

# HOUSE BILL NO. 5305

December 19, 2019, Introduced by Reps. Warren and Alexander and referred to the Committee on Transportation.

A bill to amend 2006 PA 110, entitled  
"Michigan zoning enabling act,"  
by amending section 205 (MCL 125.3205), as amended by 2018 PA 366.

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

1           Sec. 205. (1) A zoning ordinance is subject to all of the  
2 following:

3           (a) The electric transmission line certification act, 1995 PA  
4 30, MCL 460.561 to 460.575.

5           (b) The regional transit authority act, 2012 PA 387, MCL  
6 124.541 to 124.558.



1 (c) The small wireless communications facilities deployment  
2 act, 2018 PA 365, MCL 460.1301 to 460.1339.

3 (2) A county or township shall not regulate or control the  
4 drilling, completion, or operation of oil or gas wells or other  
5 wells drilled for oil or gas exploration purposes and shall not  
6 have jurisdiction with reference to the issuance of permits for the  
7 location, drilling, completion, operation, or abandonment of such  
8 wells.

9 (3) ~~An ordinance shall not prevent the extraction, A person~~  
10 **shall not extract**, by mining, ~~of valuable natural resources from~~  
11 any property unless ~~very serious consequences would result from the~~  
12 ~~extraction of those natural resources.~~ **the person has obtained a**  
13 **permit for that activity from the local unit of government**  
14 **exercising zoning authority. The local unit of government shall not**  
15 **issue the permit unless all of the following apply:**

16 (a) The person seeking to extract natural resources has  
17 submitted an administratively complete permit application to the  
18 local unit of government. An administratively complete permit  
19 application shall include, at a minimum, the following:

20 (i) A phase I environmental site assessment, for the property  
21 that is the subject of the permit application, that meets the  
22 requirements of 40 CFR part 312 for conducting all appropriate  
23 inquiries.

24 (ii) An alternatives analysis that evaluates, at a minimum, the  
25 following:

26 (A) Whether there is a need for the natural resources in the  
27 region where the project is proposed to be located.

28 (B) Alternative sites for the proposed project.

29 (C) Alternatives for the project scope, including a no-action



1 alternative.

2 (D) Whether the proposed project is superior to each  
3 alternative considering cost, feasibility, logistics, public  
4 health, community impact, environmental impact, and any other  
5 appropriate factor.

6 (iii) If the local unit of government requires reclamation under  
7 subsection (9), a financial guarantee, in a form approved by the  
8 local unit of government, to ensure the rehabilitation and  
9 reclamation of the property that is the subject of the permit  
10 application.

11 (b) **The natural resources are valuable.** Natural resources  
12 ~~shall be considered~~ **are** valuable for the purposes of this section  
13 if a person, by extracting the natural resources, can receive  
14 revenue and reasonably expect to operate at a profit.

15 (c) **No very serious consequences would result from the**  
16 **extraction of the natural resources.**

17 (4) A person challenging a zoning decision under subsection  
18 (3) has the initial burden of showing ~~that~~ **all of the following:**

19 (a) **That** there are valuable natural resources located on the  
20 relevant property. ~~, that~~

21 (b) **That** there is a need for the natural resources by the  
22 person or in the market served by the person. ~~, and that~~

23 (c) **That** no very serious consequences would result from the  
24 extraction, by mining, of the natural resources.

25 (5) ~~In~~ **Subject to subsection (6), in** determining under ~~this~~  
26 ~~section~~ **subsection (3)** whether very serious consequences would  
27 result from the extraction, by mining, of natural resources, the  
28 standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982),  
29 shall be applied and all of the following factors ~~may~~ **shall** be



1 considered, if applicable:

2 (a) The relationship of extraction and associated activities  
3 with existing land uses.

4 (b) **Environmental impact, including, but not limited to, the**  
5 **effect on protected wetlands, conservation areas, or areas of known**  
6 **contamination in the vicinity of the property. Areas of known**  
7 **contamination include, but are not limited to, all of the**  
8 **following:**

9 (i) **A facility.**

10 (ii) **A site as defined in section 21303 of the natural**  
11 **resources and environmental protection act, 1994 PA 451, MCL**  
12 **324.21303.**

13 (iii) **Property identified on the national priorities list under**  
14 **section 105 of the comprehensive environmental response,**  
15 **compensation and liability act of 1980, 42 USC 9605.**

16 (iv) **Property subject to cleanup, remediation, or other legal**  
17 **requirements because of the presence of hazardous substances in the**  
18 **environment.**

19 (c) ~~(b)~~—The impact on existing land uses in the vicinity of  
20 the property.

