

SENATE BILL No. 1210

November 27, 2018, Introduced by Senator CASPERSON 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 2012 PA 389.

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**
6 **124.541 TO 124.558.**

7 (2) A county or township shall not regulate or control the
8 drilling, completion, or operation of oil or gas wells or other
9 wells drilled for oil or gas exploration purposes and shall not
10 have jurisdiction with reference to the issuance of permits for the

1 location, drilling, completion, operation, or abandonment of such
2 wells.

3 (3) ~~An ordinance~~ **A LOCAL UNIT OF GOVERNMENT shall not, BY**
4 **ORDINANCE OR OTHERWISE, prevent, PROHIBIT, OR DENY A PERMIT,**
5 **APPROVAL, OR OTHER AUTHORIZATION FOR** the extraction, by mining, of
6 ~~valuable~~ natural resources from any property ~~unless very~~ **BY A**
7 **PERSON WITH PROPERTY, POSSESSORY, OR CONTRACTUAL RIGHTS TO DO SO IF**
8 **BOTH OF THE FOLLOWING APPLY:**

9 (A) **THE NATURAL RESOURCES ARE VALUABLE. FOR THE PURPOSES OF**
10 **THIS SECTION, NATURAL RESOURCES ARE VALUABLE IF A PERSON, BY**
11 **EXTRACTING THE NATURAL RESOURCES, CAN RECEIVE REVENUE AND**
12 **REASONABLY EXPECT TO OPERATE AT A PROFIT.**

13 (B) **VERY** serious consequences would **NOT** result from the
14 extraction of ~~these~~ **THE** natural resources. ~~Natural resources shall~~
15 ~~be considered valuable for the purposes of this section if a~~
16 ~~person, by extracting the natural resources, can receive revenue~~
17 ~~and reasonably expect to operate at a profit.~~ **THIS STATE HAS A**
18 **PARAMOUNT PUBLIC INTEREST IN THE CONSERVATION AND DEVELOPMENT OF**
19 **THIS STATE'S VALUABLE NATURAL RESOURCES. WHETHER VERY SERIOUS**
20 **CONSEQUENCES WOULD RESULT FROM THE EXTRACTION, BY MINING, OF**
21 **NATURAL RESOURCES SHALL BE CONSIDERED IN LIGHT OF THIS PARAMOUNT**
22 **STATE INTEREST.**

23 ~~—— (4) A person challenging a zoning decision under subsection~~
24 ~~(3) has the initial burden of showing that there are valuable~~
25 ~~natural resources located on the relevant property, that there is a~~
26 ~~need for the natural resources by the person or in the market~~
27 ~~served by the person, and that no very serious consequences would~~

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

7 (4) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ACT OR
8 ANY OTHER STATUTE OR ORDINANCE, THE REQUIREMENTS OF SUBSECTION
9 (3) (A) AND (B) ARE MET IF THE PERSON SEEKING TO EXTRACT NATURAL
10 RESOURCES BY MINING SUBMITS TO A LOCAL UNIT OF GOVERNMENT A PLAN
11 FOR THE PROPOSED EXTRACTION THAT INCLUDES ALL OF THE FOLLOWING:

12 (A) A DEMONSTRATION THAT THE PERSON CAN, BY EXTRACTING THE
13 NATURAL RESOURCES, RECEIVE REVENUE AND REASONABLY EXPECT TO OPERATE
14 AT A PROFIT.

15 (B) A GENERAL DESCRIPTION OF MATERIALS, METHODS, AND
16 TECHNIQUES THAT WILL BE UTILIZED FOR MINING OPERATIONS.

17 (C) A SITE PLAN SHOWING THE LOCATION OF BUILDINGS, EQUIPMENT,
18 STOCKPILES, ROADS, BERMS, OR OTHER FEATURES NECESSARY TO THE MINING
19 OPERATIONS AND DEMONSTRATING ALL OF THE FOLLOWING:

20 (i) A SETBACK OF THE MINING AREA FROM THE NEAREST PUBLIC
21 ROADWAY OR ADJOINING PROPERTY LINE OF NOT LESS THAN 50 FEET.

