

HOUSE BILL No. 5991

October 19, 2016, Introduced by Rep. McCready and referred to the Committee on Local Government.

A bill to authorize local units of government to adopt storm water utility ordinances and create storm water management utilities; to provide for the allocation of the costs of planning, constructing, operating, maintaining, financing, and administering a storm water system to real property served by the system; to permit the establishment and collection of storm water utility fees; to provide for credits and appeals; and to prescribe the powers and duties of certain local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "storm
2 water utility act".

1 Sec. 2. As used in this act:

2 (a) "Fund" means a storm water fund established pursuant to
3 section 8.

4 (b) "Impervious area" means a surface area that is resistant
5 to permeation by surface water.

6 (c) "Local unit of government" or "local unit" means a city,
7 village, township, or county or other governmental authority.

8 (d) "Operation and maintenance costs" means all costs, direct
9 and indirect, of materials, labor, professional services,
10 utilities, and other items for the management and uninterrupted
11 operation of a storm water system in a manner for which the storm
12 water system was designed and constructed.

13 (e) "Property" means real property or a parcel of real
14 property, as indicated by the context.

15 (f) "Storm water" means that term as defined in 40 CFR
16 122.26(b)(13).

17 (g) "Storm water management" means 1 or more of the following:

18 (i) The quantitative regulation through the storm water system
19 of the volume and rate of storm water runoff from property.
20 Quantitative regulation includes, but is not limited to, flood
21 control.

22 (ii) The qualitative regulation of storm water runoff into the
23 storm water system or of storm water discharged from the storm
24 water system. Qualitative regulation includes, but is not limited
25 to, storm water treatment, pollution prevention activities, and
26 administration and enforcement of ordinances to reduce, eliminate,
27 or treat pollutants carried from property into the storm water

1 system by storm water.

2 (iii) Notifying property owners about the storm water
3 management program, including, but not limited to, how to reduce or
4 eliminate fees for use of the storm water system.

5 (h) "Storm water management plan" means a plan described in
6 and adopted pursuant to section 4.

7 (i) "Storm water management program" means aspects of storm
8 water management undertaken by a local unit of government.

9 (j) "Storm water system" means features that are located or
10 partially located within the geographic limits of a local unit of
11 government and are designed or actively managed by the local unit
12 for collecting, storing, treating, or conveying storm water such as
13 roads, streets, highways, catch basins, curbs, gutters, ditches,
14 storm and combined sewers and appurtenant features, pipes,
15 interceptors, conduits, lakes, ponds, channels, swales, storm
16 drains, county drains, canals, creeks, streams, gulches, gullies,
17 flumes, culverts, bridges, siphons, retention or detention basins,
18 treatment, screening, or disinfection facilities, dams, floodwalls,
19 levees, pumping stations, and other similar facilities, and natural
20 watercourses.

21 (k) "Storm water utility fee" or "fee" means a fee provided
22 for under section 5.

23 (l) "Storm water utility ordinance" means an ordinance
24 described in and adopted pursuant to section 3.

25 Sec. 3. (1) Subject to subsection (2), the governing body of a
26 local unit of government may adopt a storm water utility ordinance
27 to accomplish 1 or more of the following regulatory purposes:

1 (a) Protect against economic loss, property damage, threats to
2 public health and safety, and damage to the environment and natural
3 resources from water pollution or from flooding or other instances
4 of high volumes or rates of storm water runoff.

5 (b) Enable property owners to fulfill legal obligations
6 pertaining to increases in the quantity or reduction in the quality
7 of storm water runoff resulting from voluntary choices made in the
8 manner of development of the property, including, but not limited
9 to, obligations under section 3109 of the natural resources and
10 environmental protection act, 1994 PA 451, MCL 324.3109, the
11 natural flow doctrine, and the law of trespass and nuisance.

12 (c) Provide property owners paying storm water utility fees
13 with proportionate benefits described in subdivision (a). These
14 benefits include reciprocal benefits to a property owner when other
15 property owners pay fees to support the storm water system and
16 thereby fulfill their legal obligations to that property owner
17 described in subdivision (b).

