

**SUBSTITUTE FOR
HOUSE BILL NO. 4444**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 9101, 9105, 9106, 9110, and 9113 (MCL
324.9101, 324.9105, 324.9106, 324.9110, and 324.9113), section 9101
as amended by 2001 PA 227 and sections 9105, 9106, 9110, and 9113
as amended by 2000 PA 504.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9101. (1) "Agricultural practices" means all land farming
2 operations except the plowing or tilling of land for the purpose of
3 crop production or the harvesting of crops.

4 (2) "Authorized public agency" means a state agency or an
5 agency of a local unit of government authorized under section 9110
6 to implement soil erosion and sedimentation control procedures with

1 regard to earth changes undertaken by it.

2 (3) "Conservation district" means a conservation district
3 authorized under part 93.

4 (4) "Consultant" means either of the following:

5 (a) An individual who has a current certificate of training
6 under section 9123.

7 (b) A person who employs 1 or more individuals who have
8 current certificates of training under section 9123.

9 (5) "County agency" means an officer, board, commission,
10 department, or other entity of county government.

11 (6) "County enforcing agency" means a county agency or a
12 conservation district designated by a county board of commissioners
13 under section 9105.

14 (7) "County program" or "county's program" means a soil
15 erosion and sedimentation control program established under section
16 9105.

17 (8) "Department" means the department of environmental
18 quality.

19 (9) "Earth change" means a human-made change in the natural
20 cover or topography of land, including cut and fill activities,
21 which may result in or contribute to soil erosion or sedimentation
22 of the waters of the state. Earth change does not include the
23 practice of plowing and tilling soil for the purpose of crop
24 production.

25 (10) **"GARDENING" MEANS ACTIVITIES NECESSARY TO THE GROWING OF**
26 **PLANTS FOR PERSONAL USE, CONSUMPTION, OR ENJOYMENT.**

27 (11) ~~—(10)—~~ "Local ordinance" means an ordinance enacted by a

1 local unit of government under this part providing for soil erosion
2 and sedimentation control.

3 (12) ~~-(11)-~~ "Municipal enforcing agency" means an agency
4 designated by a municipality under section 9106 to enforce a local
5 ordinance.

6 (13) ~~-(12)-~~ "Municipality" means any of the following:

7 (a) A city.

8 (b) A village.

9 (c) A charter township.

10 (d) A general law township that is located in a county with a
11 population of 200,000 or more.

12 (14) ~~-(13)-~~ "Rules" means the rules promulgated pursuant to
13 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
14 to 24.328.

15 (15) **"SEAWALL MAINTENANCE" MEANS AN EARTH CHANGE ACTIVITY**
16 **LANDWARD OF THE SEAWALL.**

17 (16) ~~-(14)-~~ "Sediment" means solid particulate matter,
18 including both mineral and organic matter, that is in suspension in
19 water, is being transported, or has been removed from its site of
20 origin by the actions of wind, water, or gravity and has been
21 deposited elsewhere.

22 (17) ~~-(15)-~~ "Soil erosion" means the wearing away of land by
23 the action of wind, water, gravity, or a combination of wind,
24 water, or gravity.

25 (18) ~~-(16)-~~ "State agency" means a principal state department
26 or a state public university.

27 (19) ~~-(17)-~~ "Violation of this part" or "violates this part"

1 means a violation of this part, the rules promulgated under this
2 part, a permit issued under this part, or a local ordinance enacted
3 under this part.

4 (20) ~~(18)~~ "Waters of the state" means the Great Lakes and
5 their connecting waters, inland lakes and streams as defined in
6 rules promulgated under this part, and wetlands regulated under
7 part 303.

8 Sec. 9105. (1) Subject to subsection (6), a county is
9 responsible for the administration and enforcement of this part and
10 the rules promulgated under this part throughout the county except
11 as follows:

12 (a) Within a municipality that has assumed the responsibility
13 for soil erosion and sedimentation control under section 9106.

14 (b) With regard to earth changes of authorized public
15 agencies.

