

# SENATE BILL No. 1439

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 section 9105 (MCL 324.9105), as amended by 2000 PA  
504.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 9105. (1) ~~Subject to subsection (6), a~~ 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 (3) In lieu of or in addition to a resolution provided for in  
10 subsection (2), the county board of commissioners of a county may  
11 provide by ordinance for soil erosion and sedimentation control  
12 in the county. An ordinance adopted under this subsection may be  
13 more restrictive than, but shall not make lawful that which is  
14 unlawful under, this part and the rules promulgated under this  
15 part. If an ordinance adopted under this subsection is more  
16 restrictive than this part and the rules promulgated under this  
17 part, the county enforcing agency shall notify a person receiving  
18 a permit under the ordinance that the ordinance is more  
19 restrictive than this part and the rules promulgated under this  
20 part. The ordinance shall incorporate by reference the rules  
21 promulgated under this part that do not conflict with a more  
22 restrictive ordinance and may set forth such other matters as the  
23 county board of commissioners considers necessary or desirable.  
24 The ordinance may provide penalties for a violation of the  
25 ordinance that are consistent with section 9121.

26 (4) A copy of a resolution or ordinance adopted under this  
27 section and all subsequent amendments to the resolution or

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

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

18 (6) ~~Within 3 years after the effective date of the~~  
19 ~~amendatory act that added this subsection~~ **Not later than January**  
20 **11, 2004**, the department shall conduct an initial review of each  
21 county's soil erosion and sedimentation control program in  
22 accordance with a schedule established by the department. If the  
23 department approves a county program, its approval is valid for a  
24 5-year period. After the initial review, the department shall  
25 conduct a review of a county's program every 5 years. The review  
26 shall be conducted at least 6 months before the expiration of  
27 each succeeding 5-year period. The department shall approve a

1 county's program if all of the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

22       (9) Within 6 months after a county has been placed on  
23 probation under subsection (8), the county may notify the  
24 department that it intends to hire a consultant to administer the  
25 county's program. If, within 60 days after notifying the  
26 department, the county hires a consultant that is acceptable to  
27 the department, then within 1 year after the county hires the

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

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

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

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

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

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

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

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