

House Bill 4134

Sponsor: Rep. Julie Dennis

Committee: Great Lakes and Tourism

Complete to 2-24-03

A SUMMARY OF HOUSE BILL 4134 AS INTRODUCED 2-4-03

The bill would amend sections of the Natural Resources and Environmental Protection Act (NREPA) dealing with sand dune protection and sand dune mining to do the following:

- Prohibit sand dune mining after January 1, 2006 within Great Lakes sand dune areas, and prohibit the Department of Environmental Quality (DEQ) from issuing a sand dune mining permit within a “critical dune area”[presumably as of the effective date of the bill];
- Add to the circumstances in which the DEQ would be required to deny a sand dune mining permit;
- Establish a new sand dune protection fund whose revenue would be earmarked at least 20 percent for increased surveillance, monitoring, administration, and enforcement of sand dune mining provisions of NREPA, and at least 80 percent for the acquisition of land containing critical dune areas to be held in public ownership;
- Replace the 10 cents per ton surveillance fee currently imposed on sand dune mining with a \$5 per ton administration fee, and send the revenue from the fee to the newly created sand dune protection fund; and
- 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 DEQ and dated 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 [NREPA]: Final Report*” by the Center for Remote Sensing, Michigan State University, East Lansing, Michigan (June 1996).

Under Part 637 of the act, the DEQ is prohibited from issuing sand dune mining permits within critical dune areas. Exceptions to the prohibition on mining 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 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 a sand dune mining permit would expire if mining had not occurred during a one-year period, and a landowner or operator would have to begin reclamation activities upon expiration of the permit.

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 retain this provision but delete the 3,000-ton threshold.

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, impair, or destroy the air, water, or other natural resource or the public trust in those resources. 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 500 feet of a commercial development.

Sand Dune Protection Fund. The bill would establish a sand dune protection fund within the state treasury. In addition to the deposit of administrative fees, 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. The new administrative fee collected under this provision would be subject to the same provisions as the current surveillance fee, except that the revenue would be deposited by the state treasurer in the proposed sand dune protection fund.

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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.