

SENATE BILL NO. 1124

September 16, 2020, Introduced by Senators BAYER, MCMORROW, IRWIN, WOJNO, BRINKS and CHANG and referred to the Committee on Environmental Quality.

A bill to regulate the creation of stormwater management utilities by local units of government; to regulate the adoption and content of stormwater utility ordinances; to provide for the allocation of the costs of planning, constructing, operating, maintaining, financing, and administering a stormwater system to real property served by the system; to provide for the establishment and collection of stormwater utility fees; to provide for the reduction or elimination of fees; to provide for 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
2 "stormwater utility act".

3 Sec. 2. As used in this act:

4 (a) "Fund" means a stormwater fund established pursuant to
5 section 8.

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

8 (c) "Local unit of government" or "local unit" means a city,
9 village, township, or county.

10 (d) "Property" means real property or a parcel of real
11 property, as indicated by the context.

12 (e) "Stormwater" means stormwater runoff, snow melt runoff,
13 and surface runoff and drainage.

14 (f) "Stormwater management" means 1 or more of the following:

15 (i) The quantitative regulation through the stormwater system
16 of the volume and rate of stormwater runoff from property.
17 Quantitative regulation includes, but is not limited to, flood
18 control.

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

26 (iii) Notifying property owners about the stormwater management
27 program, including, but not limited to, how to obtain a reduction

1 or elimination of fees for use of the stormwater system.

2 (g) "Stormwater management plan" or "plan" means a plan
3 described in and adopted pursuant to section 4.

4 (h) "Stormwater management program" means aspects of
5 stormwater management undertaken by a local unit of government.

6 (i) "Stormwater system" means features that are located or
7 partially located within the geographic limits of a system service
8 area and that are owned, operated, designed, maintained, or used by
9 a local unit of government for collecting, storing, treating,
10 conveying, or attenuating stormwater, including roads, streets,
11 highways, catch basins, curbs, gutters, storm ditches, storm and
12 combined sewers and appurtenant features, pipes, interceptors,
13 conduits, swales, storm drains, gulches, gullies, flumes, culverts,
14 bridges, siphons, retention basins, detention basins, treatment
15 facilities, screening facilities, disinfection facilities, dams,
16 floodwalls, levees, pumping stations, and other similar features.

17 (j) "Stormwater utility fee" or "fee" means a fee provided for
18 under section 5.

19 (k) "Stormwater utility ordinance" means an ordinance
20 described in and adopted pursuant to section 3.

21 Sec. 3. (1) A stormwater management utility established after
22 the effective date of this section shall accomplish 1 or more of
23 the following regulatory purposes:

24 (a) Protect against economic loss, property damage, threats to
25 public health and safety, and damage to the environment and natural
26 resources from water pollution or from flooding or other instances
27 of high volumes or rates of stormwater runoff.

28 (b) Enable property owners to fulfill legal obligations
29 pertaining to increases in the quantity or reduction in the quality

1 of stormwater runoff resulting from voluntary choices made in the
2 manner of development of the property, including, but not limited
3 to, obligations under section 3109 of the natural resources and
4 environmental protection act, 1994 PA 451, MCL 324.3109, the
5 natural flow doctrine, and the law of trespass and nuisance.

6 (c) Provide property owners paying stormwater utility fees
7 with proportionate benefits described in subdivision (a). These
8 benefits include reciprocal benefits to a property owner when other
9 property owners pay fees to support the stormwater system and
10 thereby fulfill their legal obligations to that property owner
11 described in subdivision (b).

12 (2) To create a stormwater management utility, the legislative
13 body of a local unit of government must do both of the following:

14 (a) Adopt a stormwater management plan by resolution.

15 (b) Adopt a stormwater utility ordinance that is consistent
16 with the adopted stormwater management plan.

17 Sec. 4. (1) A stormwater management plan shall include all of
18 the following:

19 (a) The time period covered by the plan.

20 (b) The service area of the stormwater management utility. The
21 service area may consist of all of the territory of the local unit
22 of government, a portion of the territory of the local unit, or all
23 or a portion of the territory of 2 or more local units that jointly
24 develop the plan.

25 (c) The type and level of stormwater management services to be
26 provided by the stormwater management utility, including system
27 reliability, level of flood protection, pollution control, and
28 structural condition of system components.

