

SENATE BILL NO. 660

November 09, 2023, Introduced by Senators BAYER, CHANG, SHINK, MCMORROW, GEISS, KLINEFELT, IRWIN, CHERRY and HERTEL and referred to the Committee on Local Government.

A bill to regulate the creation of stormwater management utilities by local units of government; to provide for the creation of stormwater management plans; to provide for the adoption of stormwater management utility fee ordinances; to provide for the establishment and collection of stormwater management utility fees; to provide for the reduction or elimination of stormwater management utility 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 may be cited as the "stormwater management
2 utility act".

3 Sec. 3. As used in this act:

4 (a) "Facilities" means all real and tangible personal property
5 that comprises a stormwater management system, including, but not
6 limited to, the land; buildings; basins; pipes; drains; pump
7 stations; outfalls; storage facilities; structures; fixtures such
8 as screens, meters, and control gates; improvements; easements;
9 access rights; rights of way; permits; licenses; leases; machinery;
10 equipment; vehicles; office equipment; furniture; software;
11 hardware; security systems; communications systems; nature-based
12 solutions that use or mimic natural systems to manage stormwater
13 runoff; and other information technology systems.

14 (b) "Fund" means a stormwater enterprise fund established
15 under section 11.

16 (c) "Local unit of government" means a city, village,
17 township, county, or authority established by law.

18 (d) "Property" means real property.

19 (e) "Stormwater" means stormwater, rainwater, snowmelt, or
20 other surface water runoff or drainage.

21 (f) "Stormwater management plan" or "plan" means a plan
22 described in section 7.

23 (g) "Stormwater management services" means 1 or more of the
24 following:

25 (i) The receipt, acceptance, conveyance, transport, storage,
26 treatment, disposal, or regulation of the volume or rate of flow of
27 stormwater through a stormwater management system from a property
28 for purposes of flood control or public health, safety, or welfare.

1 (ii) The receipt, acceptance, conveyance, transport, storage,
2 treatment, disposal, or regulation of stormwater for the purpose of
3 contributing to, improving, attaining, or maintaining water quality
4 standards, including, but not limited to, stormwater treatment,
5 pollution prevention activities, and compliance with local, state,
6 and federal laws, regulations, or permits to reduce, control, or
7 treat pollutants transported from property into a stormwater
8 management system.

9 (h) "Stormwater management system" means facilities that are
10 owned, operated, designed, maintained, or used by a local unit of
11 government within a set geographical area for the purpose of
12 providing stormwater management services.

13 (i) "Stormwater management utility" means a system created
14 under this act through which a local unit of government provides
15 stormwater management services in accordance with a stormwater
16 management plan.

17 (j) "Stormwater management utility fee" means a fee
18 established by a local unit of government under section 9.

19 (k) "Stormwater management utility fee ordinance" means an
20 ordinance adopted by a local unit of government under this act.

21 Sec. 5. (1) A local unit of government may create a stormwater
22 management utility and adopt a stormwater management utility fee.

23 (2) A local unit of government that creates a stormwater
24 management utility under this act shall do both of the following:

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

26 (b) Adopt a stormwater management utility fee ordinance.

27 Sec. 7. (1) A stormwater management plan must include all of
28 the following:

29 (a) A designated period of time, not less than 5 years, within

1 which the local unit of government must review and update the plan
2 as necessary.

3 (b) The service area of the stormwater management utility.

4 (c) A general description of the stormwater management
5 services that will be provided by the stormwater management
6 utility.

7 (d) A determination of the properties that will be subject to
8 a stormwater management utility fee, a description of the process
9 and method used to make that determination, and the process and
10 method for determining the addition or subtraction of properties
11 that will be subject to stormwater management utility fees.

12 (e) The method of calculating the stormwater management
13 utility fee.

14 (f) A description of how a property owner may obtain a
15 reduction or elimination of a stormwater management utility fee.

16 (g) A description of the process by which a property owner can
17 appeal the amount of a stormwater management utility fee.

18 (h) Any other information that the local unit of government
19 determines is relevant.

