



Senate Bill 256 (Substitute S-1)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

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CONTENT

The bill would create the "Storm Water Utility Act" to allow a local unit of government to adopt a storm water utility ordinance providing for a storm water system development charge and/or a storm water utility fee on real property to finance a storm water management program. Specifically, the bill would do the following:

- **Require a local unit's legislative body to adopt a storm water management plan before adopting a storm water utility ordinance.**
- **Require a local unit that established a fee or charge to create a storm water management enterprise fund to defray the costs of implementing a storm water management program, and require revenue from the fee or charge to be deposited in the fund.**
- **Create a rebuttable presumption that property was not subject to a fee or charge.**
- **Require an ordinance to provide for utility fee credits for activities or conditions that benefited or reduced the cost of service to the storm water system.**
- **Require an ordinance to designate an entity within the local unit to administer the storm water utility.**
- **Require an ordinance to prescribe remedies for unpaid fees and charges.**
- **Require an ordinance to provide for appeals and adjustments to fees and charges.**
- **Specify legislative findings.**

Ordinance & Management Plan

A local unit of government (a city, village, township, or county) could adopt a storm water utility ordinance under the proposed Act. An ordinance could provide for a storm water system development charge and/or a storm water utility fee (described below) on property located within that local unit to finance a storm water management program.

("Property" would mean real property or a parcel of real property, as indicated by the context. "Storm water management program" would mean one or more aspects of storm water management undertaken by a local unit to comply with applicable Federal or State law. "Storm water management" would mean one or more of the following:

- The quantitative control through the storm water system of the increased volume and rate of surface runoff caused by impervious areas.
- The qualitative control of storm water through the storm water system, pollution prevention activities, and ordinances to reduce, eliminate, or treat pollutants that might otherwise be carried by storm water.
- Public education, information, and outreach programs concerning the potential impacts of storm water pollution on water quality.

"Impervious area" would mean a surface area that is resistant to permeation by surface water.)

Before adopting a storm water utility ordinance, the legislative body of a local unit would have to adopt by resolution a storm water management plan. The ordinance would have to be consistent with the plan. A management plan would have to contain at least all of the following elements:

- Geographic limits of storm water management districts.
- Storm water management services to be provided to each district.
- The planning period covered by the plan.
- Projected expenses of the program within each district for each year of the planning period as well as steps taken to reduce expenses.
- Documentation of an analysis undertaken to evaluate the comparative cost-effectiveness of storm water management alternatives.
- Projected impervious area and, if applicable, total area of each class of property within each district.
- The method of calculating any storm water utility fees and development charges proportionate to the necessary cost of providing the necessary level of storm water management services.
- A determination of which properties would be subject to any storm water utility fee for use of a storm water system owned and operated by the local unit, as required by the proposed Act, and the process and method that was used to make that determination.
- A description of the components of the storm water system owned and operated by the local unit of government.
- A description of how the credits to reduce utility fees would be applied and calculated.
- Documentation of the response to the request for cooperation from other local units (described below).

A storm water management district would have to encompass property with similar cost of service characteristics and uses. A district could consist of all or part of the territory of the local unit or all or part of the territory of two or more local units that agreed to manage storm water jointly within that district.

Before preparing a storm water management plan, a local unit would have to give notice to its residents, by publication in a newspaper of general circulation within

the local unit, that it intended to prepare the plan. If the local unit had a website that was accessible to the public free of charge, the notice would have to be posted on the website. The local unit also would have to notify each local unit located in the same watershed. The notice would have to explain that the local unit intended to prepare a plan and request the recipient's cooperation and comment, including comment on jointly managing storm water. The notice to other local units would have to be given by first-class mail or personal delivery.

Before adopting a storm water management plan, a local unit would have to hold a public hearing on it. The local unit would have to give notice of the hearing by publication in a newspaper of general circulation within the local unit at least 14 days in advance. Notice also would have to be given to everyone to whom real property within the local unit was assessed and to the occupants of all structures within the local unit by personal delivery or first-class mail, at least 14 days before the hearing. If the name of the occupant were not known, the term "occupant" could be used for the intended recipient. Notice would not have to be given to more than one occupant of a structure, unless it contained more than one dwelling unit or spatial area owned or leased by different people; in that case, one occupant of each unit or spatial area would have to be given notice. If a single structure contained more than four dwelling units or other distinct spatial areas owned or leased by different people, notice could be given to the manager or owner of the structure, who would be requested to post the notice at the structure's primary entrance.

A notice would have to specify the time, place, and purpose of the hearing and state the place where a copy of the proposed plan was available for public inspection. If the local unit had a website that was accessible to the public free of charge, the notice and the proposed plan would have to be posted on it and notice by publication, personal delivery, or first-class mail would have to provide the website address.