16 (2) Subject to subsection (3), the county board of
17 commissioners of each county, by resolution, shall designate a
18 county agency, or a conservation district upon the concurrence of
19 the conservation district, as the county enforcing agency
20 responsible for administration and enforcement of this part and the
21 rules promulgated under this part in the name of the county. The
22 resolution may set forth a schedule of fees for inspections, plan
23 reviews, and permits and may set forth other matters relating to
24 the administration and enforcement of the county program and this
25 part and the rules promulgated under this part.

26 (3) In lieu of or in addition to a resolution provided for in
27 subsection (2), the county board of commissioners of a county may

1 provide by ordinance for soil erosion and sedimentation control in
2 the county. An ordinance adopted under this subsection may be more
3 restrictive than, but shall not make lawful that which is unlawful
4 under, this part and the rules promulgated under this part. If an
5 ordinance adopted under this subsection is more restrictive than
6 this part and the rules promulgated under this part, the county
7 enforcing agency shall notify a person receiving a permit under the
8 ordinance that the ordinance is more restrictive than this part and
9 the rules promulgated under this part. The ordinance shall
10 incorporate by reference the rules promulgated under this part that
11 do not conflict with a more restrictive ordinance and may set forth
12 such other matters as the county board of commissioners considers
13 necessary or desirable. The ordinance may provide penalties for a
14 violation of the ordinance that are consistent with section 9121.

15 (4) A copy of a resolution or ordinance adopted under this
16 section and all subsequent amendments to the resolution or
17 ordinance shall be forwarded to the department for the department's
18 review and approval. The department shall forward a copy to the
19 conservation district for that county for review and comment. ~~Not~~
20 ~~later than December 31, 2001, the department shall prepare and~~
21 ~~submit a report to the standing committees of the senate and the~~
22 ~~house of representatives with jurisdiction over issues primarily~~
23 ~~related to natural resources and the environment. This report shall~~
24 ~~detail the number and the substance of complaints that have been~~
25 ~~received by the department related to county ordinances that have~~
26 ~~been adopted under subsection (3) that are more restrictive than~~
27 ~~this part and the rules promulgated under this part.~~

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

6 (6) ~~Within 3 years after the effective date of the amendatory~~
7 ~~act that added this subsection, the department shall conduct an~~
8 ~~initial review of each county's soil erosion and sedimentation~~
9 ~~control program in accordance with a schedule established by the~~
10 ~~department. If the department approves a county program, its~~
11 ~~approval is valid for a 5 year period. After the initial review,~~
12 ~~the~~ **THE** department shall conduct a review of a county's program
13 every 5 years. The review shall be conducted at least 6 months
14 before the expiration of each succeeding 5-year period. The
15 department shall approve a county's program if all of the following
16 conditions are met:

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

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

22 (c) The county has effectively administered and enforced the
23 county program in the past 5 years or has implemented changes in
24 its administration or enforcement procedures that the department
25 determines will result in the county effectively administering and
26 enforcing the county program. In determining whether the county has
27 met the requirement of this subdivision, the department shall

1 consider all of the following:

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

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

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

8 (iv) The adequacy and effectiveness of the applications and
9 soil erosion and sedimentation control plans being accepted by the
10 county.

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

13 (vi) The conditions at construction sites under the
14 jurisdiction of the county as documented by departmental
15 inspections.

16 (7) Following a review under subsection (6), the department
17 shall notify the county of the results of its review and whether
18 the department proposes to approve or disapprove the county's
19 program. Within 30 days of receipt of the notice under this
20 subsection, a county may request and the department shall hold an
21 informal meeting to discuss the review and the proposed action by
22 the department.

23 (8) Following the meeting under subsection (7), if requested,
24 and consideration of the review under subsection (6), if the
25 department does not approve a county's program, the department
26 shall enter an order, stipulation, or consent agreement under
27 section ~~9112(2)~~ 9112(7) placing the county on probation. In

1 addition, at any time that the department determines that a county
2 that was previously approved by the department under subsection (6)
3 is not satisfactorily administering and enforcing the county's
4 program, the department shall enter into an order, stipulation, or
5 consent agreement under section ~~9112(2)~~ **9112(7)** placing the
6 county on probation. During the 6-month period after a county is
7 placed on probation, the department shall consult with the county
8 on how the county could change its administration of the county
9 program in a manner that would result in its approval.

