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55 YEARS

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Be careful what you wish for

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Two major events could enormously impact development and the environmental permitting process. The first is the Massachusetts governor Baker's Executive Order Number 562, "To Reduce Unnecessary Regulatory Burden," and the second is the impending retirement of 5,000 senior level state employees.

The Executive Order, similar in part to governor Patrick's former Executive Order No. 485 (which called for clearer and fiscally consistent regulations), is aimed at requiring all government agencies to undertake a review of all regulations, and to sunset all regulations by March 16, 2016, unless the regulations meet several articulated criteria. These include: a clearly identified need, the costs do not exceed the benefits, does not exceed federal requirements or duplicate local requirements, represent the least restrictive and intrusive alternatives, do not "unduly and adversely affect Massachusetts citizens and customers of the commonwealth, or the competitive environment in Massachusetts," require agencies establish a process and a schedule for measuring effectiveness, and the regulation must be time-limited or provide for regular review.

Will this help or hurt real estate development? Reasonable people can differ on their perspective. But, there is the problem of requiring state agency staff to review all their existing regulations while they are also required to process applications and make decisions about projects. Certainly no one would be opposed to a cost-benefit and effectiveness inquiry, but at what cost?

The second major event will occur on July 1, 2015, which will be the beginning of the state's fiscal year 2016. Under recently signed legislation, Massachusetts will offer state employees working for state agencies who qualify to avail themselves of an early retirement package that will be offered to 5,000 current state employees. Among the agencies believed to be hardest hit by this will be the Massachusetts Department of Environmental Protection ("DEP"). While this will result in a substantial savings in the overall state budget (estimated at approximately \$172 million), it will also wipe out managers and those with institutional memories and experience at the agencies.

These two events, aimed at making the state leaner and more cost-effective, may radically change the way real estate development can occur going forward; and the process for environmental regulatory controls to be implemented. Certainly something to think about while waiting for a MEPA review or a penalty negotiation with DEP.

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