

# SENATE BILL NO. 442

May 13, 2021, Introduced by Senators DALEY and JOHNSON and referred to the Committee on Transportation and Infrastructure.

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  
6 124.541 to 124.558.

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

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

9 (3) An ordinance shall not prevent the extraction, by mining,  
10 of valuable natural resources from any property unless very serious  
11 consequences would result from the extraction of those natural  
12 resources. ~~Natural resources shall be considered valuable for the~~  
13 ~~purposes of this section if a person, by extracting the natural~~  
14 ~~resources, can receive revenue and reasonably expect to operate at~~  
15 ~~a profit.~~

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

24 **(4) 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.**

28 (5) Taking into consideration the standards in this section  
29 and any mitigating conditions offered by the applicant or

1 authorized to be imposed by the local unit of government as part of  
2 a zoning approval, a very serious consequence would result if the  
3 proposed extractive operation is reasonably expected to result in  
4 any of the following:

5 (a) A material change to the planning and zoning policy for  
6 the zoning district

7 (b) Harm to the environment.

8 (c) An undue financial burden on the local unit of government  
9 or the property owners surrounding the relevant property or the  
10 haul route.

11 (d) An undue impact on the protections provided by zoning  
12 regulations for the district that were reasonably anticipated by  
13 property owners to protect their fundamental purchase expectations.

14 (6) ~~(5)~~—In determining under this section whether very serious  
15 consequences would result from the extraction, by mining, of  
16 natural resources, the standards set forth in *Silva v Ada Township*,  
17 416 Mich 153 (1982), shall be applied and all of the following  
18 factors may be considered, if applicable:

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

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

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

26 (d) The impact on pedestrian and traffic safety in the  
27 vicinity of the property and along the proposed hauling route  
28 serving the property. **A proposed hauling route that runs through or**  
29 **adjacent to a historic district designated under the national**

1 historic preservation act, 54 USC 300101 to 307108, or adjacent to  
 2 other property listed on the national register of historic places  
 3 under that act, or that runs through or adjacent to a historic  
 4 district established under the local historic districts act, 1970  
 5 PA 169, MCL 399.201 to 399.215, shall be presumed to result in very  
 6 serious consequences. The presumption may be rebutted by clear and  
 7 convincing evidence.

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

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

12 **(7) Notwithstanding anything to the contrary in this act or**  
 13 **any other statute or ordinance, a local unit of government may by**  
 14 **ordinance or permit action prevent the extraction by mining of**  
 15 **natural resources if the property on which the mining will occur is**  
 16 **a facility or is located within 1 mile of a facility, whether or**  
 17 **not response activities or corrective action have been completed at**  
 18 **the facility. As used in this subsection, "facility" means that**  
 19 **term as defined in section 20101 of the natural resources and**  
 20 **environmental protection act, 1994 PA 451, MCL 324.20101.**

21 **(8) ~~(6)~~ Subsections (3) to ~~(5)~~ (7) do not limit a local unit**  
 22 **of government's reasonable regulation of hours of operation,**  
 23 **blasting hours, noise levels, vibration levels, dust control**  
 24 **measures, ~~and~~ traffic, postextraction reclamation to stabilize**  
 25 **property, including security for completion of reclamation, or**  
 26 **other local matters if both of the following apply:**

27 **(a) The regulation is not preempted by part 632 of the natural**  
 28 **resources and environmental protection act, 1994 PA 451, MCL**  
 29 **324.63201 to 324.63223. However, such**

1           (b) The regulation ~~shall be~~ **is** reasonable in accommodating  
2 customary mining operations.

3           (9) The local unit of government shall make a final decision  
4 on an application for zoning approval to extract natural resources  
5 by mining not more than 1 year after receiving a complete  
6 application. An application is complete if either or both of the  
7 following apply:

8           (a) The application contains all of the materials specified in  
9 the local unit of government's ordinance governing the application.

10           (b) The local unit of government does not notify the applicant  
11 in writing of any deficiencies in the application within 90 days  
12 after receipt of the application.

13           Either or both of the time periods specified in this section  
14 may be extended by written agreement of the parties.

15           (10) If an existing mining operation has received zoning  
16 approval, the local unit of government shall make a final decision  
17 on an application for expansion of the mining operation within 90  
18 days after the receipt of a complete application if all of the  
19 following conditions are met:

20           (a) The relevant property is not located in a residential  
21 zoning district.

22           (b) The application does not propose a new haul route.

23           (c) Subsection (7) does not apply to the property on which  
24 mining will occur.

25           (11) A zoning approval of an application to extract natural  
26 resources by mining under this section is valid for the life of the  
27 mine as specified in the zoning approval if the operator of the  
28 mine complies with the conditions of approval imposed by the local  
29 unit of government and applicable state and federal laws and rules.

1 If the property is located in a single family or multifamily zoning  
2 district, the zoning ordinance of the local unit of government may  
3 restrict the total duration of mining operations to 15 years. The  
4 15-year period includes the duration of any expansion of mining  
5 operations as previously approved and of activities preliminary to  
6 extraction, such as construction of facilities. The 15-year period  
7 does not include the duration of reclamation after extraction has  
8 ceased. After approval of an application, a local unit of  
9 government may conduct a periodic compliance review of the mining  
10 and related operations. If authorized by ordinance, the compliance  
11 review may include, but is not limited to, site inspections,  
12 inspection of documents, and requirements for the mining operator  
13 to submit information to the local unit of government. A mining  
14 operator's response to a compliance review shall not be considered  
15 to be an application for a new approval to operate.

16 (12) A mining operation that requires a zoning approval shall  
17 not be located as provided in either of the following:

18 (a) Within 5 miles from an inland lake that is more than 2,000  
19 acres in size.

20 (b) Within 660 feet from a river or stream that is a tributary  
21 of such an inland lake.

22 (13) The purpose of the buffer strip setback requirements of  
23 subsection (12) is to protect the water quality of this state's  
24 most important natural resources, protect and enhance fish and  
25 wildlife habitat, and conserve biodiversity.

26 (14) ~~(7)~~ This act does not limit state regulatory authority  
27 under other statutes or rules.