

Region 2 Planning Commission

Serving Hillsdale, Jackson and Lenawee Counties

To: Region 2 Planning Commissioners
Municipal and County Planning Commissioners in the Region 2 Area
Other Interested Parties

From: Grant E. Bauman, R2PC Principal Planner

Date: February 13, 2020

Subject: **Proposed MZEA Amendments**

The Michigan Zoning Enabling Act (PA 110 of 2006, MCL 125.3101 et seq.), hereafter referred to as the MZEA, is:

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 officials; 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.

The following bills (attached) have been introduced during the 2019-2020 legislative sessions of the Michigan House of Representatives and the Michigan Senate which, if passed, amend the MZEA (as summarized by topic):

1. **State licensed residential facilities.** House Bill No. 4095 would amend the definition of state licensed residential facilities contained in Sec. 102(t) by increasing the number of children allowed to live in them from 6 to 7-10 if a facility is located on a parcel of at least 20 acres.

Staff previously informed the R2PC about this bill. Analysis is available from the House Fiscal Agency and the Senate Fiscal Agency (attached). The bill was passed by the House on May 21, 2019.

2. **Extraction of valuable natural resources 1.** Senate Bill No. 431 would further curtail the ability of local governments to regulate the mining of natural resources by amending Sec. 205(3) to do the following (as described in the Senate Fiscal Agency analysis):
 - 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 regulation of a mining operation.
- Specify that a permit or other authorization issued by a local unit of government to extract natural resources by mining would be valid until mining operations, including reclamation, were completed.

Analysis is available from the Senate Fiscal Agency (attached). The bill was introduced by Sen. Hollier and referred to the Committee on Natural Resources on 8/20/19.

3. **Extraction of valuable natural resources 2.** House Bill No. 5305 would further refine the ability of local governments to regulate the mining of natural resources by amending Sec. 205(3) to do the following:

- Require an applicant to submit a phase I environmental site assessment and an alternatives assessment.
- Specifying environmental impact as a factor in determining if very serious consequences would result from mining.
- Listing permissible reasons local governments can use in preventing/prohibiting a mining operation.
- Allowing local governments to require additional environmental sampling, analysis, or testing at the applicant's expense.
- Specifying the ability of local governments to impose reasonable conditions.

Analysis is not available from the House Fiscal Agency. The bill was introduced by Reps. Warren and Alexander and referred to the Committee on Transportation on 12/19/19.

4. **Short-term rentals (dwellings) 1.** House Bill No. 4046 would amend Sec. 206b by requiring local governments to consider the short-term (i.e., less than 28 days) rental of dwellings (in buildings with up to 4 units) to be a residential use of property in all residential districts and to curtail their ability to regulate them as a conditional/special use.

Staff previously informed the R2PC about this bill. Analysis is available from the House Fiscal Agency (attached). The bill was introduced by Rep. Sheppard and referred to the Committee on Local Government and Municipal Finance on 1/15/19.

5. **Short-term rentals (dwellings) 2.** House Bill No. 4563 would amend Sec. 206b by requiring local governments to consider the short-term (i.e., 14 days or less) rental of dwellings to be a residential use of property in all residential districts and would also amend Sec. 102 by defining a short-term rental as defined in the Michigan short term-rental promotion act.

Analysis is not available from the House Fiscal Agency. The bill was introduced by Reps. Tate and Lily and referred to the Committee on Commerce and Tourism on 5/2/19.

**SUBSTITUTE FOR
HOUSE BILL NO. 4095**

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
by amending section 102 (MCL 125.3102), as amended by 2008 PA 12.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. As used in this act:

2 (a) "Agricultural land" means substantially undeveloped land
3 devoted to the production of plants and animals useful to humans,
4 including, but not limited to, forage and sod crops, grains, feed
5 crops, field crops, dairy products, poultry and poultry products,
6 livestock, herbs, flowers, seeds, grasses, nursery stock, fruits,
7 vegetables, Christmas trees, and other similar uses and activities.

8 (b) "Airport" means an airport licensed by the Michigan
9 department of transportation, bureau of aeronautics under section



1 86 of the aeronautics code of the state of Michigan, 1945 PA 327,
2 MCL 259.86.

3 (c) "Airport approach plan" and "airport layout plan" mean a
4 plan, or an amendment to a plan, filed with the zoning commission
5 under section 151 of the aeronautics code of the state of Michigan,
6 1945 PA 327, MCL 259.151.

7 (d) "Airport manager" means that term as defined in section 2
8 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL
9 259.2.

10 (e) "Airport zoning regulations" means airport zoning
11 regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL
12 259.431 to 259.465, for an airport hazard area that lies in whole
13 or part in the area affected by a zoning ordinance under this act.

14 (f) "Conservation easement" means that term as defined in
15 section 2140 of the natural resources and environmental protection
16 act, 1994 PA 451, MCL 324.2140.

17 (g) "Coordinating zoning committee" means a coordinating
18 zoning committee as described under section 307.

19 (h) "Development rights" means the rights to develop land to
20 the maximum intensity of development authorized by law.

21 (i) "Development rights ordinance" means an ordinance, which
22 may comprise part of a zoning ordinance, adopted under section 507.

