

SENATE BILL No. 1249

April 15, 2008, 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) The health, safety, and welfare of the people of this
3 state and the quality and sustainability of this state's natural
4 resources are adversely affected by poor ambient water quality and

1 flooding that results from inadequate management of both the
2 quality and quantity of storm water.

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 which address water quality, velocity, and volume impacts of storm
4 water runoff.

5 (g) Phase II of the national pollutant discharge elimination
6 system regulations promulgated under the federal clean water act,
7 which regulations became effective as of March 10, 2003, requires
8 local units of government to, among other things, submit permit
9 applications for municipal separate storm sewer systems and
10 implement controls and improvements to storm water management
11 systems, which controls and improvements require substantial
12 capital outlay on the part of local units of government.

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

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

19 Sec. 3. As used in this act:

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

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

27 (c) "Local unit of government" means a city, village,

1 township, or county.

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

7 (e) "Storm water" means that term as defined in 40 CFR
8 122.26(b)(13).

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

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

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

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

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

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

26 (i) "Storm water system" means roads, streets, catch basins,
27 curbs, gutters, ditches, storm sewers and appurtenant features,

1 lakes, ponds, channels, swales, storm drains, canals, creeks,
2 streams, gulches, gullies, flumes, culverts, siphons, retention or
3 detention basins, dams, floodwalls, levees, pumping stations, and
4 other similar facilities, and natural watercourses and features
5 located within the geographic limits of a local unit of government,
6 that are designed or used for collecting, storing, treating, or
7 conveying storm water or through which storm water is collected,
8 stored, treated, or conveyed, or any other physical means by which
9 storm water management is achieved.

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

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

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

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

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

27 Sec. 5. (1) A storm water management plan shall contain at

1 least all of the following elements:

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

10 (b) Storm water management services to be provided to each
11 storm water management district.

12 (c) The planning period covered by the storm water management
13 plan.

14 (d) Projected expenses of the storm water management program
15 within each storm water management district for each year of the
16 storm water management plan planning period.

17 (e) Projected sources of revenue to recover the expenses under
18 subdivision (d).

19 (f) Projected impervious area and, if applicable pursuant to
20 section 8(6), total area of each class of property within each
21 storm water 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, as required under section 11(1).

2 (2) Before adopting a storm water management plan, a local
3 unit of government shall hold a public hearing on the proposed
4 plan. The local unit of government shall give notice of the hearing
5 by publication in a newspaper of general circulation within the
6 local unit of government at least 6 days before the hearing. The
7 notice shall include the time and place of the hearing and shall
8 state the place where a copy of the proposed storm water management
9 plan is available for public inspection. In addition, if the local
10 unit of government has a website, the proposed storm water
11 management plan shall be posted on the website and the notice shall
12 provide the local unit of government's website address. This
13 subsection does not apply to the adoption of a storm water
14 management plan if the storm water management plan was adopted
15 before the effective date of this act.

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

19 Sec. 6. (1) A storm water utility ordinance may provide for a
20 storm water development charge. The storm water development charge
21 is a 1-time charge to newly developed real property to finance the
22 capital costs of the public storm water system needed to serve the
23 property.

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

26 (3) A storm water system development charge shall be used to
27 finance public components of a storm water system needed to serve

1 the property on which the charge is imposed.

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

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

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

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

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

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

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

27 (5) A storm water utility ordinance may define rate categories

1 for properties where the proportionate cost of providing service is
2 similar. Each property within a rate category shall be charged the
3 same storm water utility fee.

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

18 (a) Impervious area: a method that calculates a property's
19 storm water contribution based solely on the impervious area of the
20 property.

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

27 (c) Single-family residential unit: a method that calculates a

1 property's storm water contribution based solely on the impervious
2 area of the property in comparison to the impervious area of a
3 typical single-family residence within the geographic limits of the
4 district.

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

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

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

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

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

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

26 Sec. 9. (1) A storm water utility ordinance that establishes a
27 storm water utility fee or a storm water system development charge

1 shall establish a storm water enterprise fund. All revenue from
2 storm water utility fees and storm water system development charges
3 shall be deposited in the storm water enterprise fund. The
4 treasurer of the local unit of government may receive money or
5 other assets from any other source for deposit into the storm water
6 enterprise fund. Money in the fund shall be invested pursuant to
7 1943 PA 20, MCL 129.91 to 129.96. The treasurer shall credit to the
8 fund interest and earnings from fund investments. Money in the fund
9 at the close of the fiscal year shall remain in the fund and shall
10 not lapse to the general fund of the local unit of government.