20 (2) Before adopting a proposed plan or an amendment to an
21 existing plan, the local unit of government must hold at least 1
22 public hearing on the proposed plan or amendments to an existing
23 plan. The local unit of government shall provide notice of the
24 date, time, and location of the public hearing and the times and
25 locations where a physical copy of the proposed plan or amendments
26 to an existing plan may be reviewed by the public. The notice must
27 contain a statement that the purpose of the public hearing is to
28 present and receive public comment on a proposed plan or amendments
29 to an existing plan. Notice must be provided using 1 of the

1 following methods:

2 (a) By publication, at least once, in a newspaper of general
3 circulation in the area of the local unit of government.

4 (b) By posting a copy of the notice at the principal office of
5 the local unit of government, and any other locations considered
6 appropriate by the local unit of government, for not less than 30
7 days before the date of the public hearing.

8 (c) If the local unit of government maintains a website that
9 is accessible to the public, by posting the notice on the website
10 for not less than 30 days before the date of the public hearing.

11 Sec. 9. (1) A stormwater management utility may establish a
12 stormwater management utility fee ordinance and charge a stormwater
13 management utility fee for the use of a stormwater system and to
14 recover the costs, both direct and indirect, of providing
15 stormwater management services, including, but not limited to,
16 operation, maintenance, administration, capital, or other related
17 costs.

18 (2) The stormwater management utility fee under this section
19 must be proportionate based on 1 or more methods generally accepted
20 by licensed professional civil or environmental engineers,
21 financial consultants familiar with municipal utility rate-setting
22 practices, or regional or national professional groups associated
23 with stormwater experts, such as the American Water Works
24 Association, American Society of Civil Engineers, Water Environment
25 Federation, or other similar organizations.

26 (3) As used in this section, "licensed professional civil or
27 environmental engineer" means a professional engineer that is
28 licensed under article 20 of the occupational code, 1980 PA 299,
29 MCL 339.2001 to 339.2014.

1 Sec. 11. (1) A stormwater management utility that establishes
2 a stormwater management utility fee must establish a stormwater
3 enterprise fund. All stormwater management utility fees collected
4 by a stormwater management utility must be deposited into the fund.
5 The treasurer of the local unit of government may receive money or
6 other assets from any other source for deposit into the fund. Money
7 in the fund may be invested in accordance with applicable law or
8 policies established by the local unit of government, as
9 applicable. The treasurer shall credit to the fund interest and
10 earnings from fund investments. Money in the fund at the close of
11 the fiscal year remains in the fund and does not lapse to the
12 general fund of the local unit of government.

13 (2) The treasurer of the local unit of government shall expend
14 money from the fund only for the purposes of defraying the costs of
15 the stormwater management utility.

16 (3) If the local unit of government maintains a website that
17 is accessible to the public, the local unit of government shall
18 post on its website the most recent annual comprehensive financial
19 report of the local unit of government that includes the
20 information regarding the fund.

21 Sec. 13. (1) A stormwater management utility fee ordinance
22 that establishes a stormwater management utility fee must provide
23 procedures for the reduction or elimination of the stormwater
24 management utility fee for a property if a modification or
25 improvement made to that property, or to that and 1 or more other
26 properties, reduces the rate or volume, eliminates runoff, or
27 limits pollutant loadings of stormwater entering the stormwater
28 management system.

29 (2) Each property owner has the burden of demonstrating that

1 the stormwater management utility fee reduction or elimination is
2 justified for that property, using methods that are reasonably
3 accurate considering available technology.

4 (3) A stormwater management utility fee ordinance adopted
5 under this act must establish all of the following:

6 (a) A statement of billing cycles and due dates for stormwater
7 management utility fees and remedies for delinquent stormwater
8 management utility fees, including the assessment of interest
9 charges and late fees.

10 (b) A provision that delinquent stormwater management utility
11 fees, including interest charges and late fees, constitute a lien
12 on any of the owner's property if stormwater services are provided
13 and the stormwater management utility fees, including interest
14 charges and late fees, remain delinquent for 3 months or more. The
15 delinquent stormwater management utility fees, including interest
16 charges and late fees, may be certified to the proper tax authority
17 assessing officer or agency to be entered on the next tax roll
18 against the property to which stormwater management services have
19 been provided. The delinquent amount of the lien described under
20 this subsection is collected in the same manner as taxes assessed
21 on the tax roll. The time and manner of certification and other
22 details regarding the collection of the delinquent amount and
23 enforcement of the lien must be prescribed under this provision. A
24 lien described under this subdivision is effective and has priority
25 over all other liens and encumbrances except those filed or
26 recorded before the date of the judgment only if notice of the lien
27 is filed or recorded as required by state or federal law. A lien
28 filed or recorded under this subdivision is terminated in
29 accordance with the procedures required by state or federal law

1 within 14 days after the delinquent amount is paid.

