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BILL ANALYSIS



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Senate Bill 756 (as introduced 1-18-18)
Sponsor: Senator Marty Knollenberg
Committee: Natural Resources

Date Completed: 4-25-18

CONTENT

The bill would create the "Stormwater Utility Act" to do the following:

- Allow a local unit of government (a city, village, township, or county) to establish a stormwater management utility if the local unit adopted a stormwater management plan and a stormwater utility ordinance.
- Require a stormwater management plan to include certain information, such as the costs to provide services, the type of services the utility would provide, and the method for calculating stormwater utility fees.
- Require a local unit of government to give notice that it intended to prepare a stormwater management plan, and to hold a public hearing before adopting a plan.
- Allow a stormwater management ordinance to provide for stormwater utility fees, including a fee for the use of a stormwater system and a one-time fee for connection to the system of newly developed or modified property.
- Require a stormwater utility ordinance that imposed a fee to provide for a reduction or elimination of the fee if a modification or improvement made to property reduced runoff.
- Require a stormwater utility ordinance to provide procedures for an appeal of a stormwater utility fee.

The bill would take effect 90 days after it was enacted.

Definitions

"Stormwater" would be defined as it is in the Code of Federal Regulations: storm water runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management" would mean one or more of the following:

- The quantitative regulation through the stormwater system of the volume and rate of stormwater runoff from property, including flood control.
- The qualitative regulation (including stormwater treatment, pollution prevention activities, and administration and enforcement of ordinances to reduce, eliminate, or treat pollutants carried from property into the stormwater system by stormwater), of stormwater runoff into the stormwater system or of stormwater discharged from the stormwater system.
- Notifying property owners about the stormwater management program, including how to obtain a reduction or elimination of fees for use of the stormwater system.

"Stormwater system" would mean those features that are located or partially located within the geographic limits of a local unit of government and that are designed or actively managed by the local unit of government for collecting, storing, treating, or conveying stormwater, which could include roads, streets, highways, catch basins, curbs, gutters, ditches, storm and combined sewers and appurtenant features, pipes, interceptors, conduits, lakes, ponds, channels, swales, storm drains, county drains, canals, creeks, streams, gulches, gullies, flumes, culverts, bridges, siphons, retention or detention basins, treatment, screening, or disinfection facilities, dams, floodwalls, levees, pumping stations, and other similar facilities, and natural watercourses.

Regulatory Purpose; Creation of Utility

A stormwater management utility would be required to accomplish one or more of the following regulatory purposes:

- Protect against economic loss, property damage, threats to public health and safety, and damage to the environment and natural resources from water pollution or from flooding or other instances of high volumes or rates of stormwater runoff.
- Enable property owners to fulfill legal obligations pertaining to increases in the quantity or reduction in the quality of stormwater runoff resulting from voluntary choices made in the manner of development of the property, including obligations under Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act, the Natural Flow Doctrine, and the law of trespass and nuisance.
- Provide property owners paying stormwater utility fees with proportionate benefits described in the first item above, including reciprocal benefits to a property owner when other property owners paid fees to support the stormwater system and thereby fulfilled their legal obligations to that property owner.

(The Natural Flow Doctrine is a common law concept that higher-elevation property has a right to drain its water over lower-elevation property.)

To create a stormwater management utility, the legislative body of a local unit of government would have to adopt both a stormwater management plan by resolution and a stormwater utility ordinance that was consistent with an adopted stormwater management plan.

A stormwater utility ordinance would have to identify the regulatory purposes served by the ordinance.

Stormwater Management Plan

A stormwater management plan would have to include all of the following:

- The time period covered by the plan.
- The service area of the stormwater management utility, which could consist of all the territory of the local unit of government, a portion of the territory of the local unit, or all or a portion of the territory of two or more local units that jointly developed the plan.
- The type and level of stormwater management services to be provided by the stormwater management utility, including system reliability, level of flood protection, pollution control, and structural condition of system components.
- Projected direct and indirect costs to provide services as described in the plan for the utility, including the cost of planning, capital, operations, maintenance, permit compliance, and asset replacement.
- Recommendations for efficiencies to minimize costs.

