

SENATE BILL No. 179

February 28, 1989, Introduced by Senators BINSFELD, CRUCE, GAST, SHINKLE, SEDERBURG, FESSLER, POSTHUMUS, IRWIN, CARL, DILLINGHAM, NICHOLS, GEAKE, DE GROW, DI NELLO, BARCIA, GEO. HART, FAXON, CROPSEY, WELBORN, N. SMITH and O'BRIEN and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to provide through local zoning for the regulation and the conservation of certain environmentally sensitive areas; to provide for the powers and duties of certain state departments and officials, governmental entities, and local units of government; to prescribe fees for the administration and enforcement of this act; to provide for the disposition of those fees; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "sand dune environmentally sensitive area model ordinance act".

3 Sec. 2. As used in this act:

4 (a) "Barrier dune" means the first landward sand dune forma-
5 tion along the shoreline of a Great Lake.

6 (b) "Beach ridge" means low dunes deposited by wave or wind
7 action found in sand dune areas.

1 (c) "Department" means the department of natural resources.

2 (d) "Duneland" means the soil occurring on a mound, ridge,
3 or hill, that is of loose, windblown sand, or other granular
4 material, whether the land is bare or covered with vegetation.
5 Duneland is generally located on dunes, beach ridges, and
6 beaches.

7 (e) "Environmentally sensitive area" means a geographic area
8 included in the "atlas of proposed critical dune areas" dated
9 May 1, 1988 prepared by the department, which is included in the
10 atlas because it is 1 or more of the following:

11 (i) A barrier dune.

12 (ii) A designated sand dune area that is an area within the
13 boundary of a sand dune supporting 1 or more exemplary
14 dune-associated plant communities as identified by the Michigan
15 natural features inventory.

16 (iii) An area contiguous to the great lakes shoreline com-
17 posed primarily of beach ridges, dune sand, or dune-associated
18 sands as identified in the national cooperative soil survey
19 report, and exhibiting 1 or more dune-like or beach ridge charac-
20 teristics in terms of soil, topography, or vegetation. For an
21 area without a soil survey, the landward boundaries shall be
22 demarcated by a marked change in topography, or where this change
23 is not evident, a change in soil type.

24 (f) "Floodplain" means an area of land adjoining a lake or
25 watercourse which will be inundated by a 100-year flood.

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

1 (h) "Key development project" means both of the following:

2 (i) The proposed development of an area of 3 acres or more
3 of multi-family, industrial, or commercial use in an environmen-
4 tally sensitive area.

5 (ii) The proposed development in an environmentally sensi-
6 tive area, regardless of size, that the planning commission and
7 the soil conservation district determines would affect natural
8 features of environmental sensitivity or archaeological or his-
9 torical significance which could be damaged or destroyed through
10 the development of the site.

11 (i) "Model zoning ordinance" means an ordinance of a local
12 unit of government required under this act regulating environmen-
13 tally sensitive areas within the local unit of government.

14 (j) "100-year flood" means a flood which has a 1% chance of
15 being equaled or exceeded in a given year.

16 (k) "Person" means an individual, partnership, corporation,
17 association, a local unit of government, a political subdivision
18 of a local unit of government, the state, a subdivision of the
19 state, or any other legal entity.

20 (l) "Planning commission" means the body or entity within a
21 local government that handles zoning and land use planning for
22 the local unit of government.

23 (m) "Shoreline area" means an area within 500 feet of the
24 ordinary high water level on a Great Lake as defined in section 2
25 of the Great Lakes submerged lands act, Act No. 247 of the Public
26 Acts of 1955, being section 322.702 of the Michigan Compiled
27 Laws.

