

HOUSE BILL NO. 5979

July 23, 2020, Introduced by Rep. Cole and referred to the Committee on Government Operations.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to codify the laws regarding local units of government
3 regulating the development and use of land; to provide for the
4 adoption of zoning ordinances; to provide for the establishment in
5 counties, townships, cities, and villages of zoning districts; to



1 prescribe the powers and duties of certain **state and local agencies**
2 **and officials; to provide for the promulgation of rules;** to provide
3 for the assessment and collection of fees; to authorize the
4 issuance of bonds and notes; to prescribe penalties and provide
5 remedies; and to repeal acts and parts of acts.

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

8 (a) The electric transmission line certification act, 1995 PA
9 30, MCL 460.561 to 460.575.

10 (b) The regional transit authority act, 2012 PA 387, MCL
11 124.541 to 124.558.

12 (c) The small wireless communications facilities deployment
13 act, **2018 PA 365, MCL 460.1301 to 460.1339.**

14 (2) A county or township shall not regulate or control the
15 drilling, completion, or operation of oil or gas wells or other
16 wells drilled for oil or gas exploration purposes and ~~shall~~**does**
17 not have jurisdiction with reference to the issuance of permits for
18 the location, drilling, completion, operation, or abandonment of
19 such wells.

20 (3) ~~An ordinance~~**A local unit of government** shall not, **by**
21 **ordinance or otherwise, prevent, prohibit, or deny a permit,**
22 **approval, or other authorization for** the extraction, by mining, of
23 ~~valuable~~**valuable** natural resources from any property ~~unless~~**very** **by a**
24 **person with property, possessory, or contractual rights to do so if**
25 **all the following requirements are met:**

26 (a) **The natural resources are valuable. For the purposes of**
27 **this section, natural resources are valuable if a person, by**
28 **extracting the natural resources, can receive revenue and**
29 **reasonably expect to operate at a profit.**



1 **(b) Very** serious consequences would **not** result from the
 2 extraction of ~~these~~**the** natural resources. ~~Natural resources shall~~
 3 ~~be considered valuable for the purposes of this section if a~~
 4 ~~person, by extracting the natural resources, can receive revenue~~
 5 ~~and reasonably expect to operate at a profit.~~

6 ~~(4) A person challenging a zoning decision under subsection~~
 7 ~~(3) has the initial burden of showing that there are valuable~~
 8 ~~natural resources located on the relevant property, that there is a~~
 9 ~~need for the natural resources by the person or in the market~~
 10 ~~served by the person, and that no very serious consequences would~~
 11 ~~result from the extraction, by mining, of the natural resources.~~

12 ~~(5) In determining under this section whether very serious~~
 13 ~~consequences would result from the extraction, by mining, of~~
 14 ~~natural resources, the standards set forth in *Silva v Ada Township*,~~
 15 ~~416 Mich 153 (1982), shall be applied and all of the following~~
 16 ~~factors may be considered, if applicable:~~**This state has a paramount**
 17 **public interest in the conservation and development of this state's**
 18 **valuable natural resources. Whether very serious consequences would**
 19 **result from the extraction, by mining, of natural resources shall**
 20 **be considered in light of this paramount state interest. Subject to**
 21 **subsections (4) and (5), for purposes of this section, a**
 22 **consequence is very serious if it substantially exceeds the**
 23 **ordinary impacts of customary mining operations and poses an actual**
 24 **and unnecessary risk to public health, safety, or welfare that**
 25 **cannot be avoided or ameliorated through the imposition of**
 26 **reasonable controls or conditions on the mining operations.**

27 **(c) If the local unit of government requires reclamation under**
 28 **this section, the person seeking to extract natural resources**
 29 **provides financial assurance that meets the requirements of**



1 subsection (6) to ensure the reclamation of the property.

2 (4) It shall be found that very serious consequences would not
3 result from the extraction of natural resources by mining if the
4 person seeking to extract the natural resources submits to a local
5 unit of government a plan for the proposed extraction that includes
6 all of the following:

7 (a) A general description of the materials, methods, and
8 techniques that will be utilized for the mining operations.

9 (b) A site plan showing the location of buildings, equipment,
10 stockpiles, roads, berms, or other features necessary to the mining
11 operations and demonstrating all of the following:

12 (i) A setback of the mining area from the nearest public
13 roadway or adjoining property line of not less than 50 feet.

14 (ii) All of the following setbacks of equipment used for
15 screening and crushing:

16 (A) Not less than 200 feet from the nearest public roadway.

17 (B) Not less than 200 feet from the nearest adjoining property
18 line.

19 (C) Not less than 300 feet from the nearest residential
20 dwelling occupied on adjacent property as of the date of submittal
21 of the plan for extraction.

22 (c) A description of the proposed haul routes to be used to
23 transport natural resources from the mining area to a primary road,
24 other than for local deliveries.

