

Act No. 146
Public Acts of 1989
Approved by the Governor
July 5, 1989
Filed with the Secretary of State
July 5, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Jondahl, Hillegonds, Scott, DeBeaussaert, Johnson, Hoffman, Pitoniak, Sikkema, DeMars, Gubow, Miller, Runco, Bartnik, Krause, Berman, Ciaramitaro, Martin, Bandstra, Brown, Gire, Honigman, Jonker, Emerson, Dolan, Perry Bullard, Crandall, Murphy and Hertel
Rep. Rocca named co-sponsor

ENROLLED HOUSE BILL No. 4296

AN ACT to amend the title and sections 2, 10, 11, and 14 of Act No. 222 of the Public Acts of 1976, entitled "An act to provide for study, protection, management, and reclamation of Great Lakes sand dunes; to prescribe powers and duties of the department of natural resources; to prescribe fees for the administration and enforcement of this act; and to provide penalties," section 11 as amended by Act No. 94 of the Public Acts of 1987, being sections 281.652, 281.660, 281.661, and 281.664 of the Michigan Compiled Laws; to add sections 1a, 2a, 2b, and chapter 3; and to repeal certain parts of the act on a specific date.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 10, 11, and 14 of Act No. 222 of the Public Acts of 1976, section 11 as amended by Act No. 94 of the Public Acts of 1987, being sections 281.652, 281.660, 281.661, and 281.664 of the Michigan Compiled Laws, are amended and sections 1a, 2a, 2b, and chapter 3 are added to read as follows:

TITLE

An act to provide for the study, protection, management, regulation, and reclamation of sand dune areas and critical dune areas; to prescribe the powers and duties of certain state agencies, persons, and local units of government; to provide for the issuance of permits, local zoning, and a model zoning plan regulating critical dune area uses; to prescribe fees for the administration and enforcement of this act and provide for the disposition of those fees; and to prescribe penalties and provide remedies.

CHAPTER 1 DEFINITIONS

Sec. 1a. The legislature finds that:

(a) The critical dune areas of this state are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this state and to people from other states and countries who visit this resource.

(b) Local units of government should have the opportunity to exercise the primary role in protecting and managing critical dune areas in accordance with this act.

(c) The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.

Sec. 2. As used in this act:

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

(b) "Cell-unit" means a subunit of the total sand dune mining project as determined in size and location by the operator, but which shall not exceed 10 acres in size for new operations or the expansion of existing operations, and which shall not exceed 30 acres in size for existing operations.

(c) "Commission" means the commission of natural resources.

(d) "Department" means the department of natural resources.

(e) "Director" means the director of the department or his or her authorized representative.

(f) "Great Lakes" means any of the Great Lakes which has a shoreline within the state.

(g) "Operator" means an owner or lessee of mineral rights or any other person engaged in or preparing to engage in mining operations with respect to mineral rights within a sand dune area.

(h) "Person" means an individual, partnership, firm, corporation, association, local unit of government, or other political subdivision of the state, or a state or state agency.

(i) "Sand dune area" means that area designated by the department which includes those geomorphic features composed primarily of sand, whether windblown or of other origin and which lies within 2 miles of the ordinary high-water mark on a Great Lake as defined in section 2 of the Great Lakes submerged lands act, Act No. 247 of the Public Acts of 1955, as amended, being section 322.702 of the Michigan Compiled Laws, and includes critical dune areas.

(j) "Sand dune mining" means the removal of sand from sand dune areas for commercial, or industrial purposes, or both.

Sec. 2a. As used in this act:

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

(b) "Critical dune area" means a geographic area designated in the "atlas of critical dune areas" dated February 1989 that was prepared by the department.

(c) "Local unit of government" means a city, village, township, or county.

(d) "Zoning ordinance" means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of chapters 3 and 4.

(e) "Model zoning plan" means the model zoning plan provided for in sections 31 to 42 of chapter 4.

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

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

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

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

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

(g) "Use" means a developmental, silvicultural, 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, but does not include sand dune mining.