22 (ii) A SETBACK OF EQUIPMENT USED FOR SCREENING AND CRUSHING OF
23 NOT LESS THAN 200 FEET FROM THE NEAREST PUBLIC ROADWAY OR ADJOINING
24 PROPERTY LINE, OR NOT LESS THAN 300 FEET FROM THE NEAREST
25 RESIDENTIAL DWELLING OCCUPIED ON ADJACENT PROPERTY AS OF THE DATE
26 OF SUBMITTAL OF THE PLAN FOR EXTRACTION.

27 (D) A DESCRIPTION OF THE PROPOSED HAUL ROUTES TO BE USED TO

1 TRANSPORT NATURAL RESOURCES FROM THE MINING AREA TO A PRIMARY ROAD,
2 OTHER THAN FOR LOCAL DELIVERIES.

3 (E) SIGNS TO BE MAINTAINED ON THE BOUNDARIES OF THE MINING
4 AREA, FACING OUTWARD, SPACED EVERY 200 FEET OR CLOSER, AND STATING
5 "NO TRESPASSING-MINING AREA".

6 (F) STOCKPILES, OTHER THAN SCREENING BERMS, NOT EXCEEDING THE
7 HIGHER OF 70 FEET ABOVE GROUND SURFACE AT THE LOCATION OF THE
8 STOCKPILE OR 40 FEET HIGHER THAN THE ELEVATION OF THE ADJOINING
9 PROPERTY AT THE NEAREST PROPERTY LINE.

10 (G) BERMING OR OTHER SCREENING OF THE ACTIVE MINING AREA FROM
11 AN OCCUPIED RESIDENCE ON AN ADJOINING PROPERTY TO THE EXTENT
12 REASONABLY PRACTICABLE. THE SCREENING MAY BE ACCOMPLISHED BY USING
13 OVERBURDEN TO THE EXTENT AVAILABLE TO CONSTRUCT BERMS OF UP TO 6
14 FEET IN HEIGHT ALONG ADJOINING PROPERTY LINES OR BY OTHER MEANS
15 REQUESTED BY THE APPLICANT.

16 (H) A DESCRIPTION OF PROCESSING ACTIVITIES THAT MAY INCLUDE,
17 BUT ARE NOT LIMITED TO, WASHING, SCREENING, CRUSHING, AND BLENDING
18 OF STONE, SAND, GRAVEL, AND OTHER MATERIALS, INCLUDING RECYCLED
19 MATERIALS AND OTHER MATERIALS OBTAINED FROM OFF SITE.

20 (I) A GENERAL DESCRIPTION OF THE NATURAL RESOURCES DEPOSIT.

21 (J) THE SEQUENCE OF MINING, INCLUDING PROPOSED PHASING, IF
22 APPLICABLE.

23 (K) SURFACE OVERBURDEN REMOVAL PLANS.

24 (L) A DESCRIPTION OF THE DEPTH FROM GRADE LEVEL FROM WHICH THE
25 NATURAL RESOURCES WILL BE REMOVED.

26 (M) PROOF OF FINANCIAL ASSURANCE FOR RECLAMATION OF THE MINING
27 AREA MEETING THE FOLLOWING REQUIREMENTS:

1 (i) FINANCIAL ASSURANCE SHALL BE MAINTAINED DURING MINING
2 OPERATIONS AND UNTIL RECLAMATION HAS BEEN SUBSTANTIALLY COMPLETED.

3 (ii) THE AMOUNT OF FINANCIAL ASSURANCE SHALL BE \$1,500.00 PER
4 ACRE DISTURBED BY MINING OPERATIONS BUT NOT YET RECLAIMED,
5 EXCLUDING ROADWAYS, PLANT SITES, AND OPEN WATER AREAS THAT WILL
6 REMAIN AFTER COMPLETION OF RECLAMATION.

7 (iii) THE REQUIRED FINANCIAL ASSURANCE SHALL BE ADJUSTED
8 ANNUALLY AS NECESSARY TO ENSURE THAT IT IS SUFFICIENT TO SATISFY
9 THE RECLAMATION REQUIREMENTS OF THIS SECTION.

