

HOUSE BILL No. 4444

March 3, 2005, Introduced by Rep. Pavlov and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 9105 and 9106 (MCL 324.9105 and 324.9106), as
amended by 2000 PA 504, and by adding sections 9106a and 9115a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9105. (1) Subject to **SECTION 9106A AND** subsection (6), a
2 county is responsible for the administration and enforcement of
3 this part and the rules promulgated under this part throughout the
4 county except as follows:

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

7 (b) With regard to earth changes of authorized public

1 agencies.

2 (2) Subject to subsection (3), the county board of
3 commissioners of each county, by resolution, shall designate a
4 county agency, or a conservation district upon the concurrence of
5 the conservation district, as the county enforcing agency
6 responsible for administration and enforcement of this part and the
7 rules promulgated under this part in the name of the county. The
8 resolution may set forth a schedule of fees for inspections, plan
9 reviews, and permits and may set forth other matters relating to
10 the administration and enforcement of the county program and this
11 part and the rules promulgated under this part.

12 (3) In lieu of or in addition to a resolution provided for in
13 subsection (2), the county board of commissioners of a county may
14 provide by ordinance for soil erosion and sedimentation control in
15 the county. An ordinance adopted under this subsection may be more
16 restrictive than, but shall not make lawful that which is unlawful
17 under, this part and the rules promulgated under this part. If an
18 ordinance adopted under this subsection is more restrictive than
19 this part and the rules promulgated under this part, the county
20 enforcing agency shall notify a person receiving a permit under the
21 ordinance that the ordinance is more restrictive than this part and
22 the rules promulgated under this part. The ordinance shall
23 incorporate by reference the rules promulgated under this part that
24 do not conflict with a more restrictive ordinance and may set forth
25 such other matters as the county board of commissioners considers
26 necessary or desirable. The ordinance may provide penalties for a
27 violation of the ordinance that are consistent with section 9121.

1 (4) A copy of a resolution or ordinance adopted under this
2 section and all subsequent amendments to the resolution or
3 ordinance shall be forwarded to the department for the department's
4 review and approval. The department shall forward a copy to the
5 conservation district for that county for review and comment. ~~Not~~
6 ~~later than December 31, 2001, the department shall prepare and~~
7 ~~submit a report to the standing committees of the senate and the~~
8 ~~house of representatives with jurisdiction over issues primarily~~
9 ~~related to natural resources and the environment. This report shall~~
10 ~~detail the number and the substance of complaints that have been~~
11 ~~received by the department related to county ordinances that have~~
12 ~~been adopted under subsection (3) that are more restrictive than~~
13 ~~this part and the rules promulgated under this part.~~

14 (5) Two or more counties may provide for joint enforcement and
15 administration of this part and the rules promulgated under this
16 part by entering into an interlocal agreement pursuant to the urban
17 cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to
18 124.512.

19 (6) ~~Within 3 years after the effective date of the amendatory~~
20 ~~act that added this subsection, the department shall conduct an~~
21 ~~initial review of each county's soil erosion and sedimentation~~
22 ~~control program in accordance with a schedule established by the~~
23 ~~department. If the department approves a county program, its~~
24 ~~approval is valid for a 5-year period. After the initial review,~~
25 ~~the~~ **THE** department shall conduct a review of a county's program
26 every 5 years. The review shall be conducted at least 6 months
27 before the expiration of each succeeding 5-year period. The

1 department shall approve a county's program if all of the following
2 conditions are met:

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

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

8 (c) The county has effectively administered and enforced the
9 county program in the past 5 years or has implemented changes in
10 its administration or enforcement procedures that the department
11 determines will result in the county effectively administering and
12 enforcing the county program. In determining whether the county has
13 met the requirement of this subdivision, the department shall
14 consider all of the following:

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

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

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

21 (iv) The adequacy and effectiveness of the applications and
22 soil erosion and sedimentation control plans being accepted by the
23 county.

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

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

1 inspections.

2 (7) Following a review under subsection (6), the department
3 shall notify the county of the results of its review and whether
4 the department proposes to approve or disapprove the county's
5 program. Within 30 days of receipt of the notice under this
6 subsection, a county may request and the department shall hold an
7 informal meeting to discuss the review and the proposed action by
8 the department.

9 (8) Following the meeting under subsection (7), if requested,
10 and consideration of the review under subsection (6), if the
11 department does not approve a county's program, the department
12 shall enter an order, stipulation, or consent agreement under
13 section 9112(2) placing the county on probation. In addition, at
14 any time that the department determines that a county that was
15 previously approved by the department under subsection (6) is not
16 satisfactorily administering and enforcing the county's program,
17 the department shall enter into an order, stipulation, or consent
18 agreement under section 9112(2) placing the county on probation.
19 During the 6-month period after a county is placed on probation,
20 the department shall consult with the county on how the county
21 could change its administration of the county program in a manner
22 that would result in its approval.

