

HOUSE BILL No. 5944

May 8, 2018, Introduced by Reps. Lasinski, Elder, Maturen, Brinks, Sneller, Cochran, Dianda, Chirkun, Howell, Lilly and Peterson and referred to the Committee on Local Government.

A bill to amend 1994 PA 451, entitled
 "Natural resources and environmental protection act,"
 by amending section 9106 (MCL 324.9106), as amended by 2005 PA 55.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9106. (1) Subject to subsection ~~(3)~~, **(4)**, a municipality
 2 by ordinance may provide for soil erosion and sedimentation control
 3 on public and private earth changes within its boundaries except
 4 that a township ordinance ~~shall~~ **IS** not ~~be~~ applicable within a
 5 village that has in effect such an ordinance. An ordinance may be
 6 more restrictive than, but shall not make lawful that which is
 7 unlawful under, this part and the rules promulgated under this
 8 part. If an ordinance adopted under this section is more
 9 restrictive than this part and the rules promulgated under this
 10 part, the municipal enforcing agency shall notify a person
 11 receiving a permit under the ordinance that the ordinance is more

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

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

1 part or the rules promulgated under this part. If the department
2 does not notify the clerk of the local unit within the 90-day
3 period, the ordinance, proposed ordinance, or amendment ~~shall be~~ **IS**
4 considered to have been approved by the department.

5 **(3) TWO OR MORE MUNICIPALITIES MAY PROVIDE FOR JOINT**
6 **ADMINISTRATION AND ENFORCEMENT OF THIS PART AND THE RULES**
7 **PROMULGATED UNDER THIS PART BY ENTERING INTO A WRITTEN INTERLOCAL**
8 **AGREEMENT PURSUANT TO THE URBAN COOPERATION ACT OF 1967, 1967 (EX**
9 **SESS) PA 7, MCL 124.501 TO 124.512. HOWEVER, IF ALL OF THE**
10 **MUNICIPALITIES ARE NOT LOCATED, IN WHOLE OR IN PART, IN THE SAME**
11 **COUNTY, THE AGREEMENT DOES NOT TAKE EFFECT UNLESS THE DEPARTMENT**
12 **APPROVES THE AGREEMENT IN WRITING. THE DEPARTMENT SHALL APPROVE THE**
13 **AGREEMENT IF THE DEPARTMENT DETERMINES THAT THE AGREEMENT WILL**
14 **PROMOTE THE EFFECTIVE ADMINISTRATION AND ENFORCEMENT OF THIS PART**
15 **AND RULES PROMULGATED UNDER THIS PART.**

16 **(4)** ~~(3)~~—A municipality shall not administer and enforce this
17 part or the rules promulgated under this part or a local ordinance
18 unless the department has approved the municipality. An approval
19 under this section is valid for 5 years, after which the department
20 shall review the municipality for reapproval. At least 6 months
21 before the expiration of each succeeding 5-year approval period,
22 the department shall complete a review of the municipality for
23 reapproval. The department shall approve a municipality if all of
24 the following conditions are met:

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

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

5 (c) The municipality has submitted evidence of its ability to
6 effectively administer and enforce a soil erosion and sedimentation
7 control program. In determining whether the municipality has met
8 the requirements of this subdivision, the department shall consider
9 all of the following:

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

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

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

27 (A) Whether the municipality has had adequate funding to

1 administer the municipality's soil erosion and sedimentation
2 control program.

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

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

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

11 (E) The adequacy and effectiveness of the permits issued by
12 the municipality and the inspections being performed by the
13 municipality.

14 (F) The conditions at construction sites under the
15 jurisdiction of the municipality as documented by departmental
16 inspections.

17 **(5)** ~~(4)~~—If the department determines that a municipality is
18 not approved under subsection ~~(3)~~—**(4)** or that a municipality that
19 was previously approved under subsection ~~(3)~~—**(4)** is not
20 satisfactorily administering and enforcing this part and the rules
21 promulgated under this part, the department shall enter an order,
22 stipulation, or consent agreement under section 9112(7) denying the
23 municipality authority or revoking the municipality's authority to
24 administer a soil erosion and sedimentation control program. Upon
25 entry of this order, stipulation, or consent agreement, the county
26 program for the county in which the municipality is located becomes
27 operative within the municipality.

1 (6) ~~(5)~~—A municipality that elects to rescind its ordinance
2 shall notify the department. Upon rescission of its ordinance, the
3 county program for the county in which the municipality is located
4 becomes operative within the municipality.

5 (7) ~~(6)~~—A municipality that rescinds its ordinance or is not
6 approved by the department to administer the program shall retain
7 jurisdiction over projects under permit at ~~that~~ **THE** time **OF THE**
8 **RESCISSION OR DISAPPROVAL**. The municipality shall retain
9 jurisdiction until the projects are completed and stabilized or the
10 county agrees to assume jurisdiction over the permitted earth
11 changes.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.