

SENATE BILL No. 256

February 18, 2009, Introduced by Senator BIRKHOLZ and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to authorize local units of government to create storm water utilities; to permit the establishment and collection of storm water utility fees and storm water system development charges; to provide for the allocation to property of the costs of planning, constructing, operating, maintaining, financing, and administering storm water systems; to authorize the adoption of storm water utility ordinances; to provide for credits, exemptions, 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. The legislature finds all of the following:

2 (a) Sections 51 and 52 of article IV of the state constitution
3 of 1963 provide that the legislature shall pass suitable laws for
4 the protection and promotion of the public health and that the
5 conservation of natural resources of the state is of paramount

1 public concern in the interest of the health, safety, and general
2 welfare of the people of this state.

3 (b) Improper management of storm water runoff causes erosion
4 of lands; threatens businesses and residences and other facilities
5 with water damage from flooding; adversely impacts public health,
6 safety, and welfare; and creates environmental damage to rivers,
7 streams, and other bodies of water in Michigan, including the Great
8 Lakes.

9 (c) The constitution and laws of this state authorize local
10 units of government to provide storm water management services and
11 systems that will contribute to the protection and preservation of
12 the public health, safety, and welfare, and to the protection of
13 this state's natural resources.

14 (d) Control of the quantity and quality of storm water flow
15 from developed and undeveloped property is essential to protect and
16 improve the quality of surface and groundwater in this state,
17 thereby protecting its natural resources and the health, safety,
18 and welfare of its citizens.

19 (e) It is in the interest of protecting both the waters of the
20 state from pollution and the public health, safety, and welfare to
21 enable local units of government to fund storm water management
22 with a user fee system that allocates the costs of these services
23 to property owners in a local unit of government based upon the
24 extent to which each parcel of real property contributes to the
25 need for storm water management.

26 (f) The federal clean water act and rules and regulations
27 promulgated thereunder place increased mandates on local units of

1 government to develop, implement, conduct, and make available to
2 their citizens and property owners storm water management services
3 that address water quality, velocity, and volume impacts of storm
4 water runoff.

5 (g) The national pollutant discharge elimination system
6 regulations promulgated under the federal clean water act require
7 local units of government to, among other things, submit permit
8 applications for municipal separate storm sewer systems and
9 implement controls and improvements to storm water management
10 systems, which controls and improvements require substantial
11 capital outlay on the part of local units of government.

12 (h) It is the intent of the legislature to provide a mechanism
13 by which local units of government under existing authorities may
14 establish a system of true user fees and charges to defray the
15 costs of implementing a regulatory program to manage storm water.

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

18 Sec. 3. As used in this act:

19 (a) "Fund" means the storm water enterprise fund established
20 by a local unit of government pursuant to section 9.

21 (b) "Impervious area" means a surface area that is compacted
22 or covered with material such as asphalt or concrete, so as to be
23 resistant to permeation by surface water, including, but not
24 limited to, most conventionally surfaced streets, roofs, sidewalks,
25 patios, driveways, and parking lots.

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

1 (d) "Operation and maintenance costs" means all costs, direct
2 and indirect, of materials, labor, professional services,
3 utilities, and other items for the management and uninterrupted
4 operation of a storm water system in a manner for which the storm
5 water system was designed and constructed.

6 (e) "Storm water" means that term as defined in 40 CFR
7 122.26(b)(13).

8 (f) "Storm water management" means 1 or more of the following:

9 (i) The quantitative control through the storm water system of
10 the increased volume and rate of surface runoff caused by
11 impervious areas.

12 (ii) The qualitative control of storm water through the storm
13 water system, pollution prevention activities, and ordinances to
14 reduce, eliminate, or treat pollutants that might otherwise be
15 carried by storm water.

16 (iii) Public education, information, and outreach programs
17 concerning the potential impacts of storm water pollution on water
18 quality.

19 (g) "Storm water management plan" means a plan described in
20 section 5.

21 (h) "Storm water management program" means 1 or more aspects
22 of storm water management undertaken by a local unit of government
23 to comply with applicable federal or state law or to protect the
24 public health, safety, and welfare.