23 (9) Within 6 months after a county has been placed on
24 probation under subsection (8), the county may notify the
25 department that it intends to hire a consultant to administer the
26 county's program. If, within 60 days after notifying the
27 department, the county hires a consultant that is acceptable to the

1 department, then within 1 year after the county hires the
2 consultant, the department shall conduct a review of the county's
3 program to determine whether or not the county program can be
4 approved.

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

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

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

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

14 (11) Upon hiring a consultant under subsection (10), the
15 department may establish a schedule of fees for inspections, review
16 of soil erosion and sedimentation control plans, and permits for
17 the county's program that will provide sufficient revenues to pay
18 for the cost of the contract with the consultant, or the department
19 may bill the county for the cost of the contract with the
20 consultant. As used in this subsection, "cost of the contract"
21 means the actual cost of a contract with a consultant plus the
22 documented costs to the department in administering the contract,
23 but not to exceed 10% of the actual cost of the contract.

24 (12) At any time that a county is on probation as provided for
25 in this section, the county may request the department to conduct a
26 review of the county's program. If, upon such review, the county
27 has implemented appropriate changes to the county's program, the

1 department shall approve the county's program. If the department
2 approves a county's program under this subsection, the department
3 shall rescind its order, stipulation, or consent agreement that
4 placed the county on probation.

5 Sec. 9106. (1) Subject to **SECTION 9106A AND** subsection (3), a
6 municipality by ordinance may provide for soil erosion and
7 sedimentation control on public and private earth changes within
8 its boundaries except that a township ordinance shall not be
9 applicable within a village that has in effect such an ordinance.
10 An ordinance may be more restrictive than, but shall not make
11 lawful that which is unlawful under, this part and the rules
12 promulgated under this part. If an ordinance adopted under this
13 section is more restrictive than this part and the rules
14 promulgated under this part, the municipal enforcing agency shall
15 notify a person receiving a permit under the ordinance that the
16 ordinance is more restrictive than this part and the rules
17 promulgated under this part. The ordinance shall incorporate by
18 reference the rules promulgated under this part that do not
19 conflict with a more restrictive ordinance, shall designate a
20 municipal enforcing agency responsible for administration and
21 enforcement of the ordinance, and may set forth such other matters
22 as the legislative body considers necessary or desirable. The
23 ordinance shall be applicable and shall be enforced with regard to
24 all private and public earth changes within the municipality except
25 earth changes by an authorized public agency. The municipality may
26 consult with a conservation district for assistance or advice in
27 the preparation of the ordinance. The ordinance may provide

1 penalties for a violation of the ordinance that are consistent with
2 section 9121.

3 (2) An ordinance related to soil erosion and sedimentation
4 control that is not approved by the department as conforming to the
5 minimum requirements of this part and the rules promulgated under
6 this part has no force or effect. A municipality shall submit a
7 copy of its proposed ordinance or of a proposed amendment to its
8 ordinance to the department for approval before adoption. The
9 department shall forward a copy to the county enforcing agency of
10 the county in which the municipality is located and the appropriate
11 conservation district for review and comment. Within 90 days after
12 the department receives an existing ordinance, proposed ordinance,
13 or amendment, the department shall notify the clerk of the
14 municipality of its approval or disapproval along with
15 recommendations for revision if the ordinance, proposed ordinance,
16 or amendment does not conform to the minimum requirements of this
17 part or the rules promulgated under this part. If the department
18 does not notify the clerk of the local unit within the 90-day
19 period, the ordinance, proposed ordinance, or amendment shall be
20 considered to have been approved by the department.

21 (3) ~~After a date determined by a schedule established by the~~
22 ~~department, but not later than 3 years after the effective date of~~
23 ~~the amendatory act that added this subsection, a~~ A municipality
24 shall not administer and enforce this part or the rules promulgated
25 under this part or a local ordinance unless the department has
26 approved the municipality. An approval under this section is valid
27 for 5 years, after which the department shall review the

1 municipality for reapproval. At least 6 months before the
2 expiration of each succeeding 5-year approval period, the
3 department shall complete a review of the municipality for
4 reapproval. The department shall approve a municipality if all of
5 the following conditions are met:

