



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 105 (as introduced 10-14-19)
Sponsor: Senator Curtis S. VanderWall
Committee: Natural Resources

Date Completed: 10-15-19

CONTENT

The bill would amend Part 353 (Sand Dunes Protection and Management) of the Natural Resources and Environmental Protection Act to require the Department of Environment, Great Lakes, and Energy (EGLE) to issue a special exception to the model zoning plan if certain conditions were met.

Under Part 353, a local unit of government that has one or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the Michigan Zoning Enabling Act. The zoning ordinance must consist of provisions contained in the model zoning plan described in Part 353 or comparable provisions that similarly protect critical dune areas.

A person may not initiate a use within a critical dune area unless the person obtains a permit from the local unit of government in which the critical dune area is located or from EGLE, if the Department is implementing the model zoning plan in situations where the local unit of government does not elect to issue permits or does not receive EGLE's approval of a zoning ordinance. ("Use" means a developmental, silvicultural (i.e., the cultivation of trees or forests), or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include the removal of sand from sand dune areas for commercial or industrial purposes.)

A local unit also may issue variances under a zoning ordinance, and EGLE may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if a practical difficulty will occur to the owner of the property if the variance or special exception is not granted. To determine whether a practical difficulty will occur if a variance or special exception is not granted, primary consideration must be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other State laws, and Federal law. Under the bill, primary consideration would have to be given to ensuring both of the following: a) the protection of human health and safety, and b) compliance with applicable local zoning, other State laws, and Federal law.

If a practical difficulty will occur to the property owner if the variance or special exception is not granted, the variance or exception must be granted unless the local unit of government or the Department determines that the use will significantly damage the public interest on the land, by significant and unreasonable depletion or degradation of the diversity, quality, or functions of the critical dune areas within the local unit of government. Under the bill, the variance or exception would have to be granted unless the use would significantly damage those interests.

Under the bill, notwithstanding any other provisions, upon application, the Department must issue a special exception if all of the following conditions were met:

- The applicant was a local unit of government and the application involved public land that was public land on July 5, 1989.
- The purpose of the application was 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 exception was 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 by the governing body of that local unit of government.
- The resolution demonstrated that the proposed project would meet criteria set forth in Section 35302.

(Section 35302 states certain legislative finding with respect to critical dune areas in Michigan.)

MCL 324.35317

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan
Abbey Frazier

SAS\S1920\s105sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.