29 (d) Projected direct and indirect costs to provide services as

1 described in the plan pursuant to subdivision (c) for the
2 stormwater management utility, including costs of planning,
3 capital, operations, maintenance, permit compliance, and asset
4 replacement.

5 (e) Recommendations for efficiencies to minimize costs under
6 subdivision (d).

7 (f) Current and projected impervious area and, if applicable
8 under section 7(2), an inventory of impervious surfaces and parcel
9 areas for properties within the stormwater management utility's
10 service area.

11 (g) A determination of which properties will be subject to any
12 stormwater utility fee for voluntary use of a stormwater system
13 owned and operated by the local unit of government, as required
14 under section 10(1), and the process and method that was used to
15 make that determination.

16 (h) The method of calculating any stormwater utility fees
17 proportionate to the cost of providing the locally determined level
18 of service of stormwater management.

19 (i) Provisions to ensure that the cost of those elements of
20 the stormwater management program directly or indirectly related to
21 the amount of stormwater managed will be allocated in proportion to
22 the amount of stormwater runoff from a property conveyed by the
23 stormwater system, employing methods that are relatively accurate
24 considering available technology.

25 (j) A description of the components of the stormwater system
26 owned and operated by the local unit of government.

27 (k) A description of how a stormwater utility fee may be
28 reduced or eliminated as provided under section 9.

29 (2) Before preparing a stormwater management plan, a local

1 unit of government must give notice that it intends to prepare a
2 stormwater management plan. The notice shall be given by all of the
3 following means:

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

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

11 (c) By first-class mail to the county drain commissioner or
12 water resources commissioner and to each local unit located
13 adjacent to or located, in whole or in part, within the local unit
14 preparing the plan. The notice under this subdivision shall request
15 the recipient's cooperation in and comment on the preparation of
16 the plan, including comment on jointly managing stormwater.

17 (3) Before adopting a stormwater management plan, a local unit
18 of government must hold at least 1 public hearing on the proposed
19 plan. The local unit shall give notice specifying the time, place,
20 and purpose of the hearing and the place where a copy of the
21 proposed plan is available for public inspection. The notice shall
22 be given by all of the following means:

23 (a) If the local unit has a website that is accessible to the
24 public free of charge, by posting the notice on the website at
25 least 14 days before the hearing and maintaining the posting until
26 the time of the hearing. The posting shall include a copy of the
27 proposed plan.

28 (b) By publication in a newspaper of general circulation
29 within the local unit. If there is no such newspaper, notice shall

1 be given by first-class mail to all persons to whom real property
2 taxes are assessed and to the occupants of all structures within
3 the local unit. If the local unit has a website that is accessible
4 to the public free of charge, the notice under this subdivision
5 shall include the website address at which a copy of the proposed
6 plan is posted under subdivision (a). The notice under this
7 subdivision shall be published or deposited in the United States
8 mail at least 14 days before the date of the hearing.

9 (c) By first-class mail to the county drain commissioner or
10 water resources commissioner and to each local unit located
11 adjacent to or located, in whole or in part, within the local unit
12 preparing the stormwater management plan. If the local unit has a
13 website that is accessible to the public free of charge, the notice
14 under this subdivision shall include the website address at which a
15 copy of the proposed plan is posted under subdivision (a). The
16 notice under this subdivision shall be deposited in the United
17 States mail at least 14 days before the date of the hearing.

18 (4) A stormwater management plan may be extended or otherwise
19 amended by resolution subject to the same procedure set forth in
20 this section for the adoption of the original plan.

21 Sec. 5. (1) A stormwater utility ordinance shall identify the
22 regulatory purposes under section 3(1) served by the ordinance.

23 (2) A stormwater utility ordinance may provide for a
24 stormwater utility fee on property serviced by a stormwater system
25 to pay the proportionate costs of the stormwater management
26 program. A stormwater utility fee shall not include components
27 other than as described in this section and sections 6 and 7.

28 (3) A stormwater utility ordinance shall describe the method
29 or methods used to determine any stormwater utility fee.

1 (4) A local unit of government may develop a corresponding
2 stormwater utility fee, calculation method, or both for each
3 stormwater management utility described in the stormwater
4 management plan.

