A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act,"
by amending the title and section 205 (MCL 125.3205), section 205
as amended by 2018 PA 366.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to codify the laws regarding local units of government
regulating the development and use of land; to provide for the
adoption of zoning ordinances; to provide for the establishment in
counties, townships, cities, and villages of zoning districts; to
prescribe the powers and duties of certain state and local agencies
and officials; to provide for the promulgation of rules; to provide
for the assessment and collection of fees; to authorize the
issuance of bonds and notes; to prescribe penalties and provide
remedies; and to repeal acts and parts of acts.

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 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—by a
person with property, possessory, or contractual rights to do so if
all the following requirements are met:

(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 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.

(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: 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. Subject to
subsections (4) and (5), 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.

(c) If the local unit of government requires reclamation under
this section, the person seeking to extract natural resources
provides financial assurance that meets the requirements of
subsection (6) to ensure the reclamation of the property.

(4) It shall be found that very serious consequences would not
result from the extraction of natural resources by mining if the
person seeking to extract the natural resources submits to a local
unit of government a plan for the proposed extraction that includes
all of the following:

(a) A general description of the materials, methods, and
techniques that will be utilized for the mining operations.
(b) 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.
(c) 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.
(d) 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".
(e) 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.
(f) 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.

(g) 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.

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

(i) The sequence of mining, including proposed phasing, if applicable.

(j) Surface overburden removal plans.

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

(5) As an alternative to proceeding under subsection (4), the person seeking to extract natural resources by mining may proceed under this subsection. It shall be found that very serious consequences would not result from the extraction of natural resources by mining if the person seeking to extract natural resources demonstrates that very serious consequences would not result from the extraction of the natural resources by mining, considering the following factors, as applicable:

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

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

(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.

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

(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) Financial assurance required under subsection (3)(c) shall be in a form approved by the local unit of government. The financial assurance shall consist, at the sole option of the local unit of government, of a performance bond, surety, escrow, cash, certificate of deposit, irrevocable letter of credit, or other equivalent security, or any combination thereof. Alternately, the local unit of government may accept a statement of financial responsibility demonstrating that the applicant has sufficient financial resources to satisfy the reclamation requirements. The amount of financial assurance required shall not exceed $3,000.00 per acre disturbed but not yet reclaimed, excluding roadways, plant sites, stockpile areas, and open water areas that will remain open water 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 subsection. Subject to the $3,000.00 per acre limit, the local unit of government may also require financial assurance to be adjusted to reflect substantial change to the existing reclamation plan. The department of environment, Great Lakes, and energy shall define substantial change for the purposes of this subsection by rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The financial assurance shall be maintained until reclamation of the property is completed. Failure
of an operator to maintain financial assurance under this
subsection constitutes grounds for the local unit of government to
order immediate suspension of activities.

(7) An application to extract natural resources by mining
shall be considered to be administratively complete effective 60
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 60-day period that the application is
not administratively complete. The notification shall specify the
additional information necessary to make the application
administratively complete. If the local unit of government notifies
the applicant as provided in this subsection, the 60-day period is
tolled until the applicant submits to the local unit of government
the additional information required. An application under
subsection (4) is administratively complete if it includes the
information required under subsections (3)(c), (4), and (11).

(8) 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
an administratively complete application. However, the applicant
may agree in writing to extend the 180-day period.

(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 (6) 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 6 a.m. to 7 p.m. local time, Monday through
Friday and from at least 6 a.m. to 5 p.m., local time, on 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) The local unit of government exercising zoning authority
may require as a condition of a permit that the permittee submit
plans for reclamation of the mining area that provide for all of
the following:

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

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

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

(d) A statement that the applicant will comply with subsection
(12).

(12) Once initiated, the final reclamation measures shall be
performed as stated in the reclamation plan unless the exploration
or the mining unit is reactivated. Reclamation shall be initiated
within the shorter of the following periods:
  (a) The period required by applicable federal law.
  (b) One year after cessation of mining operations, or a longer
      period if approved by the local unit of government based on any of
      the following factors:
          (i) The presence of additional quantities of the natural
              resource that was being mined or other commodities in commerce.
          (ii) Historical fluctuations in the value of the natural
               resource being mined or other commodities present that can be mined
               under the same permit.
          (iii) The design life of any process components existing at the
                mining unit.
    (13) Both of the following apply to a permit or other
    authorization issued by a local unit of government to extract
    natural resources by mining:
        (a) It is valid until mining operations, including
            reclamation, are completed.
        (b) It does not amend the underlying zoning or the master
            plan.
    (14) The 2020 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. Subsection (3)(c) also applies to all requests for the
            extraction of natural resources by mining pending on 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.

(15) 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.

(16) 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
government. 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.

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