

# HOUSE BILL No. 4904

July 18, 2013, Introduced by Reps. Driskell, Geiss, Barnett, Hovey-Wright, Tlaib, Slavens, Lipton, Irwin, Roberts, Townsend, Schor, Singh and Darany and referred to the Committee on Energy and Technology.

A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act," by amending sections 102 and 205 (MCL 125.3102 and 125.3205), section 102 as amended by 2008 PA 12 and section 205 as amended by 2012 PA 389.

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

1           Sec. 102. As used in this act:

2           (a) "Agricultural land" means substantially undeveloped land  
3 devoted to the production of plants and animals useful to humans,  
4 including, but not limited to, forage and sod crops, grains, feed  
5 crops, field crops, dairy products, poultry and poultry products,  
6 livestock, herbs, flowers, seeds, grasses, nursery stock, fruits,  
7 vegetables, Christmas trees, and other similar uses and activities.

8           (b) "Airport" means an airport licensed by the Michigan

1 department of transportation, bureau of aeronautics under section  
2 86 of the aeronautics code of the state of Michigan, 1945 PA 327,  
3 MCL 259.86.

4 (c) "Airport approach plan" and "airport layout plan" mean a  
5 plan, or an amendment to a plan, filed with the zoning commission  
6 under section 151 of the aeronautics code of the state of Michigan,  
7 1945 PA 327, MCL 259.151.

8 (d) "Airport manager" means that term as defined in section 2  
9 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL  
10 259.2.

11 (e) "Airport zoning regulations" means airport zoning  
12 regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL  
13 259.431 to 259.465, for an airport hazard area that lies in whole  
14 or part in the area affected by a zoning ordinance under this act.

15 (f) "Conservation easement" means that term as defined in  
16 section 2140 of the natural resources and environmental protection  
17 act, 1994 PA 451, MCL 324.2140.

18 (g) "Coordinating zoning committee" means a coordinating  
19 zoning committee as described under section 307.

20 (h) "Development rights" means the rights to develop land to  
21 the maximum intensity of development authorized by law.

22 (i) "Development rights ordinance" means an ordinance, which  
23 may comprise part of a zoning ordinance, adopted under section 507.

24 (j) "Family child care home" and "group child care home" mean  
25 those terms as defined in section 1 of 1973 PA 116, MCL 722.111,  
26 and only apply to the bona fide private residence of the operator  
27 of the family or group child care home.

1 (k) "Greenway" means a contiguous or linear open space,  
2 including habitats, wildlife corridors, and trails, that links  
3 parks, nature reserves, cultural features, or historic sites with  
4 each other, for recreation and conservation purposes.

5 (l) "HYDRAULIC FRACTURING" MEANS INJECTING FOAM OR FLUID IN A  
6 WELL UNDER PRESSURE TO CREATE FRACTURES IN A FORMATION AND THEREBY  
7 ENHANCE PRODUCTION OF HYDROCARBONS.

8 (M) ~~(l)~~ "Improvements" means those features and actions  
9 associated with a project that are considered necessary by the body  
10 or official granting zoning approval to protect natural resources  
11 or the health, safety, and welfare of the residents of a local unit  
12 of government and future users or inhabitants of the proposed  
13 project or project area, including roadways, lighting, utilities,  
14 sidewalks, screening, and drainage. Improvements do not include the  
15 entire project that is the subject of zoning approval.

16 (N) ~~(m)~~ "Intensity of development" means the height, bulk,  
17 area, density, setback, use, and other similar characteristics of  
18 development.

19 (O) ~~(n)~~ "Legislative body" means the county board of  
20 commissioners of a county, the board of trustees of a township, or  
21 the council or other similar elected governing body of a city or  
22 village.

23 (P) ~~(o)~~ "Local unit of government" means a county, township,  
24 city, or village.

25 (Q) ~~(p)~~ "Other eligible land" means land that has a common  
26 property line with agricultural land from which development rights  
27 have been purchased and is not divided from that agricultural land

1 by a state or federal limited access highway.

2 (R) ~~(q)~~—"Person" means an individual, partnership,  
3 corporation, association, governmental entity, or other legal  
4 entity.

5 (S) ~~(r)~~—"Population" means the population according to the  
6 most recent federal decennial census or according to a special  
7 census conducted under section 7 of the Glenn Steil state revenue  
8 sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the  
9 more recent.

10 (T) ~~(s)~~—"Site plan" includes the documents and drawings  
11 required by the zoning ordinance to ensure that a proposed land use  
12 or activity is in compliance with local ordinances and state and  
13 federal statutes.

14 (U) ~~(t)~~—"State licensed residential facility" means a  
15 structure constructed for residential purposes that is licensed by  
16 the state under the adult foster care facility licensing act, 1979  
17 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to  
18 722.128, and provides residential services for 6 or fewer  
19 individuals under 24-hour supervision or care.

20 (V) ~~(u)~~—"Undeveloped state" means a natural state preserving  
21 natural resources, natural features, scenic or wooded conditions,  
22 agricultural use, open space, or a similar use or condition. Land  
23 in an undeveloped state does not include a golf course but may  
24 include a recreational trail, picnic area, children's play area,  
25 greenway, or linear park. Land in an undeveloped state may be, but  
26 is not required to be, dedicated to the use of the public.

27 (W) ~~(v)~~—"Zoning commission" means a zoning commission as

1 described under section 301.

2 (X) ~~(w)~~—"Zoning jurisdiction" means the area encompassed by  
3 the legal boundaries of a city or village or the area encompassed  
4 by the legal boundaries of a county or township outside the limits  
5 of incorporated cities and villages. The zoning jurisdiction of a  
6 county does not include the areas subject to a township zoning  
7 ordinance.

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

10 (a) The electric transmission line certification act, 1995 PA  
11 30, MCL 460.561 to 460.575.

12 (b) The regional transit authority act, **2012 PA 387, MCL**  
13 **124.541 TO 124.558.**

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 not  
17 have jurisdiction with reference to the issuance of permits for the  
18 location, drilling, completion, operation, or abandonment of such  
19 wells. **THIS SUBSECTION DOES NOT LIMIT THE AUTHORITY OF A COUNTY OR**  
20 **TOWNSHIP TO REGULATE OR CONTROL HYDRAULIC FRACTURING OPERATIONS.**

21 (3) An ordinance shall not prevent the extraction, by mining,  
22 of valuable natural resources from any property unless very serious  
23 consequences would result from the extraction of those natural  
24 resources. Natural resources shall be considered valuable for the  
25 purposes of this section if a person, by extracting the natural  
26 resources, can receive revenue and reasonably expect to operate at  
27 a profit.

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

7 (5) In determining under this section whether very serious  
8 consequences would result from the extraction, by mining, of  
9 natural resources, the standards set forth in Silva v Ada Township,  
10 416 Mich 153 (1982), shall be applied and all of the following  
11 factors may be considered, if applicable:

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

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

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

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

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

24 (f) The overall public interest in the extraction of the  
25 specific natural resources on the property.

26 (6) Subsections (3) to (5) do not limit a local unit of  
27 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.

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