

HOUSE BILL No. 4134

February 4, 2003, Introduced by Reps. Dennis, Sak, Vagnozzi, Reeves, Woodward, Meisner, Gielegem, O'Neil, Minore, Kolb, Gillard, Bieda and Law and referred to the Committee on Great Lakes and Tourism.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 35301, 63701, 63702, 63704, 63708, 63709,
and 63711 (MCL 324.35301, 324.63701, 324.63702, 324.63704,
324.63708, 324.63709, and 324.63711), section 35301 as amended by
1995 PA 262 and sections 63701, 63702, 63704, 63708, 63709, and
63711 as added by 1995 PA 57.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35301. As used in this part:

2 (a) "Contour change" includes any grading, filling, digging,
3 or excavating that significantly alters the physical
4 characteristic of a critical dune area, except that which is
5 involved in sand dune mining as defined in part 637.

6 (b) "Crest" means the line at which the first lakeward facing
7 slope of a critical dune ridge breaks to a slope of less than

1 1-foot vertical rise in a 5-1/2-foot horizontal plane for a
2 distance of at least 20 feet, if the areal extent where this
3 break occurs is greater than 1/10 acre in size.

4 (c) "Critical dune area" means a geographic area designated
5 in the "atlas of critical dune areas" dated February 1989, ~~that~~
6 **which** was prepared by the department, **as modified by the document**
7 **entitled "Evaluation of Critical Dune Areas Designated Under**
8 **Part 353 (Sand Dune Protection and Management) of the Natural**
9 **Resources and Environmental Protection Act 1994 PA 451: Final**
10 **Report" by the center for remote sensing, Michigan state**
11 **university, East Lansing, Michigan (June 1996).**

12 (d) "Department" means the department of environmental
13 quality.

14 (e) "Foredune" means 1 or more low linear dune ridges that
15 are parallel and adjacent to the shoreline of a Great Lake and
16 are rarely greater than 20 feet in height. The lakeward face of
17 a foredune is often gently sloping and may be vegetated with dune
18 grasses and low shrub vegetation or may have an exposed sand
19 face.

20 (f) "Model zoning plan" means the model zoning plan provided
21 for in sections 35312 to 35324.

22 (g) "Planning commission" means the body or entity within a
23 local government that is responsible for zoning and land use
24 planning for the local unit of government.

25 (h) "Restabilization" means restoration of the natural
26 contours of a critical dune to the extent practicable, and the
27 restoration of the protective vegetative cover of a critical dune

1 through the establishment of indigenous vegetation, and the
2 placement of snow fencing or other temporary sand trapping
3 measures for the purpose of preventing erosion, drifting, and
4 slumping of sand.

5 (i) "Special use project" means any of the following:

6 (i) A proposed use in a critical dune area for an industrial
7 or commercial purpose regardless of the size of the site.

8 (ii) A multifamily use of more than 3 acres.

9 (iii) A multifamily use of 3 acres or less if the density of
10 use is greater than 4 individual residences per acre.

11 (iv) A proposed use in a critical dune area, regardless of
12 size of the use, that the planning commission, or the department
13 if a local unit of government does not have an approved zoning
14 ordinance, determines would damage or destroy features of
15 archaeological or historical significance.

16 (j) "Use" means a developmental, silvicultural, or
17 recreational activity done or caused to be done by a person that
18 significantly alters the physical characteristic of a critical
19 dune area or a contour change done or caused to be done by a
20 person. Use does not include sand dune mining as defined in part
21 637.

22 (k) "Zoning ordinance" means an ordinance of a local unit of
23 government that regulates the development of critical dune areas
24 within the local unit of government pursuant to the requirements
25 of this part.

26 Sec. 63701. As used in this part:

27 (a) "Active cell-unit" means a cell-unit set forth in the

1 approved progressive cell-unit mining and reclamation plan
2 provided for in section 63706(1), in which vegetation and topsoil
3 have been removed in preparation for sand dune mining or sand
4 removal has been initiated after the date of issuance of the sand
5 dune mining permit. Vegetation removal does not preclude the
6 removal of marketable forest products from a cell-unit, if the
7 removal maintains the ground cover and topsoil within the
8 cell-unit in stable condition.