10 (9) Within 6 months after a county has been placed on
11 probation under subsection (8), the county may notify the
12 department that it intends to hire a consultant to administer the
13 county's program. If, within 60 days after notifying the
14 department, the county hires a consultant that is acceptable to the
15 department, then within 1 year after the county hires the
16 consultant, the department shall conduct a review of the county's
17 program to determine whether or not the county program can be
18 approved.

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

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

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

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

1 (11) Upon hiring a consultant under subsection (10), the
2 department may establish a schedule of fees for inspections, review
3 of soil erosion and sedimentation control plans, and permits for
4 the county's program that will provide sufficient revenues to pay
5 for the cost of the contract with the consultant, or the department
6 may bill the county for the cost of the contract with the
7 consultant. As used in this subsection, "cost of the contract"
8 means the actual cost of a contract with a consultant plus the
9 documented costs to the department in administering the contract,
10 but not to exceed 10% of the actual cost of the contract.

11 (12) At any time that a county is on probation as provided for
12 in this section, the county may request the department to conduct a
13 review of the county's program. If, upon such review, the county
14 has implemented appropriate changes to the county's program, the
15 department shall approve the county's program. If the department
16 approves a county's program under this subsection, the department
17 shall rescind its order, stipulation, or consent agreement that
18 placed the county on probation.

19 Sec. 9106. (1) Subject to subsection (3), a municipality by
20 ordinance may provide for soil erosion and sedimentation control on
21 public and private earth changes within its boundaries except that
22 a township ordinance shall not be applicable within a village that
23 has in effect such an ordinance. An ordinance may be more
24 restrictive than, but shall not make lawful that which is unlawful
25 under, this part and the rules promulgated under this part. If an
26 ordinance adopted under this section is more restrictive than this
27 part and the rules promulgated under this part, the municipal

1 enforcing agency shall notify a person receiving a permit under the
2 ordinance that the ordinance is more restrictive than this part and
3 the rules promulgated under this part. The ordinance shall
4 incorporate by reference the rules promulgated under this part that
5 do not conflict with a more restrictive ordinance, shall designate
6 a municipal enforcing agency responsible for administration and
7 enforcement of the ordinance, and may set forth such other matters
8 as the legislative body considers necessary or desirable. The
9 ordinance shall be applicable and shall be enforced with regard to
10 all private and public earth changes within the municipality except
11 earth changes by an authorized public agency. The municipality may
12 consult with a conservation district for assistance or advice in
13 the preparation of the ordinance. The ordinance may provide
14 penalties for a violation of the ordinance that are consistent with
15 section 9121.

16 (2) An ordinance related to soil erosion and sedimentation
17 control that is not approved by the department as conforming to the
18 minimum requirements of this part and the rules promulgated under
19 this part has no force or effect. A municipality shall submit a
20 copy of its proposed ordinance or of a proposed amendment to its
21 ordinance to the department for approval before adoption. The
22 department shall forward a copy to the county enforcing agency of
23 the county in which the municipality is located and the appropriate
24 conservation district for review and comment. Within 90 days after
25 the department receives an existing ordinance, proposed ordinance,
26 or amendment, the department shall notify the clerk of the
27 municipality of its approval or disapproval along with

1 recommendations for revision if the ordinance, proposed ordinance,
2 or amendment does not conform to the minimum requirements of this
3 part or the rules promulgated under this part. If the department
4 does not notify the clerk of the local unit within the 90-day
5 period, the ordinance, proposed ordinance, or amendment shall be
6 considered to have been approved by the department.

7 (3) ~~After a date determined by a schedule established by the~~
8 ~~department, but not later than 3 years after the effective date of~~
9 ~~the amendatory act that added this subsection, a~~ A municipality
10 shall not administer and enforce this part or the rules promulgated
11 under this part or a local ordinance unless the department has
12 approved the municipality. An approval under this section is valid
13 for 5 years, after which the department shall review the
14 municipality for reapproval. At least 6 months before the
15 expiration of each succeeding 5-year approval period, the
16 department shall complete a review of the municipality for
17 reapproval. The department shall approve a municipality if all of
18 the following conditions are met:

19 (a) The municipality has enacted an ordinance as provided in
20 this section that is at least as restrictive as this part and the
21 rules promulgated under this part.