23 (j) "Family child care home" and "group child care home" mean
24 those terms as defined in section 1 of 1973 PA 116, MCL 722.111,
25 and only apply to the bona fide private residence of the operator
26 of the family or group child care home.

27 (k) "Greenway" means a contiguous or linear open space,
28 including habitats, wildlife corridors, and trails, that links
29 parks, nature reserves, cultural features, or historic sites with



each other, for recreation and conservation purposes.

(l) "Improvements" means those features and actions associated with a project that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of a local unit of government and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements do not include the entire project that is the subject of zoning approval.

(m) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.

(n) "Legislative body" means the county board of commissioners of a county, the board of trustees of a township, or the council or other similar elected governing body of a city or village.

(o) "Local unit of government" means a county, township, city, or village.

(p) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and is not divided from that agricultural land by a state or federal limited access highway.

(q) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(r) "Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is ~~the more~~ ~~recent~~ **later**.

(s) "Site plan" includes the documents and drawings required



1 by the zoning ordinance to ensure that a proposed land use or
2 activity is in compliance with local ordinances and state and
3 federal statutes.

4 (t) "State licensed residential facility" means a structure
5 constructed for residential purposes that is licensed by the state
6 under the adult foster care facility licensing act, 1979 PA 218,
7 MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to 722.128, and
8 provides residential services for ~~6 or fewer~~ **the following number**
9 **of** individuals under 24-hour supervision or care:

10 (i) **6 or fewer individuals.**

11 (ii) **7 to 10 individuals, if the facility is licensed under**
12 **1973 PA 116, MCL 722.111 to 722.128, and is located on a parcel of**
13 **20 acres or more.**

14 (u) "Undeveloped state" means a natural state preserving
15 natural resources, natural features, scenic or wooded conditions,
16 agricultural use, open space, or a similar use or condition. Land
17 in an undeveloped state does not include a golf course but may
18 include a recreational trail, picnic area, children's play area,
19 greenway, or linear park. Land in an undeveloped state may be, but
20 is not required to be, dedicated to the use of the public.

21 (v) "Zoning commission" means a zoning commission as described
22 under section 301.

23 (w) "Zoning jurisdiction" means the area encompassed by the
24 legal boundaries of a city or village or the area encompassed by
25 the legal boundaries of a county or township outside the limits of
26 incorporated cities and villages. The zoning jurisdiction of a
27 county does not include the areas subject to a township zoning
28 ordinance.

29 Enacting section 1. This amendatory act takes effect 90 days



1 after the date it is enacted into law.



INCREASE NUMBER OF CHILDREN ALLOWED IN CERTAIN RESIDENTIAL CARE FACILITIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4095 (H-2) as reported from committee
Sponsor: Rep. John Reilly
1st Committee: Local Government and Municipal Finance
2nd Committee: Ways and Means
Complete to 5-7-19

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4095 would amend the Michigan Zoning Enabling Act to increase the number of children allowed to live at certain state licensed residential facilities.

FISCAL IMPACT: House Bill 4095 would have an indeterminate, but likely negligible, fiscal impact on local units of government. The expanded definition of state licensed residential facility under the bill would reduce any local government administrative costs and charged fees related to special use or conditional use zoning permits for certain qualifying facilities licensed under the Child Care Licensing Act, 1973 PA 116.

THE APPARENT PROBLEM:

Michigan's foster care system is intended to provide homes for approximately 13,000 children in need of safe and supportive homes, either temporarily or permanently. The limit of 6 or fewer children per residential facility under the act is understood as encouraging a child-to-adult ratio that ensures that each child gets the attention and care that he or she needs. As of November 28, 2018, however, over 300 children in Michigan still needed adoption, leading some to dispute the limit under certain circumstances.

THE CONTENT OF THE BILL:

Currently, the Michigan Zoning Enabling Act defines a *state licensed residential facility* as one that provides residential services for 6 or fewer individuals under 24-hour supervision or care. Such a facility is designated under the act to be a residential use of property for zoning purposes and a permitted use in all residential zones that is not subject to a special use or conditional use permit or procedure that differs from permits or procedures required for other dwellings of similar density in the same zone.

The bill would change the definition of state licensed residential facility to also include a facility that is providing residential services care to 7 to 10 individuals under 24-hour supervision or care, that is licensed under 1973 PA 116 (commonly known as the Child Care Licensing Act), and that is located on a parcel of at least 20 acres in size. Such a facility would also be a residential use of property under the Zoning Enabling Act.

The bill would take effect 90 days after its enactment.

MCL 125.3102

BACKGROUND INFORMATION:

The bill is a reintroduction of HB 6499 of the 2017-18 legislative session, which was passed by the House and Senate and enrolled, but was vetoed by the governor on December 28, 2018.

In his veto message, Governor Snyder wrote that the critical needs of fostered youth must be “balanced with the ability to effectively provide them with the precious care that they deserve.” He stated that increasing the cap on foster children in a home from 6 to 10 compromised that balance and would ultimately negatively impact the children that the bill is intended to help.

ARGUMENTS:

For:

Proponents of HB 4095 argued that the bill is necessary to provide children in rural counties with the help and care that they need and that, while the six-child limit works in urban areas such as Detroit, it is burdensome in low-density counties, where fewer foster homes are available. They argued that the bill will help provide homes for the hundreds of children who still need adoption by letting some facilities take on more children.