9 (b) "Administratively complete" means an application for a
10 sand dune mining permit that is determined by the department to
11 satisfy all of the conditions of this part and rules promulgated
12 under this part.

13 (c) "Barrier dune" means the first landward sand dune
14 formation along the shoreline of a Great Lake or a sand dune
15 formation designated by the department.

16 (d) "Beneficiation" means to process sand for any of the
17 following purposes, but does not include the drying process:

18 (i) Regulating the grain size of the desired product.

19 (ii) Removing unwanted constituents.

20 (iii) Improving the quality and purity of the desired
21 product.

22 (e) "Cell-unit" means a subunit of the total sand dune mining
23 project as determined in size and location by the operator. A
24 cell-unit shall not exceed 10 acres in size for sand dune mining
25 operations that commence operation after March 31, 1977 or for
26 the expansion of sand dune mining operations that existed before
27 March 31, 1977. A cell-unit shall not exceed 30 acres in size

1 for operations that existed before March 31, 1977.

2 (f) "Conformance bond" means a surety bond that is executed
3 by a surety company authorized to do business in this state,
4 cash, certificates of deposit, letters of credit, or other
5 securities that are filed by an operator to ensure compliance
6 with this part, rules promulgated under this part, or conditions
7 of a sand dune mining permit.

8 (g) "Environmental elements" means the biological, physical,
9 and chemical characteristics of the environment, including but
10 not limited to the following:

11 (i) Watersheds.

12 (ii) Water bodies.

13 (iii) Forests.

14 (iv) Existing areas maintained for public recreation.

15 (v) Shorelands.

16 (vi) Habitat areas.

17 (h) "Great Lakes" means any of the Great Lakes that have a
18 shoreline within this state.

19 (i) "Interim cell-unit status" means a cell-unit as set forth
20 in an approved progressive cell-unit mining and reclamation plan
21 provided for in section 63706(1), in which all sand dune mining
22 and reclamation within the cell-unit has been completed, but the
23 vegetation has not sustained itself through 1 full growing
24 season. A cell-unit placed in interim cell-unit status is
25 required to retain the conformance bond provided in section 63712
26 until reclassification by the department as provided in section
27 63712(5). Each sand dune mining activity shall be limited to no

1 more than 3 cell-units in interim cell-unit status at any 1
2 time.

3 (j) "Operator" means an owner or lessee of mineral rights or
4 any other person engaged in or preparing to engage in sand dune
5 mining activities with respect to mineral rights within a sand
6 dune area.

7 (k) "Sand dune area" means that area designated by the
8 department that includes those geomorphic features composed
9 primarily of sand, whether windblown or of other origin and that
10 lies within 2 miles of the ordinary high-water mark on a Great
11 Lake as defined in section 32502, and includes critical dune
12 areas as defined in part 353.

13 (l) "Sand dune mining" means the removal of sand from sand
14 dune areas for commercial or industrial purposes, or both. ~~The~~
15 ~~removal of sand from sand dune areas in volumes of less than~~
16 ~~3,000 tons is not sand dune mining if the removal is a 1-time~~
17 ~~occurrence and the reason the sand is removed is not for the~~
18 ~~direct use for an industrial or commercial purpose.~~ However, the
19 removal of any volume of sand that is not sand dune mining within
20 a critical dune area as defined in part 353 is subject to the
21 critical dune protection provisions of part 353. The department
22 may authorize in writing the removal of ~~more than 3,000 tons of~~
23 sand without a sand dune mining permit issued pursuant to section
24 63704 for a purpose related to protecting an occupied dwelling or
25 other structure from property damage related to the migration of
26 sand or the instability of sand. This removal may be for more
27 than 1 occurrence, but a written authorization from the

1 department is required for each removal.

2 (m) "Water table" means the surface in an unconfined aquifer
3 at which the pressure is atmospheric. The water table is found
4 at the level at which water stands in wells that penetrate the
5 aquifer.

