

NATURAL RESOURCE EXTRACTION BY MINING UNDER LOCAL ZONING ORDINANCES

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House Bill 4746 as enacted

Public Act 113 of 2011

Sponsor: Rep. Matt Huuki

House Committee: Natural Resources, Tourism, and Outdoor Recreation

Senate Committee: Natural Resources, Environment, and Great Lakes

Complete to 7-26-11

A SUMMARY OF HOUSE BILL 4746 AS ENACTED

This bill amended Section 205 of the Michigan Zoning Enabling Act to specify that a zoning ordinance cannot prevent the extraction of valuable natural resources by mining from any property unless "very serious consequences" would result from the extraction.

The bill states that natural resources will be considered valuable if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

Under the bill a person bringing a zoning challenge has the initial burden of showing 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 mining.

In determining whether very serious consequences would result from extraction by mining, the standards set forth in Silva v. Ada Township, 416 MICH 153 (1982), must be applied and all of the following factors may be considered, if applicable:

- The relationship of extraction and associated activities with existing land uses.
- The impact on existing land uses in the vicinity of the property.
- The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.
- The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.
- The impact on other identifiable health, safety, and welfare interests in the local unit of government.
- The overall public interest in the extraction of the specific natural resource.

According to the bill, these provisions 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. However, regulations must be reasonable in accommodating customary mining operations. Additionally, this bill will not limit state regulatory authority under other statutes or rules.

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 the Sylva case, a township had denied a rezoning that would have allowed the mining of gravel on land zoned for agricultural use. 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, proponents said, return to the "very serious consequences" standard that existed prior to the 2010 Supreme Court decision. This presumably would restore a higher standard for local units of government to meet when regulating mining.

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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