

Staying Ahead

with Saul Ewing

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Real Estate Law

What happened?

On November 15, 2004, a bill was introduced to the New Jersey Legislature which would impose new requirements for municipalities and developers when approving a development application for "big box" stores.

What does it mean?

Although the bill is targeted to prevent Wal-Mart "Superstores" which include groceries, from developing in New Jersey, **the unintended application of this legislature on other retail developments cannot be ignored.**

NEW JERSEY LEGISLATURE CONSIDERS NEW "BIG BOX" BILL

The requirements of the "big box" bill would apply to any "superstore retailer," defined as "a store or stores being developed under a single project having greater than 130,000 square feet of gross buildable area at full build-out that will generate sales or use tax revenue under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and that contains more than 25,000 stockkeeping units with more than 10 percent of the stockkeeping units being nontaxable merchandise."

When an application is filed to build a "superstore retailer," a municipality will be required to notify and provide a report to all adjoining municipalities. Within 20 days, the adjoining municipalities may adopt a resolution of municipal concern. Municipalities that adopt a resolution are then entitled to participate in a joint intermunicipal board hearing to address their concerns. No approval may be granted by the host municipality within 60 days from when an application is deemed complete without first complying with a joint intermunicipal board hearing. If an adjoining municipality disagrees with the host municipality's decision to approve a superstore retailer's application, the adjoining municipality may appeal to an Intermunicipal Impact Advisory Board to be created within the Department of Community Affairs.

The bill also requires a municipality to prepare a regional economic impact report concerning the proposed superstore retailer. Preparation of the report cannot be waived

by any party and must be completed prior to the hearing date. The bill lists certain assessments which must be included in the report. The developer will bear the costs of the regional economic impact report.

The bill in its present form would affect **any project exceeding 130,000 square feet that included a grocery component or other non-sales tax revenue generating facility (i.e. drug store)** that compromises 10% of the total floor area. The Economic Impact Report and the Regional Review would present substantial impediments to the development of not just Wal-Mart, but other big box retailers and any grocery or drug store shopping center in excess of 130,000 square feet.

The legislation is of questionable legality. The arbitrary nature of the standard triggering review does not appear to provide any rational basis for distinguishing between taxable and non-taxable revenue generating uses. The legislation is clearly targeted to a specific group of users (i.e., big box grocers).

This Bulletin has been prepared by the Real Estate Department of Saul Ewing LLP for informational purposes only, and its contents should not be considered legal advice. For more information about the "big box" bill, please contact Henry Kent-Smith at (609) 452-3151 or Jennifer Forrest at (609) 452-3148.

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