10 (iv) FINANCIAL ASSURANCE MAY CONSIST, AT THE SOLE OPTION OF
11 THE APPLICANT, OF A PERFORMANCE BOND, SURETY, ESCROW, CASH
12 CERTIFICATE OF DEPOSIT, OR OTHER EQUIVALENT SECURITY OR COMBINATION
13 THEREOF. FINANCIAL ASSURANCE MAY ALSO BE MET BY A DEMONSTRATION
14 THAT THE APPLICANT HAS SUFFICIENT FINANCIAL RESOURCES TO SATISFY
15 THE RECLAMATION REQUIREMENTS OF SUBDIVISION (M).

16 (N) PLANS FOR RECLAMATION OF THE MINING AREA FOLLOWING
17 CESSATION OF MINING OPERATIONS THAT INCLUDE ALL OF THE FOLLOWING:

18 (i) PROVISION FOR GRADING, REVEGETATING, AND STABILIZATION
19 THAT WILL MINIMIZE, TO THE EXTENT PRACTICABLE, SOIL EROSION,
20 SEDIMENTATION, NOISE, OFF-SITE MIGRATION OF DUST, AND PUBLIC SAFETY
21 CONCERNS CONSISTENT WITH SUBSECTION (7).

22 (ii) PROVISION FOR RECLAIMING SLOPES OF THE BANKS OF THE
23 EXCAVATION NOT EXCEEDING 3 FEET HORIZONTAL TO 1 FOOT VERTICAL
24 MEASURED FROM THE NEAREST SETBACK LINE INTO ANY AREA DISTURBED BY
25 MINING OPERATIONS.

26 (iii) WHERE OPEN WATER WITH A MAXIMUM DEPTH IN EXCESS OF 5
27 FEET WILL RESULT FROM MINING OPERATIONS, PROVISION FOR RECLAIMING

1 SLOPES INTO THE WATER NOT EXCEEDING 1 FOOT VERTICAL TO 5 FEET
2 HORIZONTAL MAINTAINED AND EXTENDED INTO THE WATER TO A DEPTH OF 5
3 FEET.

4 (5) AS AN ALTERNATIVE TO SUBSECTION (4), AND NOTWITHSTANDING
5 ANYTHING TO THE CONTRARY IN THIS ACT OR ANY OTHER STATUTE OR
6 ORDINANCE, THE REQUIREMENTS OF SUBSECTION (3) (A) AND (B) ARE MET IF
7 THE PERSON SEEKING TO EXTRACT NATURAL RESOURCES BY MINING
8 DEMONSTRATES BOTH OF THE FOLLOWING:

9 (A) THAT THE PERSON CAN, BY EXTRACTING THE NATURAL RESOURCES,
10 RECEIVE REVENUE AND REASONABLY EXPECT TO OPERATE AT A PROFIT.

11 (B) THAT VERY SERIOUS CONSEQUENCES WOULD NOT RESULT FROM THE
12 EXTRACTION OF THE NATURAL RESOURCES BY MINING, CONSIDERING THE
13 FOLLOWING FACTORS, AS APPLICABLE:

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

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

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

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

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

26 ~~——(f) The overall public interest in the extraction of the~~
27 ~~specific natural resources on the property.~~

1 (6) IF THE APPLICANT HAS MADE A PRIMA FACIE CASE THAT THE
2 REQUIREMENTS OF SUBSECTION (4) OR (5) ARE MET, THE BURDEN OF PROOF
3 SHIFTS TO THE PARTY CHALLENGING OR OPPOSING THE PROPOSED MINING
4 ACTIVITY IN AN ADMINISTRATIVE OR JUDICIAL ACTION CHALLENGING THAT
5 ORDINANCE OR ACTION.

