



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 282 (as enrolled)

House Bill 4444 (as enrolled)

Sponsor: Senator Jud Gilbert, II (S.B. 282)

Representative Phillip Pavlov (H.B. 4444)

Senate Committee: Natural Resources and Environmental Affairs

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

Date Completed: 8-29-05

PUBLIC ACT 56 of 2005

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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. (An "earth change" is 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 have had 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 was suggested that these types of activities should be exempt from the soil erosion permit requirements.

CONTENT

Senate Bill 282 amended Part 91 (Soil Erosion and Sedimentation Control) of

the Natural Resources and Environmental Protection Act to allow a residential property owner to perform certain activities on his or her property without a permit. House Bill 4444 amended Part 91 to define the terms "gardening" and "seawall" maintenance, and to require an inspection or investigation of a possible violation of Part 91 to comply with the United States and State Constitutions.

The bills were tie-barred to each other and took effect on June 30, 2005.

Senate Bill 282

Under the bill, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under Part 91 if the activities do not result or contribute to soil erosion or sedimentation of the waters of the State or in a discharge of sediment off-site:

- An earth change of a minor nature that is stabilized with 24 hours of the initial earth disturbance.
- Gardening, if the natural elevation of the area is not raised.
- Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the holes.

Under the same circumstances, a residential property owner may cause all of the

following activities to be conducted on his or her property without a permit, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent property or the waters of the State has not occurred or will not reasonably occur:

- Planting of trees, shrubs, or other similar plants.
- Seeding or reseeding of lawns of less than one acre if the seeded area is at least 100 feet from the water.
- Seeding or reseeding of lawns closer than 100 feet from the water if the area to be seeded or reseeded does not exceed 100 square feet.
- The temporary stockpiling of not more than a total of 10 cubic yards of soil, sand, or gravel on the property, if the stockpiling occurs at least 100 feet from the water.
- Seawall maintenance that does not exceed 100 square feet.

The bill specifies that the exemptions provided in it may not be construed as exemptions from enforcement procedures under Part 91 or the rules promulgated under it, if the exempted activities cause or result in a violation of the part or the rules.

House Bill 4444

Part 91 allows an agent appointed by the Department of Environmental Quality, a county enforcing agency (i.e., an officer, board, commission, department, or other entity of county government, or a conservation district designated by a county board of commissioners), or a municipal enforcing agency (an agency designated by a municipality to enforce a local ordinance) to enter upon any private or public property at any reasonable time to inspect and investigate conditions or practices that may be in violation of Part 91. The bill specifies that such an investigation or inspection must comply with the U.S. and State Constitutions.

The bill defines "gardening" as activities necessary to the growing of plants for personal use, consumption, or enjoyment. The bill defines "seawall maintenance" as an earth change activity landward of the seawall.

MCL 324.9115a (S.B. 282)
324.9101 et al. (H.B. 4444)

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 permit requirement will inject a degree of reasonableness into the requirements of Part 91. Reportedly, in St. Clair County, county officials were ticketing individuals for failure to obtain a permit before planting flowers or bringing in earth to repair a seawall. Because county officials were adhering to the letter of the law, perhaps overzealously, fined individuals had little recourse. The bills ease the burden on individual property owners by exempting certain routine activities from the permit requirement, but continue 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. Thus, the bills strike a fair balance between the interests of homeowners and the need to protect the environment.

Also, requiring inspections and investigations to comply with the U.S. and State Constitutions will help protect against overly aggressive enforcement activity.

Opposing Argument

The bills do not speak to the problem of landscaping or stockpiling dirt near storm drains. 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 rivers and streams. Urban residents, in particular, are more likely to garden or landscape near a storm drain. The law should increase environmental protections in metropolitan areas.

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
Suzanne Lowe

FISCAL IMPACT

Senate Bill 282

Since the bill specifies which minor earth change projects are exempt from permit requirements, there will likely be fewer permits issued and an indeterminate loss of fee revenue.

House Bill 4444

The bill will have no fiscal impact on State or local government.

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.