

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.