

# HOUSE BILL No. 5055

September 23, 2003, Introduced by Rep. Ward and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 9105, 9106, and 9112 (MCL 324.9105,  
324.9106, and 324.9112), as amended by 2000 PA 504.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 9105. (1) Subject to subsection (6), a county is  
2 responsible for the administration and enforcement of this part  
3 and the rules promulgated under this part throughout the county  
4 except as follows:

5       (a) Within a municipality that has assumed the responsibility  
6 for soil erosion and sedimentation control under section 9106.

7       (b) With regard to earth changes of authorized public  
8 agencies.

9       (2) Subject to subsection (3), the county board of  
10 commissioners of each county, by resolution, shall designate a

1 county agency, or a conservation district upon the concurrence of  
2 the conservation district, as the county enforcing agency  
3 responsible for administration and enforcement of this part and  
4 the rules promulgated under this part in the name of the county.  
5 The resolution may set forth a schedule of fees for inspections,  
6 plan reviews, and permits and may set forth other matters  
7 relating to the administration and enforcement of the county  
8 program and this part and the rules promulgated under this part.  
9 **However, a county board of commissioners shall not require a**  
10 **person to pay a fee or other financial consideration unless a**  
11 **permit is required under section 9112.**

12 (3) In lieu of or in addition to a resolution provided for in  
13 subsection (2), the county board of commissioners of a county may  
14 provide by ordinance for soil erosion and sedimentation control  
15 in the county. An ordinance adopted under this subsection may be  
16 more restrictive than, but shall not make lawful that which is  
17 unlawful under, this part and the rules promulgated under this  
18 part. If an ordinance adopted under this subsection is more  
19 restrictive than this part and the rules promulgated under this  
20 part, the county enforcing agency shall notify a person receiving  
21 a permit under the ordinance that the ordinance is more  
22 restrictive than this part and the rules promulgated under this  
23 part. The ordinance shall incorporate by reference the rules  
24 promulgated under this part that do not conflict with a more  
25 restrictive ordinance and may set forth such other matters as the  
26 county board of commissioners considers necessary or desirable.  
27 The ordinance may provide penalties for a violation of the

1 ordinance that are consistent with section 9121.

2 (4) A copy of a resolution or ordinance adopted under this  
3 section and all subsequent amendments to the resolution or  
4 ordinance shall be forwarded to the department for the  
5 department's review and approval. The department shall forward a  
6 copy to the conservation district for that county for review and  
7 comment. Not later than December 31, 2001, the department shall  
8 prepare and submit a report to the standing committees of the  
9 senate and the house of representatives with jurisdiction over  
10 issues primarily related to natural resources and the  
11 environment. This report shall detail the number and the  
12 substance of complaints that have been received by the department  
13 related to county ordinances that have been adopted under  
14 subsection (3) that are more restrictive than this part and the  
15 rules promulgated under this part.

16 (5) Two or more counties may provide for joint enforcement  
17 and administration of this part and the rules promulgated under  
18 this part by entering into an interlocal agreement pursuant to  
19 the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL  
20 124.501 to 124.512.

21 (6) ~~Within 3 years after the effective date of the~~  
22 ~~amendatory act that added this subsection~~ **By January 11, 2004,**  
23 the department shall conduct an initial review of each county's  
24 soil erosion and sedimentation control program in accordance with  
25 a schedule established by the department. If the department  
26 approves a county program, its approval is valid for a 5-year  
27 period. After the initial review, the department shall conduct a

1 review of a county's program every 5 years. The review shall be  
2 conducted at least 6 months before the expiration of each  
3 succeeding 5-year period. The department shall approve a  
4 county's program if all of the following conditions are met:

5 (a) The county has passed a resolution or enacted an  
6 ordinance as provided in this section.

7 (b) The individuals with decision-making authority who are  
8 responsible for administering the county program have current  
9 certificates of training under section 9123.

10 (c) The county has effectively administered and enforced the  
11 county program in the past 5 years or has implemented changes in  
12 its administration or enforcement procedures that the department  
13 determines will result in the county effectively administering  
14 and enforcing the county program. In determining whether the  
15 county has met the requirement of this subdivision, the  
16 department shall consider all of the following:

17 (i) Whether a mechanism is in place to provide funding to  
18 administer the county's program.