- Current and projected impervious area and, if applicable, based on the quantity or quality, or both, of stormwater runoff from each property or category of property, an inventory of impervious surfaces and parcel areas for properties within the utility's service area.
- A determination of which properties would be subject to any stormwater utility fee for voluntary use of a stormwater system owned and operated by the local unit of government and the process and method that was used to make that determination.
- The method of calculating any stormwater utility fees proportionate to the cost of providing the locally determined level of service of stormwater management.
- Provisions to ensure that the cost of those elements of the stormwater management program directly or indirectly related to the amount of stormwater managed would be allocated in proportion to the amount of stormwater runoff from a property conveyed by the stormwater system, employing methods that were relatively accurate considering available technology.
- A description of the components of the stormwater system owned and operated by the local unit of government.
- A description of how a stormwater utility fee could be reduced or eliminated.

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

Notice & Hearings Regarding Proposed Plans

Before preparing a stormwater management plan, a local unit of government would have to give notice that it intended to do so. The notice would have to be given in accordance with the following criteria:

- If the local unit of government had a website that was accessible to the public free of charge, by posting on the website.
- If there were a newspaper of general circulation within the local unit of government, by publication in the newspaper.
- If there were no newspaper of general circulation within the local unit, by first-class mail to all people to whom real property taxes were assessed and to the occupants of all structures within the local unit.
- By first-class mail to the county drain commissioner or water resources commissioner and to each local unit located adjacent to or located, in whole or in part, within the local unit preparing the plan.

The notice to the drain commission or water resource commissioner would have to a request the recipient's cooperation in and comment on the preparation of the plan, including comment on jointly managing stormwater.

Before adopting a stormwater management plan, a local unit of government would have to hold at least one public hearing on the proposed plan. The local unit would have to give notice specifying the time, place, and purpose of the hearing and the place where a copy of the proposed plan would be available for public inspection. The notice would have to be given in accordance with the following criteria:

- If the local unit of government had a website that was accessible to the public free of charge, by posting notice that included a copy of the proposed plan, on the website at least 14 days before the hearing and maintaining the posting until the time of the hearing.
- If there were a newspaper of general circulation within the local unit, by publication in the newspaper.
- If there were no newspaper of general circulation within the local unit, by first-class mail to all people to whom real property taxes were assessed and to the occupants of all structures within the local unit.

- By first-class mail to the county drain commissioner or water resources commissioner and to each local unit located adjacent to or located, in whole or in part, within the local unit preparing the plan.

If the local unit had a website that was accessible to the public free of charge, the notices that would have to be mailed would have to include the website address at which a copy of the proposed plan was posted. The notices would have to be deposited in the U.S. mail at least 14 days before the date of the hearing.

A stormwater management plan could be extended or otherwise amended by resolution subject to the same procedure set forth for the adoption of the original plan.

Stormwater Utility Fees

A stormwater utility ordinance could provide for a stormwater utility fee on property serviced by a stormwater system to pay the proportionate costs of the stormwater management program. A fee could not include components other than as described in the bill. An ordinance would have to describe the method or methods used to determine any fee. A local unit of government could develop a corresponding stormwater utility fee, calculation method, or both for each utility described in the plan. A fee would have to be proportionate to the direct and indirect cost to the local unit of providing stormwater management to each property in a stormwater management utility that used the stormwater system unless the property was financed by revenue that the local unit of government received from any other source. A stormwater ordinance could define rate categories for classes of properties for which the proportionate cost of providing service was similar.

