



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## **CRITICAL DUNE PROTECTION**

**AS ENROLLED**

**Senate Bill 934 with House committee  
amendments**

**First Analysis (4-19-94)**

**Sponsor: Sen. Harry Gast**

**Senate Committee: Natural Resources &  
Environmental Affairs**

**House Committee: Conservation,  
Environment & Great Lakes**

### ***THE APPARENT PROBLEM:***

Public Acts 146 and 147 of 1989 instituted numerous procedures for local governments and the Department of Natural Resources to follow in regulating proposed construction activity in areas known as "critical dune areas" which lie along the Lake Michigan coastline. The majestic beauty of the dunes attracts thousands of visitors annually and this of course impacts the environment surrounding them, but the dunes also attract significant interest from industries such as mining and manufacturing that use the sand and other minerals that exist in abundance near them. Perhaps most importantly, though, private landowners living on or near dune areas who want to build new structures or remodel existing ones pose a continual threat to the dunes' stability. The 1989 acts (known as the "critical dune amendments") amended the Sand Dune Protection and Management Act to establish minimum protection standards which are intended to ensure that only limited development occurs within critical dune areas so as to prevent ecological harm to them. The acts require a property owner, before beginning construction in a regulated area, to obtain a use permit from either the municipality with jurisdiction over the area in question or the DNR; this process not only prevents inappropriate development but assures property owners that permit applications will be reviewed relatively quickly. Most people agree the 1989 amendments have worked well to accomplish these goals.

A provision was included in one of the acts requiring a legislative study committee to be formed to review the effectiveness of the critical dune amendments. This committee was formed in 1991 and in the summer of 1993, after extensive public input by concerned citizens, the DNR, municipalities, environmental groups, and those representing landowners, issued a report on its

findings. Among other things, the report cited the need to generate increased input into the permit process by local governments. Since the 1989 amendments were adopted, most municipalities apparently have opted not to take an active role in the permit process out of fear of being sued by private landowners who are aggrieved when permits are denied. Another concern raised involves situations where landowners are denied a permit to build or remodel but then apply for a "special exception" (that is, a variance) from a model zoning plan adopted by the municipality or the DNR for that area. Landowners apply for variances when they believe their proposed construction only slightly digresses from the model zoning plan in a way that would not present a danger to critical dune areas nearby. Even though the act currently allows variances to be applied for, it fails to delineate a process that ensures applications for them are reviewed properly and in a timely manner. Some people suggest amending the act to establish a formal application process for variances, and other amendments—including a provision to delete the June 15, 1995, sunset date established for the 1989 amendments, which would permanently establish this language in the act—have been requested, too.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Sand Dune Protection and Management Act to establish new procedures for the Department of Natural Resources and local governments to follow in determining whether to grant a "special exception" (i.e., a variance) to a local zoning ordinance in regards to proposed construction in a critical dune area. Under the bill, when the DNR received an application for a variance under the model zoning plan it would have to forward a copy of it and other supporting

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information to the local governmental unit that had jurisdiction over the proposed location, which would have 60 days to review the variance. The municipality could waive its opportunity to consider the application at any time within 60 days after receipt of the application and other data by notifying the department in writing. The department, however, could not decide whether to issue a variance until either the municipality had commented on it or had waived its opportunity to review it. If the municipality waived its right for review or failed to act within 60 days of receiving the application, it also would waive its opportunity to oppose a decision by the DNR to issue a variance. And if the municipality opposed the issuance of a variance it would have to notify the department in writing of this within the 60-day notice period.

The department could not issue a variance if a municipality, pursuant to the bill, opposed its issuance. A municipality could also consider whether an "unreasonable hardship" would occur to the owner of the property in question if the variance was not granted by the DNR and could make a recommendation to the department within the 60-day notice period. (The bill specifies that an unreasonable hardship would be treated as unnecessary hardship under the act.) The department would have to base its determination of an unreasonable hardship on information provided by the municipality and other pertinent information.

The bill also would do all of the following:

- \* Within one year of the bill's effective date, require the DNR to appoint a team of qualified ecologists (who could be hired as employees of the department or whose services could be contracted for) to evaluate the accuracy of the designation of critical dune areas in the state. The team also would make recommendations to provide more precise protection of this resource.

- \* Permit a person aggrieved by action of the DNR regarding the issuance or denial of a critical dune area use permit to request a formal hearing. The hearing would have to be conducted by the DNR as a contested case hearing as provided for in the Administrative Procedures Act, and a decision by the department would be subject to judicial review.

- \* Permit a landowner, if a use permit were denied, to request a revaluation of the property (for

property tax assessment purposes) to determine its fair market value under the restriction.