1 Sec. 3. (1) As soon as possible following the effective
2 date of this act, the department shall mail a copy of the "atlas
3 of proposed critical dune areas" dated May 1, 1988 to each local
4 unit of government that has environmentally sensitive areas
5 within its jurisdiction. Within 6 months of receipt of a copy of
6 the "atlas of proposed critical dune areas", a local unit of gov-
7 ernment shall determine whether there are environmentally sensi-
8 tive areas within its jurisdiction and shall determine the metes
9 and bounds descriptions of those areas based on the atlas
10 described in section 2(e). A local unit of government shall pro-
11 vide public notice, as required in the authorization act listed
12 in subsection (2)(a), (b), or (c) under which the local unit of
13 government is given zoning powers, that the local unit of govern-
14 ment is enacting a model zoning ordinance.

15 (2) Within 1 year of the effective date of this act, after
16 consultation with the local soil conservation district, local
17 units of government that have environmentally sensitive areas
18 within their jurisdictions shall formulate a model zoning ordi-
19 nance as follows:

20 (a) A county shall zone as provided in the county rural
21 zoning enabling act, Act No. 183 of the Public Acts of 1943,
22 being sections 125.201 to 125.232 of the Michigan Compiled Laws.

23 (b) A city or village shall zone as provided in Act No. 207
24 of the Public Acts of 1921, being sections 125.581 to 125.592 of
25 the Michigan Compiled Laws.

1 (c) A township shall zone as provided in the township rural
2 zoning act, Act No. 184 of the Public Acts of 1943, being
3 sections 125.271 to 125.301 of the Michigan Compiled Laws.

4 (3) A model zoning ordinance shall be based upon the model
5 ordinance set forth in sections 4 to 8 and shall be at least as
6 protective of the environment as the model ordinance provided in
7 this act.

8 (4) A local unit of government ordinance regulating environ-
9 mentally sensitive areas may be more restrictive of development
10 and more protective of environmentally sensitive areas than the
11 model zoning plan provided in this act.

12 (5) A local unit of government shall submit a model ordi-
13 nance enacted pursuant to this act or a local ordinance described
14 in subsection (4) to the department. The department shall review
15 model zoning ordinances submitted under this section to assure
16 compliance with this act. If the department finds that a model
17 zoning ordinance is not in compliance with this act, the depart-
18 ment shall work with the local unit of government to bring the
19 ordinance into compliance.

20 Sec. 4. All zoning permit applications in environmentally
21 sensitive areas shall:

22 (a) Establish that the proposed development will not
23 adversely affect the environmental quality of the site or the
24 areas surrounding the site.

25 (b) Document in writing that the county enforcing agency
26 designated pursuant to the soil erosion and sedimentation control
27 act of 1972, Act No. 347 of the Public Acts of 1972, being

1 sections 282.101 to 282.125 of the Michigan Compiled Laws, finds
2 that the project is in compliance with Act No. 347 of the Public
3 Acts of 1972 and any applicable soil erosion and sedimentation
4 control ordinance that is in effect in the local unit of
5 government.

6 (c) Document in writing that a proposed sewage treatment or
7 disposal system on the site has been approved by the county
8 health department or the wastewater division of the department.

9 (d) Provide assurances that the cutting and removing of
10 trees and other vegetation will be performed according to the
11 instructions or plans of the local soil conservation district.
12 The instructions or plans may include a program to provide miti-
13 gation for the removal of trees or vegetation by providing assur-
14 ances that the applicant will plant on the site more trees and
15 other vegetation on the site than were removed by the proposed
16 development.

17 (e) Include a site plan that contains data required by the
18 planning commission and the local soil conservation district con-
19 cerning the physical development of the site and extent of dis-
20 ruption of the site by the proposed development.

21 (f) Include an environmental impact statement for each key
22 development project defined in section 2(h)(i) and for those key
23 development projects defined in section 2(h)(ii) for which the
24 local unit of government determines that an environmental impact
25 statement is necessary to assure the protection of the special
26 features of the site.

1 (g) Include an environmental assessment for key development
2 projects that do not require an environmental impact statement.