18 (2) Before adopting a storm water utility ordinance, the
19 legislative body of a local unit of government shall by resolution
20 adopt a storm water management plan. The storm water utility
21 ordinance shall be consistent with the storm water management plan.

22 Sec. 4. (1) A storm water management plan shall include all of
23 the following:

24 (a) The planning period covered by the storm water management
25 plan.

26 (b) Geographic limits of the storm water management utility. A
27 storm water management utility shall encompass property with

1 similar cost of service characteristics and uses. A storm water
2 management utility may consist of all of the territory of the local
3 unit of government, a portion of the territory of the local unit,
4 or all or a portion of the territory of 2 or more local units that
5 jointly manage storm water within that utility.

6 (c) The type and level of storm water management services to
7 be provided to each storm water management utility, including
8 system reliability, level of flood protection, pollution control,
9 and structural condition of system components.

10 (d) Projected direct and indirect costs to provide services as
11 described in the plan pursuant to subdivision (c) for each storm
12 water management utility, including cost of planning, capital,
13 operations, maintenance, permit compliance, and asset replacement.

14 (e) Recommendations for efficiencies to minimize costs.

15 (f) Current and projected impervious area and, if applicable
16 under section 7(2), an inventory of impervious surfaces and parcel
17 areas for properties within each storm water management utility.

18 (g) A determination of which properties will be subject to any
19 storm water utility fee for voluntary use of a storm water system
20 owned and operated by the local unit of government, as required
21 under section 10(1), and the process and method that was used to
22 make that determination.

23 (h) The method of calculating any storm water utility fees
24 proportionate to the cost of providing the locally determined level
25 of service of storm water management.

26 (i) Provisions to ensure that the cost of those elements of
27 the storm water management program directly or indirectly related

1 to the amount of storm water managed will be allocated in
2 proportion to the amount of storm water runoff from a property
3 conveyed by the storm water system, employing methods that are
4 relatively accurate considering available technology.

5 (j) A description of the components of the storm water system
6 owned and operated by the local unit of government.

7 (k) A description of how a storm water utility fee may be
8 reduced as provided under section 9.

9 (2) Before preparing a storm water management plan, a local
10 unit of government shall give notice that it intends to prepare a
11 storm water management plan. The notice shall be given by all of
12 the following means:

13 (a) If the local unit has a website that is accessible to the
14 public free of charge, by posting on the website.

15 (b) By publication in a newspaper of general circulation
16 within the local unit. If there is no newspaper of general
17 circulation within the local unit, notice shall be given by first-
18 class mail to all persons to whom real property taxes are assessed
19 and to the occupants of all structures within the local unit.

20 (c) By first-class mail or electronic mail to each local unit
21 located adjacent to or located, in whole or in part, within the
22 local unit preparing the storm water management plan and to the
23 county drain commissioner or water resources commissioner. The
24 notice under this subdivision shall request the recipient's
25 cooperation and comment in the preparation of the storm water
26 management plan, including comment on jointly managing storm water.

1 (3) Before adopting a storm water management plan, a local
2 unit of government shall hold at least 1 public hearing on the
3 proposed plan. The local unit shall give notice of the hearing as
4 provided in subsection (2) (a) to (c). Notice as provided in
5 subsection (2) (a) shall be posted on the website at least 14 days
6 before the hearing and maintained on the website until the time of
7 the hearing. Notice as provided in subsection (2) (b) and (c) shall
8 be given at least 14 days before the date of the hearing. Notice
9 under this subsection shall specify the time, place, and purpose of
10 the hearing and the place where a copy of the proposed storm water
11 management plan is available for public inspection. If the local
12 unit has a website that is accessible to the public free of charge,
13 both of the following apply:

14 (a) Notice of the hearing as provided in subsection (2) (a)
15 shall include a copy of the proposed storm water management plan.

16 (b) Notice of the hearing as provided in subsection (2) (b) and
17 (c) shall provide the local unit of government's website address.