19 (ii) Whether the county has conducted adequate inspections to  
20 assure minimization of soil erosion and off-site sedimentation.

21 (iii) The effectiveness of the county's past compliance and  
22 enforcement efforts.

23 (iv) The adequacy and effectiveness of the applications and  
24 soil erosion and sedimentation control plans being accepted by  
25 the county.

26 (v) The adequacy and effectiveness of the permits issued by  
27 the county and the inspections being performed by the county.

1           (vi) The conditions at construction sites under the  
2 jurisdiction of the county as documented by departmental  
3 inspections.

4           (7) Following a review under subsection (6), the department  
5 shall notify the county of the results of its review and whether  
6 the department proposes to approve or disapprove the county's  
7 program. Within 30 days of receipt of the notice under this  
8 subsection, a county may request and the department shall hold an  
9 informal meeting to discuss the review and the proposed action by  
10 the department.

11          (8) Following the meeting under subsection (7), if requested,  
12 and consideration of the review under subsection (6), if the  
13 department does not approve a county's program, the department  
14 shall enter an order, stipulation, or consent agreement under  
15 section 9112(2) placing the county on probation. In addition, at  
16 any time that the department determines that a county that was  
17 previously approved by the department under subsection (6) is not  
18 satisfactorily administering and enforcing the county's program,  
19 the department shall enter into an order, stipulation, or consent  
20 agreement under section 9112(2) placing the county on probation.  
21 During the 6-month period after a county is placed on probation,  
22 the department shall consult with the county on how the county  
23 could change its administration of the county program in a manner  
24 that would result in its approval.

25          (9) Within 6 months after a county has been placed on  
26 probation under subsection (8), the county may notify the  
27 department that it intends to hire a consultant to administer the

1 county's program. If, within 60 days after notifying the  
2 department, the county hires a consultant that is acceptable to  
3 the department, then within 1 year after the county hires the  
4 consultant, the department shall conduct a review of the county's  
5 program to determine whether or not the county program can be  
6 approved.

7 (10) If any of the following occur, the department shall hire  
8 a consultant to administer the county's program:

9 (a) The county does not notify the department of its intent  
10 to hire a consultant under subsection (9).

11 (b) The county does not hire a consultant that is acceptable  
12 to the department within 60 days after notifying the department  
13 of its intent to hire a consultant under subsection (9).

14 (c) The county remains unapproved following the department's  
15 review under subsection (9).

16 (11) Upon hiring a consultant under subsection (10), the  
17 department may establish a schedule of fees for inspections,  
18 review of soil erosion and sedimentation control plans, and  
19 permits for the county's program that will provide sufficient  
20 revenues to pay for the cost of the contract with the consultant,  
21 or the department may bill the county for the cost of the  
22 contract with the consultant. **However, the department shall not**  
23 **require a person to pay a fee or other financial consideration**  
24 **unless a permit is required under section 9112.** As used in this  
25 subsection, "cost of the contract" means the actual cost of a  
26 contract with a consultant plus the documented costs to the  
27 department in administering the contract, but not to exceed 10%

1 of the actual cost of the contract.

2 (12) At any time that a county is on probation as provided  
3 for in this section, the county may request the department to  
4 conduct a review of the county's program. If, upon such review,  
5 the county has implemented appropriate changes to the county's  
6 program, the department shall approve the county's program. If  
7 the department approves a county's program under this subsection,  
8 the department shall rescind its order, stipulation, or consent  
9 agreement that placed the county on probation.

10 Sec. 9106. (1) Subject to subsection (3), a municipality by  
11 ordinance may provide for soil erosion and sedimentation control  
12 on public and private earth changes within its boundaries except  
13 that a township ordinance shall not be applicable within a  
14 village that has in effect such an ordinance. An ordinance may  
15 be more restrictive than, but shall not make lawful that which is  
16 unlawful under, this part and the rules promulgated under this  
17 part. If an ordinance adopted under this section is more  
18 restrictive than this part and the rules promulgated under this  
19 part, the municipal enforcing agency shall notify a person  
20 receiving a permit under the ordinance that the ordinance is more  
21 restrictive than this part and the rules promulgated under this  
22 part. The ordinance shall incorporate by reference the rules  
23 promulgated under this part that do not conflict with a more  
24 restrictive ordinance, shall designate a municipal enforcing  
25 agency responsible for administration and enforcement of the  
26 ordinance, and may set forth such other matters as the  
27 legislative body considers necessary or desirable. **However, the**

