



**House
Legislative
Analysis
Section**

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**SAND DUNES PROTECTION
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**House Bill 4296 as enrolled
Third Analysis (7-25-89)**

Mich. State Law Library

**Sponsor: Rep. H. Lynn Jondahl
Committee: Conservation, Recreation & Environment**

THE APPARENT PROBLEM:

Sand dunes are one of the state's most valuable resources. They are irreplaceable, fragile resources and home to many rare ecological wonders. However, continued mining of the dunes coupled with increased recreational use and commercial development have led to a dramatic decrease in the number of dunes in the state. Some dunes have virtually disappeared while others have suffered irreparable damage. In addition, because there is not careful regulation of residential development in dune areas, property damage has also occurred to homes built on dunes. A Natural Resources Commission study initiated in 1984 found that the dunes are not managed in a comprehensive manner and that local zoning ordinances to protect the dune areas are not consistent. Since the dunes are interconnected sand formations, inconsistent levels of protection will eventually lead to the depletion of sand dune resources. Legislation has been introduced in both the House and Senate (Senate Bill 179) to ensure consistent regulation of dune areas by the adoption of minimum protection standards in a comprehensive zoning ordinance.

THE CONTENT OF THE BILL:

The bill would amend the Sand Dune Protection and Management Act, extending regulation to non-mining uses of sand dunes and critical dune areas, and limiting permits for new mining sites. The bill would define critical dune areas to mean "geographic areas designated in the 'Atlas of Critical Dune Areas' dated February 1989 that was prepared by the Department of Natural Resources (DNR)."

Notification of Critical Dune Area Designation. The bill would require the director of the DNR to notify each local government as soon as possible of critical dune areas under its jurisdiction. Notification would include a copy of the "Atlas of Critical Dune Areas" dated February 1989 and a copy of the bill. Notification would also specify property designated as critical dune areas within the jurisdiction of the local government and would specify that critical dune areas would be regulated by the department under the model zoning plan or by local governments under a local zoning ordinance approved by the department. The same information would be sent to property owners by October 1, 1989.

Interim Regulation of Critical Dune Areas. Upon the effective date of the bill and until a local government either adopted a critical dune area zoning ordinance or the department issued a permit, a local government could require applications to be submitted for permits for uses in critical dune areas. Permits would be issued for uses that were in conformance with and at least as environmentally protective as the model zoning plan. The bill would require a local government that chose to issue permits during the interim period to pass a resolution reflecting its decision or to provide the DNR with

documentation that an existing ordinance met or exceeded the requirements of the model zoning plan. If a local government had not passed a resolution or provided the DNR with documentation by August 1, 1989, the department would issue permits during the interim period. Both local governments and the department would issue interim permits according to the following procedure:

- Persons proposing a use would file applications with the local government or the department (and one application could be filed for several uses proposed for one critical dune area).
- Notice of pending applications would be sent to interested persons if a written request for notice was accompanied by a fee established by the local government. The local unit would prepare a monthly list of applications made during the previous month.
- Unless a written request was filed within 20 days after a notice was mailed, a local government could grant an application without a public hearing. However, upon written notice of two or more people who owned or resided upon property within a critical dune area or adjacent to a critical dune area, the local unit of government would hold a public hearing pertaining to a permit application.
- A local government would have to grant or deny a permit within 60 days of the filing of the permit or within 90 days if a public hearing was held. When a permit was denied, a local government would provide reasons for denial and minor modifications needed for approval. Conditional permits could be issued in an emergency during the 20 day interim period detailed above.
- Local units would base a decision to grant or deny a permit on the model zoning plan or any existing ordinance that provided the same or a greater level of protection for critical dune areas as the model zoning plan and which was approved by the DNR.

Zoning a Critical Dune Area. Under the bill, a local government could regulate critical dune areas by adopting zoning ordinances approved by the department to meet requirements of the bill or by submitting current zoning ordinances to the DNR for approval. If the department found that an ordinance was not in compliance with the bill, the department would work with the local government to ensure compliance with the bill. Unless a local government received notice within 90 days of submittal that an ordinance was not in compliance with the bill, the ordinance would be considered approved by the department. If a local unit did not have an approved ordinance by June 30, 1990, the department would implement the model zoning plan for that local government in the same manner and under the same circumstances as detailed under the interim regulation of critical dune areas. A local government could adopt a zoning ordinance at any time, and an approved ordinance would take the place of the model zoning plan. If a local unit did not receive approval of a zoning ordinance, the department would

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implement the provisions of the model zoning plan. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, would be sent by a local government to the state tax commission and the assessing office, planning commission, and governing board of the local unit if requested by one of these entities.

Existing Uses. The lawful use of land or a structure at the time the department implemented the model zoning plan could be continued although the use of the land or structure did not conform to the provisions of the model zoning plan. The continuance, completion, restoration, reconstruction, extension, or substitution of existing nonconforming uses of land or a structure could continue upon reasonable terms that were consistent with applicable zoning provisions of the local government. The lawful use of land or a structure within a local unit that had a zoning ordinance approved by the department could be continued subject to the provisions of the law pertaining to existing uses within the act that enabled the local government to zone and the applicable zoning provisions. A use needed to obtain or maintain a permit or license required by law to continue operating an electric utility generating facility would not be precluded under the bill. Uses that had received all necessary permits from the state or the local government by June 15, 1989 or the effective date of the bill, whichever was later, would be exempt for purposes for which a permit was issued from the operation of the bill or local ordinances approved under the bill. Such uses would be regulated under local ordinances in effect by June 15, 1989.