6 Sec. 63702. ~~-(1)-~~ Notwithstanding any other provision of
7 this part, the department shall not issue a sand dune mining
8 permit within a critical dune area as defined in part 353. ~~-after~~
9 ~~July 5, 1989, except under either of the following~~
10 ~~circumstances:-~~

11 ~~—— (a) The operator seeks to renew or amend a sand dune mining~~
12 ~~permit that was issued prior to July 5, 1989, subject to the~~
13 ~~criteria and standards applicable to a renewal or amendatory~~
14 ~~application.~~

15 ~~—— (b) The operator holds a sand dune mining permit issued~~
16 ~~pursuant to section 63704 and is seeking to amend the mining~~
17 ~~permit to include land that is adjacent to property the operator~~
18 ~~is permitted to mine, and prior to July 5, 1989 the operator~~
19 ~~owned the land or owned rights to mine dune sand in the land for~~
20 ~~which the operator seeks an amended permit.~~

21 ~~—— (2) As used in this section, "adjacent" means land that is~~
22 ~~contiguous with the land for which the operator holds a sand dune~~
23 ~~mining permit issued pursuant to section 63704, provided no land~~
24 ~~or space, including a highway or road right of way, exists~~
25 ~~between the property on which sand dune mining is authorized and~~
26 ~~the adjacent land.~~

27 Sec. 63704. (1) ~~-After July 1, 1977-~~ **Until December 31,**

1 2005, a person ~~or operator~~ shall not engage in sand dune mining
2 within Great Lakes sand dune areas without first obtaining a
3 permit for that purpose from the department. **On and after**
4 **January 1, 2006, a person shall not engage in sand dune mining**
5 **within Great Lakes sand dune areas.**

6 (2) Prior to receiving a permit from the department, a person
7 ~~or operator~~ shall submit all of the following:

8 (a) A permit application on a form provided by the
9 department.

10 (b) An environmental impact statement of the proposed mining
11 activity as prescribed by section 63705.

12 (c) A progressive cell-unit mining and reclamation plan for
13 the proposed mining activity as prescribed by section 63706.

14 (d) A 15-year mining plan as prescribed by section 63707.

15 Sec. 63708. (1) ~~A~~ **Except as provided in subsection (6), a**
16 sand dune mining permit issued by the department is valid for not
17 more than 5 years. A sand dune mining permit shall be renewed if
18 the sand dune mining activities have been carried out in
19 compliance with this part, the rules promulgated under this part,
20 and the conditions of the sand dune mining permit issued by the
21 department.

22 (2) The sand dune mining permit shall state any conditions,
23 limitations, or other restrictions determined by the department,
24 including any setback from the ordinary high-water mark of a
25 Great Lake for the protection of the barrier dune.

26 (3) In granting a sand dune mining permit, if the department
27 allows for the removal of all or a portion of the barrier dune

1 pursuant to this part, it shall submit to the commission written
2 reasons for permitting the removal.

3 (4) The department shall approve or deny a sand dune mining
4 permit application in writing within 120 days after the
5 application is received and is determined by the department to be
6 administratively complete. If a sand dune mining permit is
7 denied, the reasons shall be stated in a written report.

8 (5) The department shall provide a list of all pending sand
9 dune mining applications upon a request from a person. The list
10 shall give the name and address of each applicant, the legal
11 description of the lands included in the project, and a summary
12 statement of the purpose of the application.

13 **(6) Notwithstanding any other provision of this part, a sand**
14 **dune mining permit expires if sand dune mining has not occurred**
15 **during a 1-year period. Upon expiration of a sand dune mining**
16 **permit under this subsection, the landowner or operator shall**
17 **begin reclamation activities as provided in this part.**

18 Sec. 63709. The department shall deny a sand dune mining
19 permit if, upon review of the environmental impact statement, it
20 determines ~~that~~ **any of the following:**

21 **(a) That** the proposed sand dune mining activity is likely to
22 pollute, impair, or destroy the air, water, or other natural
23 resources or the public trust in those resources, as provided by
24 part 17.

25 **(b) That the proposed sand dune mining activity is not**
26 **compatible with adjacent existing land uses.**

27 **(c) That the proposed sand dune mining activity will**

1 adversely affect any of the following:

2 (i) Flora, fauna, or wildlife habitats.

3 (ii) Groundwater supply, level, quality, and flow within
4 1,000 feet of the proposed sand dune mining activity.

5 (iii) Adjacent surface resources.

6 (iv) Air quality within 1,000 feet of the proposed sand dune
7 mining activity.