21 (d) ~~(e)~~—The impact on property values in the vicinity of the  
22 property and along the proposed hauling route serving the property,  
23 based on credible evidence.

24 (e) ~~(d)~~—The impact on pedestrian and traffic safety in the  
25 vicinity of the property and along the proposed hauling route  
26 serving the property.

27 (f) ~~(e)~~—The impact on other identifiable health, safety, and  
28 welfare interests in the local unit of government.

29 (g) ~~(f)~~—The overall public interest in the extraction of the



1 specific natural resources on the property.

2 (h) The alternatives analysis under subsection (3) (a) (ii) .

3 (6) A local unit of government may by ordinance or permit  
4 action prevent or prohibit the extraction by mining of natural  
5 resources for 1 or more of the following reasons, each of which  
6 constitutes very serious consequences:

7 (a) The property on which the mining will occur is a facility,  
8 irrespective of whether response activities or corrective action  
9 has been completed at the facility.

10 (b) A proposed haul route to transport natural resources from  
11 the mining area to a primary road runs through or adjacent to a  
12 historic district or other property listed on the National Register  
13 of Historic Places under the national historic preservation act, 54  
14 USC 300101 to 307108.

15 (c) The local unit of government already contains 3 or more  
16 mining operations wholly or partly within its boundaries.

17 (7) ~~(6)~~ Subsections (3) to (5) do not limit a local unit of  
18 government's reasonable regulation of a mining operation,  
19 including, but not limited to, hours of operation, setbacks,  
20 berming, blasting hours, noise levels, dust control measures, and  
21 traffic, not preempted by part 632 of the natural resources and  
22 environmental protection act, 1994 PA 451, MCL 324.63201 to  
23 324.63223. However, such regulation shall be reasonable in  
24 accommodating customary mining operations.

25 (8) The local unit of government exercising zoning authority  
26 may require additional environmental sampling, analysis, or testing  
27 at the permit applicant's sole expense before making a final  
28 decision on the permit application under subsection (3) .

29 (9) The local unit of government exercising zoning authority



1 may impose reasonable conditions on a permit issued under  
2 subsection (3) as follows:

3 (a) Conditions based on the phase I environmental site  
4 assessment submitted under subsection (3) (a) (i) and any subsequent  
5 environmental sampling, analysis, testing, or reports, to prevent,  
6 monitor, or remediate reasonably anticipated environmental impacts  
7 of the permitted activity.

8 (b) A requirement that the permittee submit plans for  
9 reclamation of the mining area following cessation of mining  
10 operations that include all of the following:

11 (i) Grading, revegetating, and stabilization that will  
12 minimize, to the extent practicable, soil erosion, sedimentation,  
13 noise, off-site migration of dust, and public safety concerns as  
14 identified in subsection (5).

15 (ii) Reclaiming slopes of the banks of the excavation to not  
16 exceed 1 foot vertical to 3 feet horizontal measured from the  
17 nearest setback line into any area disturbed by mining operations.

18 (iii) Where open water with a maximum depth in excess of 5 feet  
19 will result from mining operations, reclaiming slopes into the  
20 water to not exceed 1 foot vertical to 5 feet horizontal maintained  
21 and extended into the water to a depth of 5 feet.

22 (10) A person issued a permit required under subsection (3) is  
23 liable for response activity costs and natural resource damages  
24 attributable to any exacerbation, as defined in section 20101 of  
25 the natural resources and environmental protection act, 1994 PA  
26 451, MCL 324.20101, or failure to mitigate unacceptable exposure to  
27 hazardous substances with respect to the property at which the  
28 mining operations are conducted. This subsection does not limit the  
29 liability or obligations a person may otherwise have under the



1 natural resources and environmental protection act, 1994 PA 451,  
2 MCL 324.101 to 324.90106.

3 (11) ~~(7)~~—This act does not limit state regulatory authority  
4 under other statutes or rules.

5 (12) As used in subsections (5) and (6), "facility" means that  
6 term as defined in section 20101 of the natural resources and  
7 environmental protection act, 1994 PA 451, MCL 324.20101.

