

# HOUSE BILL No. 4100

January 26, 2017, Introduced by Reps. McCready, Webber, Lucido and Iden and referred to the Committee on Local Government.

A bill to regulate the creation of stormwater management utilities by local units of government; to regulate the adoption and content of stormwater utility ordinances; to provide for the allocation of the costs of planning, constructing, operating, maintaining, financing, and administering a stormwater system to real property served by the system; to provide for the establishment and collection of stormwater utility fees; to provide for the reduction or elimination of 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 shall be known and may be cited as the  
2 "stormwater utility act".

3           Sec. 2. As used in this act:

4           (a) "Fund" means a stormwater fund established pursuant to  
5 section 8.

6           (b) "Impervious area" means a surface area that is resistant  
7 to permeation by surface water.

8           (c) "Local unit of government" or "local unit" means a city,  
9 village, township, or county.

10           (d) "Operation and maintenance costs" means all costs, direct  
11 and indirect, of materials, labor, professional services,  
12 utilities, and other items for the management and uninterrupted  
13 operation of a stormwater system in a manner for which the  
14 stormwater system was designed and constructed.

15           (e) "Property" means real property or a parcel of real  
16 property, as indicated by the context.

17           (f) "Stormwater" means that term as defined in 40 CFR  
18 122.26(b)(13).

19           (g) "Stormwater management" means 1 or more of the following:

20           (i) The quantitative regulation through the stormwater system  
21 of the volume and rate of stormwater runoff from property.

22 Quantitative regulation includes, but is not limited to, flood  
23 control.

24           (ii) The qualitative regulation of stormwater runoff into the  
25 stormwater system or of stormwater discharged from the stormwater  
26 system. Qualitative regulation includes, but is not limited to,  
27 stormwater treatment, pollution prevention activities, and

1 administration and enforcement of ordinances to reduce, eliminate,  
2 or treat pollutants carried from property into the stormwater  
3 system by stormwater.

4 (iii) Notifying property owners about the stormwater  
5 management program, including, but not limited to, how to obtain a  
6 reduction or elimination of fees for use of the stormwater system.

7 (h) "Stormwater management plan" or "plan" means a plan  
8 described in and adopted pursuant to section 4.

9 (i) "Stormwater management program" means aspects of  
10 stormwater management undertaken by a local unit of government.

11 (j) "Stormwater system" means those features that are located  
12 or partially located within the geographic limits of a local unit  
13 of government and that are designed or actively managed by the  
14 local unit for collecting, storing, treating, or conveying  
15 stormwater, which may include roads, streets, highways, catch  
16 basins, curbs, gutters, ditches, storm and combined sewers and  
17 appurtenant features, pipes, interceptors, conduits, lakes, ponds,  
18 channels, swales, storm drains, county drains, canals, creeks,  
19 streams, gulches, gullies, flumes, culverts, bridges, siphons,  
20 retention or detention basins, treatment, screening, or  
21 disinfection facilities, dams, floodwalls, levees, pumping  
22 stations, and other similar facilities, and natural watercourses.

23 (k) "Stormwater utility fee" or "fee" means a fee provided for  
24 under section 5.

25 (l) "Stormwater utility ordinance" means an ordinance  
26 described in and adopted pursuant to section 3.

27 Sec. 3. (1) A stormwater management utility shall accomplish 1

1 or more of the following regulatory purposes:

2 (a) Protect against economic loss, property damage, threats to  
3 public health and safety, and damage to the environment and natural  
4 resources from water pollution or from flooding or other instances  
5 of high volumes or rates of stormwater runoff.

6 (b) Enable property owners to fulfill legal obligations  
7 pertaining to increases in the quantity or reduction in the quality  
8 of stormwater runoff resulting from voluntary choices made in the  
9 manner of development of the property, including, but not limited  
10 to, obligations under section 3109 of the natural resources and  
11 environmental protection act, 1994 PA 451, MCL 324.3109, the  
12 natural flow doctrine, and the law of trespass and nuisance.