The local unit also would have to provide notice of the hearing at least 14 days in advance to the local units of government from which it requested comment and cooperation. The notice would have to be

made by personal delivery, first-class mail, or electronic mail. The local unit preparing the plan, however, could not give notice by electronic mail unless, in the notice requesting comment and cooperation, the local unit stated that it intended to give notice by electronic mail and the local unit receiving that notice did not respond by objecting to the use of electronic mail. The notice to local units would have to specify the time, place, and purpose of the hearing and include a copy of the proposed plan. Notice by electronic mail, however, could contain a link to a website on which the proposed plan was posted, if the website were accessible to the public free of charge.

Any plan could be extended or otherwise amended by resolution subject to the notice and hearing provisions.

System Development Charge

A storm water utility ordinance could provide for a storm water development charge, which would be a one-time charge to newly developed or modified property to finance the capital costs to the local unit of components of the public storm water system needed to serve that property and not financed by the property developer or by revenue the local unit received from any other source. Revenue from a storm water system development charge would have to be deposited in the local unit's storm water enterprise fund.

A charge would have to be computed based on one or both of the following methods:

- The newly developed or modified property's proportionate share of the local unit's necessary cost to expand the storm water system to manage the additional storm water from that property.
- The newly developed or modified property's proportionate share of the local unit's capital investment in the storm water system.

The proportionate share of capital investment would have to be calculated consistent with the method the local unit used to calculate storm water utility fees.

Utility Fee

An ordinance could impose a storm water utility fee on property. Revenue from a fee

would have to be deposited in the local unit's storm water enterprise fund.

A local unit could develop a corresponding storm water utility fee and/or calculation method for each district described in the storm water management plan. A fee would have to be proportionate to the necessary cost to the local unit of providing storm water management to each property in a district not financed by revenue the local unit received from any other source.

An ordinance could define rate categories for properties for which the proportionate cost of providing service was similar. Each property within a rate category would have to be charged the same storm water utility fee.

The storm water management plan would have to demonstrate that any utility fee or portion of a fee charged to a property, for those elements of the program whose cost was directly related to the amount of storm water managed, was proportionate to the amount of storm water generated by that property. The method for determining a fee would have to be based on the storm water-generating characteristics, including consideration of use of low-impact design techniques, of either individual properties or all properties within a rate category. A local unit's cost for storm water management attributable to each property would have to be calculated using one or more methods generally accepted by licensed professional engineers, including the following:

- Impervious area, which is a method that calculates a property's storm water contribution based solely on the impervious area of the property.
- Equivalent residential unit or equivalent service unit, which is a method that calculates a property's storm water contribution based solely on the property's impervious area in comparison to the impervious area associated with all single-family and multifamily residential properties within the geographic limits of the district.
- Single-family residential unit, which is a method that calculates a property's storm water contribution based solely on the impervious area of the property in comparison to the impervious area of a typical single-family residence within the geographic limits of the district.

- Intensity of development, which is a method that calculates the property's storm water contribution based on the total area of the property multiplied by one of several rate categories.

With regard to the last method, each rate category would include those properties with statistically similar storm water-generating characteristics, with the storm water utility fee proportionate to the percentage of the property's impervious area to its total area.

In addition, the cost for storm management attributable to each property could be calculated by the equivalent hydraulic area method, which calculates the property's storm water contribution by multiplying the property's impervious area by a storm water runoff factor, multiplying the property's pervious area by a storm water runoff factor, and adding the two products.

Storm Water Enterprise Fund

A storm water utility ordinance that established a storm water utility fee or a storm water system development charge would have to establish a storm water enterprise fund. All revenue from the fees and charges would have to be deposited in the fund. The treasurer of the local unit could receive money or other assets from any other source for deposit into the fund.

The treasurer could spend fund money, upon appropriation, only to defray the costs for any of the following in implementing a storm water management program:

- Administration of the storm water management program.
- Development of a storm water management plan.
- Activities required to comply with Federal and State law and regulations related to storm water and permits issued under those laws and regulations.
- Paying drain assessments that were the obligation of the local unit under the Drain Code.
- Providing public education, information, or outreach programs related to the storm water management plan or required by Federal or State regulations, or required by permits issued to the local unit by Federal or State regulatory bodies.

The treasurer also could spend fund money to defray operation and maintenance costs and costs of planning, engineering, acquiring, constructing, installing, improving, and enlarging a storm water system, including financing and debt service costs and indirect and overhead costs that were fairly chargeable to such activities under applicable accepted accounting principles and the Uniform Budgeting and Accounting Act.