5 (5) A stormwater utility fee shall be proportionate to the
6 direct and indirect cost to the local unit of government of
7 providing stormwater management to each property in a stormwater
8 management utility that uses the stormwater system that is not
9 financed by revenue received by the local unit of government from
10 any other source.

11 (6) A stormwater utility ordinance may define rate categories
12 for classes of properties for which the proportionate cost of
13 providing service is similar.

14 Sec. 6. (1) A stormwater management utility may assess a 1-
15 time stormwater utility fee for connection to the stormwater system
16 of newly developed or modified property benefited by the stormwater
17 system. The purpose of the fee is to finance the capital costs to
18 the local unit of government of elements of the public stormwater
19 system needed to serve that property and not otherwise financed by
20 the property developer or by revenue received by the local unit of
21 government from any other source.

22 (2) A stormwater utility fee under subsection (1) shall be
23 computed based on the newly developed or modified property's
24 proportionate share of the local unit of government's cost to
25 expand the stormwater system to manage the additional stormwater
26 from that property, including, if appropriate, the newly developed
27 or modified property's proportionate share of the local unit of
28 government's existing capital investment in the stormwater system.
29 This proportionate share shall be calculated consistent with the

1 method used by the local unit of government under section 7
2 considering the available data at the time of the property's
3 development or modification.

4 Sec. 7. (1) A stormwater management utility may assess a
5 stormwater utility fee for the use of a stormwater system.

6 (2) The method for determining a stormwater utility fee under
7 subsection (1) shall be based on the quantity or quality, or both,
8 of stormwater runoff from each property or category of property.

9 (3) A stormwater utility fee or portion thereof charged to a
10 property for those elements of the stormwater management program
11 whose cost is attributable to the quantity of stormwater runoff
12 from each individual property or category of properties shall be
13 calculated, consistent with stormwater management plan provisions
14 under section 4(1)(i), using 1 or more methods generally accepted
15 by licensed professional engineers or regional or national
16 professional groups associated with stormwater experts, including,
17 but not limited to, the following methods:

18 (a) Impervious area, based solely on the impervious area of
19 the property.

20 (b) Equivalent residential unit or equivalent service unit,
21 based on the impervious area of the property in comparison to the
22 typical impervious area associated with single-family residential
23 properties within the service area of the stormwater management
24 utility.

25 (c) Intensity of development, based on the total area of the
26 property multiplied by a rate category. A rate category shall apply
27 to properties with statistically similar stormwater-runoff-
28 generating characteristics. The stormwater utility fee shall be
29 proportionate to the percentage of the property's impervious area

1 to its total area.

2 (d) Equivalent hydraulic area, calculated as follows:

3 (i) Multiply the impervious area of the property by a
4 stormwater runoff factor.

5 (ii) Multiply the pervious area of the property by a stormwater
6 runoff factor.

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

8 (e) Other billing methodologies that can be demonstrated to
9 provide an equitable distribution of costs in proportion to the
10 property's use of the stormwater system.

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

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

27 (2) The treasurer of the local unit of government shall expend
28 money from the fund, upon appropriation, only for the regulatory
29 purpose of defraying any of the following stormwater management

1 program costs:

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

9 (b) Administration of the stormwater management program.

10 (c) Development of a stormwater management plan.

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

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

20 Sec. 9. (1) Subject to subsection (2), a stormwater utility
21 ordinance that imposes a stormwater utility fee shall provide for
22 the reduction or elimination of the stormwater utility fee for a
23 property if a modification or improvement made to that property or
24 to that and 1 or more other properties reduces the rate or volume
25 of or eliminates runoff of or pollutant loadings in excess of
26 natural levels of stormwater entering the stormwater system. Each
27 property owner has the burden of demonstrating that the stormwater
28 utility fee reduction or elimination is justified for that
29 property, using methods that are reasonably accurate considering

1 available technology.

2 (2) A reduction in or elimination of the stormwater utility
3 fee under subsection (1) shall be proportionate to the reduction of
4 the cost of service of the stormwater system to the property or
5 properties.

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

9 (a) That the property utilizes the stormwater system.

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

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

25 (3) A stormwater utility ordinance that establishes a
26 stormwater utility fee shall provide that, when additional property
27 begins to utilize the stormwater system, a stormwater utility fee,
28 as determined by the local unit of government, accrues.