2 (c) Any other provisions determined necessary by the local
3 unit of government.

4 (4) A local unit of government may collect a delinquent
5 stormwater management utility fee by any method authorized by law.

6 (5) A partial payment of delinquent stormwater management
7 utility fees must be applied to the oldest delinquent fees, and
8 remaining fees may continue to accrue interest and late fees.

9 Sec. 15. (1) In addition to the requirements under section
10 13(3), a stormwater management utility fee ordinance adopted under
11 this act must establish an appeals board and provide procedures for
12 appeals of any stormwater management utility fee charged or
13 determined under this act. The appeals procedures must include, at
14 a minimum, all of the following:

15 (a) Any property owner liable for a stormwater management
16 utility fee may appeal the determination that the property utilizes
17 the stormwater management system or the amount of a stormwater
18 management utility fee, including, but not limited to, a
19 determination on a reduction or the elimination of the stormwater
20 management utility fee under section 13. An appeal must be based on
21 the quantity or quality of stormwater deposited into the stormwater
22 management utility system, the reductions established, the
23 reductions allocated, or any other matter relating to the
24 determination or validity of the stormwater management utility fee.

25 (b) An appeal of a stormwater management utility fee must be
26 brought in accordance with the stormwater management utility's
27 prescribed process not more than 6 months after the challenged
28 stormwater management utility fee was first billed.

29 (c) To prevail in an appeal of a stormwater management utility

1 fee, the appellant must demonstrate, in accordance with the
2 requirements of the stormwater management plan, that the property
3 does not use the stormwater management utility system to the extent
4 determined by the stormwater management utility in the calculation
5 of that property's stormwater management utility fee from the
6 applicable appeal date to the date that the appeal was resolved or
7 that there was a mathematical error in the calculation.

8 (d) The sole remedy for a property owner that prevails in an
9 appeal of a stormwater management utility fee is a recalculation of
10 the stormwater management utility fee that was subject to the
11 appeal. If the recalculated stormwater management utility fee is
12 less than the amount of the stormwater management utility fee that
13 was subject to the appeal, the property owner shall receive a
14 refund or credit for any difference that was paid to the stormwater
15 management utility. The stormwater management utility may provide a
16 refund to a property owner for the difference that was paid if the
17 property owner no longer owns the property and provides proof that
18 the amount of the stormwater management utility fee that was
19 subject to the appeal was paid.

20 (e) If, in an appeal of a stormwater management utility fee,
21 the appeals board finds that the requirements of subdivision (c)
22 have not been met, that finding is conclusive until the property is
23 modified to either increase or decrease the utilization of the
24 system in a manner that makes the property owner eligible for a
25 reduction or elimination of the stormwater management utility fee
26 under section 13.

27 (2) The property owner that files an appeal under this section
28 has the burden of providing the appeals board with information
29 necessary to support the appeal.

1 (3) A property owner may file an appeal of a determination of
2 the appeals board with the circuit court in the county in which the
3 owner's property is located.

4 (4) Notwithstanding any other provision of law, a property
5 owner shall continue to pay an assessed stormwater management
6 utility fee unless otherwise determined by a stormwater management
7 utility.

8 Sec. 17. This act is construed as cumulative authority for the
9 exercise of the powers granted to a local unit of government and
10 does not repeal any existing laws or limit or preempt any existing
11 powers or authorities of a local unit of government. This act does
12 not require a local unit of government with a combined sewer system
13 or separated storm sewer system to establish a stormwater
14 management utility, or to otherwise comply with this act in order
15 to assess a stormwater management utility fee. This act applies
16 only to a stormwater management utility created by a local unit of
17 government under this act on or after the effective date of this
18 act.

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