18 (4) The local unit of government shall also provide notice of
19 the hearing under subsection (3) at least 14 days before the
20 hearing to the local units and drain commissioner described in
21 subsection (2). The notice under this subsection shall be made by
22 personal delivery, first-class mail, or electronic mail. However,
23 the local unit preparing the storm water management plan shall not
24 give notice by electronic mail unless, in the notice described in
25 subsection (2), the local unit stated that it intended to give
26 notice by electronic mail and the recipient did not respond by
27 objecting to the use of electronic mail. The notice under this

1 subsection shall specify the time, place, and purpose of the
2 hearing and include a copy of the proposed storm water management
3 plan. However, notice by electronic mail may contain a link to a
4 website on which the proposed storm water management plan is posted
5 if the website is accessible to the public free of charge.

6 (5) A storm water management plan may be extended or otherwise
7 amended by resolution subject to the procedure set forth in
8 subsections (3) and (4).

9 Sec. 5. (1) A storm water utility ordinance may provide for a
10 storm water utility fee on property serviced by a storm water
11 system to pay the proportionate costs of the storm water management
12 program. A storm water utility fee shall not include components
13 other than as described in sections 6 and 7.

14 (2) A storm water utility ordinance shall describe the method
15 or methods used to determine any storm water utility fees.

16 (3) A local unit of government may develop a corresponding
17 storm water utility fee, calculation method, or both for each storm
18 water management utility described in the storm water management
19 plan.

20 (4) A storm water utility fee shall be proportionate to the
21 direct and indirect cost to the local unit of government of
22 providing storm water management to each property in a storm water
23 management utility that uses the storm water system that is not
24 financed by revenue received by the local unit of government from
25 any other source.

26 (5) A storm water utility ordinance may define rate categories
27 for classes of properties for which the proportionate cost of

1 providing service is similar.

2 Sec. 6. (1) A storm water management utility may assess a 1-
3 time storm water utility fee for connection to the storm water
4 system of newly developed or modified property benefited by the
5 storm water system. The purpose of the fee is to finance the
6 capital costs to the local unit of government of elements of the
7 public storm water system needed to serve that property and not
8 otherwise financed by the property developer or by revenue received
9 by the local unit of government from any other source.

10 (2) A storm water utility fee under subsection (1) shall be
11 computed based on the newly developed or modified property's
12 proportionate share of the local unit of government's cost to
13 expand the storm water system to manage the additional storm water
14 from that property, including, if appropriate, the newly developed
15 or modified property's proportionate share of the local unit of
16 government's existing capital investment in the storm water system.
17 This proportionate share shall be calculated consistent with the
18 method used by the local unit of government under section 7
19 considering the available data at the time of the property's
20 development or modification.

21 Sec. 7. (1) A storm water management utility may assess a
22 storm water utility fee for the use of a storm water system.

23 (2) The method for determining a storm water utility fee under
24 subsection (1) shall be based on the quantity or quality, or both,
25 of storm water runoff from each property or category of property.

26 (3) A storm water utility fee or portion thereof charged to a
27 property for those elements of the storm water management program

1 whose cost is attributable to the quantity of storm water runoff
2 from each individual property or category of properties shall be
3 calculated, consistent with storm water management plan provisions
4 under section 4(1)(i), using 1 or more methods generally accepted
5 by licensed professional engineers or regional or national
6 professional groups associated with storm water experts, including,
7 but not limited to, the following methods:

8 (a) Impervious area, based solely on the impervious area of
9 the property.

10 (b) Equivalent residential unit or equivalent service unit,
11 based on the impervious area of the property in comparison to the
12 typical impervious area associated with single-family residential
13 properties within the geographic limits of the storm water
14 management utility.

15 (c) Single-family residential unit, based solely on the
16 impervious area of the property in comparison to the impervious
17 area of a typical single-family residence within the geographic
18 limits of the storm water management utility.

19 (d) Intensity of development, based on the total area of the
20 property multiplied by a rate category. A rate category shall apply
21 to properties with statistically similar storm-water-runoff-
22 generating characteristics. The storm water utility fee shall be
23 proportionate to the percentage of the property's impervious area
24 to its total area.