25 (i) "Storm water system" means roads, streets, catch basins,
26 curbs, gutters, ditches, storm sewers and appurtenant features,
27 lakes, ponds, channels, swales, storm drains, canals, creeks,

1 streams, gulches, gullies, flumes, culverts, siphons, retention or
2 detention basins, dams, floodwalls, levees, pumping stations, and
3 other similar facilities, and natural watercourses and features
4 that are located within the geographic limits of a local unit of
5 government and are designed or actively managed by the local unit
6 of government for collecting, storing, treating, or conveying storm
7 water.

8 (j) "Storm water system development charge" or "charge" means
9 a charge provided for under section 6(1).

10 (k) "Storm water utility fee" or "fee" means a charge provided
11 for under section 8.

12 (l) "Storm water utility ordinance" means an ordinance adopted
13 by the governing body of a local unit of government pursuant to
14 section 4(1).

15 Sec. 4. (1) Subject to subsection (2), a local unit of
16 government may adopt a storm water utility ordinance under this
17 act. A storm water utility ordinance may provide for a storm water
18 system development charge or a storm water utility fee, or both, on
19 real property located within that local unit of government to
20 finance a storm water management program.

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

25 Sec. 5. (1) A storm water management plan shall contain at
26 least all of the following elements:

27 (a) Geographic limits of storm water management districts. A

1 storm water management district shall encompass property with
2 similar cost of service characteristics and uses. A storm water
3 management district may consist of all of the territory of the
4 local unit of government, or a portion of the territory of the
5 local unit of government, or all or a portion of the territory of 2
6 or more local units of government that have agreed to jointly
7 manage storm water within that district.

8 (b) Storm water management services to be provided to each
9 storm water management district.

10 (c) The planning period covered by the storm water management
11 plan.

12 (d) Projected expenses of the storm water management program
13 within each storm water management district for each year of the
14 storm water management plan planning period as well as steps taken
15 to reduce expenses.

16 (e) Documentation of an analysis undertaken to evaluate the
17 comparative cost-effectiveness of storm water management
18 alternatives.

19 (f) Projected impervious area and, if applicable under section
20 8(6), total area of each class of property within each storm water
21 management district.

22 (g) The method of calculating any storm water utility fees and
23 storm water development charges proportionate to the necessary cost
24 of providing the necessary level of storm water management
25 services.

26 (h) The process and method by which the local unit of
27 government will determine which properties will be subject to any

1 storm water utility fee for use of a storm water system owned and
2 operated by the local unit of government, as required under section
3 11(1).

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

6 (j) A description of how the credits under section 10 to
7 reduce storm water utility fees will be applied and calculated.

8 (2) Before adopting a storm water management plan, a local
9 unit of government shall hold a public hearing on the proposed
10 plan. The local unit of government shall give notice of the hearing
11 by publication in a newspaper of general circulation within the
12 local unit of government at least 14 days before the hearing. The
13 notice shall include the time and place of the hearing and shall
14 state the place where a copy of the proposed storm water management
15 plan is available for public inspection. In addition, if the local
16 unit of government has a website, the proposed storm water
17 management plan shall be posted on the website and the notice shall
18 provide the local unit of government's website address. This
19 subsection does not apply to the adoption of a storm water
20 management plan before the effective date of this act.

21 (3) Any storm water management plan may be extended or
22 otherwise amended by resolution subject to the procedure set forth
23 in subsection (2).

24 Sec. 6. (1) A storm water utility ordinance may provide for a
25 storm water development charge. The storm water development charge
26 is a 1-time charge to newly developed real property to finance the
27 capital costs of components of the public storm water system needed

1 to serve that property.

2 (2) Revenue from a storm water system development charge shall
3 be deposited in the fund.

4 Sec. 7. A storm water system development charge shall be
5 computed based on 1 or both of the following methods:

6 (a) The modified property's proportionate share of the local
7 unit of government's necessary cost to expand the storm water
8 system to manage the additional storm water from that property.

