State Impairs Ability of IDAs to Assist Retailers

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The New York State Budget bill recently passed by the State Legislature and signed by Governor Cuomo is a remarkable example of the cooperation between the Governor and Legislature that New York is enjoying these days. Gone is the interminable wrangling that traditionally caused passage of the budget to lag well beyond its statutory due date. The budget reflects the usual compromises necessary to get the diverse interests existing throughout the state to cooperate with one another. The language included in the budget regarding industrial development agencies (IDAs) is an interesting example of these compromises.

Governor Cuomo had originally proposed sweeping changes to the manner in which IDAs operate, effectively requiring that each application be submitted not only to a local agency, but also to the local regional economic council, comprised of appointees of the Governor. He also sought to limit IDA benefits to certain specified industries.

The budget legislation that passed did not contain either of these proposals. Instead, but for certain limited exceptions discussed below, it eliminated granting tax abatements to retail developments. In recent years, IDAs have granted real estate tax, sales tax, and mortgage tax abatements to such projects as the extension of the Walt Whitman Shops in South Huntington and The Gallery at Westbury Plaza.

Part J of the recently passed Bill S2609 amends the General Municipal Law (GML) and Public Authority Law with respect to IDAs. Section 862 of the GML has been amended to restrict the granting of IDA benefits to retail projects. The subdivision forbids the granting of financial assistance for projects wherein the retail portion of the facility constitutes more than one-third (1/3) of the entire project cost. The law defines “retail sales” as “sales by a registered vendor… primarily engaged in the retail sale of tangible personal property…or sales of a service to such customers.”

The law also provides three (3) exceptions to the above rule. A retail project can be exempt from this rule if such project is deemed a “tourism destination,” defined as a project that is likely to be visited by a significant number of people from outside the applicable economic development region. A retail project may also qualify for economic benefits if the applicant can show that the predominant purpose of the project is to provide goods or services that are not otherwise reasonably accessible to the residents of the applicable region. Finally, a retail project may qualify for IDA benefits if the project is located in a “highly distressed area.”

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