

## SOIL EROSION AND SEDIMENTATION CONTROL

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

**House Bill 4444 (Substitute H-1)**

**Sponsor: Rep. Phil Pavlov**

**House Committee: Natural Resources, Great Lakes, Land Use, and Environment**

**Senate Bill 282 (Substitute H-2)**

**Sponsor: Sen. Jud Gilbert, II**

**House Committee: Natural Resources, Great Lakes, Land Use, and Environment**

**Senate Committee: Natural Resources and Environmental Affairs**

### **First Analysis (5-23-05)**

**BRIEF SUMMARY:** Senate Bill 282 would amend Part 91 of NREPA so that a permit would not be required for certain specified earth change activities on residential property undertaken by the property owner and occupant. House Bill 4444 would amend NREPA to include definitions of "gardening" and "seawall maintenance," and make other technical amendments.

**FISCAL IMPACT:** The current permit fee generates \$110,000 each year. The proposed changes made by this legislation would not have a fiscal impact on the Department of Environmental Quality or on local governmental units.

### **THE APPARENT PROBLEM:**

Part 91 (Soil Erosion and Sedimentation Control) of the Natural Resources and Environmental Protection Act seeks to prevent sediment from being deposited into the waters of the state. Sediment is the greatest pollutant in the lakes and streams of the state and can result in the filling of lakes and streams, increased flooding, damage to plant and animal life, and structural damage to buildings and roads.

To protect against the uncontrolled erosion of sediment into state waters, Part 91 requires a permit for, generally speaking, any "earth change" that disturbs one or more acres or is within 500 feet of a lake or stream. Permits must be obtained from the appropriate enforcing agency – primarily counties, although certain municipalities are charged with enforcing and administering Part 91. Administration and enforcement activities undertaken pursuant to Part 91 are generally self funded by permit fees imposed on individuals and commercial entities. Critics say that officials in St. Clair County have taken a rather aggressive and, at times, overzealous enforcement approach, (which they suspects may be an effort to raise additional revenue) that now requires permits for seemingly routine yard work and home maintenance activities, such as gardening, reseeding a lawn, or maintaining a seawall. While the county's action may be entirely within the strictures of the law, some people believe that these minor activities, many of which do not contribute much to soil erosion or sedimentation, should be exempt from the law's permitting requirements.

## ***THE CONTENT OF THE BILLS:***

Senate Bill 282 would amend Part 91 of NREPA so that a permit would not be required for certain specified earth change activities on residential property undertaken by the property owner or occupant. House Bill 4444 is tie-barred to Senate Bill 282 and would amend NREPA to add definitions for "gardening" and "seawall maintenance" (as used in Senate Bill 282) and make other technical amendments. The bills are described in more detail below.

### **Senate Bill 282**

Senate Bill 282 would amend Part 91 of NREPA so that a permit would not be required for certain earth change activities on residential property when undertaken by the property owner or occupant. Specifically, the bill would not require a permit for the following activities, if the activity does not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

- An earth change of a minor nature that is stabilized within 24 hours of the initial disturbance.
- Gardening if the natural elevation of the area is not raised.
- Digging post holes for fencing, decks, utility posts, mailboxes, or similar applications if no additional grading or earth change occurs for use of the post holes.
- Seawall maintenance.
- The following activities, if the earth change stabilizes within 24 hours, soil erosion and sedimentation control measures are used, and soil erosion and sedimentation will not reasonably occur: the planting of trees; the seeding or reseeding of lawns if the lawn is of a certain size and distance from state waters; and the temporary stockpiling of soil, sand, or gravel of less than 10 cubic yards if the stockpiling is at least 100 feet from state waters.

In addition, the bill would specify that the earth change activities listed above would have to conform to state standards as if they were subject to a permit, and that an exemption from the permit requirement would not exempt the activity from applicable enforcement procedures under Part 91 or related administrative rules if the activity causes or results in a violation of the part or administrative rules.

MCL 324.9115a

## ***BACKGROUND INFORMATION:***

Reportedly, the Department of Environmental Quality and the bill sponsors have agreed in principle to additional language limiting the scope of the seawall maintenance activities the bill would exempt from act's permitting requirements. According to committee testimony, amendments will specify that such activities must be under 100 square feet, be stabilized within 24 hours, and take place on the landward side of the seawall. Substitute bills incorporating that agreement are expected to be introduced on the House floor.

## ***ARGUMENTS:***

### ***For:***

Reportedly, certain local enforcing agencies have been very aggressive in enforcing the regulations of Part 91 and have required a permit for traditional residential activities that pose no threat of erosion of sediment into the waters of the state. While these regulations may have been technically in accordance with Part 91, critics say they are not within the spirit of the law. Senate Bill 282 strikes a balance between the desire of property owners to be free from burdensome regulations and fees when managing their land as they see fit and, at the same time, the need to protect the waters of the state from soil erosion and sedimentation. To that end, the bill provides that normal residential activities, such as gardening, planting trees, re-seeding laws, and the stockpiling of soil are exempt from the permitting requirements of Part 91. However, the bill also contains numerous provisions aimed to protecting against soil erosion. The bill provides that though such activities are exempt from the permitting requirements, they would still have to conform to the same standards as if subject to a permit, and further provides that the exemption from the permitting requirements would not exempt those activities from enforcement procedures if the earth change activities violate the act or related rules.

## ***POSITIONS:***

The Department of Environmental Quality supports the bills. (5-19-05)

The Michigan Association of County Drain Commissioners supports the bills. (5-19-05)

The Michigan Association of Counties supports the bills. (5-19-05)

Legislative Analyst: Mark Wolf  
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.