

# HOUSE BILL NO. 5309

December 19, 2019, Introduced by Rep. Lilly and referred to the Committee on Regulatory Reform.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 9112 and 9115a (MCL 324.9112 and 324.9115a), section 9112 as amended by 2004 PA 565 and section 9115a as amended by 2016 PA 2.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 9112. (1) ~~A~~**Except as otherwise provided in this part, a**  
2 person shall not maintain or undertake an earth change governed by  
3 this part, the rules promulgated under this part, or an applicable



1 local ordinance, except in accordance with this part and the rules  
2 promulgated under this part or with the applicable local ordinance,  
3 and except as authorized by a permit issued by the appropriate  
4 county enforcing agency or municipal enforcing agency pursuant to  
5 part 13.

6 (2) The owner of property that is subject to a permit under  
7 this part is responsible for compliance with the terms of the  
8 permit that apply to that property.

9 (3) Except as provided in subsection (4), if property subject  
10 to a permit under this part is transferred, both of the following  
11 are transferred with the property:

12 (a) The permit, including the permit obligations and  
13 conditions.

14 (b) Responsibility for any violations of the permit that exist  
15 on the date the property is transferred.

16 (4) If property is subject to a permit under this part and a  
17 parcel of the property, but not the entire property, is  
18 transferred, both of the following are transferred with the parcel:

19 (a) The permit obligations and conditions with respect to that  
20 parcel, but not the permit itself.

21 (b) Responsibility for any violations of the permit with  
22 respect to that parcel that exist on the date the parcel is  
23 transferred.

24 (5) If property subject to a permit under this part is  
25 proposed to be transferred, the transferor shall notify the  
26 transferee of the permit in writing on a form developed by the  
27 department and provided by the county enforcing agency or municipal  
28 enforcing agency. The notice shall inform the transferee of the  
29 requirements of subsection (2) and, as applicable, subsection (3)



1 or (4). The notice shall include a copy of the permit. The  
2 transferor and transferee shall sign the notice, and the transferor  
3 shall submit the signed notice to the county enforcing agency or  
4 municipal enforcing agency before the property is transferred.

5 (6) A county enforcing agency or municipal enforcing agency  
6 may charge a fee for the transfer of a permit under subsection (3)  
7 or (4). The fee shall not exceed the administrative costs of  
8 transferring the permit. Fees collected under this subsection shall  
9 only be used for the enforcement and administration of this part by  
10 the enforcing agency.

11 (7) If in the opinion of the department a person, including an  
12 authorized public agency, violates this part, the rules promulgated  
13 under this part, or an applicable local ordinance, or a county  
14 enforcing agency or municipal enforcing agency fails to enforce  
15 this part, the rules promulgated under this part, or an applicable  
16 local ordinance, the department may notify the alleged offender in  
17 writing of its determination. If the department places a county on  
18 probation under section 9105, a municipality is not approved under  
19 section 9106, or a state agency or agency of a local unit of  
20 government is not approved under section 9110, or if the department  
21 determines that a municipal enforcing agency or authorized public  
22 agency is not satisfactorily administering and enforcing this part  
23 and rules promulgated under this part, the department shall notify  
24 the county, municipality, state agency, or agency of a local unit  
25 of government in writing of its determination or action. The notice  
26 shall contain, in addition to a statement of the specific violation  
27 or failure that the department believes to exist, a proposed order,  
28 stipulation for agreement, or other action that the department  
29 considers appropriate to assure timely correction of the violation



1 or failure. The notice shall set a date for a hearing not less than  
2 4 nor more than 8 weeks from the date of the notice of  
3 determination. Extensions of the date of the hearing may be granted  
4 by the department or on request. At the hearing, any interested  
5 party may appear, present witnesses, and submit evidence. A person  
6 who has been served with a notice of determination may file a  
7 written answer to the notice of determination before the date set  
8 for hearing or at the hearing may appear and present oral or  
9 written testimony and evidence on the charges and proposed  
10 requirements of the department to assure correction of the  
11 violation or failure. If a person served with the notice of  
12 determination agrees with the proposed requirements of the  
13 department and notifies the department of that agreement before the  
14 date set for the hearing, disposition of the case may be made with  
15 the approval of the department by stipulation or consent agreement  
16 without further hearing. The final order of determination following  
17 the hearing, or the stipulation or consent order as authorized by  
18 this section and approved by the department, is conclusive unless  
19 reviewed in accordance with the administrative procedures act of  
20 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of  
21 Ingham county, or of the county in which the violation occurred,  
22 upon petition filed within 15 days after the service upon the  
23 person of the final order of determination.

