

HOUSE BILL No. 4443

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 section 9105 (MCL 324.9105), as amended by 2000 PA 504.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9105. (1) ~~Subject to subsection (6), a~~ A county is
2 responsible for the administration and enforcement of this part and
3 the rules promulgated under this part throughout the county except
4 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
8 agencies.

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

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

27 (4) A copy of a resolution or ordinance adopted under this

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

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

18 (6) ~~Within 3 years after the effective date of the amendatory~~
19 ~~act that added this subsection~~ **NOT LATER THAN JANUARY 11, 2004,**
20 the department shall conduct an initial review of each county's
21 soil erosion and sedimentation control program in accordance with a
22 schedule established by the department. If the department approves
23 a county program, its approval is valid for a 5-year period. After
24 the initial review, the department shall conduct a review of a
25 county's program every 5 years. The review shall be conducted at
26 least 6 months before the expiration of each succeeding 5-year
27 period. The department shall approve a county's program if all of

1 the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

22 (9) Within 6 months after a county has been placed on
23 probation under subsection (8), the county may notify the
24 department that it intends to hire a consultant to administer the
25 county's program. If, within 60 days after notifying the
26 department, the county hires a consultant that is acceptable to the
27 department, then within 1 year after the county hires the

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

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

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

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

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

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

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

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