13 (c) Provide property owners paying stormwater utility fees  
14 with proportionate benefits described in subdivision (a). These  
15 benefits include reciprocal benefits to a property owner when other  
16 property owners pay fees to support the stormwater system and  
17 thereby fulfill their legal obligations to that property owner  
18 described in subdivision (b).

19 (2) To create a stormwater management utility, the legislative  
20 body of a local unit of government shall do both of the following:

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

22 (b) Adopt a stormwater utility ordinance that is consistent  
23 with the adopted stormwater management plan.

24 Sec. 4. (1) A stormwater management plan shall include all of  
25 the following:

26 (a) The time period covered by the plan.

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

1 service area may consist of all of the territory of the local unit  
2 of government, a portion of the territory of the local unit, or all  
3 or a portion of the territory of 2 or more local units that jointly  
4 develop the plan.

5 (c) The type and level of stormwater management services to be  
6 provided by the stormwater management utility, including system  
7 reliability, level of flood protection, pollution control, and  
8 structural condition of system components.

9 (d) Projected direct and indirect costs to provide services as  
10 described in the plan pursuant to subdivision (c) for the  
11 stormwater management utility, including cost of planning, capital,  
12 operations, maintenance, permit compliance, and asset replacement.

13 (e) Recommendations for efficiencies to minimize costs.

14 (f) Current and projected impervious area and, if applicable  
15 under section 7(2), an inventory of impervious surfaces and parcel  
16 areas for properties within the stormwater management utility's  
17 service area.

18 (g) A determination of which properties will be subject to any  
19 stormwater utility fee for voluntary use of a stormwater system  
20 owned and operated by the local unit of government, as required  
21 under section 10(1), and the process and method that was used to  
22 make that determination.

23 (h) The method of calculating any stormwater utility fees  
24 proportionate to the cost of providing the locally determined level  
25 of service of stormwater management.

26 (i) Provisions to ensure that the cost of those elements of  
27 the stormwater management program directly or indirectly related to

1 the amount of stormwater managed will be allocated in proportion to  
2 the amount of stormwater runoff from a property conveyed by the  
3 stormwater system, employing methods that are relatively accurate  
4 considering available technology.

5 (j) A description of the components of the stormwater system  
6 owned and operated by the local unit of government.

7 (k) A description of how a stormwater utility fee may be  
8 reduced or eliminated as provided under section 9.

9 (2) Before preparing a stormwater management plan, a local  
10 unit of government must give notice that it intends to prepare a  
11 stormwater management plan. The notice shall be given by all of the  
12 following means:

13 (a) If the local unit has a website that is accessible to the  
14 public free of charge, by posting on the website.

15 (b) By publication in a newspaper of general circulation  
16 within the local unit. If there is no newspaper of general  
17 circulation within the local unit, notice shall be given by first-  
18 class mail to all persons to whom real property taxes are assessed  
19 and to the occupants of all structures within the local unit.

20 (c) By first-class mail to the county drain commissioner or  
21 water resources commissioner and to each local unit located  
22 adjacent to or located, in whole or in part, within the local unit  
23 preparing the plan. The notice under this subdivision shall request  
24 the recipient's cooperation in and comment on the preparation of  
25 the plan, including comment on jointly managing stormwater.

26 (3) Before adopting a stormwater management plan, a local unit  
27 of government must hold at least 1 public hearing on the proposed

1 plan. The local unit shall give notice specifying the time, place,  
2 and purpose of the hearing and the place where a copy of the  
3 proposed plan is available for public inspection. The notice shall  
4 be given by all of the following means:

5 (a) If the local unit has a website that is accessible to the  
6 public free of charge, by posting the notice on the website at  
7 least 14 days before the hearing and maintaining the posting until  
8 the time of the hearing. The posting shall include a copy of the  
9 proposed plan.

10 (b) By publication in a newspaper of general circulation  
11 within the local unit. If there is no such newspaper, notice shall  
12 be given by first-class mail to all persons to whom real property  
13 taxes are assessed and to the occupants of all structures within  
14 the local unit. If the local unit has a website that is accessible  
15 to the public free of charge, the notice under this subdivision  
16 shall include the website address at which a copy of the proposed  
17 plan is posted under subdivision (a). The notice under this  
18 subdivision shall be published or deposited in the United States  
19 mail at least 14 days before the date of the hearing.

