SENATE BILL NO. 431

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:

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

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

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

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

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

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

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

(b) Very serious consequences would not result from the extraction of those the natural resources. Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit. This state has a paramount public interest in the conservation and development of this state's valuable natural resources. Whether very serious consequences would result from the extraction, by mining, of natural resources shall be considered in light of this paramount state interest. For purposes of this section, a consequence is very
serious if it substantially exceeds the ordinary impacts of customary mining operations and poses an actual and unnecessary risk to public health, safety, or welfare that cannot be avoided or ameliorated through the imposition of reasonable controls or conditions on the mining operations.

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

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in Silva v Ada Township, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

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

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

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

(c) A site plan showing the location of buildings, equipment, stockpiles, roads, berms, or other features necessary to the mining operations and demonstrating all of the following:
(i) A setback of the mining area from the nearest public roadway or adjoining property line of not less than 50 feet.

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

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

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

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

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

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

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

(j) The sequence of mining, including proposed phasing, if
(k) Surface overburden removal plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The overall public interest in the extraction of the specific natural resources on the property.
(6) An application to extract natural resources by mining shall be considered to be administratively complete effective 30 days after it is received by the local unit of government unless the local unit of government notifies the applicant, in writing, before the expiration of the 30-day period that the application is not administratively complete. The notification shall specify the information necessary to make the application administratively complete. If the local unit of government notifies the applicant as provided in this subsection, the 30-day period is tolled until the applicant submits to the local unit of government the specified information.

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

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

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

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

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

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

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

(ii) The following levels for adjacent property:

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

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

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

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

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

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

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

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

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

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

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

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

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

This act does not limit state regulatory authority under other statutes or rules.

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