Money in the fund would have to be invested pursuant to Public Act 20 of 1943 (which governs the investment of surplus funds of political subdivisions). The local treasurer would have to credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the local unit's general fund.

The local unit would have to post on its website the most recent audit report for the fund under the Uniform Budgeting and Accounting Act.

Utility Fee Credits

A storm water utility ordinance that imposed a storm water utility fee would have to grant credits that reduced the fee calculated for a property for any activities or conditions that lowered the cost of service to the storm water system or were reasonably related to a benefit to the system provided by that property or its owner or occupant, including all of the following:

- On-site retention or detention facilities.
- Increased landscape and vegetative control practices.
- Direct drainage of the property to waters of the State that were not part of the storm water system.
- The degree of permeability of the surfaces on the property.
- Filtering systems such as catch basins or filter strips.
- Components of the storm water system that managed upstream or off-site storm water.
- Facilities that reused storm water for irrigation or other on-site purposes.
- Public education or information programs conducted by the property owner or occupant related to storm water management and its impacts.

- Other components of the storm water system, programs, or activities that resulted in a measurable reduction in storm water runoff or pollutant loadings.

A credit would have to be proportionate to the reduction of the cost of service or to the benefit provided to the storm water system. If a credit equaled or exceeded the amount of the storm water utility fee that would otherwise be imposed upon a parcel, the credit would reduce the fee to zero, and the excess amount would have to be credited against the fee that would otherwise be imposed upon another parcel or parcels owned by the same owner and located within the local unit, if any.

Use of the Storm System

The bill would create a rebuttable presumption that property was not subject to a storm water utility fee or development charge. It would be the burden of the local unit to demonstrate in the plan that property used the storm water system. Before assessing the fee or charge, the local unit would have to demonstrate that the use imposed a net cost to the system when offset by any activities or conditions that reduced the cost of service to the system or were reasonably related to a benefit to the system provided by that property or its owner or occupant, including the conditions for which credits would have to be granted.

The local unit would have to give the owner of property initially determined to be subject to a utility fee or development charge the opportunity to demonstrate that the property either did not use the storm water system or did not impose a net cost to the system and was therefore exempt from the fee or charge. The ordinance would have to set forth the procedure for a property owner to claim an exemption.

An ordinance that established a fee or charge also would have to provide that when additional property began to use the system, a fee or charge would accrue, as determined by the local unit.

Storm Water Utility Administration

A storm water utility ordinance would have to designate an entity within the local unit to administer the storm water utility, and would have to establish the administrative

duties. The ordinance would have to establish a set of administrative policies and procedures or authorize the administrator to establish them. The policies and procedures would have to include at least the following topics, as applicable:

- Subject to a provision concerning liability for payment, criteria used to determine whether a storm water utility fee would be billed to the property owner or occupant and how to allocate the fee to multiple occupants of a single property.
- Procedures for updating billing data based upon changes in property boundaries, ownership, and storm water runoff characteristics.
- Billing and payment procedures of the utility that defined the billing period, billing methodology, and penalties.
- Policies establishing the type and manner of service that the utility would provide.
- Regulations governing the resolution of storm water management disputes that arose between property owners within the district.
- Procedures for granting and modifying any utility fee credits.
- Procedures for appeals.
- Enforcement policies and procedures.

Delinquent Fees & Charges

A storm water utility ordinance would have to establish remedies for any unpaid fees and charges, as described below.

A fee or charge could be a lien on the property on which the fee was imposed. Fees or charges delinquent for at least six months could be certified annually to the proper tax assessing officer or agency. An officer or agency to which fees were certified would have to enter the liens on the next tax roll against the respective parcels of property. The fees or charges would have to be collected and the lien would have to be enforced in the same manner as provided for the collection of taxes assessed upon the roll and the enforcement of the lien for those taxes. The lien would be superior to all other liens except tax liens. The time and manner of certification and other details regarding the collection of fees or charges and the enforcement of the lien would have to be as prescribed by the ordinance.

A lien for a storm water utility fee could not be certified if the clerk of the local unit had

been notified that an occupant of the property other than the owner was responsible for payment. The notice would have to be accompanied by a copy of the lease, if any, under which the occupant possessed the property and a cash deposit in an amount specified by the ordinance as security for the payment of the delinquent amount.

A local unit could collect a storm water utility fee or system development charge by any lawful method, including any method authorized under the Revised Judicature Act.

A partial payment of fees or charges would have to be applied to the oldest delinquent fees or charges. Remaining fees or charges could continue to accrue interest and penalties.

Appeals Procedure

A storm water utility ordinance or the administrative policies and procedures adopted under it would have to provide a procedure for appeals and the adjustment of any fee or charge. The procedure would have to include at least all of the provisions described below.

