

# SENATE BILL NO. 431

August 20, 2019, Introduced by Senator HOLLIER and referred to the Committee on Natural Resources.

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

1 124.541 to 124.558.

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

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

10 (3) ~~An ordinance~~**A local unit of government** shall not, **by**  
11 **ordinance or otherwise**, prevent, **prohibit, or deny a permit,**  
12 **approval, or other authorization for** the extraction, by mining, of  
13 ~~valuable~~natural resources from any property ~~unless very~~**by a**  
14 **person with property, possessory, or contractual rights to do so if**  
15 **both of the following apply:**

16 (a) **The natural resources are valuable. For the purposes of**  
17 **this section, natural resources are valuable if a person, by**  
18 **extracting the natural resources, can receive revenue and**  
19 **reasonably expect to operate at a profit.**

20 (b) **Very** serious consequences would **not** result from the  
21 extraction of ~~these~~**the** natural resources. ~~Natural resources shall~~  
22 ~~be considered valuable for the purposes of this section if a~~  
23 ~~person, by extracting the natural resources, can receive revenue~~  
24 ~~and reasonably expect to operate at a profit.~~**This state has a**  
25 **paramount public interest in the conservation and development of**  
26 **this state's valuable natural resources. Whether very serious**  
27 **consequences would result from the extraction, by mining, of**  
28 **natural resources shall be considered in light of this paramount**  
29 **state interest. For purposes of this section, a consequence is very**

1 serious if it substantially exceeds the ordinary impacts of  
2 customary mining operations and poses an actual and unnecessary  
3 risk to public health, safety, or welfare that cannot be avoided or  
4 ameliorated through the imposition of reasonable controls or  
5 conditions on the mining operations.

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:~~

17 (4) Notwithstanding anything to the contrary in this act or  
18 any other statute or ordinance, the requirements of subsection  
19 (3) (a) and (b) are met if the person seeking to extract natural  
20 resources by mining submits to a local unit of government a plan  
21 for the proposed extraction that includes all of the following:

22 (a) A demonstration that the person can, by extracting the  
23 natural resources, receive revenue and reasonably expect to operate  
24 at a profit.

25 (b) A general description of the materials, methods, and  
26 techniques that will be utilized for the mining operations.

27 (c) A site plan showing the location of buildings, equipment,  
28 stockpiles, roads, berms, or other features necessary to the mining  
29 operations and demonstrating all of the following:

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

3 (ii) A setback of equipment used for screening and crushing of  
4 not less than 200 feet from the nearest public roadway or adjoining  
5 property line, or not less than 300 feet from the nearest  
6 residential dwelling occupied on adjacent property as of the date  
7 of submittal of the plan for extraction.

8 (d) A description of the proposed haul routes to be used to  
9 transport natural resources from the mining area to a primary road,  
10 other than for local deliveries.

11 (e) Signs to be maintained on the boundaries of the mining  
12 area, facing outward, spaced every 200 feet or closer, and stating  
13 "NO TRESPASSING-MINING AREA".

14 (f) Stockpiles, other than screening berms, not exceeding the  
15 higher of 70 feet above ground surface at the location of the  
16 stockpile or 40 feet higher than the elevation of the adjoining  
17 property at the nearest property line.

18 (g) Berming or other screening of the active mining area from  
19 an occupied residence on an adjoining property to the extent  
20 reasonably practicable. The screening may be accomplished using  
21 overburden to the extent available to construct berms of up to 6  
22 feet in height along adjoining property lines or by other means  
23 requested by the applicant.

24 (h) A description of processing activities that may include,  
25 but are not limited to, washing, screening, crushing, and blending  
26 of stone, sand, gravel, and other materials, including recycled  
27 materials and other materials obtained from off site.

28 (i) A general description of the natural resources deposit.

29 (j) The sequence of mining, including proposed phasing, if

1 applicable.

2 (k) Surface overburden removal plans.

3 (l) A description of the depth from grade level from which the  
4 natural resources will be removed.

5 (m) Proof of financial assurance for reclamation of the mining  
6 area meeting the following requirements:

7 (i) Financial assurance shall be maintained during mining  
8 operations and until reclamation has been substantially completed.

9 (ii) The amount of financial assurance shall be the product of  
10 \$1,500.00 multiplied by the number of acres disturbed by mining  
11 operations but not yet reclaimed, excluding roadways, plant sites,  
12 and open water areas that will remain after completion of  
13 reclamation. The amount of financial assurance shall be adjusted  
14 annually as necessary because of changes in the number of acres as  
15 described in this subparagraph.

16 (iii) Financial assurance shall consist, at the sole option of  
17 the applicant, of a performance bond, surety, escrow, cash  
18 certificate of deposit, or other equivalent security or a  
19 combination thereof. Alternatively, the applicant may demonstrate  
20 that it has sufficient financial resources to satisfy the  
21 reclamation requirements of subdivision (n).