Except as exempted above, the bill would prohibit a surface drilling operation that was utilized for the purpose of exploring for (or producing) hydrocarbons or natural brine, or for the disposal of the waste or by-product of the use of a critical dune area. The bill would also prohibit production facilities regulated under the Mineral Well Act in a critical dune area, except as provided above.

Permit and Inspection Fees. A local unit of government or the department could establish a use permit and inspection fee to defray the costs of administering the bill. Fees collected by the department would be deposited in the state treasury and credited to the general fund, and fees collected by a local government would be credited to the treasury of the government. A soil conservation district could charge a separate fee to cover the actual expense of providing services under the bill and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under the bill. A local government or the director of the DNR could require the holder of a permit to file a bond executed by an approved surety in an amount necessary to assure faithful conformance with the permit.

Penalties. If the director found that a person was not in compliance with the model zoning plan, or if the DNR was involved in the modification or reversal of a decision regarding a special use project, the director of the department could suspend or revoke the permit.

The attorney general could institute an action for a restraining order or injunction at the request of any person in order to prevent or preclude a violation of the model zoning plan if the department was implementing the plan or if the department was involved in the modification or reversal of a decision regarding a special use project. The county prosecutor could institute an action for a restraining order or injunction or other proper remedy at the request

of any person to prevent a violation of a zoning ordinance approved under the bill. These actions could be taken in addition to the rights provided in the Environmental Protection Act.

The bill would require the department to periodically review the performance of all local governments that have ordinances approved under the bill. If a local government was not administering the ordinance in conformance with the bill, it would have 30 days to make the needed changes. If changes were not made, the director of the DNR could withdraw approval of the local ordinance and implement the model zoning plan within the local unit. Local governments could appeal a department action under the Administrative Procedures Act. In addition to other relief provided under the bill, a court could impose a civil fine of not more than \$5,000 for each day of violation and the full cost of restabilization of a critical dune area or other natural resource area, or both, upon a person who violated the bill's provisions. This penalty provision would not go into effect until 30 days after individual property owners had been notified of the bill's provisions.

Legislative Committee. By June 15, 1991 a legislative study committee would be created by the Senate Majority Leader and the Speaker of the House to report to the legislature on the following issues:

- accuracy and precision of the critical dune area designations in the "Atlas of Critical Dune Areas" dated February 1989;
- the number of permits requested, issued, and denied;
- the number of variances requested, issued, and denied;
- the effectiveness of the criteria and standards in the model zoning plan;
- whether the model zoning plan and approved ordinances were accomplishing the objectives of the bill;
- whether laws pertaining to the taking of private property for public use were being used due to the operation of the model zoning plan or approved zoning ordinances, and if takings were occurring, whether there were apparent inequities.

The committee would consist of three members of the House and three members of the Senate with at least two members of each chamber having critical dune areas within their districts and with one member of each chamber a member of the standing committee concerned with environmental protection and natural resources. The committee would submit a written report to the legislature by June 15, 1993. The committee would consult with a representative from each of the following groups during its consideration of the issues listed above:

- the public;
- the Michigan Townships Association;
- the Michigan Municipal League;
- a conservation organization;
- an environmental protection organization;
- land development interests;
- construction industry interests; and
- the DNR.

The bill is tie-barred to Senate Bill 179, which outlines the "model zoning plan" to specify minimum requirements of a local zoning ordinance to regulate the use of critical dune areas. The bill's provisions regarding critical dune areas would be repealed June 15, 1995.

FISCAL IMPLICATIONS:

The Department of Natural Resources estimates that the bill would cost approximately \$200,000 for staff and studies to implement the bill. However, this estimate does not take into account the possibility that communities will not take regulation under their control. (7-25-89)

ARGUMENTS:

For:

Coastal sand dunes are a rare resource of the state that constitute a fragile interface between water and land and are extremely sensitive to alteration. The vegetation that occurs naturally in the dunes' ecosystems stabilizes that interface. However, recent development of dune areas has served to threaten the stability of the dunes by reckless development and destruction of the dunes' vegetative cover. While the bill will not prohibit all development activities in Michigan's more than 70,000 acres of critical dune areas, the bill will help to improve public policies pertaining to coastal dunes by regulating acceptable dune uses and prohibiting unacceptable uses.

For:

Currently, there is not a consistent method of regulation of critical dune areas. Local protection varies widely and is nonexistent in some areas. Consistent methods of regulation are needed to ensure uniform development procedures and maintenance of the stability of the dunes. By outlining a model zoning plan on which localities would have to base ordinances, House Bill 4296 and Senate Bill 179 will provide consistent standards throughout the state for regulating dune uses while keeping enforcement of the standards under the jurisdiction of local units.

Response: Although protecting the environmentally sensitive sand dune areas of the state, the bills will provide no real local control of zoning regulations. Local governments that adopted ordinances still would be answerable to the DNR. In addition, the DNR annually would review zoning ordinances for compliance and could withdraw approval if the department felt that an ordinance was not stringent enough to protect the critical dune areas.

Rebuttal: The legislation specifies in several provisions that the department is to "work with local governments" in order to ensure compliance. In addition, some oversight is needed to maintain consistency between the ordinances of local governments, and it is logical for the department to have this responsibility.