9 (b) The modified property's proportionate share of the local
10 unit of government's capital investment in the storm water system.
11 The modified property's proportionate share shall be calculated
12 consistent with the method used by the local unit of government to
13 calculate storm water utility fees as described in section 8.

14 Sec. 8. (1) A storm water utility ordinance may impose a storm
15 water utility fee on real property. Revenue from a storm water
16 utility fee shall be deposited in the fund and used for the
17 purposes described in section 9.

18 (2) A storm water utility ordinance shall describe the method
19 or methods used to determine any storm water utility fee.

20 (3) A local unit of government may develop a corresponding
21 storm water utility fee, calculation method, or both for each storm
22 water management district described in the storm water management
23 plan under section 5(1)(a).

24 (4) A storm water utility fee shall be proportionate to the
25 necessary cost of providing storm water management to each property
26 in a storm water management district taking into account revenue
27 collected from any storm water system development charge or other

1 existing charge or assessment for providing storm water management
2 to that property.

3 (5) A storm water utility ordinance may define rate categories
4 for properties where the proportionate cost of providing service is
5 similar. Each property within a rate category shall be charged the
6 same storm water utility fee.

7 (6) The storm water management plan shall demonstrate that any
8 storm water utility fee or portion thereof charged to a property,
9 for those elements of the storm water management program whose cost
10 is directly related to the amount of storm water managed and is not
11 covered by storm water development charges or other revenue, is
12 proportionate to the amount of storm water generated by that
13 property. The method for determining a storm water utility fee
14 shall be based on the storm-water-generating characteristics of
15 either individual properties or all properties within a rate
16 category. A local unit of government's cost for storm water
17 management attributable to each individual property shall be
18 calculated using 1 or more methods generally accepted by licensed
19 professional engineers, including, but not limited to, the
20 following methods:

21 (a) Impervious area: a method that calculates a property's
22 storm water contribution based solely on the impervious area of the
23 property.

24 (b) Equivalent residential unit or equivalent service unit: a
25 method that calculates a property's storm water contribution based
26 solely on the impervious area of the property in comparison to the
27 impervious area associated with all single- and multifamily

1 residential properties within the geographic limits of the
2 district.

3 (c) Single-family residential unit: a method that calculates a
4 property's storm water contribution based solely on the impervious
5 area of the property in comparison to the impervious area of a
6 typical single-family residence within the geographic limits of the
7 district.

8 (d) Intensity of development: a method that calculates the
9 property's storm water contribution based on the total area of the
10 property multiplied by 1 of several rate categories. Each rate
11 category includes those properties with statistically similar
12 storm-water-generating characteristics, with the storm water
13 utility fee proportionate to the percentage of the property's
14 impervious area to its total area.

15 (e) Equivalent hydraulic area: a method that calculates the
16 property's storm water contribution as follows:

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

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

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

22 (7) The storm water management plan shall demonstrate that any
23 storm water utility fee or portion thereof charged to a property,
24 for those elements of the storm water management program whose cost
25 is not directly related to the amount of storm water managed and is
26 not covered by storm water development charges or other revenue, is
27 proportionate to the necessary cost of implementing the storm water

1 management program.

2 Sec. 9. (1) A storm water utility ordinance that establishes a
3 storm water utility fee or a storm water system development charge
4 shall establish a storm water enterprise fund. All revenue from
5 storm water utility fees and storm water system development charges
6 shall be deposited in the storm water enterprise fund. The
7 treasurer of the local unit of government may receive money or
8 other assets from any other source for deposit into the storm water
9 enterprise fund. Money in the fund shall be invested pursuant to
10 1943 PA 20, MCL 129.91 to 129.97a. The treasurer shall credit to
11 the fund interest and earnings from fund investments. Money in the
12 fund at the close of the fiscal year shall remain in the fund and
13 shall not lapse to the general fund of the local unit of
14 government.

