



SENATE BILL No. 934

November 30, 1993, Introduced by Senators Gast, Ehlers, Koivisto, McManus, Hoffman, Dingell and Pridnia and referred to the Committee on Natural Resources and Environmental Affairs

A bill to amend section 36 of Act No 222 of the Public Acts of 1976, entitled as amended

"Sand dune protection and management act,"

as added by Act No 147 of the Public Acts of 1989, being section 281 686 of the Michigan Compiled Laws to add sections 17a and 23a to repeal certain acts and parts of acts and to repeal certain parts of the act

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 36 of Act No 222 of the Public Acts of
2 1976, as added by Act No 147 of the Public Acts of 1989, being
3 section 281 686 of the Michigan Compiled Laws, is amended and
4 sections 17a and 23a are added to read as follows

5 SEC 17A (1) IF A PERSON IS AGGRIEVED BY ANY ACTION OR
6 INACTION OF THE DEPARTMENT IN REGARD TO THE ISSUANCE OR DENIAL OF
7 A PERMIT UNDER THIS ACT, THE PERSON MAY REQUEST A FORMAL HEARING

1 ON THE MATTER INVOLVED THE HEARING SHALL BE CONDUCTED BY THE
2 DEPARTMENT AS A CONTESTED CASE IN THE MANNER PROVIDED FOR IN THE
3 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO 306 OF THE PUBLIC
4 ACTS OF 1969, BEING SECTIONS 24 201 TO 24 328 OF THE MICHIGAN
5 COMPILED LAWS

6 (2) FOLLOWING THE HEARING PROVIDED FOR UNDER SUBSECTION (1),
7 A DETERMINATION, ACTION, OR INACTION BY THE DEPARTMENT IN REGARD
8 TO THE ISSUANCE OF A PERMIT UNDER THIS ACT IS SUBJECT TO JUDICIAL
9 REVIEW AS PROVIDED IN ACT NO 306 OF THE PUBLIC ACTS OF 1969

10 SEC 23A WITHIN 1 YEAR OF THE EFFECTIVE DATE OF THIS SEC-
11 TION, THE DEPARTMENT SHALL ESTABLISH A TEAM OF QUALIFIED ECOLOGI-
12 STS WHO MAY BE EMPLOYED BY THE DEPARTMENT OR MAY BE PERSONS WITH
13 WHOM THE DEPARTMENT ENTERS INTO CONTRACTS WHO SHALL REVIEW "THE
14 ATLAS OF CRITICAL DUNE AREAS" DATED FEBRUARY 1989 THE REVIEW
15 TEAM SHALL CONDUCT A REVIEW TO EVALUATE THE ACCURACY OF THE DES-
16 IGNATIONS OF CRITICAL DUNE AREAS WITHIN THE ATLAS AND SHALL REC-
17 OMMEND TO THE LEGISLATURE ANY CHANGES TO THE ATLAS OR UNDERLYING
18 CRITERIA REVISIONS TO THE ATLAS THAT WOULD PROVIDE MORE PRECISE
19 PROTECTION TO THE TARGETED RESOURCE

20 Sec 36 (1) A local unit of government may issue variances
21 under a zoning ordinance, or the department may issue special
22 exceptions under the model zoning plan if a local unit of govern-
23 ment does not have an approved zoning ordinance, if an unreason-
24 able hardship will occur to the owner of the property if the
25 variance or special exception is not granted A variance or a
26 special exception shall also be subject to the following
27 limitations

1 (a) A variance shall not be granted from a setback
2 requirement unless the property for which the variance is
3 requested is 1 of the following

4 (1) A nonconforming lot of record that is recorded prior to
5 the effective date of this section and that becomes nonconforming
6 due to the operation of this act or a zoning ordinance

7 (11) A lot legally created after the effective date of this
8 section that later becomes nonconforming due to natural shoreline
9 erosion

10 (111) Property on which the base of the first landward crit-
11 ical dune of at least 20 feet in height, that is not a foredune,
12 is located at least 500 feet inland from the first foredune crest
13 or line of vegetation on the property However, the setback
14 shall be a minimum of 200 feet measured from the foredune crest
15 or line of vegetation /

16 (b) A variance shall not be granted that authorizes con-
17 struction of a dwelling or other permanent building on the first
18 lakeward facing slope of a critical dune area or a foredune
19 However, a variance may be granted if the proposed construction
20 is near the base of the lakeward facing slope of the critical
21 dune on a slope of less than 12% on a nonconforming lot of record
22 that is recorded prior to the effective date of this chapter that
23 has borders that lie entirely on the first lakeward facing slope
24 of the critical dune area that is not a foredune

25 (2) Each local unit of government that has issued a variance
26 for a use other than a special use project during the previous 12
27 months shall file an annual report with the department indicating

1 variances that have been granted by the local unit of government
2 during that period

3 (3) UPON RECEIPT OF AN APPLICATION FOR A SPECIAL EXCEPTION
4 UNDER THE MODEL ZONING PLAN, THE DEPARTMENT SHALL FORWARD A COPY
5 OF THE APPLICATION AND ALL SUPPORTING DOCUMENTATION TO THE LOCAL
6 UNIT OF GOVERNMENT IN WHICH THE PROPOSED USE IS LOCATED THE
7 LOCAL UNIT OF GOVERNMENT SHALL HAVE 90 DAYS TO DETERMINE IF IT
8 BELIEVES THE APPLICATION MEETS THE REQUIREMENTS OF THIS SECTION
9 IF THE LOCAL UNIT OF GOVERNMENT RECOMMENDS THAT THE APPLICATION
10 BE DENIED OR DOES NOT RESPOND WITHIN 90 DAYS, THE DEPARTMENT MAY
11 DENY THE APPLICATION FOR THE SPECIAL EXCEPTION BASED SOLELY ON
12 THE ACTION OR INACTION OF THE LOCAL UNIT OF GOVERNMENT

13 (4) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (3), THE
14 DEPARTMENT SHALL NOT ISSUE A SPECIAL EXCEPTION UNDER THE MODEL
15 ZONING PLAN UNLESS THE DEPARTMENT SUBMITS TO THE ZONING BOARD OF
16 THE LOCAL UNIT OF GOVERNMENT IN WHICH THE PROPOSED USE IS LOCATED
17 FOR A REVIEW AND COMMENT PERIOD OF 30 DAYS A COPY OF THE PROPOSED
18 SPECIAL EXCEPTION AND ANY DOCUMENTATION USED BY THE DEPARTMENT IN
19 EVALUATING THE APPLICATION FOR THE SPECIAL EXCEPTION IF THE
20 ZONING BOARD FOR THE LOCAL UNIT OF GOVERNMENT IS NOT IN AGREEMENT
21 WITH ISSUANCE OF THE PROPOSED SPECIAL EXCEPTION, THE ZONING BOARD
22 SHALL NOTIFY THE DEPARTMENT OF ITS OPPOSITION WITHIN THE 30-DAY
23 NOTICE PERIOD IF A ZONING BOARD FILES A NOTICE OF OPPOSITION,
24 THE DEPARTMENT SHALL NOT ISSUE A SPECIAL EXCEPTION UNTIL THE
25 NOTICE OF OPPOSITION IS WITHDRAWN

26 Section 2 The following enacting sections are repealed

1 (a) Enacting section 3 of Act No 146 of the Public Acts of
2 1989

3 (b) Enacting section 3 of Act No 147 of the Public Acts of
4 1989

5 Section 3 Section 23 of Act No 222 of the Public Acts of
6 1976, being section 281 673 of the Michigan Compiled Laws, is
7 repealed