CHAPTER 2 SAND DUNE MINING

Sec. 2b. Notwithstanding any other provision of this act, the department shall not issue a sand dune mining permit within a critical dune area after the effective date of this section except under either of the following circumstances:

(a) The operator seeks to renew or amend a sand dune mining permit that was issued prior to the effective date of this section subject to the criteria and standards applicable to a renewal or amendatory application.

(b) The operator holds a sand dune mining permit and is seeking a mining permit for land that is adjacent to property the operator is permitted to mine, and prior to the effective date of this section the operator owned the land or owned rights in the land for which the operator seeks a permit.

Sec. 10. The state or an instrumentality of the state shall not engage in the extraction of sand or other minerals from a sand dune area, except as required in the interest of public health and safety in an emergency situation resulting from a disaster as defined in section 2 of the emergency preparedness act, Act No. 390 of the Public Acts of 1976, as amended, being section 30.402 of the Michigan Compiled Laws.

Sec. 11. (1) For purposes of surveillance, monitoring, administration, and enforcement of this act, an operator is assessed a fee of not more than 10 cents per ton of sand mined from a sand dune area for the calendar year reported as described in subsection (2). Funds collected by the assessment of the fee shall not exceed the actual costs to the department of implementing the sections of this act that pertain to sand dune mining. Any fees collected under this subsection that are unexpended at the end of a fiscal year shall be credited to a separate fund of the department and carried over to the succeeding fiscal year and shall be deducted from the amount appropriated for that year for surveillance, monitoring, administration, and enforcement of this act for purposes of computing the fee to be assessed for that year.

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

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

(b) Location of the sand dune area.

(3) The fee described in subsection (1) shall be due not more than 30 days after the department sends written notice to the operator of the amount due.

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

(5) Failure to submit an annual report in compliance with rules promulgated by the department shall constitute grounds for revocation of a permit.

(6) A penalty equal to 10% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the operator for a fee not paid when due. An unpaid fee and penalty shall constitute a debt and become the basis of a judgment against the operator. Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this chapter.

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

(8) The department shall annually prepare and submit to the house of representatives and senate committees on conservation a report on the sand mining surveillance activities undertaken by the department for the immediately preceding year and the cost of those activities.

Sec. 14. (1) If the department finds that an operator is not in compliance with this chapter, the rules promulgated under this chapter, or a provision of a permit issued under this chapter, the department may suspend or revoke the permit.

(2) At the request of the department, the attorney general may institute an action in the circuit court for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of a permit issued under this chapter, this chapter, or the rules promulgated under this chapter. This shall be in addition to the rights provided in the Thomas J. Anderson, Gordon Rockwell environmental protection act of 1970, Act No. 127 of the Public Acts of 1970, being sections 691.1201 to 691.1207 of the Michigan Compiled Laws.

(3) A person who violates this chapter or a permit issued under this chapter is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00.

CHAPTER 3 CRITICAL DUNE USE PROCEDURES

Sec. 16. (1) As soon as practicable following the effective date of this chapter, the director shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the "atlas of critical dune areas" dated February 1989 and a copy of this act with the notice. By October 1, 1989, the director shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under this act.

(b) A local unit of government may adopt a zoning ordinance that is approved by the department, or if the local unit of government does not have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

Sec. 17. (1) Beginning on the effective date of this chapter and until the local unit of government either adopts a zoning ordinance that is approved by the department or the department issues permits as provided in subsection (3) or (8), whichever occurs first, the local unit of government may require the submittal of applications for permits for uses in critical dune areas. The local unit of government shall evaluate applications for uses and may issue permits for uses in critical dune areas that are in conformance with and are at least as environmentally protective as the model zoning plan.

(2) A local unit of government that elects to issue permits during the interim period described in subsection (1) shall notify the department of its decision and shall reflect this decision by passage of a resolution of its governing body or by providing documentation to the department that an existing ordinance meets or exceeds the requirements of the model zoning plan. Following the passage of the resolution, a local unit of government may issue permits during the interim period in accord with the procedures and criteria established in subsection (4).

(3) If by August 1, 1989 a local unit of government has not passed a resolution indicating its intent to issue permits during the interim period or submitted an existing ordinance that meets the requirements of this act, the department shall issue permits in the same manner provided for local units of government in subsection (4) for uses within that local unit of government under the model zoning plan until the local unit of government submits a zoning ordinance to the department and obtains approval of the ordinance.