15 (2) The treasurer of the local unit of government shall expend
16 money from the storm water enterprise fund, upon appropriation,
17 only to defray the local unit of government's cost of implementing
18 a storm water management program including, but not limited to, the
19 following:

20 (a) Operation and maintenance costs and costs of planning,
21 engineering, acquiring, constructing, installing, improving, and
22 enlarging a storm water system, including financing and debt
23 service costs together with indirect and overhead costs that are
24 fairly chargeable to such activities pursuant to applicable
25 accepted accounting principles and practices, including practices
26 required under the uniform budgeting and accounting act, 1968 PA 2,
27 MCL 141.421 to 141.440a.

1 (b) Administering the storm water management program.

2 (c) Developing a storm water management plan.

3 (d) Undertaking activities required in order to comply with
4 federal and state law and regulations related to storm water and
5 permits issued thereunder.

6 (e) Paying drain assessments that are the obligation of the
7 local unit of government under the drain code of 1956, 1956 PA 40,
8 MCL 280.1 to 280.630.

9 (f) Providing public education, information, or outreach
10 programs related to the storm water management plan or required by
11 federal or state regulations, or required by permits issued to the
12 local unit of government by federal or state regulatory bodies.

13 Sec. 10. (1) Subject to subsection (2), a storm water utility
14 ordinance that imposes a storm water utility fee shall grant
15 credits that reduce the storm water utility fee calculated for a
16 parcel of property for any activities or conditions that reduce the
17 cost of service to the storm water system or are reasonably related
18 to a benefit to the storm water system provided by that property or
19 its owner or occupant, including, but not limited to, all of the
20 following:

21 (a) On-site retention or detention facilities.

22 (b) Increased landscape and vegetative control practices.

23 (c) Direct drainage of the property to waters of this state.

24 (d) The degree of permeability of the surfaces on the
25 property.

26 (e) Filtering systems such as catch basins or filter strips.

27 (f) Components of the storm water system that manage upstream

1 or off-site storm water.

2 (g) Facilities that reuse storm water for irrigation or other
3 on-site purposes.

4 (h) Public education or information programs conducted by the
5 property owner or occupant related to storm water management and
6 its impacts.

7 (i) Other components of the storm water system, programs, or
8 activities that result in a measurable reduction in storm water
9 runoff or pollutant loadings.

10 (2) A credit under subsection (1) shall be proportionate to
11 the reduction of the cost of service to the storm water system or
12 to the benefit provided to the storm water system.

13 Sec. 11. (1) Property shall not be subject to a storm water
14 utility fee or storm water system development charge unless the
15 local unit of government in the storm water management plan
16 demonstrates that the property utilizes the storm water system.

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 or storm water system development charge under
20 subsection (1) with the opportunity to present evidence that the
21 property does not utilize the storm water system and is therefore
22 exempt from the storm water utility fee or storm water system
23 development charge. The storm water utility ordinance shall set
24 forth the procedure for a property owner to claim such an
25 exemption.

26 (3) A storm water utility ordinance that establishes a storm
27 water utility fee or storm water system development charge shall

1 provide that when additional property begins to utilize the storm
2 water system, a storm water utility fee or storm water system
3 development charge accrues, as determined by the local unit of
4 government.

5 Sec. 12. A storm water utility ordinance shall provide for an
6 entity within the local unit of government that will administer the
7 storm water utility and shall define the administrative duties. A
8 storm water utility ordinance shall establish a set of
9 administrative policies and procedures or authorize the
10 administrator to establish the administrative policies and
11 procedures. The administrative policies and procedures shall
12 include at least the following topics, as applicable:

13 (a) Subject to section 15, criteria used to determine whether
14 a storm water utility fee will be billed to the property owner or
15 occupant and how to allocate the storm water utility fee to
16 multiple occupants of a single property.

17 (b) Procedures for updating billing data based upon changes in
18 property boundaries, ownership, and storm water runoff
19 characteristics.

20 (c) Billing and payment procedures of the storm water utility
21 that define the billing period, billing methodology, and penalties.

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

24 (e) Regulations governing the resolution of storm water
25 management disputes that arise between property owners within the
26 district.

