

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1810

H.P. 1262

House of Representatives, March 30, 2007

### An Act To Enact the Informed Growth Act

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Reference to the Committee on State and Local Government suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BARSTOW of Gorham.  
Cosponsored by Senator SCHNEIDER of Penobscot and  
Representatives: BEAUDETTE of Biddeford, Speaker CUMMINGS of Portland, KOFFMAN  
of Bar Harbor, McKANE of Newcastle, SMITH of Monmouth, Senators: DAMON of  
Hancock, DOW of Lincoln, MILLS of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 30-A MRSA c. 187, sub-c. 3-A** is enacted to read:

3 **SUBCHAPTER 3-A**

4 **INFORMED GROWTH ACT**

5 **§4365. Short title**

6 This subchapter may be known and cited as "the Informed Growth Act."

7 **§4366. Definitions**

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

10 **1. Aggregate of buildings or structures.** "Aggregate of buildings or structures"  
11 means any combination of buildings or structures on the same or abutting lots owned,  
12 leased or used by or for a single entity or affiliated businesses for the same or a similar  
13 use.

14 **2. Comprehensive impact area.** "Comprehensive impact area" means the  
15 geographic area affected by a proposed large-scale retail development. This area includes  
16 the municipality; the applicant's market area, including that part of the applicant's market  
17 area that extends into other municipalities; and the area extending 5 miles in all directions  
18 from the proposed large-scale retail development tract, parcel or lots.

19 **3. Comprehensive impact study.** "Comprehensive impact study" means a  
20 municipal study that estimates the positive and negative effects of a large-scale retail  
21 development on the local economy and community pursuant to section 4367, subsection  
22 3.

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

28 **5. Gross floor area.** "Gross floor area" means the aggregate of the areas of each  
29 floor of a building or structure, including accessory structures, measured between the  
30 exterior faces of the exterior walls or limits of the building or structure at the level of  
31 each floor.

32 **6. Land use permit.** "Land use permit" means a municipal permit or approval  
33 required by a municipal land ordinance, site plan ordinance, subdivision ordinance,  
34 zoning ordinance or building permit ordinance or by the state subdivision law pursuant to  
35 subchapter 4.

1        **7. 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 or structures at the same location and any expansion or renovation  
4 of an existing building or structure that results in a retail business establishment's having  
5 a gross floor area of 75,000 square feet or more in one or more buildings at the same  
6 location, whether located in a single structure, a single tenant space, an aggregate of  
7 buildings or structures or tenant spaces in an aggregate of buildings or structures.  
8 Adjacent retail business establishments that share a common check stand, management,  
9 controlling ownership or storage areas are considered one retail business establishment.

10        **8. Market area.** "Market area" means a geographical area large enough to provide a  
11 viable retail market for a large-scale retail development.

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

15        **10. Undue adverse impact.** "Undue adverse impact" means that, within the  
16 comprehensive impact area, the estimated overall negative effects on the factors listed for  
17 consideration in section 4367, subsection 3 of a proposed large-scale retail development  
18 outweigh the estimated overall positive effects on those factors and that the estimated  
19 negative effects of at least 2 of the factors listed in section 4367, subsection 3, paragraph  
20 A outweigh the positive effects on those factors.

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

22        As part of its review of a permit application for a large-scale retail development, a  
23 municipal reviewing authority shall require the preparation of a comprehensive impact  
24 study and has the authority to determine who will prepare it.

25        **1. Qualified preparer.** A comprehensive impact study must be prepared by a  
26 person other than the applicant for a large-scale retail development, that is qualified by  
27 education, training and experience to prepare a study or that is identified by the office.  
28 The office is authorized to maintain a list of persons qualified by education, training and  
29 experience to prepare such studies and to prequalify persons wishing to provide such  
30 services to municipalities through an open request for qualifications process. The office  
31 shall provide the list to a municipal reviewing authority upon request.

32        **2. Payment.** The applicant for the permit shall pay a fee of \$40,000 to the office to  
33 be deposited into a dedicated revenue account. The development application is not  
34 complete for processing until the office confirms that the fee has been paid.

35        The office shall disburse to the municipality, from the dedicated account, an amount  
36 equal to the municipality's projected costs of the comprehensive impact study contract,  
37 notice of the public hearing and related municipal staff support. The municipality's  
38 contract for the study must be defined and priced to ensure that the \$40,000 fee will be  
39 sufficient to cover both the costs of the study and the costs listed in this subsection. The  
40 office may charge against the fee a sufficient amount to cover its costs to record,

1 administer and disburse the fee but may not exceed \$1,000. Any unexpended funds from  
2 the \$40,000 fee must be returned to the applicant.