3 Sec. 5. (1) Except as provided in subsection (2), zoning
4 permit applications for on-site disposal of sewage shall not be
5 located in environmentally sensitive areas.

6 (2) In accord with the minimum standards of applicable sani-
7 tary codes and on sites of 2 acres or more, variances from sub-
8 section (1) may be granted where duneland soils are not present
9 or are not dominant.

10 Sec. 6. Except as otherwise provided in section 7, all of
11 the following provisions related to possible flooding or water
12 damage shall be included in each model zoning ordinance:

13 (a) Septic facilities shall be set back at least 100 feet
14 from all shorelines.

15 (b) Structures, other than those without plumbing, shall be
16 set back at least 50 feet from the mean high water mark.

17 (c) A building shall not be located within a designated
18 floodway. The local planning commission may permit bridges,
19 dams, other public facilities, piers, wharves, or boat houses in
20 a floodplain. However, before the structure is built within the
21 floodplain, it shall be shown that the structure will not form a
22 significant obstruction or retard the movement of floodwaters,
23 except as part of an approved plan for flood control.

24 (d) Restrictions for development on the 100-year floodplain
25 shall be as follows:

26 (i) A structure shall not be built in the floodplain of a
27 water body unless the lowest floor and the heating and electrical

1 systems of the structure are located 4 feet above the
2 floodplain. The elevation may not be achieved through the use of
3 fill. The use of stilts, lifts, pilings, or other similar means
4 of elevation are permissible if they are in accordance with other
5 applicable regulations, and they do not form more than a 5%
6 obstruction to the flow of the 100-year floodwaters.

7 (ii) An on-site sewage disposal system or the dumping of
8 waste materials of any type in the floodplain is prohibited.

9 (iii) The storage of buoyant, flammable, explosive, or toxic
10 materials in a floodplain is prohibited.

11 Sec. 7. All of the following provisions related to develop-
12 ment on the shoreline of 1 of the Great Lakes shall be included
13 in each model zoning ordinance:

14 (a) Sewage disposal systems within the shoreline area shall
15 have a setback of at least 150 feet from the mean high water
16 mark, and shall be designed such that effluent will not degrade
17 the quality of ground or surface water.

18 (b) Septic facility tile fields shall not be less than 6
19 feet above the mean high water mark.

20 (c) Structures, other than those without plumbing, shall be
21 set back at least 100 feet from the mean high water mark.

22 (d) The filling, grading, or other alteration of natural
23 drainage within the shoreline area shall be reviewed and approved
24 by the local planning commission and the soil conservation
25 district.

26 (e) The digging or drilling of wells or other domestic water
27 supply sources in the floodplain is prohibited.

1 Sec. 8. (1) All of the following provisions pertaining to
2 development on property that has a slope exceeding 18% shall be
3 included in each model zoning ordinance:

4 (a) A structure shall not be permitted unless in accordance
5 with plans prepared for the site by a registered professional
6 architect or engineer and the plans provide for the disposal of
7 storm waters without serious soil erosion and without sedimenta-
8 tion of any stream or other body of water.

9 (b) On-site sewage disposal systems will be allowed only if
10 designed in a manner that sewage effluent will not degrade the
11 quality of surface or groundwater.

12 (c) Prior to approval of a plan for site alterations, the
13 plan shall provide for comment or review by the appropriate offi-
14 cials of the soil conservation district.

15 (2) On-site sewage disposal systems shall not be permitted
16 on slopes greater than 12% unless the system is approved by a
17 county health department.

18 (3) If the local unit of government is not certain of the
19 degree of slope on a property for which a development permit is
20 sought, the local unit may require contour maps with 5-inch
21 intervals at or near any proposed structure or roadway.

22 Sec. 9. (1) A local unit of government shall not permit a
23 use within an environmentally sensitive area that does not comply
24 with the minimum setback requirements required by rules promul-
25 gated under the shorelands protection and management act of 1970,
26 Act No. 245 of the Public Acts of 1970, being sections 281.631 to

1 281.644 of the Michigan Compiled Laws, unless a special exception
2 has been granted pursuant to that act.

