings of the
17 legislative body of a city, county, or city and county, following
18 the completion and approval of the economic impact report
19 required by this section, and 30 days prior to the issuance of any
20 entitlement, including, but not limited to, a building permit, a city,
21 county, or city and county shall provide the opportunity for public
22 comment on the economic impact report and its findings.

23 (f) This section shall not preclude a city, county, or city and
24 county from conducting additional studies of the effects of the
25 construction and operation of a proposed superstore.

26 (g) (1) The Legislature finds that the construction and operation
27 of a superstore has land use, environmental, economic, fiscal, and
28 social equity effects that extend beyond the boundaries of the city,
29 county, or city and county in which it is located and may impact
30 the goals and objectives of economic development areas, including
31 enterprise zones, local agency military base recovery areas,
32 manufacturing enhancement areas, targeted tax areas, and any plan
33 area administered by a successor agency to a former redevelopment
34 agency, and beyond the borders of the city, county, or city and
35 county, where financial assistance is provided to a superstore.

36 (2) The Legislature finds that it is essential for the statewide
37 public health, safety, and welfare to require cities, counties, and
38 cities and counties to understand the potential spillover effects of
39 approving the construction and operation of superstores.

1 (3) The Legislature further finds and declares that the review
2 and regulation of superstores is a matter of statewide concern and
3 not merely a municipal affair, as that term is used in Section 5 of
4 Article XI of the California Constitution. Therefore, this section
5 shall apply to charter cities and to charter cities and counties.

6 SEC. 7. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 a local agency or school district has the authority to levy service
9 charges, fees, or assessments sufficient to pay for the program or
10 level of service mandated by this act, within the meaning of Section
11 17556 of the Government Code.

O