A stormwater utility could assess a one-time utility fee for connection to the stormwater system of newly developed or modified property benefited by the stormwater system. The purpose of this fee would be to finance the capital costs to the local unit of elements of the public stormwater system needed to serve that property and not otherwise financed by the property developer or by revenue received by the local unit from any other source. This fee would have to be computed based on the newly developed or modified property's proportionate share of the local unit's cost to expand the stormwater system to manage the additional stormwater from that property, including, if appropriate, the property's proportionate share of the local unit's existing capital investment in the system. The proportionate share would have to be calculated consistent with the method used by the local unit for use of a stormwater system (as described below) considering the available data at the time of the property's development or modification.

A stormwater management utility also could assess a stormwater utility fee for the use of a stormwater system. The method for determining a utility fee would have to be based on the quantity or quality, or both, of stormwater runoff from each property or category of property. A fee or portion of a fee charged to a property for those elements of the stormwater management program whose cost was attributable to the quantity of stormwater runoff from each individual property or category of properties would have to be calculated consistent with stormwater management plan provisions to ensure that the cost of those elements of the program directly or indirectly related to the amount of stormwater managed would be allocated in proportion to runoff, using one or more methods general accepted by licensed professional engineers or regional or national professional groups associated with stormwater experts. These methods of calculation would have to include at least all of the following:

- Impervious area, based solely on the impervious area of the property.

- Equivalent residential unit or equivalent service unit, based on the impervious area of the property in comparison to the typical impervious area associated with single-family residential properties within the service area of the stormwater management utility.
- Intensity of development, based on the total area of the property multiplied by a rate category.

A rate category would have to apply to properties with statistically similar stormwater-runoff-generating characteristics. The fee would have to be proportionate to the percentage of the property's impervious area to its total area.

A stormwater fee also could be calculated using the equivalent hydraulic area, calculated as follows:

- Multiply the impervious area of the property by a stormwater runoff factor.
- Multiply the pervious area of the property by a stormwater factor.
- Add the products of those multiplications.

In addition, the methods of calculation could include other billing methodologies that could be demonstrated to provide an equitable distribution of costs in proportion to the property's use of the stormwater system.

A stormwater utility fee or portion of a fee charged to a property for those elements of the stormwater management program whose cost was attributable to the quality of stormwater managed and was not covered by other revenue would have to be proportionate to the cost of those elements of the stormwater management program.

A stormwater utility ordinance would have to establish remedies for any unpaid fees. A local unit of government could collect a fee by any method authorized by law. A partial payment of delinquent fees would have to be applied to the oldest delinquent fees, and remaining fees could continue to accrue interest and penalties.

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

Stormwater Funds

A stormwater utility ordinance that established a stormwater utility fee would have to establish a stormwater fund. All stormwater utility fees collected by the local unit of government would have to be deposited into the fund. The treasurer of the local unit of could receive money or other assets from any other source for deposit into the fund. 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 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 have to remain in the fund and could not lapse to the general fund of the local unit.

The treasurer of the local unit of government would have to spend money from the fund, upon appropriation, only for the regulatory purpose of defraying any of the following stormwater management program costs:

- Operation, maintenance, planning, engineering, acquisition, construction, installation, improvement, or enlargement of a stormwater system, including financing and debt service costs and indirect and overhead costs that would be fairly chargeable to such

activities under applicable generally accepted accounting principles and the Uniform Budgeting and Accounting Act.

- Administration of the stormwater management program.
- Development of a stormwater management plan.
- Providing user education related to the plan or required by Federal or State regulations or required by permits issued to the local unit of government by Federal or State regulatory bodies.

If the local unit of government had a website that was accessible to the public free of charge, 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.

Stormwater Fee Reduction or Elimination

A stormwater utility ordinance that imposed a stormwater utility fee would have to provide for the reduction or elimination of the fee for a property if a modification or improvement made to that property or to that and one or more other properties reduced the rate or volume of or eliminated runoff of or pollutant loadings in excess of natural levels of stormwater entering the stormwater system. Each property owner would have the burden of demonstrating that the fee reduction or elimination was justified for that property, using methods that would be reasonably accurate considering available technology.