Against:

Opponents expressed concern with the local preemption of the bill; they would have preferred the bill to require a residential home to seek a variance with the relevant local unit of government to ensure that there is no conflict with local codes or planning. Opponents argued that the bill strips the ability of a local governmental unit to write its own ordinances regarding residential facilities. They argued that the bill goes against the intent of the Michigan Zoning Enabling Act by allowing large-scale facilities to be created in single-family residential neighborhoods and that such an incompatible land use could put an undue burden on many communities.

Opponents also expressed concern as to whether an enlarged facility can provide the proper individual treatment that foster children need. They argued that children in foster care—especially those who have been through hardship—need special attention and care, and that putting too many of them into individual homes will deny them that care.

POSITIONS:

A representative of the House of Providence testified in support of the bill. (3-13-19)

The Department of Health and Human Services indicated a neutral position. (4-25-19)

Representatives of the following organizations testified in opposition to the bill:

- Michigan Municipal League (4-25-19)
- Michigan Townships Association (4-25-19)
- Rose Township Zoning Board of Appeals (4-25-19)
- Rose Township (4-25-19)
- Groveland Township (4-25-19)
- Oxford Neighbors Association (4-25-19)

The Preservation of Hunt Country Neighbors indicated opposition to the bill. (3-13-19)

Legislative Analyst: Nick Kelly
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.



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



Telephone: (517) 373-5383
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House Bill 4095 (Substitute H-2 as reported without amendment)
Sponsor: Representative John Reilly
House Committee: Local Government and Municipal Finance
Senate Committee: Government Operations

CONTENT

The bill would amend the Michigan Zoning Enabling Act to modify the definition of "State licensed residential facility" to include a structure that provides 24-hour supervision to seven to 10 individuals, if the facility is licensed under the child care licensing Act and is located on a parcel of 20 acres or more.

Under the Act, "State licensed residential facility" means a structure constructed for residential purposes that is licensed by the State under the Adult Foster Care Facility Licensing Act or child care licensing Act, and provides residential services for six or fewer individuals under 24-hour supervision or care.

Under the bill, the definition also would include a structure licensed as described above that provides residential services for seven to 10 individuals, under 24-hour supervision or care, if the facility is licensed under the child care licensing Act, and is located on a parcel of 20 acres or more.

MCL 125.3102

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Date Completed: 12-11-19

Fiscal Analyst: Ryan Bergan

SENATE BILL NO. 431

August 20, 2019, Introduced by Senator HOLLIER 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 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

1 124.541 to 124.558.

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

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

10 (3) ~~An ordinance~~**A local unit of government** shall not, by
11 **ordinance or otherwise**, prevent, prohibit, or deny a permit,
12 **approval, or other authorization for** the extraction, by mining, of
13 ~~valuable~~ natural resources from any property ~~unless very~~**by a**
14 **person with property, possessory, or contractual rights to do so if**
15 **both of the following apply:**

16 (a) The natural resources are valuable. For the purposes of
17 this section, natural resources are valuable if a person, by
18 extracting the natural resources, can receive revenue and
19 reasonably expect to operate at a profit.

20 (b) **Very** serious consequences would **not** result from the
21 extraction of ~~these~~**the** natural resources. ~~Natural resources shall~~
22 ~~be considered valuable for the purposes of this section if a~~
23 ~~person, by extracting the natural resources, can receive revenue~~
24 ~~and reasonably expect to operate at a profit.~~**This state has a**
25 **paramount public interest in the conservation and development of**
26 **this state's valuable natural resources. Whether very serious**
27 **consequences would result from the extraction, by mining, of**
28 **natural resources shall be considered in light of this paramount**
29 **state interest. For purposes of this section, a consequence is very**

1 serious if it substantially exceeds the ordinary impacts of
2 customary mining operations and poses an actual and unnecessary
3 risk to public health, safety, or welfare that cannot be avoided or
4 ameliorated through the imposition of reasonable controls or
5 conditions on the mining operations.

6 ~~(4) A person challenging a zoning decision under subsection~~
7 ~~(3) has the initial burden of showing that there are valuable~~
8 ~~natural resources located on the relevant property, that there is a~~
9 ~~need for the natural resources by the person or in the market~~
10 ~~served by the person, and that no very serious consequences would~~
11 ~~result from the extraction, by mining, of the natural resources.~~

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

17 (4) Notwithstanding anything to the contrary in this act or
18 any other statute or ordinance, the requirements of subsection
19 (3) (a) and (b) are met if the person seeking to extract natural
20 resources by mining submits to a local unit of government a plan
21 for the proposed extraction that includes all of the following:

22 (a) A demonstration that the person can, by extracting the
23 natural resources, receive revenue and reasonably expect to operate
24 at a profit.

25 (b) A general description of the materials, methods, and
26 techniques that will be utilized for the mining operations.

27 (c) A site plan showing the location of buildings, equipment,
28 stockpiles, roads, berms, or other features necessary to the mining
29 operations and demonstrating all of the following:

1 (i) A setback of the mining area from the nearest public
2 roadway or adjoining property line of not less than 50 feet.