25 (d) Signs to be maintained on the boundaries of the mining
26 area, facing outward, spaced every 100 feet or closer, and stating
27 "NO TRESPASSING-MINING AREA".

28 (e) Stockpiles, other than screening berms, not exceeding the
29 higher of 70 feet above ground surface at the location of the



1 stockpile or 40 feet higher than the elevation of the adjoining
2 property at the nearest property line.

3 (f) Berming or other screening of the active mining area from
4 an occupied residence on an adjoining property to the extent
5 reasonably practicable. The screening may be accomplished using
6 overburden to the extent available to construct berms of up to 6
7 feet in height along adjoining property lines or by other means
8 requested by the applicant.

9 (g) A description of processing activities that may include,
10 but are not limited to, washing, screening, crushing, and blending
11 of stone, sand, gravel, and other materials, including recycled
12 materials and other materials obtained from off site.

13 (h) A general description of the natural resources deposit.

14 (i) The sequence of mining, including proposed phasing, if
15 applicable.

16 (j) Surface overburden removal plans.

17 (k) A description of the depth from grade level from which the
18 natural resources will be removed.

19 The local unit of government shall post the information under
20 subdivisions (a) and (b) on its website or make it publicly
21 available by other means.

22 (5) As an alternative to proceeding under subsection (4), the
23 person seeking to extract natural resources by mining may proceed
24 under this subsection. It shall be found that very serious
25 consequences would not result from the extraction of natural
26 resources by mining if the person seeking to extract natural
27 resources demonstrates that very serious consequences would not
28 result from the extraction of the natural resources by mining,
29 considering the following factors, as applicable:



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

3 (b) The impact on existing land uses in the vicinity of the
4 property.

5 (c) The impact on property values in the vicinity of the
6 property and along the proposed hauling route serving the property,
7 based on credible evidence.

8 (d) The impact on pedestrian and traffic safety in the
9 vicinity of the property and along the proposed hauling route
10 serving the property.

11 (e) The impact on other identifiable health, safety, and
12 welfare interests in the local unit of government.

13 ~~(f) The overall public interest in the extraction of the~~
14 ~~specific natural resources on the property.~~

15 **(6) Financial assurance required under subsection (3) (c) shall**
16 **be in a form approved by the local unit of government. The**
17 **financial assurance shall consist of a performance bond, surety,**
18 **escrow, cash, certificate of deposit, irrevocable letter of credit,**
19 **or other equivalent security, or any combination thereof.**
20 **Alternately, the local unit of government may accept a statement of**
21 **financial responsibility demonstrating that the applicant has**
22 **sufficient financial resources to satisfy the reclamation**
23 **requirements. The amount of financial assurance required shall not**
24 **exceed \$3,000.00 per acre disturbed but not yet reclaimed,**
25 **excluding roadways, plant sites, stockpile areas, and open water**
26 **areas that will remain open water after completion of reclamation.**
27 **The amount of financial assurance shall be adjusted annually as**
28 **necessary because of changes in the number of acres as described in**
29 **this subsection. Subject to the \$3,000.00 per acre limit, the local**



1 unit of government may also require financial assurance to be
2 adjusted to reflect substantial change to the existing reclamation
3 plan. The financial assurance shall be maintained until reclamation
4 of the property is completed. Failure of an operator to maintain
5 financial assurance under this subsection constitutes grounds for
6 the local unit of government to order immediate suspension of
7 activities.

8 (7) An application to extract natural resources by mining
9 shall be considered to be administratively complete effective 60
10 days after it is received by the local unit of government unless
11 the local unit of government notifies the applicant, in writing,
12 before the expiration of the 60-day period that the application is
13 not administratively complete. The notification shall specify the
14 additional information necessary to make the application
15 administratively complete. If the local unit of government notifies
16 the applicant as provided in this subsection, the 60-day period is
17 tolled until the applicant submits to the local unit of government
18 the additional information required. An application under
19 subsection (4) is administratively complete if it includes the
20 information required under subsections (3)(c), (4), and (11).

21 (8) An application to extract natural resources by mining that
22 contains the information required under this act is considered
23 approved if the local unit of government does not make a final
24 decision regarding the application within 180 days after receipt of
25 an administratively complete application. However, the applicant
26 may agree in writing to extend the 180-day period.

27 (9) If a person challenges in court a zoning decision or
28 ordinance that prevents, prohibits, or denies an applicant a permit
29 or other authorization to extract natural resources by mining, the



1 judicial proceedings and the review of the zoning decision or
2 ordinance shall be de novo.

3 (10) ~~(6)~~ Subsections (3) to ~~(5)~~ (6) do not limit a local unit
4 of government's reasonable regulation of hours of operation,
5 blasting hours, noise levels, dust control measures, and traffic,
6 not preempted by part 632 of the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.63201 to
8 324.63223. However, such regulation shall be reasonable in
9 accommodating customary mining operations ~~and shall not be more~~
10 restrictive than the following:

11 (a) For dust control, dust shall not exceed the standards
12 required pursuant to any applicable general or individual air
13 permit issued pursuant to part 55 of the natural resources and
14 environmental protection act, 1994 PA 451, MCL 324.5501 to
15 324.5542, or federal law.

