

Answers to Common Questions about Maine's Informed Growth Act

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1. What does the Informed Growth Act do?

It requires towns that have received permit applications for large retail stores to determine whether the development would have an "undue adverse impact" on the local economy and community. If the town decides that it would, the permit cannot be approved.

The town's permitting authority is the body that decides whether the project will have an undue adverse impact. In many Maine towns, this would be the planning board.

2. What types of development projects are subject to the law?

The law applies to proposed retail establishments that are 75,000 square feet or larger and to projects that would involve the expansion or renovation of an existing building or buildings resulting in a retail business establishment of 75,000 square feet or more. That's about the size of one-and-a-half football fields. Smaller development projects are not affected.

3. Where does the term "undue adverse impact" come from?

In Maine's land use statutes, "undue adverse impact" is the typical standard that towns are required to use in evaluating development applications. For example, under the state's mandated standards for subdivision applications, towns must determine whether the development would have an "undue adverse impact" on traffic, air quality, and water quality.

The Informed Growth Act extends this standard to apply to the economic impact of large-scale retail development projects.

4. How does a town determine whether a particular retail development will have an undue adverse impact?

The law lists several economic factors that the town must consider. These include the project's impact on jobs, existing businesses, wages, municipal revenue, and the cost of town services. The law also requires towns to more generally consider the environmental impact of the proposed development.

To assist towns in evaluating a project's impact on these factors, the law provides for a "comprehensive economic impact study" to be prepared by a qualified consultant at no cost to the town.

The study is presented at a public hearing at which anyone, including the applicant, other municipalities, business owners, and residents, may comment on the study and may submit evidence and testimony about the anticipated impact of the proposed project.

After considering the study and all other related evidence and testimony, the town decides whether the project will have an undue adverse impact or not. There is a two step "findings of fact" process for the town to complete in reaching this conclusion.

The first step is to find whether the project will have a negative effect on any of the 11 economic factors listed in the law. There can be no undue adverse impact conclusion unless the town finds that the proposed development will have a negative effect on at least two of the 11 factors.

The second step is to find whether the project's overall negative effects on the economy and the environment outweigh its overall positive effects. There can be no undue adverse impact conclusion unless the board also finds that there will be an overall negative impact on the economy and the environment.

Thus, a conclusion of "undue adverse impact" requires negative findings in both steps—that is (1) two or more negative findings as to the economic factors and (2) a negative impact finding overall. Otherwise, the conclusion must be that there is no undue adverse impact.

5. Who prepares the study and who pays for it?

The law stipulates that the developer must pay a \$40,000 fee to the State Planning Office (SPO). The SPO distributes up to \$39,000 of this to the town to cover the cost of hiring the study's preparer, calling a public hearing, and all related municipal staff time. The SPO may keep up to \$1,000 to cover its costs. Any remaining funds are returned to the applicant.

The SPO also provides the town with a list of qualified preparers from which the town can select a consultant to conduct the study. The law stipulates that the town and the applicant shall agree on the consultant. If they cannot reach an agreement, however, then the choice is left to the town.

6. The law states that the study shall evaluate the impact of the project on the "comprehensive economic impact area." What is this?

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

7. Is it legal for towns to consider economic factors in land use permitting decisions?

Yes. It is worthy of note that neither the attorney general, nor any opponent to the act, asserted at any time when the act was being considered for passage by the legislature, including at the legislative public hearing and workshop on the bill, that the economic impact factors were unconstitutional. That is because they are not. The act's economic factors are similar to other such factors applied by the municipalities, the state, and the unorganized territories.

For example, the Maine Land Use Regulation Commission applies similar economic "evaluation factors" for commercial development applications in the State's unorganized territories, which factors include: "economic benefit"; "need for goods and services"; and "projected customer base". These factors were developed under the counsel of the Maine Attorney General's office. *See* LURC Guidance Document, "*Clarifying the Rezoning Definition of Demonstrated Need*" (9 evaluation factors for residential development and 9 evaluation factors for non-residential development).

The state's subdivision statute also requires that a subdivision development application made to a municipality must conform to the municipality's "development plan" and "comprehensive plan", *see* 30-A M.R.S.A. Sec. 4404 (10). Such municipal development and comprehensive plans typically include economic impact goals, limits, policies and objectives.

The Maine courts have not invalidated any of these provisions. Moreover, federal and state courts elsewhere have expressly affirmed the authority of cities to consider broad economic and fiscal impacts in making land use decisions, including the effect a development will have on downtown economic vitality. The courts have reasoned that these impacts constitute legitimate public welfare considerations and are therefore reasonable factors in land use decisions.

8. Can towns be exempt from the law?

Yes. The law states that to be exempt, a town must have "adopted economic and community impact review criteria that apply to large-scale retail development land use permit applications and that require a study of the comprehensive economic and community impacts of the proposed large-scale retail development for consideration, among other evidence, in applying the review criteria to the application."

A town should consult with its attorney in evaluating whether it is exempt from the law. In general, a town would need to have a land use permit ordinance that

applies the same, or substantially similar, review criteria to large-scale retail development proposals as outlined in the act and requires the same, or substantially similar economic impact study as is required by the act. The town's ordinance, however, does not need to mirror some of the specific provisions of the act, including the fee required of the applicant and the time limit for the study's completion.

For more on the act's exemption provision, see the "Information Sheet" in the *Municipal Forms Package* available at www.informedgrowthact.com.

7. Does this law take away local control?

No. The law specifically preserves home-rule for municipalities and vests the town's planning board (or other permitting authority) with the authority to determine whether a proposed retail development will have an undue adverse impact.

The Informed Growth Act enhances local control in some respects. It provides towns with additional, quantifiable information about the economic impacts (positive and negative) of large-scale retail development proposals and grants them the authority to consider these factors in making a permitting decision.

The act also enhances the role of towns that abut municipalities that have received applications for large-scale retail development. The act specifies that the comprehensive impact study must evaluate the impacts on both the host town and adjacent towns, and that officials of abutting towns must be notified and have an opportunity to comment at the public hearing.

8. Does this law create another review process?

No. The impact standard is applied as part of the municipal board's review of the developer's permit application. The board's hearing on the impact standard may be held at the same public hearing as is held regarding its other permit standards.

9. Will this law delay the process for reviewing retail development applications?

It shouldn't. Municipal board review of a large-scale retail development application typically takes more than six months. This act calls for the impact study to be completed and submitted to the board for review within four months of the application, which should ensure that the review period does not extend beyond typical current review periods.

10. The law enumerates a number of factors that the impact study must analyze and that the town must consider in making its decision. Are there data sources and accepted methodologies for analyzing those factors?

Yes, there are data sources and established, credible methodologies for analyzing the effects of a large-scale retail development on the economic and fiscal factors enumerated in the law. Please see the *Guidebook to Retail Impact Analysis* at www.informedgrowthact.com for more information.

11. Does the law require towns to amend their land use ordinances to incorporate the provisions of the Informed Growth Act?

No, the act does not direct towns to amend their ordinances. However, towns may wish to revise their ordinances to incorporate the act's provisions into their existing review process for large-scale retail development applications.

12. What does the law require of towns that do not require any type of land use permit?

The act applies only when a large-scale retail developer applies for a "land use permit." The law defines a land use permit as "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." If there is no land use permit or approval requirement, then there is no obligation to conduct a study or make a finding regarding undue adverse impact.

13. When does the Informed Growth Act go into effect and does it apply to applications filed before that date?

The act takes effect on September 20, 2007. The Informed Growth Act is not retroactive and does not apply to completed land use permit applications filed before September 20.