3 (2) A local unit of government may issue a variance from a
4 requirement of a model zoning ordinance subject to all of the
5 following:

6 (a) A variance shall not be granted from a setback require-
7 ment in the ordinance unless the property for which the variance
8 is requested is a nonconforming lot of record that is recorded
9 prior to the effective date of this act, or is a lot legally cre-
10 ated after the effective date of this section that later becomes
11 nonconforming due to natural shoreline erosion.

12 (b) A variance shall not be granted that authorizes con-
13 struction of a dwelling or other permanent building on the first
14 lakeward facing slope of a critical dune area or a foredune
15 unless the proposed construction is near the base of the lakeward
16 facing slope of the critical dune on a slope of less than 12% on
17 a nonconforming lot of record that is recorded prior to the
18 effective date of this section which has boundaries that lie
19 entirely on the first lakeward facing slope of the dune that is
20 not a foredune. If a local unit of government determines that
21 granting a variance under this section is appropriate, the local
22 unit of government shall submit the proposal to the department.
23 If the department finds that the decision is contrary to this
24 act, the department may within 90 days of submittal deny the
25 request.

1 (c) A variance shall not be granted unless a local unit of
2 government finds that there are conditions regarding the site
3 that indicate both of the following:

4 (i) That unreasonable hardship will occur to the owner of
5 the site if a variance is not granted.

6 (ii) That the granting of the variance is consistent with
7 this act.

8 Sec. 10. If an environmental impact statement is required
9 under section 4(f), that statement shall include all of the
10 following:

11 (a) The name and address of the applicant.

12 (b) A description of the applicant's proprietary interest in
13 the site of the proposed development.

14 (c) The name, address, and professional qualifications of
15 the proposed professional design team members, including the des-
16 ignation of the person responsible for the preparation of the
17 environmental impact statement.

18 (d) The description and purpose of the proposed project.

19 (e) Six copies and 1 reproducible transparency of a sche-
20 matic development plan of the proposed development showing the
21 general site location of the proposed development and major
22 existing physical and natural features, including, but not
23 limited to, watercourses, rock outcropping, wetlands, and wooded
24 areas.

25 (f) The location of the existing utilities and
26 drainageways.

1 (g) The location and names of public streets, parks, and
2 railroad and utility rights-of-way within or adjacent to the
3 proposed development.

4 (h) The general location and dimensions of proposed streets,
5 driveways, sidewalks, pedestrian ways, trails, off-street park-
6 ing, and loading areas.

7 (i) The general location and approximate dimensions of pro-
8 posed structures.

9 (j) Major proposed change of land form as new lakes, terrac-
10 ing, or excavating.

11 (k) Approximate existing and proposed contours and drainage
12 patterns, showing at least 4-foot contour intervals.

13 (l) Sketches showing the scale, character, and relationship
14 of structures, streets, or driveways, and open space.

15 (m) Approximate location and type of proposed drainage,
16 water, and sewage facilities.

17 (n) Legal description of property.

18 (o) An aerial photo and contour map showing the project site
19 in relation to the surrounding area.

20 (p) A general narrative, physical description of the site,
21 including its dominant characteristics, its vegetative character,
22 its present use, and other relevant information.

23 (q) A soil review giving a short descriptive summary of the
24 soil types found on the site and whether they permit the use of
25 septic tanks or require central sewer. The review may be based
26 on the "unified soil classification system" as adopted by the
27 United States government corps of engineers and bureau of

1 reclamation, January 1952, or the national cooperative soil
2 survey classification system, and the standards for developabi-
3 lity that have been offered for each portion of the site.

4 (r) A natural hazards review element consisting of a list of
5 natural hazards such as periodic flooding, poor soil bearing con-
6 ditions, and any other hazards peculiar to the site.