3 **3. Comprehensive impact study.** The comprehensive impact study must be  
4 completed within 6 months of the filing of the application and must be made available to  
5 the reviewing authority, the applicant and the public. It must estimate the positive and  
6 negative effects of the large-scale retail development as set out in this subsection.

7 A. The comprehensive impact study, using existing studies and data and through the  
8 collection and analysis of new data, must identify the positive and negative economic  
9 effects of the large-scale retail development on existing retail operations; supply and  
10 demand for retail space; economic vitality of downtowns; employment, including  
11 projected net job creation and loss; retail wages and benefits; captured share of  
12 existing retail sales; sales revenue retained and reinvested in the comprehensive  
13 impact area; municipal revenues generated; municipal capital, service and  
14 maintenance costs caused by the development's construction and operation including  
15 costs of roads and police, fire, rescue and sewer services; the amount of public  
16 subsidies, including tax increment financing; public road traffic congestion and  
17 safety; and public water utility, sewage disposal and solid waste disposal capacity.

18 B. The comprehensive impact study must identify, to the extent that there are  
19 existing studies and data, the general positive and negative environmental effects of  
20 the large-scale retail development on air quality; the quality of wetlands, groundwater  
21 and surface water; scenic and natural beauty; the quality of residential  
22 neighborhoods, including on noise, lights, traffic and safety; recreational and historic  
23 sites; significant plant and wildlife habitat and wildlife travel corridors; rare and  
24 irreplaceable natural areas; any public rights for physical or visual access to a  
25 shoreline; and the implementation of municipal comprehensive planning goals.

26 **§4368. Public hearing**

27 **1. Public participation required.** The municipal reviewing authority shall provide  
28 the public with an adequate opportunity to be heard prior to the approval of a permit for a  
29 large-scale retail development.

30 **2. Notice.** Notice of the public hearing on the permit application must state that the  
31 comprehensive impact study will be presented at the hearing and that the municipal  
32 reviewing authority will take testimony on the comprehensive impact of the proposed  
33 large-scale retail development, and the notice must include the name of any potential  
34 retailer, a map of the development location and a map of the comprehensive impact area.  
35 The municipality shall also provide notice by regular mail to municipal officers of  
36 adjacent municipalities, to all persons residing in the municipality within 5,000 feet of the  
37 proposed development and to persons who have made timely requests to be notified of a  
38 specific application.

39 **3. Public disclosure of the applicant.** If the applicant for a large-scale retail  
40 development is not the potential retailer, the applicant shall disclose in its application and  
41 at the public hearing the name of the potential retailer, including its commonly used retail  
42 name.

1 **§4369. Permit approval**

2 The municipal reviewing authority shall issue a finding of whether a large-scale retail  
3 development will likely have undue adverse impact or no undue adverse impact based on  
4 the comprehensive impact study; other materials submitted to the municipal reviewing  
5 authority by any person, including the applicant, state agencies, nonprofit organizations  
6 and members of the public; and the testimony received during the public hearing under  
7 section 4368. The municipal reviewing authority may issue the permit for the large-scale  
8 retail development only if it determines that there is likely to be no undue adverse impact.

9 Nothing in this Act may preclude a municipality from adopting an ordinance to  
10 authorize additional studies of the effects of a proposed large-scale retail development.  
11 The requirements of this Act are in addition to all other required federal, state and local  
12 permit processes that pertain to the proposed large-scale retail development.

13 **§4370. Appeal**

14 The provisions of this subchapter granting persons, municipalities, the State and other  
15 entities the opportunity to provide input on a municipal land use permit or approval do  
16 not, and may not be interpreted to, authorize persons or entities who would not, absent the  
17 provisions of this subchapter, have an interest in or otherwise have standing to appeal a  
18 municipal action on the permit or approval.

19 **SUMMARY**

20 This bill enacts the Informed Growth Act to supplement existing municipal project  
21 application review criteria with a comprehensive impact study specifically related to the  
22 impact of large-scale retail development. It requires an applicant seeking a permit to  
23 build a large-scale retail development that is larger than 75,000 square feet to pay for a  
24 comprehensive impact study, a public hearing and related municipal staff support in order  
25 to estimate the positive and negative economic and environmental effects of the project  
26 on the local area prior to permit approval. The study must be presented at a public  
27 hearing before the municipal reviewing authority held simultaneously with its review of  
28 the permit application. In order for approval for the application to be given, the  
29 municipal reviewing authority must determine, based on the comprehensive impact study,  
30 other materials and a public hearing, that the project would have no undue adverse impact  
31 on the local area.

32 This bill ensures that municipalities that do not have a site plan ordinance or zoning  
33 ordinance have the ability to assess the projected impacts of a large-scale retail  
34 development without having to pay for the study.