

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 721**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 35317 (MCL 324.35317), as amended by 2012 PA
297.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35317. (1) A local unit of government may issue variances
2 under a zoning ordinance, or the department may issue special
3 exceptions under the model zoning plan if a local unit of
4 government does not have an approved zoning ordinance, if a
5 practical difficulty will occur to the owner of the property if the
6 variance or special exception is not granted. In determining
7 whether a practical difficulty will occur if a variance or special
8 exception is not granted, primary consideration shall be given to
9 **ENSURING BOTH OF THE FOLLOWING:** ~~assuring that~~

1 **(A) THE PROTECTION OF** human health and safety. ~~are protected~~
2 ~~by the determination and that the determination complies~~

3 **(B) COMPLIANCE** with applicable local zoning, other state laws,
4 and federal law.

5 **(2)** If a practical difficulty will occur to the owner of the
6 property if the variance or special exception is not granted, a
7 variance or special exception shall be granted under this section
8 unless the local unit of government or the department determines
9 that the use will significantly damage the public interest on the
10 privately owned land, or, if the land is publicly owned, the public
11 interest in the publicly owned land, by significant and
12 unreasonable depletion or degradation of any of the following:

13 (a) The diversity of the critical dune areas within the local
14 unit of government.

15 (b) The quality of the critical dune areas within the local
16 unit of government.

17 (c) The functions of the critical dune areas within the local
18 unit of government.

19 **(3)** ~~(2)~~ The decision of the local unit of government or the
20 department shall be in writing and shall be based upon evidence
21 that would meet the standards in section 75 of the administrative
22 procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying
23 a variance or special exception shall document, and any review
24 upholding the decision shall determine, all of the following:

25 (a) That the local unit of government or the department has
26 met the burden of proof under subsection ~~(1)~~. **(2)**.

27 (b) That the decision is based upon sufficient facts or data.

1 (c) That the decision is the product of reliable scientific
2 principles and methods.

3 (d) That the decision has applied the principles and methods
4 reliably to the facts.

5 (e) That the facts or data upon which the decision is based
6 are recorded in the file.

7 **(4)** ~~(3)~~—A local unit of government or the department shall not
8 require an environmental site assessment or environmental impact
9 statement for a variance except for a special use project.

10 **(5)** ~~(4)~~—A variance shall not be granted from a setback
11 requirement provided for under the model zoning plan or an
12 equivalent zoning ordinance approved under section ~~35034~~ **35304**
13 enacted pursuant to this part unless the property for which the
14 variance is requested is 1 of the following:

15 (a) A nonconforming lot of record that is recorded prior to
16 July 5, 1989, and that becomes nonconforming due to the operation
17 of this part or a zoning ordinance.

18 (b) A lot legally created after July 5, 1989 that later
19 becomes nonconforming due to natural shoreline erosion.

20 (c) Property on which the base of the first landward critical
21 dune of at least 20 feet in height that is not a foredune is
22 located at least 500 feet inland from the first foredune crest or
23 line of vegetation on the property. However, the setback shall be a
24 minimum of 200 feet measured from the foredune crest or line of
25 vegetation.

26 **(6)** ~~(5)~~—Each local unit of government that has issued a
27 variance for a use other than a special use project during the

1 previous 12 months shall file an annual report with the department
2 indicating variances that have been granted by the local unit of
3 government during that period.

4 (7) ~~(6)~~ Upon receipt of an application for a special exception
5 under the model zoning plan, the department shall forward a copy of
6 the application and all supporting documentation to the local unit
7 of government having jurisdiction over the proposed location. The
8 local unit of government ~~shall have~~ **HAS** 60 days to review and
9 comment on the proposed special exception. The department shall not
10 make a decision on a special exception under the model zoning plan
11 until either the local unit of government has commented on the
12 proposed special exception or has waived its opportunity to review
13 the special exception. The local unit of government may waive its
14 opportunity to review the application at any time within 60 days
15 after receipt of the application and supporting documentation by
16 notifying the department in writing. The local unit of government
17 also waives its opportunity to review the application if it fails
18 to act as authorized in this subsection within 60 days. If the
19 local unit of government waives its opportunity to review the
20 application, the local unit of government also waives its
21 opportunity to oppose the decision by the department to issue a
22 special exception. If the local unit of government opposes the
23 issuance of the special exception, the local unit of government
24 shall notify the department, in writing, of its opposition within
25 the 60-day notice period. If the local unit of government opposes
26 the issuance of the special exception, the department shall not
27 issue a special exception. The local unit of government may also

1 consider whether a practical difficulty will occur to the owner of
2 the property if the special exception is not granted by the
3 department and may make a recommendation to the department within
4 the 60-day notice period. The department shall base its
5 determination of whether a practical difficulty exists on
6 information provided by the local unit of government and other
7 pertinent information.

8 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, UPON
9 APPLICATION, THE DEPARTMENT SHALL ISSUE A SPECIAL EXCEPTION UNDER
10 THIS SECTION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

11 (A) THE APPLICANT IS A LOCAL UNIT OF GOVERNMENT AND THE
12 APPLICATION INVOLVES PUBLIC LAND THAT WAS PUBLIC LAND ON JULY 5,
13 1989.

14 (B) THE PURPOSE OF THE APPLICATION IS TO PROVIDE A VIEW OF 1
15 OF THE GREAT LAKES, FROM A PARKING LOT THAT WAS LAWFUL AND IN
16 EXISTENCE ON JULY 5, 1989.

17 (C) THE SPECIAL EXCEPTION IS FOR A PROPOSED PROJECT THAT WOULD
18 BENEFIT THE CITIZENS AND VISITORS OF THAT LOCAL UNIT OF GOVERNMENT
19 AS EVIDENCED BY THE ADOPTION OF A RESOLUTION IN SUPPORT OF THE
20 SPECIAL EXCEPTION BY THE GOVERNING BODY OF THAT LOCAL UNIT OF
21 GOVERNMENT.

22 (D) THE RESOLUTION ADOPTED UNDER SUBDIVISION (C) DEMONSTRATES
23 THAT THE PROPOSED PROJECT WOULD MEET THE CRITERIA SET FORTH IN
24 SECTION 35302.

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.