(4) A local unit of government that issues permits during the interim time period provided for in subsection (1), or the department if it issues permits as provided under subsection (3) or (8), shall issue permits in accordance with all of the following:

(a) A person proposing a use within a critical dune area shall file an application with the local unit of government, or with the department if the department is issuing permits under the model zoning plan. The application form shall include information that may be necessary to conform with the requirements of this act. If a project proposes the use of more than 1 critical dune area location within a local unit of government, 1 application may be filed for the uses.

(b) Notice of an application filed under this section shall be sent to a person who makes a written request to the local unit of government for notification of pending applications accompanied by an annual fee established by the local unit of government. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is mailed, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons that own real property within the local unit of government or an adjacent local unit of government, or that reside within the local unit of government or an adjacent local unit of government, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by the publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and in other publications, if appropriate, to give notice to persons likely to be affected by the proposed use, and by mailing copies of the notice to the persons who have requested notice pursuant to subsection (1) and the person requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. When a permit is denied, the local unit of government shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit required by this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides the same or a greater level of protection for critical dune areas and which is approved by the department.

(5) A local unit of government zoning ordinance regulating critical dune areas may be more restrictive of development and more protective of critical dune areas than the model zoning plan.

(6) As soon as possible following adoption of a zoning ordinance enacted pursuant to this act, the local unit of government shall submit a copy of the ordinance that it determines meets the requirements of this act to the department. If the local unit of government has an existing ordinance that it contends is at least as restrictive as the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to assure compliance with this act. If the department finds that an ordinance is not in compliance with this act, the department shall work with the local unit of

government to bring the ordinance into compliance and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient. Unless a local unit of government receives notice within 90 days of submittal that the ordinance they submit to the department under this subsection is not in compliance with this act, the local unit of government shall be considered to be approved by the department.

(7) A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved ordinance by June 30, 1990, the department shall implement the model zoning plan for that local unit of government in the same manner and under the same circumstances as provided in subsection (4). Notwithstanding any other provision of this act, a local unit of government may adopt a zoning ordinance at any time, and upon the approval of the department, that ordinance shall take the place of the model zoning plan implemented by the department.

(8) If a local unit of government in which a proposed use is to be located does not elect to issue permits or does not receive approval of a zoning ordinance that regulates critical dune areas, the department shall implement the provisions of the model zoning plan in the place of the local unit of government and issue special exceptions in the same circumstances as provided in this chapter for the issuance of variances by local units of government.

(9) The department shall develop permit application forms to implement this section.

(10) The department shall assist local units of government in developing ordinances that meet the requirements of this act.

Sec. 18. (1) The lawful use of land or a structure, as existing and lawful within a critical dune area at the time the department implements the model zoning plan for a local unit of government, may be continued although the use of that land or structure does not conform to the provisions of the model zoning plan. The continuance, completion, restoration, reconstruction, extension, or substitution of existing nonconforming uses of land or a structure may continue upon reasonable terms that are consistent, to the extent possible, with the applicable zoning provisions of the local unit of government in which the use is located.

(2) The lawful use of land or a structure, as existing and lawful within a local unit of government that has a zoning ordinance approved by the department, may, but is not required by this act to, be continued subject to the provisions of law pertaining to existing uses within the act that enables that local unit of government to zone and the applicable zoning provisions of the local unit of government.

(3) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on the effective date of this section shall not be precluded under this act.

(4) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by June 15, 1989 or the effective date of this chapter, whichever is later, are exempt for purposes for which a permit is issued from the operation of this act or local ordinances approved under this act. Such uses shall be regulated pursuant to local ordinances in effect by that date.

Sec. 19. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

Sec. 20. (1) Except as provided in subsection (2), the following uses shall be prohibited in a critical dune area:

(a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.

(b) Production facilities regulated pursuant to the mineral well act, Act No. 315 of the Public Acts of 1969, being sections 319.211 to 319.236 of the Michigan Compiled Laws, and Act No. 61 of the Public Acts of 1939, being sections 319.1 to 319.27 of the Michigan Compiled Laws.

