

## EROSION AND SEDIMENTATION CONTROL PERMITS TO FOLLOW LAND OWNERSHIP

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**House Bill 5055 (Substitute H-2)**  
**Sponsor: Rep. Chris Ward**  
**Committee: Land Use and Environment**  
**First Analysis (7-14-04)**

**BRIEF SUMMARY:** The bill specifies that an ‘earth change’ permit issued to a developer (regulated by local or state soil erosion and sedimentation control plans) would run with the land, and be transferred with ownership. Prospective buyers would have to receive written notice of the permits from sellers before property was sold.

**FISCAL IMPACT:** This bill would not have a significant fiscal impact on the State or on local governmental units. There may be a reduction in the number of soil erosion permits issued with a fee, but only for those applications which would transfer the holder of the permit to the land owner.

### **THE APPARENT PROBLEM:**

Whenever soil must be moved as land is developed, a permit is required under the Natural Resources and Environmental Protection Act. The relocation of the soil—called an ‘earth change’ under the act—is regulated either under state laws or local ordinances that govern soil erosion and sedimentation plans developed by land use agencies.

Sometimes when a developer of residential housing nears completion of a development, lots are sold to new residents before the landscaping is completed to the specifications of the local unit of government’s soil erosion and sedimentation control plan. The landscaping must be completed by the developer, despite the fact that ownership of the land has transferred to the new owner.

According to committee testimony, at least one local unit of government in Kent County that issues erosion control permits has a requirement that grass be three inches high before the requirements of the local soil erosion and sedimentation control plan are met. A requirement of this kind is difficult for a developer to meet after the ownership of the land has been transferred—either to another developer who will finish the development and sell the units of housing, or to the new resident who wishes to take charge of landscaping the property surrounding his or her new home.

In order to address this difficulty, legislation has been introduced to require that a soil erosion control permit “run” with the ownership of the land, and also that sellers of land with such permits provide written notice to buyers, before the sale of the property.

## ***THE CONTENT OF THE BILL:***

House Bill 5055 would amend the Natural Resources and Environmental Protection Act to specify that a permit issued to a developer of land allowing him or her to undertake an ‘earth change’ (regulated under either this state law, or a local ordinance by soil erosion and sedimentation control plans) would run with the land. The bill specifies that all obligations under the permit would be transferred with ownership, and be the responsibility of the land owner. The bill also would require that the seller of the land subject to the permit provide written notification to a prospective purchaser before the sale.

MCL 324.9112

## ***ARGUMENTS:***

### ***For:***

When new homes are sold by developers—either to other developers or to homeowners—before the landscaping requirements are complete, as specified in a local unit of government’s soil erosion control plan, the original developers sometimes have a difficult time fulfilling the sedimentation control requirements in their earth change permits. It makes sense that a permit issued to control erosion “run” with the ownership of the land. This legislation would enable developers to transfer the permit and the yet unfulfilled landscape requirements to the new owner of the land.

### ***Against:***

New homeowners may find this legislation saddles them with unexpected landscaping costs and responsibilities. Although the legislation requires that sellers of the property give prospective buyers notice of the erosion-control permit before a sale, the bill does not specify either the timing or the content of that written notice. It is entirely possible that the prospective buyers will receive notice late in their decision-making process, and have very little information available to them concerning the erosion-control requirements of the local unit of government.

## ***POSITIONS:***

The Michigan Association of Home Builders supports the bill. (7-6-04)

The Michigan Municipal League supports the bill. (7-6-04)

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