3 (ii) A setback of equipment used for screening and crushing of
4 not less than 200 feet from the nearest public roadway or adjoining
5 property line, or not less than 300 feet from the nearest
6 residential dwelling occupied on adjacent property as of the date
7 of submittal of the plan for extraction.

8 (d) A description of the proposed haul routes to be used to
9 transport natural resources from the mining area to a primary road,
10 other than for local deliveries.

11 (e) Signs to be maintained on the boundaries of the mining
12 area, facing outward, spaced every 200 feet or closer, and stating
13 "NO TRESPASSING-MINING AREA".

14 (f) Stockpiles, other than screening berms, not exceeding the
15 higher of 70 feet above ground surface at the location of the
16 stockpile or 40 feet higher than the elevation of the adjoining
17 property at the nearest property line.

18 (g) Berming or other screening of the active mining area from
19 an occupied residence on an adjoining property to the extent
20 reasonably practicable. The screening may be accomplished using
21 overburden to the extent available to construct berms of up to 6
22 feet in height along adjoining property lines or by other means
23 requested by the applicant.

24 (h) A description of processing activities that may include,
25 but are not limited to, washing, screening, crushing, and blending
26 of stone, sand, gravel, and other materials, including recycled
27 materials and other materials obtained from off site.

28 (i) A general description of the natural resources deposit.

29 (j) The sequence of mining, including proposed phasing, if

1 applicable.

2 (k) Surface overburden removal plans.

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

5 (m) Proof of financial assurance for reclamation of the mining
6 area meeting the following requirements:

7 (i) Financial assurance shall be maintained during mining
8 operations and until reclamation has been substantially completed.

9 (ii) The amount of financial assurance shall be the product of
10 \$1,500.00 multiplied by the number of acres disturbed by mining
11 operations but not yet reclaimed, excluding roadways, plant sites,
12 and open water areas that will remain after completion of
13 reclamation. The amount of financial assurance shall be adjusted
14 annually as necessary because of changes in the number of acres as
15 described in this subparagraph.

16 (iii) Financial assurance shall consist, at the sole option of
17 the applicant, of a performance bond, surety, escrow, cash
18 certificate of deposit, or other equivalent security or a
19 combination thereof. Alternatively, the applicant may demonstrate
20 that it has sufficient financial resources to satisfy the
21 reclamation requirements of subdivision (n).

22 (n) Plans for reclamation of the mining area following
23 cessation of mining operations that include all of the following:

24 (i) Grading, revegetating, and stabilization that will
25 minimize, to the extent practicable, soil erosion, sedimentation,
26 noise, off-site migration of dust, and public safety concerns
27 consistent with subsection (10).

28 (ii) Reclaiming slopes of the banks of the excavation not
29 exceeding 1 foot vertical to 3 feet horizontal measured from the

1 nearest setback line into any area disturbed by mining operations.

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

6 (5) As an alternative to subsection (4), and notwithstanding
7 anything to the contrary in this act or any other statute or
8 ordinance, the requirements of subsection (3) (a) and (b) are met if
9 the person seeking to extract natural resources by mining
10 demonstrates both of the following:

11 (a) That the person can, by extracting the natural resources,
12 receive revenue and reasonably expect to operate at a profit.

13 (b) That very serious consequences would not result from the
14 extraction of the natural resources by mining, considering the
15 following factors, as applicable:

16 (i) ~~(a)~~ The relationship of extraction and associated
17 activities with existing land uses.

18 (ii) ~~(b)~~ The impact on existing land uses in the vicinity of
19 the property.

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

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

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

28 ~~(f) The overall public interest in the extraction of the~~
29 ~~specific natural resources on the property.~~

1 (6) An application to extract natural resources by mining
2 shall be considered to be administratively complete effective 30
3 days after it is received by the local unit of government unless
4 the local unit of government notifies the applicant, in writing,
5 before the expiration of the 30-day period that the application is
6 not administratively complete. The notification shall specify the
7 information necessary to make the application administratively
8 complete. If the local unit of government notifies the applicant as
9 provided in this subsection, the 30-day period is tolled until the
10 applicant submits to the local unit of government the specified
11 information.

12 (7) An application to extract natural resources by mining that
13 contains the information required under this act is considered
14 approved if the local unit of government does not make a final
15 decision regarding the application within 180 days after receipt of
16 the completed application. However, the applicant may agree in
17 writing to extend the 180-day period.

18 (8) If the applicant has made a prima facie case that the
19 requirements of subsection (4) or (5) are met, the burden of proof
20 shifts to the party challenging or opposing the proposed mining
21 operations in an administrative or judicial action challenging
22 those operations or the zoning ordinance.

23 (9) If a person challenges in court a zoning decision or
24 ordinance that prevents, prohibits, or denies an applicant a permit
25 or other authorization to extract natural resources by mining, the
26 judicial proceedings and the review of the zoning decision or
27 ordinance shall be de novo.

28 (10) ~~(6)~~ Subsections (3) to (5) do not limit a local unit of
29 government's reasonable regulation of hours of operation, blasting

1 hours, noise levels, dust control measures, and traffic, not
2 preempted by part 632 of the natural resources and environmental
3 protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However,
4 such regulation shall be reasonable in accommodating customary
5 mining operations ~~and shall not be more restrictive than the~~
6 following:

7 (a) For dust control, dust shall not exceed the standards
8 required pursuant to any applicable general or individual air
9 permit issued pursuant to part 55 of the natural resources and
10 environmental protection act, 1994 PA 451, MCL 324.5501 to
11 324.5542, or federal law.

