

RESTRICT SAND DUNE MINING

House Bill 4795

Sponsor: Rep. Julie Dennis

Committee: Conservation and Outdoor
Recreation

Complete to 8-27-01

A SUMMARY OF HOUSE BILL 4795 AS INTRODUCED 5-17-01

House Bill 4795 would amend parts 353 (MCL 324.35301 et al.) and 637 (MCL 324.63701 et al.) of the Natural Resources and Environmental Protection Act (NREPA), concerning sand dune protection and management and sand dune mining, respectively, to prohibit sand dune mining after January 1, 2006, and to restrict sand dune mining operations until that date; to delete exceptions to the current ban on mining in *all* sand dune areas, including critical dunes; to establish a sand dune protection fund; to replace the surveillance fees currently imposed under the act with administration fees; and to update the current definition of "critical dune area."

Critical Dune Areas. Currently, under Part 353 of the act, "critical dune area" is defined to mean a geographic area designated in the *'Atlas of Critical Dune Areas,'* prepared by the Department of Environmental Quality (DEQ) (February, 1989). The bill would extend the definition to refer, instead, to a modification of the *Atlas* by the document entitled "*Evaluation of Critical Dune Areas designated under Part 353 (sand dune protection and management) of the act as: Final Report*" by the Center for Remote Sensing, Michigan State University, East Lansing, Michigan (June 1996).

Under the act, the removal of sand that is not defined as "sand dune mining" within a critical dune area is subject to the critical dune protection provisions of Part 353 of the act. Under Part 637 of the act, the DEQ is prohibited from issuing sand dune mining permits within critical dune areas. Exceptions to the prohibition are provided in a situation where a mine operator seeks to renew or amend a permit that was issued before July 5, 1989 (the date, established under Public Act 135 of 1994, by which local units of government could issue permits for land uses in critical dune areas), or in a situation where an operator wants to have an existing sand dune mining permit amended to include adjacent land. The bill would amend the act to delete these exceptions.

Prohibition on Sand Dune Mining. "Sand dune mining" is defined, under Part 637 of the act, to mean the removal of sand from sand dune areas for commercial or industrial purposes, or both. Currently, the act specifies that a permit is required for sand dune mining within Great Lakes sand dune areas. The bill would specify, instead, that a permit would be required until December 31, 2005. After that date, sand dune mining within Great Lakes sand dune areas would be prohibited. In addition, the bill would add that, notwithstanding any other provision of Part 637, a sand dune mining permit would expire if mining had not occurred during a one-year period, and reclamation activities would be prohibited.

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Under the act, the removal of sand from sand dune areas in volumes of less than 3,000 tons is not considered sand dune mining if it is a one-time occurrence and the sand is not removed for an industrial or commercial purpose. The bill would delete this provision. The act also specifies that the DEQ may authorize the removal – for more than one occurrence – of more than 3,000 tons of sand without a sand dune mining permit if the purpose is related to protecting an occupied structure from property damage related to the migration or the instability of sand. The bill would amend the act to delete the 3,000-ton threshold from this provision.

Denial of Permit. Currently, the act specifies that the department must deny a sand dune mining permit if the proposed activity is likely to pollute. Under the bill, a permit could also be denied if the proposed mining activity wasn't compatible with adjacent existing land uses; or if the proposed mining activity would adversely affect any of the following;

- Flora, fauna, or wildlife habitats;
- Groundwater supply, level, quality, and flow within 1,000 feet of the proposed mining activity;
- Adjacent surface resources;
- Air quality within 1,000 feet of the proposed mining activity;
- The proposed mining activity would be located within any of the following: 1,000 feet of a resident; 2,000 feet of a school; or five hundred feet of a commercial development.

Sand Dune Protection Fund. The bill would establish a sand dune protection fund within the state treasury. Money or other assets could be received from any source for deposit into the fund. Interest and earnings from fund investments would also be credited to the fund. Money in the fund at the close of the fiscal year would remain there and would not lapse to the general fund. The bill would require that money from the fund could only be appropriated for one or more of the following purposes:

- Not less than 20 percent for more surveillance, monitoring, administration, and enforcement of the provisions of Part 637 of the act.
- Not less than 80 percent for acquisition of land containing critical dune areas. Lands acquired under this provision would be held in public ownership for the protection of the critical dune areas.

Administrative Fee. Currently, under the act, an operator is assessed a surveillance fee of not more than 10 cents per ton of sand mined from a sand dune area for the reported calendar year. The bill would delete this provision. Instead, the bill would require that the DEQ assess each operator with an administrative fee of \$5 per ton of sand mined from a sand dune area for the reported calendar year. Funds collected under this provision would be subject to the same

provisions as surveillance fees, except that they would be deposited by the state treasurer in the proposed Sand Dune Protection Fund. In addition, the bill would specify that, in addition to complying with DEQ rules, the annual report required under the act would have to comply with the provisions of the act

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.