Any property owner or occupant liable for a fee or charge could appeal the determination that the property used the storm water system, the fee, the charge, or a credit. An appeal could be based on the amount of storm water generated, the credits established, the credits allocated, or any other matter relating to the determination of the storm water utility fee or development charge. An appeal could not be brought more than one year after the fee or charge was billed.

An appeal would have to be brought to a storm water utility appeals board appointed by the local unit of government. The appeals board would have to consist of two officers of the local unit, two individuals representing the local business community, and one individual representing the general public.

For an appeal of a fee to be successful, the appellant would have to demonstrate that the amount of storm water the property generated was materially less than the amount the local unit used in the calculation of the property's fee or that there was a

mathematical error in the calculation. If the local unit found that the requirements for a successful appeal had been met, the sole remedy to the property owner would be a correct recalculation of the fee.

If, in an appeal of a fee, a local unit found that the requirements had not been met, that finding would be conclusive with respect to that property for seven years after the final judgment on appeal, or until the property was modified so as not to use the system or so as to materially reduce its net cost to the system, whichever occurred first. The property owner would remain eligible for credits and exemptions under the ordinance.

A property owner or occupant making an appeal would have to provide information necessary to make a determination.

A person aggrieved by the local unit's decision on an appeal could appeal to the circuit court.

Liability for Payment

A local unit of government's storm water utility ordinance would have to provide that a property owner would be liable for payment of any fee even if the property owner had authorized the local unit to bill fees to an occupant of the property other than the owner.

This provision would apply notwithstanding Section 13(3). (Section 13(3) provides that a lien for a fee could not be certified if the local clerk were notified that an occupant other than the owner was responsible for payment of the fee.)

Authority of Local Units

The bill specifies that the proposed Act would not expand existing authority of local units of government.

Legislative Findings

The bill includes the following legislative findings:

-- "Sections 51 and 52 of article IV of the state constitution of 1963 provide that the legislature shall pass suitable laws for the protection and promotion of the public health and that the conservation of natural resources of the state is of

- paramount public concern in the interest of the health, safety, and general welfare of the people of this state."
- "Improper management of storm water runoff causes erosion of lands; threatens businesses and residences and other facilities with water damage from flooding; adversely impacts public health, safety, and welfare; and creates environmental damage to rivers, streams, and other bodies of water in Michigan, including the Great Lakes."
- "The constitution and laws of this state authorize local units of government to provide storm water management services and systems that will contribute to the protection and preservation of the public health, safety, and welfare, and to the protection of this state's natural resources."
- "Control of the quantity and quality of storm water flow from developed and undeveloped property is essential to protect and improve the quality of surface and groundwater in this state, thereby protecting its natural resources and the health, safety, and welfare of its citizens."
- "It is in the interest of protecting both the waters of the state from pollution and the public health, safety, and welfare to enable local units of government to fund storm water management with a user fee system that allocates the costs of these services to property owners in a local unit of government based upon the extent to which each parcel of real property contributes to the need for storm water management provided by the local unit of government."
- "The federal clean water act and rules and regulations promulgated thereunder place increased mandates on local units of government to develop, implement, conduct, and make available to their citizens and property owners storm water management services that address water quality, velocity, and volume impacts of storm water runoff."
- "The national pollutant discharge elimination system regulations promulgated under the federal clean water act require local units of government to, among other things, submit permit applications for municipal separate storm sewer systems and implement controls and improvements to storm water management systems, which controls and improvements require

substantial capital outlay on the part of local units of government."

- "It is the intent of the legislature to provide a mechanism by which local units of government under existing authorities may establish a system of true user fees and charges to defray the costs of implementing a regulatory program to manage storm water and to encourage communities to work cooperatively to manage storm water."

Supreme Court Opinion

The bill states, "It is the intent of the legislature that the senate or house of representatives request the supreme court by concurrent resolution...for an opinion on the constitutionality of this act if the governor has not already requested an opinion." The proposed Act would take effect when the Supreme Court issued its opinion in response to the request, or 60 days after the Supreme Court declined to issue an opinion.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no effect on State revenue or expenditures. The bill would increase local unit revenue, and potentially local unit expenditures, by an unknown and potentially significant amount. Any increased revenue would be explicitly restricted to fund expenses relating to a storm water system. Local unit expenditures could be increased to the extent that a local unit would be able to fund optional or mandated obligations related to storm water systems and to the extent that revenue under the bill could offset revenue currently derived from other sources that could then be redirected to other local unit expenses. The actual impact of the bill would depend upon how many local units established storm water system development charges and/or utility fees, the fee and credit structures implemented, and the costs of developing and managing storm water systems.

Fiscal Analyst: David Zin

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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.