25 (e) Equivalent hydraulic area, calculated as follows:

26 (i) Multiply the impervious area of the property by a storm
27 water runoff factor.

1 (ii) Multiply the pervious area of the property by a storm
2 water runoff factor.

3 (iii) Add the products under subparagraphs (i) and (ii).

4 (iv) Multiply the sum under subparagraph (iii) by the total
5 area of the property to obtain the storm water runoff contribution
6 in relation to other properties.

7 (f) Other billing methodologies that can be demonstrated to
8 provide an equitable distribution of costs in proportion to the
9 property's use of the storm water system.

10 (4) A storm water utility fee or portion thereof charged to a
11 property for those elements of the storm water management program
12 whose cost is attributable to the quality of storm water managed
13 and is not covered by other revenue shall be proportionate to the
14 cost of those elements of the storm water management program.

15 Sec. 8. (1) A storm water utility ordinance that establishes a
16 storm water utility fee shall establish a storm water fund. All
17 storm water utility fees collected by the local unit of government
18 shall be deposited into the fund. The treasurer of the local unit
19 of government may receive money or other assets from any other
20 source for deposit into the fund. Money in the fund shall be
21 invested pursuant to 1943 PA 20, MCL 129.91 to 129.97a. The
22 treasurer shall credit to the fund interest and earnings from fund
23 investments. Money in the fund at the close of the fiscal year
24 shall remain in the fund and shall not lapse to the general fund of
25 the local unit.

26 (2) The treasurer of the local unit of government shall expend
27 money from the fund, upon appropriation, only for the regulatory

1 purpose of defraying any of the following storm water management
2 program costs:

3 (a) Operation, maintenance, planning, engineering,
4 acquisition, construction, installation, improvement, or
5 enlargement of a storm water system, including financing and debt
6 service costs and indirect and overhead costs that are fairly
7 chargeable to such activities under applicable generally accepted
8 accounting principles and the uniform budgeting and accounting act,
9 1968 PA 2, MCL 141.421 to 141.440a.

10 (b) Administration of the storm water management program.

11 (c) Development of a storm water management plan.

12 (d) Providing user education related to the storm water
13 management plan or required by federal or state regulations or
14 required by permits issued to the local unit of government by
15 federal or state regulatory bodies.

16 (3) If the local unit of government has a website that is
17 accessible to the public free of charge, the local unit shall post
18 on its website the most recent audit report for the fund under the
19 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to
20 141.440a.

21 Sec. 9. (1) Subject to subsection (2), a storm water utility
22 ordinance that imposes a storm water utility fee shall provide for
23 the reduction or elimination of the storm water utility fee for a
24 property if modifications or improvements made to the property
25 reduce the rate or volume of or eliminate runoff of or pollutant
26 loadings in excess of natural levels of storm water entering the
27 storm water system. The property owner has the burden of

1 demonstrating that the storm water utility fee reduction or
2 elimination is justified, using methods that are reasonably
3 accurate considering available technology.

4 (2) A reduction in the storm water utility fee under
5 subsection (1) shall be proportionate to the reduction of the cost
6 of service of the storm water system to the property.

7 Sec. 10. (1) To ensure that storm water utility fees are
8 voluntary, property is not subject to a fee unless the local unit
9 of government demonstrates both of the following:

10 (a) That the property utilizes the storm water system.

11 (b) That such utilization imposes a net cost to the storm
12 water system when offset by any activities or conditions that
13 reduce the cost of service to the storm water system or are
14 reasonably related to a benefit to the storm water system provided
15 by that property or its owner, including, but not limited to,
16 modifications or improvements described in section 9(1).

17 (2) The local unit of government shall provide the owner of
18 property initially determined to be subject to a storm water
19 utility fee under subsection (1) with the opportunity to
20 demonstrate that the property either does not utilize the storm
21 water system or does not utilize the storm water system to the
22 extent calculated by the local unit of government in establishing
23 the storm water utility fee and is therefore entitled to the
24 elimination of or a reduction in the fee. The storm water utility
25 ordinance shall set forth procedures to implement this subsection.

