

MAINE STATE LEGISLATURE

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Date: 5/29/07

L.D. 1810

(Filing No. H-354)

Report C

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1262, L.D. 1810, Bill, "An Act To Enact the Informed Growth Act"

Amend the bill in section 1 by striking out all of §4366 and §4367 and inserting the following:

§4366. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Comprehensive economic impact area. "Comprehensive economic impact area" means the geographic area affected by a proposed large-scale retail development. This area includes the municipality and abutting municipalities.

2. Comprehensive economic impact study. "Comprehensive economic impact study" means a municipal study that estimates the effects of a large-scale retail development on the local economy, downtown and community pursuant to section 4367, subsection 4.

3. Downtown. "Downtown" means the central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure.

4. Gross floor area. "Gross floor area" means the aggregate of the areas of each floor of a building or structure, including accessory structures, measured between the exterior faces of the exterior walls or limits of the building or structure at the level of each floor.

5. Land use permit. "Land use permit" means a municipal permit or approval required by a municipal land ordinance, site plan ordinance, subdivision ordinance, zoning ordinance or building permit ordinance or by the state subdivision law pursuant to subchapter 4.

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1 6. Large-scale retail development. "Large-scale retail development" means any
2 retail business establishment having a gross floor area of 75,000 square feet or more in
3 one or more buildings at the same location, and any expansion or renovation of an
4 existing building or buildings that results in a retail business establishment's having a
5 gross floor area of 75,000 square feet or more in one or more buildings except when the
6 expansion of an existing retail business establishment is less than 20,000 square feet.
7 Other retail business establishments on the same site as the large-scale retail business
8 establishment are not included in this definition unless they share a common check stand,
9 management, controlling ownership or storage areas.

10 7. Municipal reviewing authority. "Municipal reviewing authority" means the
11 municipal planning board, agency or office or, if none, the municipal officers.

12 8. Office. "Office" means the Executive Department, State Planning Office.

13 9. Retail business establishment. "Retail business establishment" means a business
14 engaged in the sale of goods to the ultimate consumer for direct use or consumption.

15 10. Undue adverse impact. "Undue adverse impact" means that, within the
16 comprehensive economic impact area, the estimated overall negative effects on the
17 factors listed for consideration in section 4367, subsection 4 outweigh the estimated
18 overall positive effects on those factors and that the estimated negative effects of at least
19 2 of the factors listed in section 4367, subsection 4, paragraph A outweigh the positive
20 effects on those factors.

21 **§4367. Preparation of comprehensive economic impact study**

22 As part of its review of a land use permit application for a large-scale retail
23 development, a municipal reviewing authority shall require the preparation of a
24 comprehensive economic impact study.

25 1. Qualified preparer. A comprehensive economic impact study must be prepared
26 by a person, other than the applicant for a large-scale retail development, listed by the
27 office as qualified by education, training and experience to prepare such a study. The
28 office shall provide the list of qualified preparers to a municipal reviewing authority and
29 land use permit applicant upon request. The office shall adopt routine technical rules
30 under Title 5, chapter 375, subchapter 2-A to carry out the purposes of this subsection.

31 2. Selection of preparer. The selection of the preparer must be mutually agreed
32 upon by the municipal reviewing authority and the applicant. If no mutual agreement is
33 reached within 15 days, the municipal reviewing authority shall select the preparer. The
34 preparer must be qualified in accordance with subsection 1.

35 3. Payment. The applicant for the permit shall pay a fee of \$40,000 to the
36 municipality. The development application is not complete for processing until the fee
37 has been paid. The municipality's contract for the study must be defined and priced to
38 ensure that the \$40,000 fee will be sufficient to cover the costs of the comprehensive
39 economic impact study, notice of the public hearing and related municipal staff support.
40 Any unexpended funds from the \$40,000 fee must be returned to the applicant.

41 4. Comprehensive economic impact study. The comprehensive economic impact
42 study must be completed within 4 months of the filing of the application and must be

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1 made available to the municipal reviewing authority, the applicant and the public. It must
2 estimate the effects of the large-scale retail development as set out in this subsection.

3 A. The comprehensive economic impact study, using existing studies and data and
4 through the collection and analysis of new data, must identify the economic effects of
5 the large-scale retail development on existing retail operations; supply and demand
6 for retail space; number and location of existing retail establishments where there is
7 overlap of goods and services offered; employment, including projected net job
8 creation and loss; retail wages and benefits; captured share of existing retail sales;
9 sales revenue retained and reinvested in the comprehensive economic impact area;
10 municipal revenues generated; municipal capital, service and maintenance costs
11 caused by the development's construction and operation, including costs of roads and
12 police, fire, rescue and sewer services; the amount of public subsidies, including tax
13 increment financing; and public water utility, sewage disposal and solid waste
14 disposal capacity.

15 B. The comprehensive economic impact study must identify, to the extent that there
16 are available for reference, existing studies and data, the general environmental
17 effects on those factors enumerated in section 4404, regardless of whether the project
18 is a subdivision, and in Title 38, sections 480-D and 484, regardless of the acreage of
19 the project site.'