7 (s) A substrata review including a descriptive summary of
8 the various geologic bedrock formations underlying the site,
9 including the identification of known aquifers, their approximate
10 depths and, if being tapped for use, the principal uses to be
11 made of these waters, including irrigation, domestic water
12 supply, and industrial usage.

13 (t) An erosion review showing how erosion control will be
14 achieved, and illustrating plans or programs that may be required
15 by any existing soil erosion and sedimentation ordinance.

16 (u) At a minimum, plans for compliance with all of the fol-
17 lowing standards shall be required for construction and postcon-
18 struction periods:

19 (i) Surface drainage designs and structures are erosion
20 proof through control of the direction, volume, and velocities of
21 drainage patterns. These patterns shall promote natural vegeta-
22 tion growth that are included in the design in order that drain-
23 age waters may be impeded in their flow and percolation
24 encouraged.

25 (ii) The design shall include trash collection devices when
26 handling street and parking drainage to contain solid waste and
27 trash.

(iii) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.

(iv) If vegetation has been removed or has not been able to occur on surface areas such as in-fill zones, it shall be the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, and windbreaks and other such barriers.

Sec. 11. If an environmental assessment is required under section 4(g), that statement shall include the following:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site of the proposed development.

(c) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.

(d) The description and purpose of the proposed project.

(e) The location of the existing utilities and drainageways.

(f) The general location and approximate dimensions of proposed structures.

(g) Major proposed change of land form as new lakes, terracing, or excavating.

1 (h) Sketches showing the scale, character, and relationship
2 of structures, streets, or driveways, and open space.

3 (i) Approximate location and type of proposed drainage,
4 water, and sewage facilities.

5 (j) Legal description of property.

6 (k) A general narrative, physical description of the site,
7 including its dominant characteristics, its vegetative character,
8 its present use, and other relevant information.

9 (l) A natural hazards review element consisting of a list of
10 natural hazards such as periodic flooding, poor soil bearing con-
11 ditions, and any other hazards peculiar to the site.

12 (m) An erosion review showing how erosion control will be
13 achieved, and illustrating plans or programs that may be required
14 by any existing soil erosion and sedimentation ordinance.

15 Sec. 12. (1) In reviewing a site plan required under sec-
16 tion 4, the planning commission with the advice and assistance of
17 the soil conservation district shall do all of the following:

18 (a) Determine whether the requirements and conditions of the
19 model zoning ordinance have been met.

20 (b) Determine whether the intent of all state and county
21 regulations, including the model zoning ordinance, is served by
22 allowing the proposed development.

23 (c) Determine whether the proposed development safeguards
24 against adverse effects on air and water quality, the natural
25 resources of the area.

26 (2) The planning commission based on the advice and
27 assistance of the soil conservation district shall recommend

1 alterations of a proposed development to minimize adverse effects
2 anticipated if the development is approved and to assure compli-
3 ance with all applicable state and local requirements.

4 Sec. 13. Prior to issuing a permit allowing a key develop-
5 ment within an environmentally sensitive area, a local unit of
6 government shall submit the plan to the department. The depart-
7 ment shall have 60 days to review the plan and may affirm,
8 modify, or reverse the proposed decision of the local unit of
9 government. If the department reverses the proposed decision of
10 the local unit of government causing serious injury to the value
11 of the property and abusing its legitimate powers aimed directly
12 at the applicant's property, this shall be prima facie evidence
13 of a de facto taking of property within the meaning of section 2
14 of article X of the state constitution of 1963. If the depart-
15 ment has not acted within the time limit required under this sec-
16 tion, the local unit of government may assume the department has
17 no objection to the proposed decision of the local unit of
18 government.

19 Sec. 14. (1) In addition to any other appellate remedies
20 otherwise lawfully available, an applicant for a permit who is
21 aggrieved by a decision of a local unit of government under a
22 model zoning ordinance may appeal that decision to the department
23 of natural resources.