24       Sec. 9115a. (1) Notwithstanding any other provision of this  
25 part, a person is not required to obtain a permit from a county or  
26 municipal enforcing agency for earth changes associated with the  
27 following agricultural practices if the earth change activities do  
28 not result in or contribute to soil erosion or sedimentation of the  
29 waters of the state or a discharge of sediment off-site:



1 (a) The construction, maintenance, or removal of fences and  
2 fence lines.

3 (b) The removal of tree or shrub stumps or roots.

4 (c) The installation of drainage tile, irrigation, or  
5 electrical lines.

6 (d) The construction or maintenance of 1 or more ponds that  
7 meet all of the following:

8 (i) The earth change associated with the construction or  
9 maintenance is less than 5 acres.

10 (ii) The earth change associated with the construction or  
11 maintenance does not result in a discharge of storm water into the  
12 waters of the state.

13 (iii) The earth change associated with the construction or  
14 maintenance is not part of a larger plan of development. As used in  
15 this subparagraph, "larger plan of development" means a contiguous  
16 area where multiple separate and distinct construction activities  
17 are occurring under a single plan as identified in documentation or  
18 physical demarcation indicating where construction activities may  
19 occur.

20 (2) Notwithstanding any other provision of this part, a  
21 residential property owner who causes the following activities to  
22 be conducted on individual residential property owned and occupied  
23 by him or her is not required to obtain a permit under this part if  
24 the earth change activities do not result in or contribute to soil  
25 erosion or sedimentation of the waters of the state or a discharge  
26 of sediment off-site:

27 (a) An earth change of a minor nature that is stabilized  
28 within 24 hours of the initial earth disturbance.

29 (b) Gardening, if the natural elevation of the area is not



1 raised.

2 (c) Post holes for fencing, decks, utility posts, mailboxes,  
3 or similar applications, if no additional grading or earth change  
4 occurs for use of the post holes.

5 (d) Removal of tree stumps, shrub stumps, or roots resulting  
6 in an earth change not to exceed 100 square feet.

7 (e) All of the following activities, if soil erosion and  
8 sedimentation controls are implemented, the earth change is  
9 stabilized within 24 hours of the initial earth disturbance, and  
10 soil erosion or sedimentation to adjacent properties or the waters  
11 of the state has not or will not reasonably occur:

12 (i) Planting of trees, shrubs, or other similar plants.

13 (ii) Seeding or reseeding of lawns of less than 1 acre if the  
14 seeded area is at least 100 feet from the waters of the state.

15 (iii) Seeding or reseeding of lawns closer than 100 feet from  
16 the waters of the state if the area to be seeded or reseeded does  
17 not exceed 100 square feet.

18 (iv) The temporary stockpiling of soil, sand, or gravel not  
19 greater than a total of 10 cubic yards on the property if the  
20 stockpiling occurs at least 100 feet from the waters of the state.

21 (v) Seawall maintenance that does not exceed 100 square feet.

22 **(3) Notwithstanding any other provision of this part, a person**  
23 **is not required to obtain a permit from a county or municipal**  
24 **enforcing agency for earth changes if all of the following**  
25 **conditions are met:**

26 (a) **The earth change activities are necessary to protect life**  
27 **or property.**

28 (b) **The earth change activities are conducted during a state**  
29 **of emergency declared by the governor.**



1 (c) The earth change activities are conducted within the  
2 geographic area that is the subject of the state of emergency  
3 described in subdivision (b).

4 (4) The department may issue a permit to a property owner to  
5 conduct earth change activities during a state of emergency as  
6 described in subsection (3). A property owner shall not conduct  
7 such earth change activities unless the property owner has obtained  
8 a permit from the department under this subsection.

9 (5) ~~(3)~~—Exemptions provided in this section shall not be  
10 construed as exemptions from enforcement procedures under this part  
11 or the rules promulgated under this part if the exempted activities  
12 cause or result in a violation of this part or the rules  
13 promulgated under this part.