12 (b) For noise levels, the 8-hour time-weighted average sound
13 pressure level in decibels measured at the common property line
14 nearest to the active mining area on a sound level meter using the
15 A-weighting network shall not exceed the greater of the following:

16 (i) 20 DB(A) above background levels.

17 (ii) The following levels for adjacent property:

18 (A) For residentially zoned property: 75 A-weighted decibels.

19 (B) For commercially zoned property: 85 A-weighted decibels.

20 (C) For industrial and all other zoning classifications: 90 A-
21 weighted decibels.

22 (c) For ground vibration, all stationary machinery and
23 equipment shall be mounted and operated to prevent transmission of
24 ground vibration exceeding a displacement of 0.10 inches measured
25 anywhere outside of the property line. Blasting activity shall not
26 create any of the following at any residential building:

27 (i) Ground vibration in excess of that set forth in United
28 States Bureau of Mines Reports, RI 8507, Figure B-1 "Safe levels of
29 blasting vibrations for houses using a combination of velocity and

1 displacement".

2 (ii) Air blast in excess of 133 decibels at any residential
3 dwelling.

4 (d) For truck loading hours, customer truck loading shall be
5 permitted from at least 5 a.m. to 7 p.m. local time, Monday through
6 Saturday, or as otherwise specifically required by state or county
7 contract. These limitations only apply to the loading of trucks or
8 trailers for over-the-road transportation and do not apply to the
9 loading or unloading of railroad cars or ships, which shall be
10 permitted at any time.

11 (11) A permit or other authorization issued by a local unit of
12 government to extract natural resources by mining is valid until
13 mining operations, including reclamation, are completed.

14 (12) The 2019 amendatory act that added this subsection
15 applies to the following:

16 (a) All requests for the extraction of natural resources by
17 mining submitted on or after the effective date of that amendatory
18 act.

19 (b) All requests for the extraction of natural resources by
20 mining pending on the effective date of that amendatory act or with
21 respect to which all administrative and judicial actions have not
22 been exhausted.

23 (13) This section does not apply to ferrous mineral operators
24 regulated under part 631 of the natural resources and environmental
25 protection act, 1994 PA 451, MCL 324.63101 to 324.63110.

26 (14) This act does not alter or limit the preemptive effect of
27 part 632 of the natural resources and environmental protection act,
28 1994 PA 451, MCL 324.63201 to 324.63223, as it relates to the
29 regulation of nonferrous metallic mining by a local unit of

1 government. A local unit of government shall not exercise zoning
2 authority under this act over activity governed by part 632 of the
3 natural resources and environmental protection act, 1994 PA 451,
4 MCL 324.63201 to 324.63223.

5 (15) ~~(7)~~—This act does not limit state regulatory authority
6 under other statutes or rules.

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



Senate Fiscal Agency
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Lansing, Michigan 48909-7536



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

Senate Bill 431 (as introduced 8-20-19)
Sponsor: Senator Adam Hollier
Committee: Transportation and Infrastructure

Date Completed: 1-21-20

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 regulation of a mining operation.**
- **Specify that a permit or other authorization issued by a local unit of government to extract natural resources by mining would be valid until mining operations, including reclamation, were completed.**

The bill would take effect 90 days after its enactment.

Mining Zoning Ordinance Preemption

Under the Act, an ordinance may not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those resources.

Instead, the bill would prohibit a local unit of government, by ordinance or otherwise, from preventing, prohibiting, or denying a permit, approval, or 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 the following applied:

- The natural resources were valuable; natural resources are considered valuable for the purpose of the Act if a person, by extracting them, can receive revenue and reasonably expect to operate at a profit.
- 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 any serious consequences would result from the extraction, by mining, of natural resources would have to be considered in light of this paramount State interest. For purposes of the Act, a consequences would be very serious if it substantially exceeded the ordinary impacts of customary mining operations and posed an actual and unnecessary risk to public health, safety, or welfare that could not be avoided or ameliorated through the imposition of reasonable controls or conditions on the mining operations.

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

Under the bill, notwithstanding anything to the contrary in the Act or any other statute or ordinance, the requirements 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, which could be accomplished using overburden to the extent available to construct berms of up to six feet in height along adjoining property lines or by other means requested by the applicant.

- 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, and the amount of financial assurance would have to be adjusted annually as necessary because of changes in the number of acres.
- 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 would have to 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; alternatively, the applicant could demonstrate that it had sufficient financial resources to satisfy the reclamation requirements of the bill.

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:

- 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.
- 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, 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.

An application to extract natural resources by mining would have to be considered to be administratively complete effective 30 days after it was received by the local unit of government unless the local unit of government notified the applicant in writing that the application was not administratively complete before the 30-day period expired. The

notification would have to specify the information necessary to make the application administratively complete. If the local unit of government notified the applicant, the 30-day period would be tolled until the applicant submitted to the local unit of government the specified information.

An application to extract natural resources by mining that contains the information required by the bill would be considered approved if the local unit of government did not make a final decision regarding the application within 180 days after receiving it; however, the applicant could agree in writing to extend the 180-day period.