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

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

13 (c) The municipality has submitted evidence of its ability to
14 effectively administer and enforce a soil erosion and sedimentation
15 control program. In determining whether the municipality has met
16 the requirements of this subdivision, the department shall consider
17 all of the following:

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

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

25 (iii) If the municipality has previously administered a soil
26 erosion and sedimentation control program, whether the municipality
27 effectively administered and enforced the program in the past or

1 has implemented changes in its administration or enforcement
2 procedures that the department determines will result in the
3 municipality effectively administering and enforcing a soil erosion
4 and sedimentation control program in compliance with this part and
5 the rules promulgated under this part. In determining whether the
6 municipality has met the requirement of this subparagraph, the
7 department shall consider all of the following:

8 (A) Whether the municipality has had adequate funding to
9 administer the municipality's soil erosion and sedimentation
10 control program.

11 (B) Whether the municipality has conducted adequate
12 inspections to assure minimization of soil erosion and off-site
13 sedimentation.

14 (C) The effectiveness of the municipality's past compliance
15 and enforcement efforts.

16 (D) The adequacy and effectiveness of the applications and
17 soil erosion and sedimentation control plans being accepted by the
18 municipality.

19 (E) The adequacy and effectiveness of the permits issued by
20 the municipality and the inspections being performed by the
21 municipality.

22 (F) The conditions at construction sites under the
23 jurisdiction of the municipality as documented by departmental
24 inspections.

25 (4) If the department determines that a municipality is not
26 approved under subsection (3) or that a municipality that was
27 previously approved under subsection (3) is not satisfactorily

1 administering and enforcing this part and the rules promulgated
2 under this part, the department shall enter an order, stipulation,
3 or consent agreement under section 9112(2) denying the municipality
4 authority or revoking the municipality's authority to administer a
5 soil erosion and sedimentation control program. Upon entry of this
6 order, stipulation, or consent agreement, the county program for
7 the county in which the municipality is located becomes operative
8 within the municipality.

9 (5) A municipality that elects to rescind its ordinance shall
10 notify the department. Upon rescission of its ordinance, the county
11 program for the county in which the municipality is located becomes
12 operative within the municipality.

13 (6) A municipality that rescinds its ordinance or is not
14 approved by the department to administer the program shall retain
15 jurisdiction over projects under permit at that time. The
16 municipality shall retain jurisdiction until the projects are
17 completed and stabilized or the county agrees to assume
18 jurisdiction over the permitted earth changes.

19 **SEC. 9106A. (1) A COUNTY ENFORCING AGENCY OR MUNICIPAL**
20 **ENFORCING AGENCY SHALL ISSUE A GENERAL PERMIT FOR A RESIDENTIAL**
21 **PROJECT WITHIN ITS JURISDICTION TO A RESIDENTIAL PROPERTY OWNER WHO**
22 **WISHES TO ENGAGE IN ROUTINE MAINTENANCE ACTIVITIES ON A PREVIOUSLY**
23 **PERMITTED SEAWALL OR SIMILAR STRUCTURE.**

24 (2) A GENERAL PERMIT SHALL BE ISSUED UNDER SUBSECTION (1) UPON
25 THE SUBMISSION OF A FORM DEVELOPED BY THE COUNTY ENFORCING AGENCY
26 OR MUNICIPAL ENFORCING AGENCY WITH JURISDICTION OVER THE PROPOSED
27 PROJECT. THE FORM SHALL CONTAIN THE FOLLOWING INFORMATION:

- 1 (A) LIKELY DATES OF THE PROPOSED WORK.
- 2 (B) LOCATION OF EXISTING STRUCTURES.
- 3 (C) A GENERAL DESCRIPTION OF THE TYPE OF WORK TO BE COMPLETED.

4 (3) A COUNTY ENFORCING AGENCY OR MUNICIPAL ENFORCING AGENCY
 5 MAY CHARGE A FEE, NOT TO EXCEED THE ADMINISTRATIVE COSTS TO THE
 6 AGENCY, FOR A GENERAL PERMIT UNDER THIS SECTION.

7 SEC. 9115A. A RESIDENTIAL PROPERTY OWNER WHO CAUSES THE
 8 FOLLOWING ACTIVITIES TO BE CONDUCTED ON HIS OR HER INDIVIDUAL
 9 RESIDENTIAL PROPERTY IS NOT REQUIRED TO OBTAIN A PERMIT UNDER THIS
 10 PART:

- 11 (A) GARDENING.
- 12 (B) LANDSCAPING.
- 13 (C) HOUSEHOLD MAINTENANCE.
- 14 (D) FENCING.
- 15 (E) PREVENTATIVE MEASURES USED TO STABILIZE SOILS.