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

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

24 (b) Administering the storm water management program.

25 (c) Developing a storm water management plan.

26 (d) Undertaking activities required in order to comply with
27 federal and state law and regulations related to storm water and

1 permits issued thereunder.

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

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

9 Sec. 10. (1) A storm water utility ordinance that imposes a
10 storm water utility fee shall offer credits that reduce the storm
11 water utility fee calculated for a parcel of property for
12 conditions that reduce the cost of service to the storm water
13 system or are reasonably related to a benefit to the storm water
14 system provided by that property or its owner or occupant.

15 (2) The following are examples of the types of conditions for
16 which a local unit of government may offer credits in a storm water
17 utility ordinance:

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

19 (b) Increased landscape and vegetative control practices.

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

21 (d) Use of permeable materials on property.

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

23 (f) Components of the storm water system that manage upstream
24 or off-site storm water.

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

27 (h) Public education or information programs conducted by the

1 property owner or occupant related to storm water management and
2 its impacts.

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

6 Sec. 11. (1) Property shall not be subject to a storm water
7 utility fee or storm water system development charge unless the
8 local unit of government in the storm water management plan
9 determines that the property utilizes the storm water system.

10 (2) The local unit of government shall provide the owner of
11 property initially determined to be subject to a storm water
12 utility fee or storm water system development charge under
13 subsection (1) with the opportunity to present evidence that the
14 property does not utilize the storm water system and is therefore
15 exempt from the storm water utility fee or storm water system
16 development charge. The storm water utility ordinance shall set
17 forth the procedure for a property owner to claim such an
18 exemption.

19 (3) A storm water utility ordinance that establishes a storm
20 water utility fee or storm water system development charge shall
21 provide that when additional property begins to utilize the storm
22 water system, a storm water utility fee or storm water system
23 development charge accrues, as determined by the local unit of
24 government.

25 Sec. 12. (1) A storm water utility ordinance shall provide for
26 an entity within the local unit of government that will administer
27 the storm water utility and shall define the administrative duties.

1 A storm water utility ordinance shall establish a set of
2 administrative policies and procedures or authorize the
3 administrator to establish the administrative policies and
4 procedures. The administrative policies and procedures shall
5 include at least the following topics, as applicable:

6 (a) Subject to section 15, criteria used to determine whether
7 a storm water utility fee will be billed to the property owner or
8 occupant, including criteria that will be used to determine how to
9 allocate the storm water utility fee to multiple occupants of a
10 single property.

11 (b) Procedures for updating billing data based upon changes in
12 property boundaries, ownership, and storm water runoff
13 characteristics.

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

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

18 (e) Regulations governing the resolution of storm water
19 management disputes that arise between property owners within the
20 district.

21 (f) Procedures for granting and modifying any credits
22 authorized pursuant to section 10.

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

24 (h) Enforcement policies and procedures.

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

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

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

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

26 (5) A partial payment of delinquent storm water utility fees
27 or storm water system development charges shall be applied to the

1 oldest delinquent fees or charges, and remaining fees or charges
2 may continue to accrue interest and penalties.

3 Sec. 14. (1) A storm water utility ordinance or the
4 administrative policies and procedures adopted under the ordinance
5 shall provide a procedure for appeals and the adjustment of any
6 storm water utility fee or storm water system development charge
7 that includes at least all of the following:

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

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

14 (c) For an appeal of a storm water utility fee to be
15 successful, the appellant shall demonstrate that the storm water
16 generated by the property is materially less than the amount used
17 by the local unit of government in the calculation of that
18 property's storm water utility fee or that there was a mathematical
19 error in the calculation.

20 (d) If the local unit of government finds that the
21 requirements for a successful appeal under subdivision (c) have
22 been met, the sole remedy to the property owner is a correct
23 recalculation of the storm water utility fee.

24 (e) A finding by the local unit of government that the
25 requirements of subdivision (c) have not been met is conclusive
26 with respect to that property for 7 years. The property owner
27 remains eligible for credits and exemptions under the storm water

1 utility ordinance.

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

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

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

13 Sec. 16. The powers provided by this act are in addition to
14 any other powers provided by law or charter.

15 Enacting section 1. Pursuant to section 8 of article III of
16 the state constitution of 1963, it is the intent of the
17 legislature, by concurrent resolution, to request the opinion of
18 the supreme court as to the constitutionality of this act if the
19 governor has not already requested an opinion.