

TRANSFER OF EROSION AND SEDIMENTATION CONTROL PERMITS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5055 as enrolled
Public Act 565 of 2004
Sponsor: Rep. Chris Ward
Committee: Land Use and Environment

Second Analysis (4-1-05)

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) could be transferred. If the permit were transferred, both the current and the proposed permit holders would be required to sign a notice of transfer, and the transferor would then be required to file the permit with the county or municipal enforcing agency. The local enforcing agency could charge a permit transfer fee.

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) could be transferred.

The bill specifies that the owner of property that is subject to a permit is responsible for compliance with the terms of that permit. However, if property subject to a permit is transferred, both of the following would be transferred with the property: a) the permit, including the permit obligations and conditions; and b) responsibility for any violations of the permit that existed on the date the property was transferred.

Further, if property was subject to a permit and *a parcel* of the property (but not the entire property) were transferred, both of the following would be transferred with the parcel: a) the permit obligations and conditions with respect to that parcel, but not the permit itself; and b) responsibility for any violations of the permit with respect to that parcel that existed on the date the parcel was transferred.

The bill specifies that if property subject to a permit is proposed to be transferred, the transferor would be required to notify the transferee of the permit in writing (on a form developed by the department, and provided by either the county or municipal enforcing agency). The notice must inform the transferee of the requirements noted above, as well as contain a copy of the permit. The transferor and transferee would be required to sign the notice, and the transferor must then submit the signed notice to the county or municipal enforcing agency before the property is transferred.

An enforcing agency (either county or municipal) may charge a permit transfer fee; however, the fee cannot exceed the administrative costs of the transfer. Fees collected can only be used for the enforcement and administration of this part of the act.

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 the present permit holder to notify the proposed permit holder of the new responsibilities, in writing, (and also include

a copy of the permit); requires that both sign the notice; and the transferor to submit the notice to either a county or municipal enforcing agency, the bill does not specify either the timing or the content of that written notice. It is entirely possible that the prospective buyers will be apprised of the permit's existence late in their decision-making process, accept the transfer of responsibility to hasten the granting of an occupancy permit, and yet throughout the process of notification have very little information available to them concerning the erosion-control requirements of the local unit of government.

Legislative Analyst: J. Hunault
Fiscal Analyst: Kirk Lindquist

■ 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.