22 (b) The individuals with decision-making authority who are
23 responsible for administering the soil erosion and sedimentation
24 control program for the municipality have current certificates of
25 training under section 9123.

26 (c) The municipality has submitted evidence of its ability to
27 effectively administer and enforce a soil erosion and sedimentation

1 control program. In determining whether the municipality has met
2 the requirements of this subdivision, the department shall consider
3 all of the following:

4 (i) Whether a mechanism is in place to provide funding to
5 administer the municipality's soil erosion and sedimentation
6 control program.

7 (ii) The adequacy of the documents proposed for use by the
8 municipality including, but not limited to, application forms, soil
9 erosion and sedimentation control plan requirements, permit forms,
10 and inspection reports.

11 (iii) If the municipality has previously administered a soil
12 erosion and sedimentation control program, whether the municipality
13 effectively administered and enforced the program in the past or
14 has implemented changes in its administration or enforcement
15 procedures that the department determines will result in the
16 municipality effectively administering and enforcing a soil erosion
17 and sedimentation control program in compliance with this part and
18 the rules promulgated under this part. In determining whether the
19 municipality has met the requirement of this subparagraph, the
20 department shall consider all of the following:

21 (A) Whether the municipality has had adequate funding to
22 administer the municipality's soil erosion and sedimentation
23 control program.

24 (B) Whether the municipality has conducted adequate
25 inspections to assure minimization of soil erosion and off-site
26 sedimentation.

27 (C) The effectiveness of the municipality's past compliance

1 and enforcement efforts.

2 (D) The adequacy and effectiveness of the applications and
3 soil erosion and sedimentation control plans being accepted by the
4 municipality.

5 (E) The adequacy and effectiveness of the permits issued by
6 the municipality and the inspections being performed by the
7 municipality.

8 (F) The conditions at construction sites under the
9 jurisdiction of the municipality as documented by departmental
10 inspections.

11 (4) If the department determines that a municipality is not
12 approved under subsection (3) or that a municipality that was
13 previously approved under subsection (3) is not satisfactorily
14 administering and enforcing this part and the rules promulgated
15 under this part, the department shall enter an order, stipulation,
16 or consent agreement under section ~~9112(2)~~ **9112(7)** denying the
17 municipality authority or revoking the municipality's authority to
18 administer a soil erosion and sedimentation control program. Upon
19 entry of this order, stipulation, or consent agreement, the county
20 program for the county in which the municipality is located becomes
21 operative within the municipality.

22 (5) A municipality that elects to rescind its ordinance shall
23 notify the department. Upon rescission of its ordinance, the county
24 program for the county in which the municipality is located becomes
25 operative within the municipality.

26 (6) A municipality that rescinds its ordinance or is not
27 approved by the department to administer the program shall retain

1 jurisdiction over projects under permit at that time. The
2 municipality shall retain jurisdiction until the projects are
3 completed and stabilized or the county agrees to assume
4 jurisdiction over the permitted earth changes.

5 Sec. 9110. (1) Subject to subsection (4), a state agency or an
6 agency of a local unit of government may apply to the department
7 for designation as an authorized public agency by submitting to the
8 department the soil erosion and sedimentation control procedures
9 governing all earth changes normally undertaken by the agency. If
10 the applicant is an agency of a local unit of government, the
11 department shall submit the procedures to the county enforcing
12 agency and the appropriate conservation district for review. The
13 county enforcing agency and the conservation district shall submit
14 their comments on the procedures to the department within 60 days.
15 If the applicant is a state agency, the department shall submit the
16 procedures to the department of agriculture for review, and the
17 department of agriculture shall submit its comments on the
18 procedures to the department within 60 days.

19 (2) Subject to subsection (4), if the department finds that
20 the soil erosion and sedimentation control procedures of the state
21 agency or the agency of the local unit of government meet the
22 requirements of this part and rules promulgated under this part,
23 the department shall designate the agency as an authorized public
24 agency.

