

Legislative Analysis



SOIL EROSION AND SEDIMENTATION CONTROL

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House Bill 4444 as enrolled
Public Act 55 of 2005
Sponsor: Rep. Phil Pavlov

Senate Bill 282 as enrolled
Public Act 56 of 2005
Sponsor: Sen. Jud Gilbert, II

House Committee: Natural Resources, Great Lakes, Land Use, and Environment
Senate Committee: Natural Resources and Environmental Affairs
Second Analysis (8-11-05)

BRIEF SUMMARY: Senate Bill 282 would amend Part 91 of the Natural Resources and Environmental Protection Act 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 would amend Part 91 to add definitions for "gardening" and "seawall maintenance" (as used in Senate Bill 282).

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 said to be 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 typically requires a permit for 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 also 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 very aggressive and, at times, even overzealous enforcement approach, (which they suspect may be an effort to raise additional revenue) and now require permits for seemingly routine yard work and home maintenance activities, such as gardening, reseeding a lawn, or maintaining a seawall. While the county's actions may be entirely within the strictures of the law, some people believe that 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 the Natural Resources and Environmental Protection Act 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 would amend Part 91 to add definitions for "gardening" and "seawall maintenance" (as used in Senate Bill 282). The bills, which are tie-barred to each other, are described below in greater detail.

House Bill 4444

The bill would amend Part 91 of NREPA to add definitions for "gardening" and "seawall maintenance." The bill would define "gardening" to mean activities that are necessary to the growing of plants for personal use, consumption, or enjoyment. The bill would define "seawall maintenance" to mean an earth change activity landward of the seawall.

Additionally, Part 91 permits an agent appointed by the DEQ or local enforcing agency to enter public or private property, at reasonable times, to investigate and inspect conditions or practices may be in violation of the part. The bill would add that an investigation or inspection would have to comply with the U.S. and state constitutions.

MCL 324.9101 et al

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.
- 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; 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; and seawall maintenance not exceeding 100 square feet

In addition, the bill would specify 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

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, including certain size and location limitations. Additionally, the bill provides that though such activities are exempt from the permitting requirements, they would not be exempt from enforcement procedures if the earth change activities violate the act or related rules.

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