22 (n) Plans for reclamation of the mining area following  
23 cessation of mining operations that include all of the following:

24 (i) Grading, revegetating, and stabilization that will  
25 minimize, to the extent practicable, soil erosion, sedimentation,  
26 noise, off-site migration of dust, and public safety concerns  
27 consistent with subsection (10).

28 (ii) Reclaiming slopes of the banks of the excavation not  
29 exceeding 1 foot vertical to 3 feet horizontal measured from the

1 nearest setback line into any area disturbed by mining operations.

2 (iii) Where open water with a maximum depth in excess of 5 feet  
3 will result from mining operations, reclaiming slopes into the  
4 water not exceeding 1 foot vertical to 5 feet horizontal maintained  
5 and extended into the water to a depth of 5 feet.

6 (5) As an alternative to subsection (4), and notwithstanding  
7 anything to the contrary in this act or any other statute or  
8 ordinance, the requirements of subsection (3) (a) and (b) are met if  
9 the person seeking to extract natural resources by mining  
10 demonstrates both of the following:

11 (a) That the person can, by extracting the natural resources,  
12 receive revenue and reasonably expect to operate at a profit.

13 (b) That very serious consequences would not result from the  
14 extraction of the natural resources by mining, considering the  
15 following factors, as applicable:

16 (i) ~~(a)~~—The relationship of extraction and associated  
17 activities with existing land uses.

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

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

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

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

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

1           (6) An application to extract natural resources by mining  
2 shall be considered to be administratively complete effective 30  
3 days after it is received by the local unit of government unless  
4 the local unit of government notifies the applicant, in writing,  
5 before the expiration of the 30-day period that the application is  
6 not administratively complete. The notification shall specify the  
7 information necessary to make the application administratively  
8 complete. If the local unit of government notifies the applicant as  
9 provided in this subsection, the 30-day period is tolled until the  
10 applicant submits to the local unit of government the specified  
11 information.

12           (7) An application to extract natural resources by mining that  
13 contains the information required under this act is considered  
14 approved if the local unit of government does not make a final  
15 decision regarding the application within 180 days after receipt of  
16 the completed application. However, the applicant may agree in  
17 writing to extend the 180-day period.

18           (8) If the applicant has made a prima facie case that the  
19 requirements of subsection (4) or (5) are met, the burden of proof  
20 shifts to the party challenging or opposing the proposed mining  
21 operations in an administrative or judicial action challenging  
22 those operations or the zoning ordinance.

23           (9) If a person challenges in court a zoning decision or  
24 ordinance that prevents, prohibits, or denies an applicant a permit  
25 or other authorization to extract natural resources by mining, the  
26 judicial proceedings and the review of the zoning decision or  
27 ordinance shall be de novo.

28           (10) ~~(6)~~ Subsections (3) to (5) do not limit a local unit of  
29 government's reasonable regulation of hours of operation, blasting

1 hours, noise levels, dust control measures, and traffic, not  
2 preempted by part 632 of the natural resources and environmental  
3 protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However,  
4 such regulation shall be reasonable in accommodating customary  
5 mining operations ~~and shall not be more restrictive than the~~  
6 following:

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

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

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

17 (ii) The following levels for adjacent property:

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

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

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

22 (c) For ground vibration, all stationary machinery and  
23 equipment shall be mounted and operated to prevent transmission of  
24 ground vibration exceeding a displacement of 0.10 inches measured  
25 anywhere outside of the property line. Blasting activity shall not  
26 create any of the following at any residential building:

27 (i) Ground vibration in excess of that set forth in United  
28 States Bureau of Mines Reports, RI 8507, Figure B-1 "Safe levels of  
29 blasting vibrations for houses using a combination of velocity and



1 displacement".

2 (ii) Air blast in excess of 133 decibels at any residential  
3 dwelling.

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

11 (11) A permit or other authorization issued by a local unit of  
12 government to extract natural resources by mining is valid until  
13 mining operations, including reclamation, are completed.

14 (12) The 2019 amendatory act that added this subsection  
15 applies to the following:

16 (a) All requests for the extraction of natural resources by  
17 mining submitted on or after the effective date of that amendatory  
18 act.

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

23 (13) This section does not apply to ferrous mineral operators  
24 regulated under part 631 of the natural resources and environmental  
25 protection act, 1994 PA 451, MCL 324.63101 to 324.63110.

26 (14) This act does not alter or limit the preemptive effect of  
27 part 632 of the natural resources and environmental protection act,  
28 1994 PA 451, MCL 324.63201 to 324.63223, as it relates to the  
29 regulation of nonferrous metallic mining by a local unit of

1 government. A local unit of government shall not exercise zoning  
2 authority under this act over activity governed by part 632 of the  
3 natural resources and environmental protection act, 1994 PA 451,  
4 MCL 324.63201 to 324.63223.

5 (15) ~~(7)~~—This act does not limit state regulatory authority  
6 under other statutes or rules.

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