8 (d) That the proposed sand dune mining activity will be
9 located within any of the following:

10 (i) One thousand feet of a residence.

11 (ii) Two thousand feet of a school.

12 (iii) Five hundred feet of a commercial development.

13 Sec. 63711. (1) ~~For purposes of surveillance, monitoring,~~
14 ~~administration, and enforcement of this part, an operator is~~
15 ~~assessed a fee of not more than 10 cents~~ **The department shall**
16 **assess each operator an administrative fee of \$5.00** per ton of
17 sand mined from a sand dune area for the calendar year reported
18 as described in subsection (2). ~~Funds collected by the~~
19 ~~assessment of the fee shall not exceed the actual costs to the~~
20 ~~department of implementing the sections of this part that pertain~~
21 ~~to sand dune mining. Any fees collected under this subsection~~
22 ~~that are unexpended at the end of a fiscal year shall be credited~~
23 ~~to a separate fund of the department, carried over to the~~
24 ~~succeeding fiscal year, and deducted from the amount appropriated~~
25 ~~for that year for surveillance, monitoring, administration, and~~
26 ~~enforcement of this part for purposes of computing the fee to be~~
27 ~~assessed for that year.~~ **Administrative fees collected under this**

1 section shall be forwarded to the state treasurer for deposit
2 into the sand dune protection fund created in subsection (8).

3 (2) An operator shall file an annual report on or before
4 January 31 of each year. The report shall show the areas mined
5 and describe the progress of restoration and reclamation
6 activities of the operator for the preceding calendar year. The
7 report shall contain both of the following:

8 (a) The number of tons of sand mined from a sand dune area.

9 (b) ~~Location~~ **The location** of the sand dune area.

10 (3) The **administrative** fee ~~described in~~ **assessed under**
11 subsection (1) ~~shall be~~ **is** due not more than 30 days after the
12 department sends written notice to the operator of the amount
13 due.

14 (4) The ~~surveillance~~ **administrative** fee and annual report
15 required by this section is confidential and shall not be
16 available for public inspection without the written consent of
17 the person filing the fee and report, except in accordance with
18 judicial order.

19 (5) Failure to submit an annual report in compliance with
20 **this section and any** rules promulgated by the department
21 constitutes grounds for revocation of a permit.

22 (6) A penalty equal to 10% of the amount due, or \$1,000.00,
23 whichever is greater, shall be assessed against the operator for
24 ~~a~~ **an administrative** fee that is not paid when due. An unpaid
25 **administrative** fee and penalty ~~shall~~ constitute a debt and
26 become the basis of a judgment against the operator. Penalties
27 ~~paid pursuant to~~ **recovered under** this section shall be ~~used~~

1 ~~for the implementation, administration, and enforcement of this~~
2 ~~part~~ forwarded to the state treasurer for deposit into the sand
3 dune protection fund created in subsection (8).

4 (7) Records upon which the annual report is based shall be
5 preserved for 3 years and are subject to audit by the
6 department.

7 (8) The sand dune protection fund is created within the state
8 treasury. The state treasurer may receive money or other assets
9 from any source for deposit into the sand dune protection fund.
10 The state treasurer shall direct the investment of the sand dune
11 protection fund. The state treasurer shall credit to the sand
12 dune protection fund interest and earnings from sand dune
13 protection fund investments. Money in the sand dune protection
14 fund at the close of the fiscal year shall remain in the sand
15 dune protection fund and shall not lapse to the general fund.
16 The department shall expend money from the sand dune protection
17 fund, upon appropriation, only for 1 or more of the following
18 purposes:

19 (a) Not less than 20% for more surveillance, monitoring,
20 administration, and enforcement of this part.

21 (b) Not less than 80% for acquisition of land containing
22 critical dune areas. Land acquired under this subdivision shall
23 be held in public ownership for the protection of the critical
24 dune areas.

25 (9) ~~-(8)-~~ The department shall annually prepare and submit to
26 the house of representatives and senate standing committees with
27 jurisdiction over subject areas related to natural resources and

- 1 the environment a report on the sand mining surveillance
- 2 activities undertaken by the department for the immediately
- 3 preceding year and the cost of those activities.