

# Legislative Analysis

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## NATURAL RESOURCE EXTRACTION UNDER LOCAL ZONING ORDINANCES

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### House Bill 4746

**Sponsor: Rep. Matt Huuki**

**Committee: Natural Resources, Tourism, and Outdoor Recreation**

**Complete to 6-15-11**

### A SUMMARY OF HOUSE BILL 4746 AS INTRODUCED 6-14-11

This bill would amend Section 205 of the Michigan Zoning Enabling Act to specify that a zoning ordinance cannot prevent the extraction of valuable natural resources from any property unless "very serious consequences" would result from the extraction. The bill says it "is intended to codify the standard set forth in Silva v Ada Township" (a 1982 Michigan Supreme Court decision). Senate Bill 470 contains identical provisions.

MCL 125.3205

### BACKGROUND INFORMATION:

In 2010, the Michigan Supreme Court issued an opinion in Kyser v Kasson Township that is understood to have overturned its 1982 decision in Silva v Ada Township. In Silva, the Court had recognized a rule that zoning ordinances that prevent mining are unreasonable unless "very serious consequences" would result. According to legal commentators, in the 2010 Kyser decision, among other things, the Court declared that rule unconstitutional because it violated the separation of powers. Additionally, the Court held the "very serious consequence" rule had been superseded by the exclusionary zoning provision (MCL 125.297a) of the Township Zoning Act, now incorporated into the 2006 Zoning Enabling Act. In its 2010 decision, the Court eliminated the "very serious consequences" rule and replaced it with the traditional reasonableness test that applies to all other types of land use restrictions.

House Bill 4746 would, apparently, return to the "very serious consequences" standard that existed prior to the 2010 Supreme Court decision.

### FISCAL IMPACT:

House Bill 4746 would have no fiscal impact on the State of Michigan. The bill's provisions would not have any significant fiscal impact to local units of government unless the local unit incurred costs from additional zoning challenges.

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