



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1210 (as introduced 11-27-18)
Sponsor: Senator Tom Casperson
Committee: Natural Resources

Date Completed: 11-28-18

CONTENT

The bill would amend the Michigan Zoning Enabling Act to do the following:

- **Prohibit a local unit of government from preventing, prohibiting, or denying a permit, approval, or other authorization for the mining of natural resources if the natural resources were valuable and very serious consequences would not result from the extraction of the natural resources.**
- **Provide that a person who sought to extract natural resources by mining could meet the requirements above by submitting to a local unit of government a plan for the proposed extraction that met certain requirements.**
- **Provide that, if an applicant had made a prima facie case that the requirements were met, the burden of proof would shift to the party challenging or opposing the proposed mining activity.**
- **Describe certain limitations on a local unit of government's regulations of a mining operation.**

The bill would take effect 90 days after its enactment.

Mining Zoning Ordinance Preemption

The Act prohibits an ordinance from preventing the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. Natural resources are considered valuable for the purposes of the Act if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

The bill would prohibit a local unit of government, by ordinance or otherwise, from preventing, prohibiting, or denying a permit, approval, or other authorization for the extraction, by mining, of natural resources from any property by a person with property, possessory, or contractual rights to do so if both of the following applied:

- The natural resources were valuable.
- Very serious consequences would *not* result from the extraction of the natural resources.

The bill states that the State has a paramount public interest in the conservation and development of the State's valuable natural resources. Whether very serious consequences would result from the extraction, by mining, of natural resources would be considered in light of the paramount State interest.

The Act specifies that a person challenging a zoning decision 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. In determining 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), 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 resources on the property.

The bill would delete these provisions.

Plan for Proposed Extraction

The bill would provide that, notwithstanding anything to the contrary in the Act or any other statute or ordinance, the conditions above would be met if the person seeking to extract natural resources by mining submitted to a local unit of government a plan for the proposed extraction that included all of the following:

- A demonstration that the person could, by extracting the natural resources, receive revenue and reasonably expect to operate at a profit.
- A general description of materials, methods, and techniques that would be used for mining operations.
- 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.
- 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".
- 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.
- Berming or other screening of the active mining area from an occupied residence on an adjoining property to the extent reasonably practicable.
- A description of processing activities that could include washing, screening, crushing, and blending of stone, sand, gravel, and other materials, including recycled materials and other materials obtained from off site.
- A general description of the natural resources deposit.
- The sequence of mining, including proposed phasing, if applicable.
- Surface overburden removal plans.
- A description of the depth from the grade level from which the natural resources would be removed.

The plan also would have to include proof of financial assurance for reclamation of the mining area that met the following requirements:

- Financial assurance would have to be maintained during mining operations and until reclamation had been substantially completed.
- The amount of financial assurance would have to be \$1,500 per acre disturbed by mining operations but not yet reclaimed, excluding roadways, plant sites, and open water areas that would remain after completion of reclamation.
- The required financial assurance would have to be adjusted annually as necessary to ensure that it was sufficient to satisfy the reclamation requirements.
- Financial assurance could consist, at the sole option of the applicant, of a performance bond, surety, escrow, cash certificate of deposit, or other equivalent security or combination thereof.
- Financial assurance could also be met by a demonstration that the applicant had sufficient financial resources to satisfy the reclamation requirements.

A plan would also have to include 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:

- A setback of the mining area from the nearest public roadway or adjoining property line of not less than 50 feet.
- 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.

The plan would have to include plans for reclamation of the mining area following cessation of mining operations that included all of the following:

- Provision for grading, revegetating, and stabilization that would minimize, to the extent practicable, soil erosion, sedimentation, noise, off-site migration of dust, and public safety concerns consistent with regulations described below.
- Provision for reclaiming slopes of the banks of the excavation not exceeding three feet horizontal to one foot vertical measured from the nearest setback line into any area disturbed by mining operations.
- Where open water with a maximum depth in excess of five feet would result from mining operations, provision for reclaiming slopes into the water not exceeding one foot vertical to five feet horizontal maintained and extended into the water to a depth of five feet.

Alternative to Plan for Proposed Extraction

As an alternative to submitting a plan for the proposed extraction, and notwithstanding anything to the contrary in the Act or any other statute or ordinance, the conditions above could be met if the person who sought to extract natural resources by mining demonstrated that the person could, by extracting the natural resources, receive revenue and reasonably expect to operate at a profit. The person would also have to demonstrate that very serious consequences would not result from the extraction of the natural resources by mining, considering the following factors, as 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.

If the applicant had made a prima facie case that the requirements of a plan for proposed extraction or an alternative to a plan were met, the burden of proof would shift to the party challenging or opposing the proposed mining activity in an administrative or judicial action challenging that ordinance or action.

Regulations Not Preempted; Limitations

Currently, the Act does 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 (Nonferrous Metallic Mineral Mining) of the Natural Resources and Environmental Protection Act. However, these regulation must be reasonable in accommodating customary mining operations.

Under the bill, the regulations could not be more restrictive than the following standards.

For dust control, dust could not exceed the standards required pursuant to any applicable general or individual air permit issued pursuant to Part 55 (Air Resources Protection) of the Natural Resources and Environmental Protection Act or Federal law.

For noise, the eight-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 could not exceed 20 dB above background level and the following levels for adjacent property:

- For residentially zoned property: 75 dB(A).
- For commercially zoned property: 85 dB(A).
- For industrial and all other zoning classifications: 90 dB(A).

For ground vibration, all stationary machinery and equipment would have to be mounted and operated to prevent transmission of ground vibration exceeding a displacement of 0.1 inches measured anywhere outside of the property line. Blasting activity could not create any of the following at any residential building:

- Ground vibration in excess of that set forth in a United States Bureau of Mines report that lists safe blasting vibration criteria developed for residential structures.
- Air blast in excess of 133 decibels at any residential dwelling.

For truck loading hours, customer truck loading would have to be permitted from at least 5 a.m. to 7 p.m. local time, Monday through Saturday, or as otherwise specifically required by State or county contract. These limitations would apply only to the loading of trucks or trailers for over-the-road transportation and would not apply to the loading or unloading of railroad cars or ships, which would have to be permitted at any time.

The bill would apply to all requests for the extraction of natural resources by mining submitted on or after the bill's effective date and would apply to all requests for the extraction of natural resources by mining pending on the bill's effective date or with respect to which all administrative and judicial actions had not been exhausted.

MCL 125.3205

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would have no impact on State or Local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.