25 (3) Subject to subsection (4), after approval of the
26 procedures and designation as an authorized public agency pursuant
27 to subsection ~~-(1)-or-~~ (2), all earth changes maintained or

1 undertaken by the authorized public agency shall be undertaken
2 pursuant to the approved procedures. If determined necessary by the
3 department and upon request of an authorized public agency, the
4 department may grant a variance from the provisions of this
5 subsection.

6 (4) ~~After a date determined by a schedule established by the~~
7 ~~department, but not later than 3 years after the effective date of~~
8 ~~the amendatory act that added this subsection, a~~ A state agency or
9 an agency of a local unit of government shall not administer and
10 enforce this part and the rules promulgated under this part as an
11 authorized public agency unless the department has approved the
12 agency under this section. An approval under this section is valid
13 for 5 years, after which the department shall review the agency for
14 reapproval. At least 6 months before the expiration of each
15 succeeding 5-year period, the department shall complete a review of
16 the authorized public agency for reapproval. The department shall
17 approve a state agency or an agency of a local unit of government
18 if all of the following conditions are met:

19 (a) The agency has adopted soil erosion and sedimentation
20 control procedures that are at least as restrictive as this part
21 and the rules promulgated under this part.

22 (b) The individuals with decision-making authority who are
23 responsible for administering the soil erosion and sedimentation
24 control procedures have current certificates of training under
25 section 9123.

26 (c) The agency has submitted evidence of its ability to
27 effectively administer soil erosion and sedimentation control

1 procedures. In determining whether the agency has met the
2 requirement of this subdivision, the department shall consider all
3 of the following:

4 (i) Funding to administer the agency's soil erosion and
5 sedimentation control program.

6 (ii) The agency's plans for inspections to assure minimization
7 of soil erosion and off-site sedimentation.

8 (iii) The adequacy of the agency's soil erosion and
9 sedimentation control procedures.

10 (iv) If the agency has previously administered soil erosion and
11 sedimentation control procedures, the agency has effectively
12 administered these procedures or has implemented changes in their
13 administration that the department determines will result in the
14 agency effectively administering the soil erosion and sedimentation
15 control procedures. In determining whether the agency has met the
16 requirement of this subparagraph, the department shall consider all
17 of the following:

18 (A) Whether the agency has had adequate funding to administer
19 the agency's soil erosion and sedimentation control program.

20 (B) Whether the agency has conducted adequate inspections to
21 assure minimization of soil erosion and off-site sedimentation.

22 (C) The effectiveness of the agency's past compliance and
23 enforcement efforts.

24 (D) The adequacy of the agency's soil erosion and
25 sedimentation control plans and procedures as required by rule.

26 (E) The conditions at construction sites under the
27 jurisdiction of the agency as documented by departmental

1 inspections.

2 (5) If the department determines that a state agency or an
3 agency of a local unit of government is not approved under
4 subsection (4) or that a state agency or an agency of a local unit
5 of government that was previously approved under subsection (4) is
6 not satisfactorily administering and enforcing this part and the
7 rules promulgated under this part, the department shall enter an
8 order, stipulation, or consent agreement under section ~~9112(2)~~
9 **9112(7)** denying or revoking the designation of the state agency or
10 agency of a local unit of government as an authorized public
11 agency.

12 Sec. 9113. (1) Notwithstanding the existence or pursuit of any
13 other remedy, the department or a county enforcing agency or
14 municipal enforcing agency may maintain an action in its own name
15 in a court of competent jurisdiction for an injunction or other
16 process against a person to restrain or prevent violations of this
17 part.

18 (2) ~~An~~ **AT ANY REASONABLE TIME, AN** agent appointed by the
19 department, a county enforcing agency, or a municipal enforcing
20 agency may enter ~~at all reasonable times in or~~ upon any private
21 or public property for the purpose of inspecting and investigating
22 conditions or practices that may be in violation of this part.
23 **HOWEVER, AN INVESTIGATION OR INSPECTION UNDER THIS SUBSECTION SHALL**
24 **COMPLY WITH THE UNITED STATES CONSTITUTION AND THE STATE**
25 **CONSTITUTION OF 1963.**

26 Enacting section 1. This amendatory act does not take effect
27 unless Senate Bill No. 282 of the 93rd Legislature is enacted into

1 law.