

Legislative Analysis



SAND DUNE SPECIAL EXCEPTIONS

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House Bill 4267 as introduced
Sponsor: Rep. Jack O'Malley
Committee: Natural Resources and Outdoor Recreation
Complete to 9-6-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4267 would amend Part 353 (Sand Dunes Protection and Management) of the Natural Resources and Environmental Protection Act (NREPA) to require the Department of Environment, Great Lakes, and Energy (EGLE) to issue a special exception regarding an activity in a critical dune area under certain circumstances.

Currently, a person is prohibited from initiating a *use* in a critical dune area without first getting a permit from the relevant local unit of government or EGLE.

Use is defined as a contour change or a developmental, silvicultural (forestry), or recreational activity that significantly alters a critical dune area physically.

However, a local unit may issue a variance under a zoning ordinance to allow a person to initiate or maintain a use in a critical dune area if not having the variance would cause a *practical difficulty* to the property owner. If the local unit does not have a zoning ordinance, EGLE may issue a special exception under the model zoning plan to such a person.

Senate Bill 721 would require EGLE to issue a special exception, upon application, if all of the following conditions were met:

- The applicant is a local unit of government and the application involves public land that was public land on July 5, 1989.¹
- The purpose of the application is to provide a view of one of the Great Lakes from a parking lot that was lawful and in existence on July 5, 1989.
- The special exception is for a proposed project that would benefit the citizens and visitors of that local unit of government, as evidenced by the adoption of a resolution in support of the special exception.
- The resolution described above demonstrates that the proposed project would meet the criteria contained in section 35302 of NREPA. (Section 35302 is a general statement of legislative intent regarding Part 353 of the act.)

The bill would also slightly revise the criteria used to determine whether a *practical difficulty* will occur to a property owner if a variance or special exception is not granted. Under current law, primary consideration in making such a determination must go to

¹ July 5, 1989 was the effective date of 1989 PA 146, which extensively revised and expanded the sand dune protection and management act (1976 PA 222) that was codified as Part 353 when NREPA was enacted in 1994.

assuring that human health and safety are protected by the determination and assuring that the determination complies with applicable local zoning, state, and federal requirements. The bill would require primary consideration to be given more generally to ensuring the protection of human health and safety and ensuring compliance with applicable local zoning, state, and federal requirements.

The bill would take effect 90 days after its enactment.

MCL 324.35317

BACKGROUND:

House Bill 4267 is substantially similar to last session's Senate Bill 721,² which was enrolled (passed in identical form by both houses of the legislature) but then vetoed by the governor. In his veto message, then-Governor Snyder wrote:

Critical, vegetated dunes are important [to] Michigan's shorelines and play an integral part of the dune ecosystem. They provide stability to the dune systems and protect parks, their users, and nearby residents from wind and blowing sand.

Allowing large-scale contour changes, as proposed by Senate Bill 721, is not protective of the dune ecosystem. Further, it would provide opportunities to degrade, erode and destabilize critical dunes, precisely what this statute was originally enacted to protect.

FISCAL IMPACT:

It is unclear whether Senate Bill 721 would affect costs for EGLE. The bill would require the department to issue a special zoning exception under specific circumstances. EGLE already has the capacity to issue special exceptions and the number of special exception applicants who would qualify under the bill is unclear. Consequently, the extent of a potential cost increase due to additional applicants is unclear. The bill is unlikely to affect costs or revenues for local units of government.

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

² More information on last session's bill can be found here: <http://legislature.mi.gov/doc.aspx?2017-SB-0721>.