

SENATE BILL NO. 593

July 15, 2021, Introduced by Senators BAYER, HOLLIER, IRWIN, CHANG, MCMORROW, MOSS, POLEHANKI, BULLOCK, WOJNO, ALEXANDER and SANTANA and referred to the Committee on Local Government.

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 stormwater 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 created under section 8.

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

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

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

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

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

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

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

25 (iii) Notifying property owners about the stormwater management
26 program, including, but not limited to, how to obtain a reduction
27 or elimination of fees for the use of the stormwater system.

1 (g) "Stormwater management plan" or "plan" means a plan
2 described in and adopted under section 4.

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

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

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

18 (k) "Stormwater utility ordinance" means an ordinance
19 described in and adopted under section 3.

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

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

27 (b) Enable property owners to fulfill legal obligations
28 pertaining to increases in the quantity or reduction in the quality
29 of stormwater runoff resulting from voluntary choices made in the

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

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

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

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

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

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

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

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

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

28 (d) Projected direct and indirect costs to provide services as
29 described in the plan under subdivision (c) for the stormwater

1 management utility, including costs of planning, capital,
2 operations, maintenance, permit compliance, and asset replacement.

3 (e) Recommendations for efficiencies to minimize costs under
4 subdivision (d).

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

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

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

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

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

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

27 (2) Before preparing a stormwater management plan, a local
28 unit of government must give notice that it intends to prepare a
29 stormwater management plan. Notice must be given by all of the

1 following means:

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

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

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 plan. The notice under this subdivision must request
13 the recipient's cooperation in and comment on the preparation of
14 the plan, including comment on jointly managing stormwater.

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

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

26 (b) By publication in a newspaper of general circulation
27 within the local unit. If there is no newspaper of general
28 circulation within the local unit, notice must be given by first-
29 class mail to all persons to whom real property taxes are assessed

1 and to the occupants of all structures within the local unit. If
2 the local unit has a website that is accessible to the public free
3 of charge, the notice under this subdivision must include the
4 website address at which a copy of the proposed plan is posted
5 under subdivision (a). The notice under this subdivision must be
6 published or deposited in the United States mail at least 14 days
7 before the date of the hearing.

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

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

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

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

27 (3) A stormwater utility ordinance must describe the method or
28 methods used to determine a stormwater utility fee.

29 (4) A local unit of government may develop a corresponding

1 stormwater utility fee, calculation method, or both for each
2 stormwater management utility described in the stormwater
3 management plan.

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

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

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

21 (2) A stormwater utility fee under subsection (1) must be
22 computed based on the newly developed or modified property's
23 proportionate share of the local unit of government's cost to
24 expand the stormwater system to manage the additional stormwater
25 from that property, including, if appropriate, the newly developed
26 or modified property's proportionate share of the local unit of
27 government's existing capital investment in the stormwater system.
28 This proportionate share must be calculated consistent with the
29 method used by the local unit of government under section 7

1 considering the available data at the time of the property's
2 development or modification.

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

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

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

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

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

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

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

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

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

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

7 (e) 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 stormwater system.

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

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

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

29 (a) Operation, maintenance, planning, engineering,

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

7 (b) Administration of the stormwater management program.

8 (c) Development of a stormwater management plan.

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

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

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

29 (2) A reduction in or elimination of the stormwater utility

1 fee under subsection (1) must be proportionate to the reduction of
2 the cost of service of the stormwater system to the property or
3 properties.

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

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

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

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

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

27 Sec. 11. A stormwater utility ordinance must designate an
28 entity within the local unit of government to administer the
29 stormwater management utility and establish the administrative

1 duties. A stormwater utility ordinance must establish
2 administrative policies and procedures or authorize the
3 administrator to establish the administrative policies and
4 procedures. The administrative policies and procedures must include
5 at least the following topics, as applicable:

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

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

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

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

16 (e) Procedures for granting and modifying the reduction or
17 elimination of a fee, as authorized under section 9.

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

19 (g) Enforcement policies and procedures.

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

23 Sec. 12. (1) A stormwater utility ordinance must establish
24 remedies for any unpaid stormwater utility fees as described in
25 this section.

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

28 (3) A partial payment of delinquent stormwater utility fees
29 must be applied to the oldest delinquent fees, and remaining fees

1 may continue to accrue interest and penalties.

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

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

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

21 (c) An appeal of a stormwater utility fee must not be brought
22 more than 1 year after the fee was billed.

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

29 (e) The sole remedy for a property owner that prevails in an

1 appeal of a stormwater utility fee is a prospective correct
2 recalculation of the stormwater utility fee.

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

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

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

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

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

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

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

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

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