

SENATE BILL No. 721

December 12, 2017, Introduced by Senator BOOHER and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 35317 (MCL 324.35317), as amended by 2012 PA
297.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35317. (1) A local unit of government may issue variances
2 under a zoning ordinance, or the department may issue special
3 exceptions under the model zoning plan if a local unit of
4 government does not have an approved zoning ordinance, if a
5 practical difficulty will occur to the owner of the property if the
6 variance or special exception is not granted. In determining
7 whether a practical difficulty will occur if a variance or special
8 exception is not granted, primary consideration shall be given to

1 ~~assuring~~ **ENSURING** that human health and safety are protected by the
2 determination and that the determination complies with applicable
3 local zoning, other state laws, and federal law. If a practical
4 difficulty will occur to the owner of the property if the variance
5 or special exception is not granted, a variance or special
6 exception shall be granted under this section unless the local unit
7 of government or the department determines that the use will
8 significantly damage the public interest on the privately owned
9 land, or, if the land is publicly owned, the public interest in the
10 publicly owned land, by significant and unreasonable depletion or
11 degradation of any of the following:

12 (a) The diversity of the critical dune areas within the local
13 unit of government.

14 (b) The quality of the critical dune areas within the local
15 unit of government.

16 (c) The functions of the critical dune areas within the local
17 unit of government.

18 (2) The decision of the local unit of government or the
19 department shall be in writing and shall be based upon evidence
20 that would meet the standards in section 75 of the administrative
21 procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying
22 a variance or special exception shall document, and any review
23 upholding the decision shall determine, all of the following:

24 (a) That the local unit of government or the department has
25 met the burden of proof under subsection (1).

26 (b) That the decision is based upon sufficient facts or data.

27 (c) That the decision is the product of reliable scientific

1 principles and methods.

2 (d) That the decision has applied the principles and methods
3 reliably to the facts.

4 (e) That the facts or data upon which the decision is based
5 are recorded in the file.

6 (3) A local unit of government or the department shall not
7 require an environmental site assessment or environmental impact
8 statement for a variance except for a special use project.

9 (4) A variance shall not be granted from a setback requirement
10 provided for under the model zoning plan or an equivalent zoning
11 ordinance approved under section ~~35034~~ **35304** enacted pursuant to
12 this part unless the property for which the variance is requested
13 is 1 of the following:

14 (a) A nonconforming lot of record that is recorded prior to
15 July 5, 1989, and that becomes nonconforming due to the operation
16 of this part or a zoning ordinance.

17 (b) A lot legally created after July 5, 1989 that later
18 becomes nonconforming due to natural shoreline erosion.

19 (c) Property on which the base of the first landward critical
20 dune of at least 20 feet in height that is not a foredune is
21 located at least 500 feet inland from the first foredune crest or
22 line of vegetation on the property. However, the setback shall be a
23 minimum of 200 feet measured from the foredune crest or line of
24 vegetation.

25 (5) 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 (6) Upon receipt of an application for a special exception
4 under the model zoning plan, the department shall forward a copy of
5 the application and all supporting documentation to the local unit
6 of government having jurisdiction over the proposed location. The
7 local unit of government shall have 60 days to review and comment
8 on the proposed special exception. The department shall not make a
9 decision on a special exception under the model zoning plan until
10 either the local unit of government has commented on the proposed
11 special exception or has waived its opportunity to review the
12 special exception. The local unit of government may waive its
13 opportunity to review the application at any time within 60 days
14 after receipt of the application and supporting documentation by
15 notifying the department in writing. The local unit of government
16 also waives its opportunity to review the application if it fails
17 to act as authorized in this subsection within 60 days. If the
18 local unit of government waives its opportunity to review the
19 application, the local unit of government also waives its
20 opportunity to oppose the decision by the department to issue a
21 special exception. If the local unit of government opposes the
22 issuance of the special exception, the local unit of government
23 shall notify the department, in writing, of its opposition within
24 the 60-day notice period. If the local unit of government opposes
25 the issuance of the special exception, the department shall not
26 issue a special exception. The local unit of government may also
27 consider whether a practical difficulty will occur to the owner of

1 the property if the special exception is not granted by the
2 department and may make a recommendation to the department within
3 the 60-day notice period. The department shall base its
4 determination of whether a practical difficulty exists on
5 information provided by the local unit of government and other
6 pertinent information.

7 (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE
8 DEPARTMENT SHALL ISSUE A SPECIAL EXCEPTION UNDER THIS SECTION IF
9 ALL OF THE FOLLOWING CONDITIONS ARE MET:

10 (A) THE APPLICANT IS A LOCAL UNIT OF GOVERNMENT AND THE
11 APPLICATION INVOLVES PUBLIC LAND THAT WAS PUBLIC LAND ON JULY 5,
12 1989.

13 (B) THE PURPOSE OF THE APPLICATION IS TO RESTORE A USE,
14 INCLUDING PUBLIC VIEWING AREAS, THAT WAS LAWFUL AND IN EXISTENCE ON
15 JULY 5, 1989.

16 (C) THE PROPOSED PROJECT FOR WHICH THE SPECIAL EXCEPTION IS
17 SOUGHT BENEFITS THE CITIZENS AND VISITORS OF THAT LOCAL UNIT OF
18 GOVERNMENT AS EVIDENCED BY THE ADOPTION OF A RESOLUTION IN SUPPORT
19 OF THE SPECIAL EXCEPTION BY THE GOVERNING BODY OF THAT LOCAL UNIT
20 OF GOVERNMENT.

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.