20 Amend the bill in section 1 in §4368 by striking out all of subsection 2 (page 3, lines
21 30 to 38 in L.D.) and inserting the following:

22 '2. Notice. Notice of the public hearing on the land use permit application must state
23 that the comprehensive economic impact study will be presented at the hearing and that
24 the municipal reviewing authority will take testimony on the comprehensive impact of the
25 proposed large-scale retail development, and the notice must include the name of any
26 potential retailer, a map of the development location and a map of the comprehensive
27 economic impact area. The municipality shall also provide notice by regular mail to
28 municipal officers of abutting municipalities and to all property owners within 1,000 feet
29 of the proposed development.'

30 Amend the bill in section 1 by striking out all of §4369 (page 4, lines 1 to 12 in L.D.)
31 and inserting the following:

32 **§4369. Land use permit approval**

33 The municipal reviewing authority shall evaluate the impacts of the proposed large-
34 scale retail development based on the comprehensive economic impact study; other
35 materials submitted to the municipal reviewing authority by any person, including the
36 applicant, state agencies, nonprofit organizations and members of the public; and
37 testimony received during the public hearing under section 4368 to issue a finding of
38 undue adverse impact or no undue adverse impact. The municipal reviewing authority
39 may issue a land use permit for a large-scale retail development only if it determines that
40 there is likely to be no undue adverse impact.

41 Nothing in this Act may preclude a municipality from adopting an ordinance to
42 authorize additional studies and criteria regarding the effects of a proposed large-scale

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1 retail development. The requirements of this Act are in addition to all other required
2 federal, state and local land use permit processes that pertain to a proposed large-scale
3 retail development.'

4 Amend the bill by adding before the summary the following:

5 'Sec. 2. Appropriations and allocations. The following appropriations and
6 allocations are made.

7 EXECUTIVE DEPARTMENT

8 Planning Office 0082

9 Initiative: Provides a base allocation of \$500 to establish an Other Special Revenue Funds
10 account to reimburse municipalities for activities related to certain permitting
11 requirements mandated by the State.

| | | | |
|----|--|----------------|----------------|
| 12 | OTHER SPECIAL REVENUE FUNDS | 2007-08 | 2008-09 |
| 13 | All Other | \$500 | \$500 |
| 14 | | <hr/> | <hr/> |
| 15 | OTHER SPECIAL REVENUE FUNDS TOTAL | \$500 | \$500 |
| 16 | | | |

17 SUMMARY

18 This amendment, which is the minority report, makes a number of changes to the bill.

19 1. It removes the definitions of "aggregate of buildings or structures" and "market
20 area" from the bill.

21 2. It includes a definition of "municipal reviewing authority" and clarifies that
22 "office" means the Executive Department, State Planning Office.

23 3. It changes the defined term "comprehensive impact area" to "comprehensive
24 economic impact area." "Comprehensive economic impact area" includes the
25 municipality and the abutting municipalities in the geographic area affected by the
26 proposed large-scale retail development rather than the market area of the development or
27 5 miles in all directions.

28 4. It changes the defined term "comprehensive impact study" to "comprehensive
29 economic impact study." It estimates effects of the retail development rather than
30 requiring positive and negative judgments. It removes other references to positive and
31 negative effects. It also requires the preparer of the study to collect any studies on
32 environmental issues that have already been carried out.

33 5. It limits the definition of "large-scale retail development" to a single retail
34 business on a single site.

35 6. It clarifies the definition of "retail business establishment" by removing a
36 reference to services.

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- 1 7. It requires the study to be completed within 4 months of application rather than 6
2 months.
- 3 8. It requires the municipal reviewing authority and the applicant for the permit to
4 agree on the preparer of the study from the list provided by the State Planning Office. If
5 there is no agreement after 15 days, the municipal reviewing authority has the authority to
6 choose the preparer.
- 7 9. It requires the applicant for the permit to pay the \$40,000 fee to the municipality
8 rather than to the State Planning Office.
- 9 10. It adds an appropriations and allocations section.

10
11

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



123rd MAINE LEGISLATURE

LD 1810

LR 2241(03)

An Act To Enact the Informed Growth Act

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: State and Local Government

Fiscal Note Required: Yes

Fiscal Note

State Mandate - Unfunded

State Mandates

Required Activity

Requiring municipalities prepare comprehensive impact studies is a state mandate pursuant to the Constitution of Maine. Public hearings and related administrative activities surrounding the permitting process are also mandated activities. The additional costs to accomplish these activities are expected to be significant.

Unit Affected

Municipality

Costs

Signific-

Fiscal Detail and Notes

The bill requires permit applicants to pay \$40,000 to the municipality. Although this payment reimburses the municipality for costs incurred in contracting for the comprehensive economic impact study and related costs, 30-A MRSA § 5685(3A) does not permit the state to meet its obligation to provide funding for mandated activities by authorizing a local unit of government to levy fees or taxes. Therefore, despite reimbursement from the permit applicant, without state reimbursement this bill will still be an unfunded state mandate. Without funding or a mandate preamble exempting the state from such funding, municipalities may not be required to adhere to the provisions of this bill.