1 ordinance shall not require a person to pay a fee or other  
2 financial consideration unless a permit is required under the  
3 ordinance. The ordinance shall be applicable and shall be  
4 enforced with regard to all private and public earth changes  
5 within the municipality except earth changes by an authorized  
6 public agency. The municipality may consult with a conservation  
7 district for assistance or advice in the preparation of the  
8 ordinance. The ordinance may provide penalties for a violation  
9 of the ordinance that are consistent with section 9121.

10 (2) An ordinance related to soil erosion and sedimentation  
11 control that is not approved by the department as conforming to  
12 the minimum requirements of this part and the rules promulgated  
13 under this part has no force or effect. A municipality shall  
14 submit a copy of its proposed ordinance or of a proposed  
15 amendment to its ordinance to the department for approval before  
16 adoption. The department shall forward a copy to the county  
17 enforcing agency of the county in which the municipality is  
18 located and the appropriate conservation district for review and  
19 comment. Within 90 days after the department receives an  
20 existing ordinance, proposed ordinance, or amendment, the  
21 department shall notify the clerk of the municipality of its  
22 approval or disapproval along with recommendations for revision  
23 if the ordinance, proposed ordinance, or amendment does not  
24 conform to the minimum requirements of this part or the rules  
25 promulgated under this part. If the department does not notify  
26 the clerk of the local unit within the 90-day period, the  
27 ordinance, proposed ordinance, or amendment shall be considered



1 to have been approved by the department.

2 (3) After a date determined by a schedule established by the  
3 department, but not later than ~~3 years after the effective date~~  
4 ~~of the amendatory act that added this subsection~~ **January 11,**  
5 **2004**, a municipality shall not administer and enforce this part  
6 or the rules promulgated under this part or a local ordinance  
7 unless the department has approved the municipality. An approval  
8 under this section is valid for 5 years, after which the  
9 department shall review the municipality for reapproval. At  
10 least 6 months before the expiration of each succeeding 5-year  
11 approval period, the department shall complete a review of the  
12 municipality for reapproval. The department shall approve a  
13 municipality if all of the following conditions are met:

14 (a) The municipality has enacted an ordinance as provided in  
15 this section that is at least as restrictive as this part and the  
16 rules promulgated under this part.

17 (b) The individuals with decision-making authority who are  
18 responsible for administering the soil erosion and sedimentation  
19 control program for the municipality have current certificates of  
20 training under section 9123.

21 (c) The municipality has submitted evidence of its ability to  
22 effectively administer and enforce a soil erosion and  
23 sedimentation control program. In determining whether the  
24 municipality has met the requirements of this subdivision, the  
25 department shall consider all of the following:

26 (i) Whether a mechanism is in place to provide funding to  
27 administer the municipality's soil erosion and sedimentation

1 control program.

2 (ii) The adequacy of the documents proposed for use by the  
3 municipality including, but not limited to, application forms,  
4 soil erosion and sedimentation control plan requirements, permit  
5 forms, and inspection reports.

6 (iii) If the municipality has previously administered a soil  
7 erosion and sedimentation control program, whether the  
8 municipality effectively administered and enforced the program in  
9 the past or has implemented changes in its administration or  
10 enforcement procedures that the department determines will result  
11 in the municipality effectively administering and enforcing a  
12 soil erosion and sedimentation control program in compliance with  
13 this part and the rules promulgated under this part. In  
14 determining whether the municipality has met the requirement of  
15 this subparagraph, the department shall consider all of the  
16 following:

17 (A) Whether the municipality has had adequate funding to  
18 administer the municipality's soil erosion and sedimentation  
19 control program.

20 (B) Whether the municipality has conducted adequate  
21 inspections to assure minimization of soil erosion and off-site  
22 sedimentation.

23 (C) The effectiveness of the municipality's past compliance  
24 and enforcement efforts.

25 (D) The adequacy and effectiveness of the applications and  
26 soil erosion and sedimentation control plans being accepted by  
27 the municipality.

1 (E) The adequacy and effectiveness of the permits issued by  
2 the municipality and the inspections being performed by the  
3 municipality.