- \* Make it a misdemeanor punishable by a fine of up to \$5,000 per day for each day of violation, to violate the act's provisions on critical dune use procedures or a model zoning plan, or to violate a provision of a permit issued under critical dune use provisions.

In addition, the bill would repeal a June 15, 1995, sunset date that applies to provisions relating to notification of local governments and property owners of critical dune areas, use permits, the model zoning plan, prohibited uses, use permit and inspection fees, restricted uses, variances, environmental assessments, site plan reviews, special use projects, federally and state-owned land, purchase of land in critical dune areas, and appropriations for enforcement.

MCL 281.672 and 281.686

### ***FISCAL IMPLICATIONS:***

The Department of Natural Resources says the bill would have minimal fiscal implications for both the state and its local governments. (4-13-94)

### ***ARGUMENTS:***

#### ***For:***

Provisions added to the Sand Dune Protection and Management Act in 1989, known as the "critical dune amendments," established a regulatory framework for local governments and the Department of Natural Resources to follow in order to protect the fragility of Michigan's magnificent sand dunes lying along the Lake Michigan coastline. Included within these changes is a provision that required a legislative study committee to be formed in 1991 to look into the effectiveness of the 1989 changes a few years after they became law. This committee issued a report in July of 1993 detailing some areas of concern. Though most input from concerned individuals and groups concerning the changes was positive, one issue of concern raised repeatedly involves the lack of input by local governments in the permit process. Most local governments apparently failed to adopt model zoning ordinances soon after the 1989 changes went into effect out of fear they could be held liable for the real or perceived loss of value to properties that would result if they denied permits to build in



critical dune areas. Consequently, the DNR has become the main regulatory authority involved in issuing permits, which probably has deterred numerous applicants aggrieved over decisions from suing, as the state has considerable resources to defend its decisions. Even so, most applications for building permits in critical dune areas have been approved by the DNR and local governments that have adopted model zoning plans.

Some people, however, feel the act fails to provide much of a framework for landowners to apply for and municipalities and/or the DNR to review "special exceptions" or variances from model zoning plans, though it certainly allows property owners to apply for them. What's needed, some say, is a specific process detailing the responsibilities of a municipality, the DNR, or both to either grant or deny a variance once one has been applied for. Establishing a formal procedure for reviewing an application for variances would both protect the interests of property owners and prod local governments to become more active in having a say over these decisions. Under the bill, however, the DNR would ultimately decide whether to grant a variance but could not do so if a municipality was opposed to it. In addition, a municipality could determine whether not granting a variance would impose an "unreasonable hardship" on the property owner and recommend to the DNR what its decision should be; the DNR would have to decide a case based on information provided by the municipality. Thus, the bill would ensure that decisions for or against issuing variances were based to some extent on the economic impact to the property owner. And finally, the bill would clarify a landowner's right to request a formal hearing if he or she were aggrieved by a decision, and also would allow a landowner who was denied a building permit to request a revaluation of property to determine its fair market value.

#### ***For:***

The bill would permanently establish the critical dune amendments (Public Acts 146 and 147 of 1989) by repealing the June 15, 1995, sunset that applies to these provisions. It is generally agreed these acts amending the Sand Dune Protection and Management Act have worked well both to protect the environment surrounding the dunes as well as the rights of those owning land on or near the protected dune areas.

#### ***For:***

The bill would require a special team of qualified ecologists to study the atlas designating the critical dune areas to determine if it accurately reflects all the areas needing protection. Apparently, the effects of weather and erosion, as well as normal geological movements, may have altered these areas to the extent that the original map of them no longer accurately reflects their boundaries.

#### ***Response:***

The bill fails to say what qualities or characteristics a person would have to have in order to be considered a "qualified ecologist." Thus, the DNR could appoint persons lacking scientific expertise who may be biased toward either expanding or reducing the size of critical dune areas in an attempt to alter the current regulatory framework. The bill should specify qualifications that a person would have to possess to be appointed to the team. In addition, the legislature would be wise to require the appointment of persons to this team who represented the various interest groups involved in protecting or utilizing the dune areas (i.e., the general public, municipalities, property owners, the DNR, environmentalists, and the like).

#### ***POSITIONS:***

The Department of Natural Resources supports the bill. (4-13-94)

The Michigan Townships Association supports the bill. (4-13-94)

The Michigan Environmental Council supports the bill. (4-13-94)

The Sierra Club, Mackinac Chapter, supports the bill. (4-13-94)

The Michigan United Conservation Clubs supports the bill. (4-14-94)

Clean Water Action supports the bill. (4-13-94)

The West Michigan Environmental Action Council supports the bill. (4-14-94)

The Michigan Association of Realtors generally supports the bill. (4-14-94)

The Michigan Association of Home Builders generally supports the bill. (4-14-94)