20 (c) By first-class mail to the county drain commissioner or  
21 water resources commissioner and to each local unit located  
22 adjacent to or located, in whole or in part, within the local unit  
23 preparing the stormwater management plan. If the local unit has a  
24 website that is accessible to the public free of charge, the notice  
25 under this subdivision shall include the website address at which a  
26 copy of the proposed plan is posted under subdivision (a). The  
27 notice under this subdivision shall be deposited in the United

1 States mail at least 14 days before the date of the hearing.

2 (4) A stormwater management plan may be extended or otherwise  
3 amended by resolution subject to the same procedure set forth in  
4 this section for the adoption of the original plan.

5 Sec. 5. (1) A stormwater utility ordinance shall identify the  
6 regulatory purposes under section 3(1) served by the ordinance.

7 (2) A stormwater utility ordinance may provide for a  
8 stormwater utility fee on property serviced by a stormwater system  
9 to pay the proportionate costs of the stormwater management  
10 program. A stormwater utility fee shall not include components  
11 other than as described in this section and sections 6 and 7.

12 (3) A stormwater utility ordinance shall describe the method  
13 or methods used to determine any stormwater utility fee.

14 (4) A local unit of government may develop a corresponding  
15 stormwater utility fee, calculation method, or both for each  
16 stormwater management utility described in the stormwater  
17 management plan.

18 (5) A stormwater utility fee shall be proportionate to the  
19 direct and indirect cost to the local unit of government of  
20 providing stormwater management to each property in a stormwater  
21 management utility that uses the stormwater system that is not  
22 financed by revenue received by the local unit of government from  
23 any other source.

24 (6) A stormwater utility ordinance may define rate categories  
25 for classes of properties for which the proportionate cost of  
26 providing service is similar.

27 Sec. 6. (1) A stormwater management utility may assess a 1-



1 time stormwater utility fee for connection to the stormwater system  
2 of newly developed or modified property benefited by the stormwater  
3 system. The purpose of the fee is to finance the capital costs to  
4 the local unit of government of elements of the public stormwater  
5 system needed to serve that property and not otherwise financed by  
6 the property developer or by revenue received by the local unit of  
7 government from any other source.

8 (2) A stormwater utility fee under subsection (1) shall be  
9 computed based on the newly developed or modified property's  
10 proportionate share of the local unit of government's cost to  
11 expand the stormwater system to manage the additional stormwater  
12 from that property, including, if appropriate, the newly developed  
13 or modified property's proportionate share of the local unit of  
14 government's existing capital investment in the stormwater system.  
15 This proportionate share shall be calculated consistent with the  
16 method used by the local unit of government under section 7  
17 considering the available data at the time of the property's  
18 development or modification.

19 Sec. 7. (1) A stormwater management utility may assess a  
20 stormwater utility fee for the use of a stormwater system.

21 (2) The method for determining a stormwater utility fee under  
22 subsection (1) shall be based on the quantity or quality, or both,  
23 of stormwater runoff from each property or category of property.

24 (3) A stormwater utility fee or portion thereof charged to a  
25 property for those elements of the stormwater management program  
26 whose cost is attributable to the quantity of stormwater runoff  
27 from each individual property or category of properties shall be

1 calculated, consistent with stormwater management plan provisions  
2 under section 4(1)(i), using 1 or more methods generally accepted  
3 by licensed professional engineers or regional or national  
4 professional groups associated with stormwater experts, including,  
5 but not limited to, the following methods:

6 (a) Impervious area, based solely on the impervious area of  
7 the property.

8 (b) Equivalent residential unit or equivalent service unit,  
9 based on the impervious area of the property in comparison to the  
10 typical impervious area associated with single-family residential  
11 properties within the service area of the stormwater management  
12 utility.

13 (c) Intensity of development, based on the total area of the  
14 property multiplied by a rate category. A rate category shall apply  
15 to properties with statistically similar stormwater-runoff-  
16 generating characteristics. The stormwater utility fee shall be  
17 proportionate to the percentage of the property's impervious area  
18 to its total area.

19 (d) