

SENATE BILL No. 1438

September 30, 2004, Introduced by Senators GILBERT, TOY and GOSCHKA and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 9105 and 9106 (MCL 324.9105 and 324.9106),
as amended by 2000 PA 504, and by adding section 9111.

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 (c) With regard to general permits under section 9111.

10 (2) Subject to subsection (3), the county board of

1 commissioners of each county, by resolution, shall designate a
2 county agency, or a conservation district upon the concurrence of
3 the conservation district, as the county enforcing agency
4 responsible for administration and enforcement of this part and
5 the rules promulgated under this part in the name of the county.
6 The resolution may set forth a schedule of fees for inspections,
7 plan reviews, and permits and may set forth other matters
8 relating to the administration and enforcement of the county
9 program and this part and the rules promulgated under this part.

10 (3) In lieu of or in addition to a resolution provided for in
11 subsection (2), the county board of commissioners of a county may
12 provide by ordinance for soil erosion and sedimentation control
13 in the county. An ordinance adopted under this subsection may be
14 more restrictive than, but shall not make lawful that which is
15 unlawful under, this part and the rules promulgated under this
16 part. If an ordinance adopted under this subsection is more
17 restrictive than this part and the rules promulgated under this
18 part, the county enforcing agency shall notify a person receiving
19 a permit under the ordinance that the ordinance is more
20 restrictive than this part and the rules promulgated under this
21 part. The ordinance shall incorporate by reference the rules
22 promulgated under this part that do not conflict with a more
23 restrictive ordinance and may set forth such other matters as the
24 county board of commissioners considers necessary or desirable.
25 The ordinance may provide penalties for a violation of the
26 ordinance that are consistent with section 9121.

27 (4) A copy of a resolution or ordinance adopted under this

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

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

19 (6) ~~Within 3 years after the effective date of the~~
20 ~~amendatory act that added this subsection, the department shall~~
21 ~~conduct an initial review of each county's soil erosion and~~
22 ~~sedimentation control program in accordance with a schedule~~
23 ~~established by the department. If the department approves a~~
24 ~~county program, its approval is valid for a 5 year period. After~~
25 ~~the initial review, the~~ **The** department shall conduct a review of
26 a county's program every 5 years. The review shall be conducted
27 at least 6 months before the expiration of each succeeding 5-year

1 period. The department shall approve a county's program if all
2 of the following conditions are met:

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

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

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

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

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

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

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

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

26 (vi) The conditions at construction sites under the
27 jurisdiction of the county as documented by departmental

1 inspections.

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

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

23 (9) Within 6 months after a county has been placed on
24 probation under subsection (8), the county may notify the
25 department that it intends to hire a consultant to administer the
26 county's program. If, within 60 days after notifying the
27 department, the county hires a consultant that is acceptable to

1 the department, then within 1 year after the county hires the
2 consultant, the department shall conduct a review of the county's
3 program to determine whether or not the county program can be
4 approved.

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

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

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

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

14 (11) Upon hiring a consultant under subsection (10), the
15 department may establish a schedule of fees for inspections,
16 review of soil erosion and sedimentation control plans, and
17 permits for the county's program that will provide sufficient
18 revenues to pay for the cost of the contract with the consultant,
19 or the department may bill the county for the cost of the
20 contract with the consultant. As used in this subsection, "cost
21 of the contract" means the actual cost of a contract with a
22 consultant plus the documented costs to the department in
23 administering the contract, but not to exceed 10% of the actual
24 cost of the contract.

25 (12) At any time that a county is on probation as provided
26 for in this section, the county may request the department to
27 conduct a review of the county's program. If, upon such review,

1 the county has implemented appropriate changes to the county's
2 program, the department shall approve the county's program. If
3 the department approves a county's program under this subsection,
4 the department shall rescind its order, stipulation, or consent
5 agreement that placed the county on probation.

6 Sec. 9106. (1) Subject to **section 9111 and** subsection (3),
7 a municipality by ordinance may provide for soil erosion and
8 sedimentation control on public and private earth changes within
9 its boundaries except that a township ordinance shall not be
10 applicable within a village that has in effect such an
11 ordinance. An ordinance may be more restrictive than, but shall
12 not make lawful that which is unlawful under, this part and the
13 rules promulgated under this part. If an ordinance adopted under
14 this section is more restrictive than this part and the rules
15 promulgated under this part, the municipal enforcing agency shall
16 notify a person receiving a permit under the ordinance that the
17 ordinance is more restrictive than this part and the rules
18 promulgated under this part. The ordinance shall incorporate by
19 reference the rules promulgated under this part that do not
20 conflict with a more restrictive ordinance, shall designate a
21 municipal enforcing agency responsible for administration and
22 enforcement of the ordinance, and may set forth such other
23 matters as the legislative body considers necessary or
24 desirable. The ordinance shall be applicable and shall be
25 enforced with regard to all private and public earth changes
26 within the municipality except earth changes by an authorized
27 public agency. The municipality may consult with a conservation

1 district for assistance or advice in the preparation of the
2 ordinance. The ordinance may provide penalties for a violation
3 of the ordinance that are consistent with section 9121.

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

23 (3) ~~After a date determined by a schedule established by the~~
24 ~~department, but not later than 3 years after the effective date~~
25 ~~of the amendatory act that added this subsection, a~~ **A**
26 municipality shall not administer and enforce this part or the
27 rules promulgated under this part or a local ordinance unless the

1 department has approved the municipality. An approval under this
2 section is valid for 5 years, after which the department shall
3 review the municipality for reapproval. At least 6 months before
4 the expiration of each succeeding 5-year approval period, the
5 department shall complete a review of the municipality for
6 reapproval. The department shall approve a municipality if all
7 of the following conditions are met:

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

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

15 (c) The municipality has submitted evidence of its ability to
16 effectively administer and enforce a soil erosion and
17 sedimentation control program. In determining whether the
18 municipality has met the requirements of this subdivision, the
19 department shall consider all of the following:

20 (i) Whether a mechanism is in place to provide funding to
21 administer the municipality's soil erosion and sedimentation
22 control program.

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

27 (iii) If the municipality has previously administered a soil

1 erosion and sedimentation control program, whether the
2 municipality effectively administered and enforced the program in
3 the past or has implemented changes in its administration or
4 enforcement procedures that the department determines will result
5 in the municipality effectively administering and enforcing a
6 soil erosion and sedimentation control program in compliance with
7 this part and the rules promulgated under this part. In
8 determining whether the municipality has met the requirement of
9 this subparagraph, the department shall consider all of the
10 following:

11 (A) Whether the municipality has had adequate funding to
12 administer the municipality's soil erosion and sedimentation
13 control program.

14 (B) Whether the municipality has conducted adequate
15 inspections to assure minimization of soil erosion and off-site
16 sedimentation.

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

19 (D) The adequacy and effectiveness of the applications and
20 soil erosion and sedimentation control plans being accepted by
21 the municipality.

22 (E) The adequacy and effectiveness of the permits issued by
23 the municipality and the inspections being performed by the
24 municipality.

25 (F) The conditions at construction sites under the
26 jurisdiction of the municipality as documented by departmental
27 inspections.

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

13 (5) A municipality that elects to rescind its ordinance shall
14 notify the department. Upon rescission of its ordinance, the
15 county program for the county in which the municipality is
16 located becomes operative within the municipality.

17 (6) A municipality that rescinds its ordinance or is not
18 approved by the department to administer the program shall retain
19 jurisdiction over projects under permit at that time. The
20 municipality shall retain jurisdiction until the projects are
21 completed and stabilized or the county agrees to assume
22 jurisdiction over the permitted earth changes.

23 **Sec. 9111. (1) The department shall issue a general permit**
24 **to a person who wishes to maintain a previously permitted seawall**
25 **or similar structure or other preventative measure used to**
26 **stabilize soils. A general permit shall be issued upon the**
27 **submission of appropriate information on a form to be developed**

1 by the department. Such a form shall include likely dates of the
2 proposed work, location of the existing structure, and a general
3 description of the type of work to be completed. The department
4 shall not charge a fee for a general permit. The department
5 shall notify the relevant county enforcing agency or municipal
6 enforcing agency whenever a general permit is issued in its area
7 of jurisdiction.

8 (2) A person that obtains a general permit from the
9 department under subsection (1) is not required to obtain a
10 permit from a county enforcing agency or a municipal enforcing
11 agency.