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.

If a person challenged in court a zoning decision or ordinance that prevented, prohibited, or denied 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 would have to be de novo.

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 regulations 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 (dB) 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 AM to 7 PM 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 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.

The bill also specifies that it would not apply to ferrous mineral operators regulated under Part 631 (Ferrous Mineral Mining) of the Natural Resources and Environmental Protection Act (NREPA). In addition, the bill specifies that the Michigan Zoning Enabling Act would not alter or limit the preemptive effect of Part 632 (Nonferrous Metallic Mineral Mining) of the NREPA as it related to the regulation of nonferrous metallic mining by a local unit of government. A local unit of government could not exercise zoning authority under the Michigan Zoning Enabling Act over activity governed by Part 362 of NREPA.

MCL 125.3205

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan
Abbey Frazier

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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.

HOUSE BILL NO. 5305

December 19, 2019, Introduced by Reps. Warren and Alexander and referred to the Committee on Transportation.

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.



TMV



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(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 shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

(3) ~~An ordinance shall not prevent the extraction,~~ **A person shall not extract**, by mining, ~~of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources.~~ **the person has obtained a permit for that activity from the local unit of government exercising zoning authority. The local unit of government shall not issue the permit unless all of the following apply:**

(a) The person seeking to extract natural resources has submitted an administratively complete permit application to the local unit of government. An administratively complete permit application shall include, at a minimum, the following:

(i) A phase I environmental site assessment, for the property that is the subject of the permit application, that meets the requirements of 40 CFR part 312 for conducting all appropriate inquiries.

(ii) An alternatives analysis that evaluates, at a minimum, the following:

(A) Whether there is a need for the natural resources in the region where the project is proposed to be located.

(B) Alternative sites for the proposed project.

(C) Alternatives for the project scope, including a no-action



1 alternative.

2 (D) Whether the proposed project is superior to each
3 alternative considering cost, feasibility, logistics, public
4 health, community impact, environmental impact, and any other
5 appropriate factor.

6 (iii) If the local unit of government requires reclamation under
7 subsection (9), a financial guarantee, in a form approved by the
8 local unit of government, to ensure the rehabilitation and
9 reclamation of the property that is the subject of the permit
10 application.

11 (b) **The natural resources are valuable.** Natural resources
12 ~~shall be considered~~ **are** valuable for the purposes of this section
13 if a person, by extracting the natural resources, can receive
14 revenue and reasonably expect to operate at a profit.

15 (c) **No very serious consequences would result from the**
16 **extraction of the natural resources.**

17 (4) A person challenging a zoning decision under subsection
18 (3) has the initial burden of showing ~~that~~ **all of the following:**

19 (a) **That** there are valuable natural resources located on the
20 relevant property. ~~, that~~

21 (b) **That** there is a need for the natural resources by the
22 person or in the market served by the person. ~~, and that~~

23 (c) **That** no very serious consequences would result from the
24 extraction, by mining, of the natural resources.

25 (5) ~~In~~ **Subject to subsection (6), in** determining under ~~this~~
26 ~~section~~ **subsection (3)** whether very serious consequences would
27 result from the extraction, by mining, of natural resources, the
28 standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982),
29 shall be applied and all of the following factors ~~may~~ **shall** be



1 considered, if applicable:

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

4 (b) **Environmental impact, including, but not limited to, the**
5 **effect on protected wetlands, conservation areas, or areas of known**
6 **contamination in the vicinity of the property. Areas of known**
7 **contamination include, but are not limited to, all of the**
8 **following:**

9 (i) **A facility.**

10 (ii) **A site as defined in section 21303 of the natural**
11 **resources and environmental protection act, 1994 PA 451, MCL**
12 **324.21303.**

13 (iii) **Property identified on the national priorities list under**
14 **section 105 of the comprehensive environmental response,**
15 **compensation and liability act of 1980, 42 USC 9605.**

16 (iv) **Property subject to cleanup, remediation, or other legal**
17 **requirements because of the presence of hazardous substances in the**
18 **environment.**

19 (c) ~~(b)~~ The impact on existing land uses in the vicinity of
20 the property.

21 (d) ~~(e)~~ The impact on property values in the vicinity of the
22 property and along the proposed hauling route serving the property,
23 based on credible evidence.

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

27 (f) ~~(e)~~ The impact on other identifiable health, safety, and
28 welfare interests in the local unit of government.

29 (g) ~~(f)~~ The overall public interest in the extraction of the



specific natural resources on the property.

(h) The alternatives analysis under subsection (3) (a) (ii) .

(6) A local unit of government may by ordinance or permit action prevent or prohibit the extraction by mining of natural resources for 1 or more of the following reasons, each of which constitutes very serious consequences:

(a) The property on which the mining will occur is a facility, irrespective of whether response activities or corrective action has been completed at the facility.

(b) A proposed haul route to transport natural resources from the mining area to a primary road runs through or adjacent to a historic district or other property listed on the National Register of Historic Places under the national historic preservation act, 54 USC 300101 to 307108.

(c) The local unit of government already contains 3 or more mining operations wholly or partly within its boundaries.