26 (3) A storm water utility ordinance that establishes a storm
27 water utility fee shall provide that, when additional property

1 begins to utilize the storm water system, a storm water utility
2 fee, as determined by the local unit of government, accrues.

3 Sec. 11. A storm water utility ordinance shall designate an
4 entity within the local unit of government to administer the storm
5 water management utility and shall establish the administrative
6 duties. A storm water utility ordinance shall establish
7 administrative policies and procedures or authorize the
8 administrator to establish the administrative policies and
9 procedures. The administrative policies and procedures shall
10 include at least the following topics, as applicable:

11 (a) Criteria used to determine whether a storm water utility
12 fee will be billed to the property owner.

13 (b) Procedures for updating billing data based upon changes in
14 property boundaries, ownership, and storm water runoff
15 characteristics, and storm water runoff calculation methods.

16 (c) Billing and payment procedures of the storm water
17 management utility including the billing period, billing
18 methodology, credit application procedures, and penalties.

19 (d) Policies establishing the type and manner of service that
20 will be provided by the storm water management utility.

21 (e) Regulations governing the resolution of storm water
22 management disputes that arise between property owners within the
23 storm water management utility.

24 (f) Procedures for granting and modifying fee reductions
25 authorized pursuant to section 9.

26 (g) Procedures for appeals as described in section 13.

27 (h) Enforcement policies and procedures.

1 (i) A process by which fees, formulas for calculating fees,
2 and formulas for calculating fee reductions will be reviewed and
3 updated at least every 3 years.

4 Sec. 12. (1) A storm water utility ordinance shall establish
5 remedies for any unpaid storm water utility fees as described in
6 this section.

7 (2) A local unit of government may collect a storm water
8 utility fee by any method authorized by law.

9 (3) A partial payment of delinquent storm water utility fees
10 shall be applied to the oldest delinquent fees, and remaining fees
11 may continue to accrue interest and penalties.

12 Sec. 13. (1) A storm water utility ordinance or the
13 administrative policies and procedures adopted under the ordinance
14 shall provide a procedure for appeals, the establishment of an
15 appeals board, and the adjustment or elimination of any storm water
16 utility fee. The procedure shall include at least all of the
17 following:

18 (a) Any property owner liable for a storm water utility fee
19 may appeal the determination that the property utilizes the storm
20 water system or the amount of a storm water utility fee, including
21 a determination on a reduction in or the elimination of the fee
22 under section 9. An appeal may be based on the quantity or quality
23 of storm water runoff generated, the reductions established, the
24 reductions allocated, or any other matter relating to the
25 determination of the storm water utility fee.

26 (b) An appeal under subdivision (a) shall be heard by a storm
27 water utility appeals board appointed by the local unit of

1 government. The appeals board shall consist of 3 members, 2 of whom
2 shall be licensed professional engineers not employed by the local
3 unit of government.

4 (c) An appeal of a storm water utility fee shall not be
5 brought more than 1 year after the fee was billed.

6 (d) To prevail in an appeal of a storm water utility fee, the
7 appellant shall demonstrate in accordance with the requirements of
8 the plan that the use of the system by the property is less than
9 the amount used by the local unit of government in the calculation
10 of that property's storm water utility fee or that there was a
11 mathematical error in the calculation.

12 (e) The sole remedy for a property owner who prevails in an
13 appeal of a storm water utility fee is a prospective correct
14 recalculation of the storm water utility fee.

15 (f) If in an appeal of a storm water utility fee a local unit
16 of government finds that the requirements of subdivision (d) have
17 not been met, that finding is conclusive until the property is
18 modified to either increase or decrease the utilization of the
19 system. The property owner remains eligible for reduction or
20 elimination of fees under the storm water utility ordinance.

21 (g) A property owner making an appeal shall provide the
22 appeals board with information necessary to make a determination.

23 (2) A person aggrieved by a decision of the appeals board on
24 an appeal under this section may appeal to the circuit court in
25 which the property is located.

26 Sec. 14. This act does not expand existing authority of local
27 units of government.

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