27 (f) Procedures for granting and modifying any credits

1 authorized pursuant to section 10.

2 (g) Procedures for appeals as described in section 14.

3 (h) Enforcement policies and procedures.

4 Sec. 13. (1) A storm water utility ordinance shall establish
5 remedies for any unpaid storm water utility fees and storm water
6 system development charges as described in this section.

7 (2) A storm water utility fee or storm water system
8 development charge may be a lien on the property on which the fee
9 is imposed. Fees or charges delinquent for 6 months or more may be
10 certified annually to the proper tax assessing officer or agency.
11 An officer or agency to whom fees are certified shall enter the
12 liens on the next tax roll against the respective parcels of
13 property. The fees or charges shall be collected and the lien shall
14 be enforced in the same manner as provided for the collection of
15 taxes assessed upon the roll and the enforcement of the lien for
16 such taxes. The lien is superior to all other liens except tax
17 liens. The time and manner of certification and other details
18 regarding the collection of fees or charges and the enforcement of
19 the lien shall be prescribed by the storm water utility ordinance.

20 (3) A lien for a storm water utility fee shall not be
21 certified under subsection (2) if the clerk of the local unit of
22 government has been notified that an occupant of the property other
23 than the owner is responsible for the payment of the storm water
24 utility fee. The notice shall be accompanied by a copy of the
25 lease, if any, under which the occupant possesses the property and
26 a cash deposit in an amount specified by the storm water utility
27 ordinance as security for the payment of the delinquent amount.

1 (4) A local unit of government may collect a storm water
2 utility fee or storm water system development charge by any lawful
3 method, including any method authorized under the revised
4 judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

5 (5) A partial payment of delinquent storm water utility fees
6 or storm water system development charges shall be applied to the
7 oldest delinquent fees or charges, and remaining fees or charges
8 may continue to accrue interest and penalties.

9 Sec. 14. (1) A storm water utility ordinance or the
10 administrative policies and procedures adopted under the ordinance
11 shall provide a procedure for appeals and the adjustment of any
12 storm water utility fee or storm water system development charge
13 that includes at least all of the following:

14 (a) A property owner or occupant liable for a storm water
15 utility fee or storm water system development charge may appeal the
16 fee or charge to the local unit of government.

17 (b) An appeal of a storm water utility fee or storm water
18 system development charge shall not be brought more than 1 year
19 after the fee or charge was billed.

20 (c) For an appeal of a storm water utility fee to be
21 successful, the appellant shall demonstrate that the amount of
22 storm water generated by the property is materially less than the
23 amount used by the local unit of government in the calculation of
24 that property's storm water utility fee or that there was a
25 mathematical error in the calculation.

26 (d) If the local unit of government finds that the
27 requirements for a successful appeal under subdivision (c) have

1 been met, the sole remedy to the property owner is a correct
2 recalculation of the storm water utility fee.

3 (e) If in an appeal of a storm water utility fee a local unit
4 of government finds that the requirements of subdivision (c) have
5 not been met, that finding is conclusive with respect to that
6 property for 7 years. The property owner remains eligible for
7 credits and exemptions under the storm water utility ordinance.

8 (f) A property owner or occupant making an appeal shall
9 provide information necessary to make a determination.

10 (2) A person aggrieved by a decision of the local unit of
11 government on an appeal under this section may appeal to the
12 circuit court.

13 Sec. 15. Notwithstanding section 13(3), a local unit of
14 government's storm water utility ordinance shall provide that a
15 property owner is liable for payment of any storm water utility fee
16 even if the property owner has authorized the local unit of
17 government to bill storm water utility fees to an occupant of the
18 property other than the owner.

19 Sec. 16. This act does not expand existing authority of local
20 units of government.

21 Enacting section 1. This act takes effect January 1, 2010.

22 Enacting section 2. It is the intent of the legislature that
23 the senate or house of representatives request the supreme court by
24 concurrent resolution, pursuant to section 8 of article III of the
25 state constitution of 1963, for an opinion on the constitutionality
26 of this act if the governor has not already requested an opinion.