(7) ~~(6)~~ Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of a mining operation, including, but not limited to, hours of operation, setbacks, berming, 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.

(8) The local unit of government exercising zoning authority may require additional environmental sampling, analysis, or testing at the permit applicant's sole expense before making a final decision on the permit application under subsection (3) .

(9) The local unit of government exercising zoning authority



1 may impose reasonable conditions on a permit issued under
2 subsection (3) as follows:

3 (a) Conditions based on the phase I environmental site
4 assessment submitted under subsection (3) (a) (i) and any subsequent
5 environmental sampling, analysis, testing, or reports, to prevent,
6 monitor, or remediate reasonably anticipated environmental impacts
7 of the permitted activity.

8 (b) A requirement that the permittee submit plans for
9 reclamation of the mining area following cessation of mining
10 operations that include all of the following:

11 (i) Grading, revegetating, and stabilization that will
12 minimize, to the extent practicable, soil erosion, sedimentation,
13 noise, off-site migration of dust, and public safety concerns as
14 identified in subsection (5).

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

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

22 (10) A person issued a permit required under subsection (3) is
23 liable for response activity costs and natural resource damages
24 attributable to any exacerbation, as defined in section 20101 of
25 the natural resources and environmental protection act, 1994 PA
26 451, MCL 324.20101, or failure to mitigate unacceptable exposure to
27 hazardous substances with respect to the property at which the
28 mining operations are conducted. This subsection does not limit the
29 liability or obligations a person may otherwise have under the



1 natural resources and environmental protection act, 1994 PA 451,
2 MCL 324.101 to 324.90106.

3 (11) ~~(7)~~—This act does not limit state regulatory authority
4 under other statutes or rules.

5 (12) As used in subsections (5) and (6), "facility" means that
6 term as defined in section 20101 of the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.20101.



HOUSE BILL NO. 4046

January 15, 2019, Introduced by Rep. Sheppard and referred to the Committee on Local Government and Municipal Finance.

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
(MCL 125.3101 to 125.3702) by adding section 206b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 206b. (1) For the purposes of zoning, all of the
2 following apply to the rental of a dwelling, including, but not
3 limited to, short-term rental:

4 (a) It is a residential use of property and a permitted use in
5 all residential zones.



1 (b) It is not subject to a special use or conditional use
2 permit or procedure different from those required for other
3 dwellings in the same zone.

4 (c) It is not a commercial use of property.

5 (2) This section does not prohibit regulation applied on a
6 consistent basis to rental and owner-occupied residences for noise,
7 advertising, traffic, or other conditions.

8 (3) As used in this section, "short-term rental" means the
9 rental of any single-family residence or 1-to-4-family house or
10 dwelling unit, or any unit or group of units in a condominium, for
11 terms of less than 28 days at a time.

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



Legislative Analysis



LIMIT ZONING REGULATION OF SHORT-TERM RENTALS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4046 (proposed substitute H-1)
Sponsor: Rep. Jason Sheppard
Committee: Local Government
Complete to 4-29-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4046 would amend the Michigan Zoning Enabling Act to create new zoning requirements specific to *short-term rentals*.

Short-term rental would mean the rental of any single-family residence or one-to-four-family house or dwelling unit, or any unit or group of units in a condominium, for terms of less than 28 days at a time.

Under the bill, for the purpose of zoning, all of the following would apply to the rental, including short-term rental, of a dwelling:

- It is a residential use of property and a permitted use in all residential zones.
- It is not subject to a special use or conditional use permit or procedure different from that required for other dwellings in the same zone.
- It is not a commercial use of property.

The bill further states that the above provisions would not prohibit any of the following if applied on a consistent basis to rental and owner-occupied residences:

- Regulation of noise, advertising, traffic, or other conditions, to prevent nuisances.
- Regulation of the number of individuals that may occupy a dwelling.
- Requirements for dwelling inspections and inspection fees.
- Taxes otherwise permitted by law.
- Requirements to notify a local unit of government of association or condominium regulations or other private agreements that may affect the use of a dwelling.

The bill would take effect 90 days after its enactment.

Proposed MCL 125.3206b

FISCAL IMPACT:

House Bill 4046 would have an indeterminate, but likely negligible, fiscal impact on local units of government that regulate short-term rentals. Local units of government regulating short-term rentals presumably either prohibit them or charge a permit or licensing fee to cover the costs of regulation. Unless a local unit of government was levying permit or

licensing fees in excess of actual regulatory costs, there would be no net fiscal impact for local units of government.

There would be no fiscal impact on state government.

Legislative Analyst: Nick Kelly
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL NO. 4563

May 02, 2019, Introduced by Reps. Tate and Lilly and referred to the Committee on Commerce and Tourism.

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
by amending sections 102 and 207 (MCL 125.3102 and 125.3207),
section 102 as amended by 2008 PA 12, and by adding section 206b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. As used in this act:

2 (a) "Agricultural land" means substantially undeveloped land
3 devoted to the production of plants and animals useful to humans,
4 including, but not limited to, forage and sod crops, grains, feed
5 crops, field crops, dairy products, poultry and poultry products,



JLB



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1 livestock, herbs, flowers, seeds, grasses, nursery stock, fruits,
2 vegetables, Christmas trees, and other similar uses and activities.