24 (2) In reviewing the decision of a local unit of government
25 as provided in subsection (1), the department may affirm, alter,
26 or reverse the decision of the local unit of government.

1 Sec. 15. (1) Private property shall not be taken for public
2 use under a model zoning ordinance without just compensation
3 being made to the owner. As used in this act, there is prima
4 facie evidence of a taking of private property requiring just
5 compensation if all of the following circumstances exist:

6 (a) There is a lack of clear standards or criteria provided
7 to the property owner by the government as to any private devel-
8 opment or use that may be allowed.

9 (b) The government abuses its legitimate powers in affirma-
10 tive actions that are aimed at an applicant's property and that
11 substantially reduce the value of that property.

12 (2) For the purpose of determining if private property has
13 been taken for public use without just compensation under a model
14 zoning ordinance, an owner of property who has sought and been
15 denied a permit, who has had a permit application modified or
16 conditions attached to a permit, or who is aggrieved by an action
17 or inaction of a local unit of government or the department when
18 applying a model zoning ordinance may file an action in a court
19 of competent jurisdiction.

20 (3) If the court determines that an action of the local unit
21 or the department under a model zoning ordinance results in
22 taking private property for a public use without just compensa-
23 tion, then the court shall award reasonable attorney fees, costs,
24 and disbursements and shall order the department to do 1 or more
25 of the following:

26 (a) Compensate the property owner for the full amount of the
27 lost value.

1 (b) Purchase the property in the public interest as
2 determined before its value was affected by this act or the
3 department's action or inaction pursuant to this act.

4 (c) Modify its action or inaction with respect to the prop-
5 erty so as to substantially minimize or eliminate the detrimental
6 effect to the property's value.

7 (4) In all actions filed against a local unit of government
8 that pertain to the local unit of government's efforts to imple-
9 ment or enforce a model zoning ordinance on behalf of the state,
10 the attorney general, upon the request of the local unit of gov-
11 ernment, shall represent the local unit of government.

12 Sec. 16. (1) A local unit of government may establish a
13 permit and inspection fee as necessary to implement a model
14 zoning ordinance. The fee established shall not exceed the costs
15 of inspection and the costs of processing application for a
16 permit.

17 (2) Fees collected by a local unit of government shall be
18 credited to the treasury of the local unit of government to be
19 used to defray the cost of administering uses under this act.

20 (3) In addition to fees provided for in this section, a soil
21 conservation district may charge a separate fee to cover the
22 expense of providing services under this act and for providing
23 technical assistance and advice to individuals who seek their
24 assistance in matters pertaining to compliance with this act.

25 (4) A local unit of government or the director may require
26 the holder of a permit granted under this section to file with
27 the director a bond executed by an approved surety in this state,

1 or another form of financial assurance approved by the director,
2 in an amount necessary to assure faithful conformance with the
3 permit.

4 Sec. 17. (1) Federally owned land, to the extent allowable
5 by law, and state owned land within environmentally sensitive
6 areas shall be managed in a manner that is consistent with the
7 model ordinance in this act.

8 (2) If environmentally sensitive areas are barrier dunes
9 located on state owned lands that are accessible to the public,
10 the state shall construct wooden walkways, or walkways con-
11 structed of other material as approved by the local soil conser-
12 vation district, on all paths open to the public to assure the
13 protection of those areas.

14 (3) If a local unit of government, with the concurrence of
15 the department, determines that no use should occur on a barrier
16 dune, that property shall be purchased by the state, with the
17 concurrence of the owner of the property.

18 Sec. 18. (1) The legislature shall appropriate to the
19 departments of agriculture, natural resources, and the attorney
20 general sufficient funds to assure the full implementation and
21 enforcement of this act.

22 (2) Appropriations to the department of agriculture shall be
23 sufficient to assure adequate funding for the soil conservation
24 districts to fulfill their responsibilities under this act.