



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 646 (as enrolled)

**PUBLIC ACT 262 of 1995**

Sponsor: Senator Harry Gast

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Conservation, Environment and Great Lakes

Date Completed: 5-6-96

**CONTENT**

The bill amended provisions of the Natural Resources and Environmental Protection Act concerning sand dune zoning laws, to replace references to “unreasonable hardship” with references to “practical difficulty” as a criterion for granting a variance; define slopes of dunes in terms of vertical rises in horizontal planes, rather than as percentages; define “department” as the Department of Environmental Quality (DEQ); require procedures for monitoring the restoration of a critical dune area; and require the DEQ, within 60 days of the bill’s effective date, to develop guidelines to describe the method by which it and local governments measure slopes to implement the zoning ordinance or the model zoning plan.

The bill provides that a local government may issue variances under a zoning ordinance that regulates the use of sand dunes and critical dune areas, or the Department may issue special exceptions under the model zoning plan if a local unit does not have an approved zoning ordinance, if a property owner will experience a “practical difficulty” if the variance or special exception is not granted. The Act previously had allowed variances or special exceptions if a property owner would experience an “unreasonable hardship”. The bill also deleted a requirement that “unreasonable hardship” be treated as unnecessary hardship. As the Act had provided concerning an unreasonable hardship, the bill provides that, in determining whether a practical difficulty will occur, primary consideration must be given to assuring that human health and safety are protected and that the determination complies with applicable local zoning, other State laws, and Federal law.

The Act specifies that unless a variance is granted, a zoning ordinance may not permit certain uses in a critical dune area. Previously, these uses included a structure on a slope within a critical dune area that was 18% to 25%, unless the structure met certain other requirements. The Act also prohibited a use on a slope within a critical dune area that was greater than 25%. The bill provides, instead, that prohibited uses (absent a variance) include a structure and access to the structure on a slope that measures from a one-foot vertical rise in a four-foot horizontal plane to less than a one-foot vertical rise in a three-foot horizontal plane, unless the structure and access to it meet the Act’s criteria (i.e., the structure is in accordance with plans prepared for the site by a registered professional architect or a licensed professional engineer, and the plans provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water). Prohibited uses under the bill also include a use on a slope within a critical dune area that has a slope steeper than a one-foot vertical rise in a three-foot horizontal plane.

The Act provides that a use that is a structure must be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. If construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, however, the applicant for a variance must demonstrate that the proposed use meets certain requirements. Among other things, the contour changes and vegetative removal must be limited to that essential to siting the structure. Under the bill, the contour changes and vegetative removal also must be essential to access to the structure.

The Act also prohibits the granting of a variance that authorizes construction of a permanent dwelling on the first lakeward facing slope of a critical dune area or foredune, unless the construction is near the base of the lakeward facing slope on a slope of less than a certain size on a nonconforming lot of record that was recorded before July 5, 1989, whose borders lie entirely on the first lakeward facing slope of the critical dune area that is not a foredune. The bill amended this provision to refer to a slope of less than one-foot vertical rise in an eight-foot horizontal plane, instead of a slope of less than 12%.

The bill redefined “crest” as the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than “1-foot vertical rise in a 5-1/2-foot horizontal plane” for a distance of at least 20 feet, if the areal extent where this break occurs is larger than one-tenth acre. The previous definition had referred to a slope of less than 18%.

Under the bill, if a person is ordered by the DEQ, or by a local unit of government that is enforcing a zoning ordinance authorized under the Act, to restore a critical dune area that has been degraded by that person, the Department or local unit must establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

MCL 324.35301 et al.

Legislative Analyst: S. Margules

### **FISCAL IMPACT**

The bill will have no direct fiscal impact on State or local government.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.