3 (b) "Airport" means an airport licensed by the Michigan
4 ~~department of state~~ transportation **department**, bureau of
5 aeronautics under section 86 of the aeronautics code of the state
6 of Michigan, 1945 PA 327, MCL 259.86.

7 (c) "Airport approach plan" and "airport layout plan" mean a
8 plan, or an amendment to a plan, filed with the zoning commission
9 under section 151 of the aeronautics code of the state of Michigan,
10 1945 PA 327, MCL 259.151.

11 (d) "Airport manager" means that term as defined in section 2
12 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL
13 259.2.

14 (e) "Airport zoning regulations" means airport zoning
15 regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL
16 259.431 to 259.465, for an airport hazard area that lies in whole
17 or part in the area affected by a zoning ordinance under this act.

18 (f) "Conservation easement" means that term as defined in
19 section 2140 of the natural resources and environmental protection
20 act, 1994 PA 451, MCL 324.2140.

21 (g) "Coordinating zoning committee" means a coordinating
22 zoning committee as described under section 307.

23 (h) "Development rights" means the rights to develop land to
24 the maximum intensity of development authorized by law.

25 (i) "Development rights ordinance" means an ordinance, which
26 may comprise part of a zoning ordinance, adopted under section 507.

27 (j) "Family child care home" and "group child care home" mean
28 those terms as defined in section 1 of 1973 PA 116, MCL 722.111,
29 and only apply to the bona fide private residence of the operator



1 of the family or group child care home.

2 (k) "Greenway" means a contiguous or linear open space,
3 including habitats, wildlife corridors, and trails, that links
4 parks, nature reserves, cultural features, or historic sites with
5 each other, for recreation and conservation purposes.

6 (l) "Improvements" means those features and actions associated
7 with a project that are considered necessary by the body or
8 official granting zoning approval to protect natural resources or
9 the health, safety, and welfare of the residents of a local unit of
10 government and future users or inhabitants of the proposed project
11 or project area, including roadways, lighting, utilities,
12 sidewalks, screening, and drainage. Improvements do not include the
13 entire project that is the subject of zoning approval.

14 (m) "Intensity of development" means the height, bulk, area,
15 density, setback, use, and other similar characteristics of
16 development.

17 (n) "Legislative body" means the county board of commissioners
18 of a county, the board of trustees of a township, or the council or
19 other similar elected governing body of a city or village.

20 (o) "Local unit of government" means a county, township, city,
21 or village.

22 (p) "Other eligible land" means land that has a common
23 property line with agricultural land from which development rights
24 have been purchased and is not divided from that agricultural land
25 by a state or federal limited access highway.

26 (q) "Person" means an individual, partnership, corporation,
27 association, governmental entity, or other legal entity.

28 (r) "Population" means the population according to the most
29 recent federal decennial census or according to a special census



1 conducted under section 7 of the Glenn Steil state revenue sharing
 2 act of 1971, 1971 PA 140, MCL 141.907, whichever is ~~the more~~
 3 ~~recent~~. **later.**

4 **(s) "Short-term rental" means that term as defined in the**
 5 **Michigan short-term rental promotion act.**

6 **(t) ~~(s)~~**—"Site plan" includes the documents and drawings
 7 required by the zoning ordinance to ensure that a proposed land use
 8 or activity is in compliance with local ordinances and state and
 9 federal statutes.

10 **(u) ~~(t)~~**—"State licensed residential facility" means a
 11 structure constructed for residential purposes that is licensed by
 12 the state under the adult foster care facility licensing act, 1979
 13 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to
 14 722.128, and provides residential services for 6 or fewer
 15 individuals under 24-hour supervision or care.

16 **(v) ~~(u)~~**—"Undeveloped state" means a natural state preserving
 17 natural resources, natural features, scenic or wooded conditions,
 18 agricultural use, open space, or a similar use or condition. Land
 19 in an undeveloped state does not include a golf course but may
 20 include a recreational trail, picnic area, children's play area,
 21 greenway, or linear park. Land in an undeveloped state may be, but
 22 is not required to be, dedicated to the use of the public.

23 **(w) ~~(v)~~**—"Zoning commission" means a zoning commission as
 24 described under section 301.

25 **(x) ~~(w)~~**—"Zoning jurisdiction" means the area encompassed by
 26 the legal boundaries of a city or village or the area encompassed
 27 by the legal boundaries of a county or township outside the limits
 28 of incorporated cities and villages. The zoning jurisdiction of a
 29 county does not include the areas subject to a township zoning



1 ordinance.

2 **Sec. 206b. For the purposes of zoning, a short-term rental**
3 **that is rented out for 14 days or less in a calendar year is a**
4 **residential use of property and a permitted use in all residential**
5 **zones.**

6 Sec. 207. A zoning ordinance or zoning decision shall not have
7 the effect of totally prohibiting the establishment of a land use,
8 **including, but not limited to, a short-term rental,** within a local
9 unit of government in the presence of a demonstrated need for that
10 land use within either that local unit of government or the
11 surrounding area within ~~the~~**this** state, unless a location within
12 the local unit of government does not exist where the use may be
13 appropriately located or the use is unlawful.

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No.____ or House Bill No.____ (request no.
16 01509'19) of the 100th Legislature is enacted into law.