A reduction in or elimination of the fee would have to be proportionate to the reduction of the cost of service of the stormwater system to the property or properties.

To ensure that fees were voluntary, property would not be subject to a fee unless the local unit of government demonstrated both of the following:

- That the property used the stormwater system.
- That such use imposed a net cost to the stormwater system when offset by any activities or conditions that reduced the cost of service to the stormwater system provided by that property or its owner, including modifications or improvements described above.

The local unit of government would have to provide the owner of property initially determined to be subject to a fee with the opportunity to demonstrate that the property either did not use the stormwater system or did not use the system to the extent calculated by the local unit and was therefore entitled to the elimination of or a reduction in the fee. The stormwater utility ordinance would have to set forth procedures to offer this opportunity.

Administration of the Utility

A stormwater utility ordinance would have to designate an entity within the local unit of government to administer the utility and would have to establish the administrative duties. An ordinance would have to establish administrative policies and procedures or authorize the administrator to do so. The administrative policies and procedures would have to include at least the following topics, as applicable:

- Criteria used to determine whether a fee would be billed to the property owner.
- Procedures for updating billing data based upon changes in property boundaries, ownership, and stormwater runoff characteristics, and stormwater runoff calculation methods.
- Billing and payment procedures of the utility, including the billing period, billing methodology, credit application procedures, and penalties.
- Policies establishing the type and manner of service that the utility would provide.

- Regulations governing the resolution of stormwater management disputes that arose between property owners within the stormwater management utility.
- Procedures for granting and modifying the reduction or elimination of a fee.
- Procedures for appeals.
- Enforcement policies and procedures.
- A process by which fees, formulas for calculating fees, and formulas for calculating fee reductions would be reviewed and updated at least every three years.

Appeals

A stormwater utility ordinance or the administrative policies and procedures adopted under it would have to provide a procedure for appeals, the establishment of an appeals board, and the reduction or elimination of any stormwater utility fee. The procedure would have to include at least all of the following provisions described below.

Any property owner liable for a fee could appeal the determination that the property used the stormwater system or the amount of a fee, including a determination on a reduction in or the elimination of the fee. An appeal could be based on the quantity or quality of stormwater runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the fee.

An appeal regarding a fee would have to be heard by a stormwater utility appeals board appointed by the local unit of government. The appeals board would have to consist of three members, including two licensed professional engineers not employed by the local unit.

An appeal of a stormwater utility fee could not be brought more than one year after the fee was billed.

To prevail in an appeal of a fee, the appellant would have to demonstrate in accordance with the requirements of the stormwater management plan that the property did not use the system to the extent determined by the local unit of government in the calculation of that property's fee or that there was a mathematical error in the calculation. The sole remedy for a property owner who prevailed in an appeal of a fee would be a prospective correct recalculation of the fee.

If, in an appeal of a fee, a local unit of government found that the requirements to prevail had not been met, that finding would be conclusive until the property was modified to either increase or decrease the use of the system. The property owner would remain eligible for a reduction in or elimination of fees under the ordinance.

A property owner making an appeal would have to give the appeals board information necessary to make a determination.

A person aggrieved by a decision of the appeals board on an appeal could appeal to the circuit court in which the property was located.

Local Authority

The proposed Act would not expand existing authority of local units of government. It also would not limit existing authority of local units to cooperate with respect to or jointly create and operate stormwater management facilities.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would have no fiscal impact on the State and likely would have a negligible fiscal impact on local government. The bill would require various notice and meeting requirements before a local unit of government could establish a stormwater management plan, the costs of which would have to be paid from existing revenue. However, after a stormwater management program was adopted, the local unit of government would be allowed to assess a stormwater utility fee sufficient to pay the direct and indirect costs of providing stormwater management.

Fiscal Analyst: Ryan Bergan

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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.