

**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 ALL 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) **THE PROTECTION OF MULTIPLE HUMAN USES OF THE CRITICAL**  
4 **DUNES AND THE BENEFITS OF PUBLIC ACCESS TO AND ENJOYMENT OF THE**  
5 **CRITICAL DUNES.**

6           (C) **THE PROTECTION OF COMPATIBLE ECONOMIC BENEFITS ASSOCIATED**  
7 **WITH CRITICAL DUNES.**

8           (D) **COMPLIANCE** with applicable local zoning, other state laws,  
9 and federal law.

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

18           (a) The diversity of the critical dune areas within the local  
19 unit of government.

20           (b) The quality of the critical dune areas within the local  
21 unit of government.

22           (c) The functions of the critical dune areas within the local  
23 unit of government.

24          (3) ~~(2)~~—The decision of the local unit of government or the  
25 department shall be in writing and shall be based upon evidence  
26 that would meet the standards in section 75 of the administrative  
27 procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying

1 a variance or special exception shall document, and any review  
2 upholding the decision shall determine, all of the following:

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

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

6 (c) That the decision is the product of reliable scientific  
7 principles and methods.

8 (d) That the decision has applied the principles and methods  
9 reliably to the facts.

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

12 **(4)** ~~(3)~~—A local unit of government or the department shall not  
13 require an environmental site assessment or environmental impact  
14 statement for a variance except for a special use project.

15 **(5)** ~~(4)~~—A variance shall not be granted from a setback  
16 requirement provided for under the model zoning plan or an  
17 equivalent zoning ordinance approved under section ~~35034~~ **35304**  
18 enacted pursuant to this part unless the property for which the  
19 variance is requested is 1 of the following:

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

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

25 (c) Property on which the base of the first landward critical  
26 dune of at least 20 feet in height that is not a foredune is  
27 located at least 500 feet inland from the first foredune crest or

1 line of vegetation on the property. However, the setback shall be a  
2 minimum of 200 feet measured from the foredune crest or line of  
3 vegetation.

4 (6) ~~(5)~~—Each local unit of government that has issued a  
5 variance for a use other than a special use project during the  
6 previous 12 months shall file an annual report with the department  
7 indicating variances that have been granted by the local unit of  
8 government during that period.

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

1 issuance of the special exception, the local unit of government  
2 shall notify the department, in writing, of its opposition within  
3 the 60-day notice period. If the local unit of government opposes  
4 the issuance of the special exception, the department shall not  
5 issue a special exception. The local unit of government may also  
6 consider whether a practical difficulty will occur to the owner of  
7 the property if the special exception is not granted by the  
8 department and may make a recommendation to the department within  
9 the 60-day notice period. The department shall base its  
10 determination of whether a practical difficulty exists on  
11 information provided by the local unit of government and other  
12 pertinent information.

13 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE  
14 DEPARTMENT SHALL ISSUE A SPECIAL EXCEPTION UNDER THIS SECTION IF  
15 ALL OF THE FOLLOWING CONDITIONS ARE MET:

16 (A) THE APPLICANT IS A LOCAL UNIT OF GOVERNMENT AND THE  
17 APPLICATION INVOLVES PUBLIC LAND THAT WAS PUBLIC LAND ON JULY 5,  
18 1989.

19 (B) THE PURPOSE OF THE APPLICATION IS TO RESTORE A USE,  
20 INCLUDING PUBLIC VIEWING AREAS, THAT WAS LAWFUL AND IN EXISTENCE ON  
21 JULY 5, 1989.

22 (C) THE PROPOSED PROJECT FOR WHICH THE SPECIAL EXCEPTION IS  
23 SOUGHT BENEFITS THE CITIZENS AND VISITORS OF THAT LOCAL UNIT OF  
24 GOVERNMENT AS EVIDENCED BY THE ADOPTION OF A RESOLUTION IN SUPPORT  
25 OF THE SPECIAL EXCEPTION BY THE GOVERNING BODY OF THAT LOCAL UNIT  
26 OF GOVERNMENT.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.