16 (b) For noise levels, the 8-hour time-weighted average sound
17 pressure level in decibels measured at the common property line
18 nearest to the active mining area on a sound level meter using the
19 A-weighting network shall not exceed the greater of the following:

20 (i) 20 DB(A) above background levels.

21 (ii) The following levels for adjacent property:

22 (A) For residentially zoned property: 75 A-weighted decibels.

23 (B) For commercially zoned property: 85 A-weighted decibels.

24 (C) For industrial and all other zoning classifications: 90 A-
25 weighted decibels.

26 (c) For ground vibration, all stationary machinery and
27 equipment shall be mounted and operated to prevent transmission of
28 ground vibration exceeding a displacement of 0.10 inches measured
29 anywhere outside of the property line. Blasting activity shall not



1 create any of the following at any residential building:

2 (i) Ground vibration in excess of that set forth in United
3 States Bureau of Mines Reports, RI 8507, Figure B-1 "Safe levels of
4 blasting vibrations for houses using a combination of velocity and
5 displacement".

6 (ii) Air blast in excess of 133 decibels at any residential
7 dwelling.

8 (d) For truck loading hours, customer truck loading shall be
9 permitted from at least 6 a.m. to 7 p.m. local time, Monday through
10 Friday and from at least 6 a.m. to 5 p.m., local time, on Saturday,
11 or as otherwise specifically required by state or county contract.
12 These limitations only apply to the loading of trucks or trailers
13 for over-the-road transportation and do not apply to the loading or
14 unloading of railroad cars or ships, which shall be permitted at
15 any time.

16 (11) The local unit of government exercising zoning authority
17 may require as a condition of a permit that the permittee submit
18 plans for reclamation of the mining area that provide for all of
19 the following:

20 (a) Grading, revegetating, and stabilization that will
21 minimize, to the extent practicable, soil erosion, sedimentation,
22 noise, off-site migration of dust, and public safety concerns,
23 subject to the limitations in subsection (10).

24 (b) Reclaiming slopes of the banks of the excavation to not
25 exceed 1 foot vertical to 3 feet horizontal measured from the
26 nearest setback line into any area disturbed by mining operations.

27 (c) Where open water with a maximum depth in excess of 5 feet
28 will result from mining operations, reclaiming slopes into the
29 water to not exceed 1 foot vertical to 5 feet horizontal maintained



1 and extended into the water to a depth of 5 feet.

2 (d) A statement that the applicant will comply with subsection
3 (12).

4 (12) Once initiated, the final reclamation measures shall be
5 performed as stated in the reclamation plan unless the exploration
6 or the mining unit is reactivated. Reclamation shall be initiated
7 within the shorter of the following periods:

8 (a) The period required by applicable federal law.

9 (b) One year after cessation of mining operations, or a longer
10 period if approved by the local unit of government based on any of
11 the following factors:

12 (i) The presence of additional quantities of the natural
13 resource that was being mined or other commodities in commerce.

14 (ii) Historical fluctuations in the value of the natural
15 resource being mined or other commodities present that can be mined
16 under the same permit.

17 (iii) The design life of any process components existing at the
18 mining unit.

19 (13) Both of the following apply to a permit or other
20 authorization issued by a local unit of government to extract
21 natural resources by mining:

22 (a) It is valid until mining operations, including
23 reclamation, are completed.

24 (b) It does not amend the underlying zoning or the master
25 plan.

26 (14) The 2020 amendatory act that added this subsection
27 applies to the following:

28 (a) All requests for the extraction of natural resources by
29 mining submitted on or after the effective date of that amendatory



1 act. Subsection (3) (c) also applies to all requests for the
2 extraction of natural resources by mining pending on the effective
3 date of that amendatory act.

4 (b) All requests for the extraction of natural resources by
5 mining pending on the effective date of that amendatory act or with
6 respect to which all administrative and judicial actions have not
7 been exhausted.

8 (15) This section does not apply to ferrous mineral operators
9 regulated under part 631 of the natural resources and environmental
10 protection act, 1994 PA 451, MCL 324.63101 to 324.63110.

11 (16) This act does not alter or limit the preemptive effect of
12 part 632 of the natural resources and environmental protection act,
13 1994 PA 451, MCL 324.63201 to 324.63223, as it relates to the
14 regulation of nonferrous metallic mining by a local unit of
15 government. A local unit of government shall not exercise zoning
16 authority under this act over activity governed by part 632 of the
17 natural resources and environmental protection act, 1994 PA 451,
18 MCL 324.63201 to 324.63223.

19 (17) ~~(7)~~—This act does not limit state regulatory authority
20 under other statutes or rules.