29 Sec. 11. A stormwater utility ordinance shall designate an

1 entity within the local unit of government to administer the
2 stormwater management utility and shall establish the
3 administrative duties. A stormwater utility ordinance shall
4 establish administrative policies and procedures or authorize the
5 administrator to establish the administrative policies and
6 procedures. The administrative policies and procedures shall
7 include at least the following topics, as applicable:

8 (a) Criteria used to determine whether a stormwater utility
9 fee will be billed to the property owner.

10 (b) Procedures for updating billing data based on changes in
11 property boundaries, ownership, and stormwater runoff
12 characteristics, and stormwater runoff calculation methods.

13 (c) Billing and payment procedures of the stormwater
14 management utility including the billing period, billing
15 methodology, credit application procedures, and penalties.

16 (d) Policies establishing the type and manner of service that
17 will be provided by the stormwater management utility.

18 (e) Procedures for granting and modifying the reduction or
19 elimination of a fee, as authorized pursuant to section 9.

20 (f) Procedures for appeals as described in section 13.

21 (g) Enforcement policies and procedures.

22 (h) A process by which fees, formulas for calculating fees,
23 and formulas for calculating fee reductions will be reviewed and
24 updated at least every 3 years.

25 Sec. 12. (1) A stormwater utility ordinance shall establish
26 remedies for any unpaid stormwater utility fees as described in
27 this section.

28 (2) A local unit of government may collect a stormwater
29 utility fee by any method authorized by law.

1 (3) A partial payment of delinquent stormwater utility fees
2 shall be applied to the oldest delinquent fees, and remaining fees
3 may continue to accrue interest and penalties.

4 Sec. 13. (1) A stormwater utility ordinance or the
5 administrative policies and procedures adopted under the ordinance
6 shall provide a procedure for appeals, the establishment of an
7 appeals board, and the reduction or elimination of any stormwater
8 utility fee. The procedure shall include at least all of the
9 following:

10 (a) Any property owner liable for a stormwater utility fee may
11 appeal the determination that the property utilizes the stormwater
12 system or the amount of a stormwater utility fee, including a
13 determination on a reduction in or the elimination of the fee under
14 section 9. An appeal may be based on the quantity or quality of
15 stormwater runoff generated, the reductions established, the
16 reductions allocated, or any other matter relating to the
17 determination of the stormwater utility fee.

18 (b) An appeal under subdivision (a) shall be heard by a
19 stormwater utility appeals board appointed by the local unit of
20 government. The appeals board shall consist of 3 members, 2 of whom
21 shall be licensed professional engineers not employed by the local
22 unit of government.

23 (c) An appeal of a stormwater utility fee shall not be brought
24 more than 1 year after the fee was billed.

25 (d) To prevail in an appeal of a stormwater utility fee, the
26 appellant must demonstrate in accordance with the requirements of
27 the stormwater management plan that the property does not use the
28 system to the extent determined by the local unit of government in
29 the calculation of that property's stormwater utility fee or that

1 there was a mathematical error in the calculation.

2 (e) The sole remedy for a property owner who prevails in an
3 appeal of a stormwater utility fee is a prospective correct
4 recalculation of the stormwater utility fee.

5 (f) If in an appeal of a stormwater utility fee a local unit
6 of government finds that the requirements of subdivision (d) have
7 not been met, that finding is conclusive until the property is
8 modified to either increase or decrease the utilization of the
9 system. The property owner remains eligible for a reduction in or
10 elimination of fees under the stormwater utility ordinance.

11 (g) A property owner that appeals shall provide the appeals
12 board with information necessary to make a determination.

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

16 Sec. 14. This act does not do any of the following:

17 (a) Expand existing authority of local units of government.

18 (b) Limit existing authority of local units of government to
19 cooperate with respect to or jointly create and operate stormwater
20 management utilities, subject to section 3(1).

21 (c) Require a local unit of government with a separated storm
22 sewer system to adopt a stormwater utility fee or a rate model that
23 includes a stormwater utility fee.

24 (d) Require a local unit of government with a combined storm
25 and sanitary sewer system to adopt a stormwater utility fee or a
26 rate model that includes a stormwater utility fee.

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