6 (7) ~~(6)~~—Subsections (3) to (5) do not limit a local unit of
7 government's reasonable regulation of hours of operation, blasting
8 hours, noise levels, dust control measures, and traffic, not
9 preempted by part 632 of the natural resources and environmental
10 protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However,
11 such regulation shall be reasonable in accommodating customary
12 mining operations ~~—AND SHALL NOT BE MORE RESTRICTIVE THAN THE~~
13 FOLLOWING:

14 (A) FOR DUST CONTROL, DUST SHALL NOT EXCEED THE STANDARDS
15 REQUIRED PURSUANT TO ANY APPLICABLE GENERAL OR INDIVIDUAL AIR
16 PERMIT ISSUED PURSUANT TO PART 55 OF THE NATURAL RESOURCES AND
17 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.5501 TO
18 324.5542, OR FEDERAL LAW.

19 (B) FOR NOISE, THE 8-HOUR TIME-WEIGHTED AVERAGE SOUND PRESSURE
20 LEVEL IN DECIBELS MEASURED AT THE COMMON PROPERTY LINE NEAREST TO
21 THE ACTIVE MINING AREA ON A SOUND LEVEL METER USING THE A-WEIGHTING
22 NETWORK SHALL NOT EXCEED THE GREATER OF THE FOLLOWING:

23 (i) 20 DB(A) ABOVE BACKGROUND LEVELS.

24 (ii) THE FOLLOWING LEVELS FOR ADJACENT PROPERTY:

25 (A) FOR RESIDENTIALLY ZONED PROPERTY: 75 DB(A).

26 (B) FOR COMMERCIAL ZONED PROPERTY: 85 DB(A).

27 (C) FOR INDUSTRIAL AND ALL OTHER ZONING CLASSIFICATIONS: 90

1 DB(A).

2 (C) FOR GROUND VIBRATION, ALL STATIONARY MACHINERY AND
3 EQUIPMENT SHALL BE MOUNTED AND OPERATED TO PREVENT TRANSMISSION OF
4 GROUND VIBRATION EXCEEDING A DISPLACEMENT OF 0.10 INCHES MEASURED
5 ANYWHERE OUTSIDE OF THE PROPERTY LINE. BLASTING ACTIVITY SHALL NOT
6 CREATE ANY OF THE FOLLOWING AT ANY RESIDENTIAL BUILDING:

7 (i) GROUND VIBRATION IN EXCESS OF THAT SET FORTH IN UNITED
8 STATES BUREAU OF MINES REPORTS, RI 8507, FIGURE B-1 "SAFE LEVELS OF
9 BLASTING VIBRATIONS FOR HOUSES USING A COMBINATION OF VELOCITY AND
10 DISPLACEMENT".

11 (ii) AIR BLAST IN EXCESS OF 133 DECIBELS AT ANY RESIDENTIAL
12 DWELLING.

13 (D) FOR TRUCK LOADING HOURS, CUSTOMER TRUCK LOADING SHALL BE
14 PERMITTED FROM AT LEAST 5 A.M. TO 7 P.M. LOCAL TIME, MONDAY THROUGH
15 SATURDAY, OR AS OTHERWISE SPECIFICALLY REQUIRED BY STATE OR COUNTY
16 CONTRACT. THESE LIMITATIONS ONLY APPLY TO THE LOADING OF TRUCKS OR
17 TRAILERS FOR OVER-THE-ROAD TRANSPORTATION AND DO NOT APPLY TO THE
18 LOADING OR UNLOADING OF RAILROAD CARS OR SHIPS, WHICH SHALL BE
19 PERMITTED AT ANY TIME.

20 (8) THE 2018 AMENDATORY ACT THAT AMENDED THIS SECTION APPLIES
21 TO THE FOLLOWING:

22 (A) ALL REQUESTS FOR THE EXTRACTION OF NATURAL RESOURCES BY
23 MINING SUBMITTED ON OR AFTER THE EFFECTIVE DATE OF THAT AMENDATORY
24 ACT.

25 (B) ALL REQUESTS FOR THE EXTRACTION OF NATURAL RESOURCES BY
26 MINING PENDING ON THE EFFECTIVE DATE OF THAT AMENDATORY ACT OR WITH
27 RESPECT TO WHICH ALL ADMINISTRATIVE AND JUDICIAL ACTIONS HAVE NOT

1 **BEEN EXHAUSTED.**

2 (9) ~~(7)~~—This act does not limit state regulatory authority
3 under other statutes or rules.

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