4 (F) The conditions at construction sites under the  
5 jurisdiction of the municipality as documented by departmental  
6 inspections.

7 (4) If the department determines that a municipality is not  
8 approved under subsection (3) or that a municipality that was  
9 previously approved under subsection (3) is not satisfactorily  
10 administering and enforcing this part and the rules promulgated  
11 under this part, the department shall enter an order,  
12 stipulation, or consent agreement under section 9112(2) denying  
13 the municipality authority or revoking the municipality's  
14 authority to administer a soil erosion and sedimentation control  
15 program. Upon entry of this order, stipulation, or consent  
16 agreement, the county program for the county in which the  
17 municipality is located becomes operative within the  
18 municipality.

19 (5) A municipality that elects to rescind its ordinance shall  
20 notify the department. Upon rescission of its ordinance, the  
21 county program for the county in which the municipality is  
22 located becomes operative within the municipality.

23 (6) A municipality that rescinds its ordinance or is not  
24 approved by the department to administer the program shall retain  
25 jurisdiction over projects under permit at that time. The  
26 municipality shall retain jurisdiction until the projects are  
27 completed and stabilized or the county agrees to assume

1 jurisdiction over the permitted earth changes.

2       Sec. 9112. (1) A person shall not maintain or undertake an  
3 earth change governed by this part, the rules promulgated under  
4 this part, or an applicable local ordinance, except in accordance  
5 with this part and the rules promulgated under this part or with  
6 the applicable local ordinance, and pursuant to a permit approved  
7 by the appropriate county enforcing agency or municipal enforcing  
8 agency. A county enforcing agency or municipal enforcing agency  
9 shall approve or deny an application for a permit within 30 days  
10 after the filing of a complete application for a permit. **A**  
11 **permit issued under this section or an applicable local ordinance**  
12 **to a person undertaking or maintaining an earth change for which**  
13 **a permit is required may be transferred to the owner of the land**  
14 **on which the earth change has been made prior to the closing of**  
15 **the term of the permit. A fee shall not be charged for this**  
16 **transfer.**

17       (2) If in the opinion of the department a person, including  
18 an authorized public agency, violates this part, the rules  
19 promulgated under this part, or an applicable local ordinance, or  
20 a county enforcing agency or municipal enforcing agency fails to  
21 enforce this part, the rules promulgated under this part, or an  
22 applicable local ordinance, the department may notify the alleged  
23 offender in writing of its determination. If the department  
24 places a county on probation under section 9105, a municipality  
25 is not approved under section 9106, or a state agency or agency  
26 of a local unit of government is not approved under section 9110,  
27 or if the department determines that a municipal enforcing agency

1 or authorized public agency is not satisfactorily administering  
2 and enforcing this part and rules promulgated under this part,  
3 the department shall notify the county, municipality, state  
4 agency, or agency of a local unit of government in writing of its  
5 determination or action. The notice shall contain, in addition  
6 to a statement of the specific violation or failure that the  
7 department believes to exist, a proposed order, stipulation for  
8 agreement, or other action that the department considers  
9 appropriate to assure timely correction of the violation or  
10 failure. The notice shall set a date for a hearing not less than  
11 4 nor more than 8 weeks from the date of the notice of  
12 determination. Extensions of the date of the hearing may be  
13 granted by the department or on request. At the hearing, any  
14 interested party may appear, present witnesses, and submit  
15 evidence. A person who has been served with a notice of  
16 determination may file a written answer to the notice of  
17 determination before the date set for hearing or at the hearing  
18 may appear and present oral or written testimony and evidence on  
19 the charges and proposed requirements of the department to assure  
20 correction of the violation or failure. If a person served with  
21 the notice of determination agrees with the proposed requirements  
22 of the department and notifies the department of that agreement  
23 before the date set for the hearing, disposition of the case may  
24 be made with the approval of the department by stipulation or  
25 consent agreement without further hearing. The final order of  
26 determination following the hearing, or the stipulation or  
27 consent order as authorized by this section and approved by the

1 department, is conclusive unless reviewed in accordance with the  
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
3 24.328, in the circuit court of Ingham county, or of the county  
4 in which the violation occurred, upon petition filed within 15  
5 days after the service upon the person of the final order of  
6 determination.