(2) Uses described in subsection (1) that are lawfully in existence at a site on the effective date of this chapter may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the director.

Sec. 21. (1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) Fees collected by the department under this section shall be deposited in the state treasury and credited to the general fund to be used to defray the cost of administering this chapter and chapter 4.

(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this act and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under this act.

(5) A local unit of government, or the director if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the director to file with the local unit of government or the director a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

Sec. 22. (1) If the director finds that a person is not in compliance with the model zoning plan if the department is implementing the provisions of the plan, or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 40, the director may suspend or revoke the permit.

(2) At the request of the director or a person, the attorney general may institute an action for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the model zoning plan if the department is implementing the provisions of the plan or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 40. At the request of a member of the governing body of a local unit of government or a person, the county prosecutor may institute an action for a restraining order or injunction or other proper remedy to prevent a violation of a zoning ordinance approved under this act. This shall be in addition to the rights provided in the Thomas J. Anderson, Gordon Rockwell environmental protection act of 1970, Act No. 127 of the Public Acts of 1970, being sections 691.1201 to 691.1207 of the Michigan Compiled Laws, and as otherwise provided by law. An action under this subsection instituted by the attorney general may be instituted in the circuit court for the county of Ingham or in the county in which the defendant is located, resides, or is doing business.

(3) The department shall periodically review the performance of all local units of government that have ordinances approved under this chapter. If the department determines that the local unit of government is not administering the ordinance in conformance with this act, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government shall have 30 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the director may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, in the manner provided in that act for contested cases.

(4) In addition to any other relief provided by this section, the court may impose on a person who violates this chapter or chapter 4, or a provision of a permit, a civil fine of not more than \$5,000.00 for each day of violation, or order a violator to pay the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. This subsection shall not take effect until 30 days after notification is mailed to individual property owners under section 16(1).

Sec. 23. (1) By June 15, 1991 a legislative study committee shall be created by the majority leader of the senate and the speaker of the house of representatives to report to the legislature on the issues listed in subsection (2). This legislative committee shall consist of 3 members of the house of representatives who shall be appointed by the speaker of the house of representatives and 3 members of the senate who shall be appointed by the majority leader of the senate. Of the members appointed, 2 of the members appointed from the senate and 2 of the members appointed from the house of representatives shall have critical dune areas within their districts. In addition, 1 of the committee members appointed from each house shall be a member of the standing committee of that house that addresses legislation pertaining to environmental protection and natural resources.

(2) The written report of the legislative committee shall be submitted to each of the members of the legislature by June 15, 1993. The report shall contain information and analyses of each of the following issues pertaining to the implementation of this chapter and chapter 4 and of zoning ordinances approved pursuant to this act:

(a) The accuracy and precision of the critical dune area designations in the "atlas of critical dune areas" dated February 1989.

(b) The number of use permits requested and the number of permits issued and denied under this act by the department and by local units of government.

(c) The number of requests for variances and the number of those requests that are denied by the department and by local units of government, including any pertinent pattern in the issuance or denial of variances by geographic areas of the state.

(d) The effectiveness of the criteria and standards in the model zoning plan, including but not limited to, slope and setback restrictions, vegetation removal, and erosion related measures.

(e) Whether the model zoning plan and approved ordinances are accomplishing the objectives of the act.

(f) Whether the law pertaining to the taking of private property for public use is being utilized due to the operation of the model zoning plan or approved zoning ordinances, and if takings are occurring whether there are apparent inequities.

(3) During its consideration of the issues listed in subsection (2), the legislative committee shall consult, at a minimum, with representatives from each of the following:

(a) The public.

(b) The Michigan townships association.

(c) The Michigan municipal league.

(d) A conservation organization.

(e) An environmental protection organization.

(f) Land development interests.

(g) Construction industry interests.

(h) The department.

Section 2. This amendatory act shall not take effect unless Senate Bill No. 179 of the 85th Legislature is enacted into law.

Section 3. Sections 1a, 2a, 16, 17, 18, 19, 20, 21, 22, and 23 of Act No. 222 of the Public Acts of 1976 are repealed effective June 15, 1995.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.