



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 282 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Jud Gilbert, II
Committee: Natural Resources and Environmental Affairs

Date Completed: 4-12-05

RATIONALE

According to the Department of Environmental Quality (DEQ), sediment is the greatest pollutant, by volume, entering the State's lakes and streams. Sediment typically enters waterways when construction and landscaping activities occurring near a lake or stream remove the vegetation that keeps erosion in check. Therefore, Part 91 of the Natural Resources and Environmental Protection Act requires a permit for any earth change that disturbs one or more acres, or is within 500 feet of a lake or stream. ("Earth change" is defined as a human-made change in the natural cover or topography of land, including cut and fill activities that may result in or contribute to soil erosion or sedimentation of water. The term does not include mining activities, or plowing or tilling the soil for the purposes of crop production.) A county is responsible for administering and enforcing Part 91 throughout the county, except within a municipality that has assumed the responsibility for soil erosion and sedimentation control. Reportedly, in order to comply with Part 91, many homeowners who live along waterways are required to drive to their county seat, apply for a permit, and submit a soil erosion and sedimentation control plan, for activities such as repairing seawalls, digging fenceposts, and planting flowers. It has been suggested that these types of activities should be exempt from the soil erosion permit requirements.

CONTENT

The bill would amend Part 91 (Soil Erosion and Sedimentation Control) of the Natural Resources and Environmental Protection Act to identify

sediment-moving activities on residential property that would not require a permit, and allow the DEQ to issue general permits for specific categories of projects not otherwise exempt from the permit requirements under Part 91.

Under the bill, a residential property owner who caused the following activities to be conducted on his or her property would not be required to obtain a permit if the activities did not result in a discharge of sediments to the waters of the State, or an off-site discharge of sediment:

- An earth change of a minor nature that would be stabilized with 24 hours of the initial earth disturbance.
- Gardening, if the natural elevation of the area were not raised.
- Post holes for fencing, decks, utility posts, mailboxes, or similar application.
- Normal and customary residential landscaping, including all of the following: planting of trees, shrubs, and other vegetation; seeding or reseeding lawns less than one acre, if the seeded area were at least 100 feet from State waters; and seeding or reseeding of lawns closer than 100 feet from State waters, if the area did not exceed 100 square feet.
- Stockpiling of soil, sand, or gravel not greater than 10 cubic yards, if the stockpiling occurred at least 100 feet from State waters.

The DEQ could issue general permits for specific categories of projects that were not otherwise exempt from the permit requirements and that would have minimal risks of adverse impacts on the waters of

the State, including all of the following: landscaping, minor household maintenance, minor soil stabilization activities, and seawall maintenance. The Department would have to develop criteria that defined the projects that qualified for each general permit; the criteria would have to consider the type of project, the area of the earth change, and the distance from State waters. The DEQ also would have to develop conditions in each general permit that protected State waters from soil erosion and sedimentation.

The Department would have to provide application forms for certificates of coverage for each general permit issued. An individual who desired to conduct activities authorized by a general permit would have to submit an application for a certificate of coverage to the county enforcing agency or the municipal enforcing agency, as appropriate. After receiving an application for a certificate of coverage for a project covered by a general permit, the county or municipal enforcing agency could issue a certificate of coverage if the project met the DEQ's criteria. The county or municipal enforcing agency could waive fees or could charge a fee, not to exceed the administrative costs to the agency to issue the certificate of coverage, for a general permit.

Proposed MCL 324.9115a & 324.9115b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Exempting minor earth-moving activities from the permitting process would inject a degree of reasonableness into the requirements of Part 91. Reportedly, in Saint Clair County, county officials are ticketing individuals for failure to obtain a permit before planting flowers or bringing in earth to repair a seawall. Because county officials are adhering to the letter of the law in issuing the permits, fined individuals have little recourse. The bill would retain the spirit of the law by continuing to require permits for activities that have the potential to discharge sediment into State waters, such as construction activities, terracing, and stockpiling large mounds of dirt.

The bill also would ease the paperwork burden on residents and on county and municipal enforcing agencies by allowing general permits for projects that would have minimal impact on the waters of the State but otherwise not be exempt under the law. (A general permit allows an enforcing agency to submit to the DEQ an application for a permit for certain categories of activities, on behalf of the residents of the county or municipality.) Currently, when people submit a permit application under Part 91, they must supply a soil erosion and sedimentation control plan that includes a map of the site location, soil information, the timing and sequence of each proposed earth change, and at least four other detailed items of information. For minor activities such as home landscaping, this requirement is onerous and unnecessary. Under the bill, individuals could apply for a certificate of coverage under the general permit--a procedure that presumably would be tailored to small residential projects--rather than the current process, which is suited for large-scale construction or earth-moving jobs.

Opposing Argument

The bill does not speak to the problem of landscaping or stockpiling dirt near storm drains. Thus, a person could pile a large mass of earth near a storm drain, where rain could wash most of it down the drain and into the State's rivers and streams. Urban residents, in particular, are more likely to garden or landscape near a storm drain, and the bill should provide environmental protections in metropolitan areas as well as rural or lake-side counties.

Response: Part 91 permits a county board of commissioners to pass an ordinance for soil erosion and sedimentation control that is more restrictive than Part 91 and the rules promulgated under it. This provides for local control, enabling each county to tailor the permitting processes to fit its needs. Thus, any county presently may restrict the stockpiling of dirt near storm drains, if it sees fit.

Legislative Analyst: Claire Layman

FISCAL IMPACT

Since the bill specifies which minor earth change projects would be exempt from permit requirements and would create a general permit for many other activities, there would likely be fewer permits issued

and an indeterminate loss of fee revenue. Local enforcing agencies would be allowed to charge a fee to cover administrative costs of issuing certificates of coverage and would recover any expenses imposed by the bill.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.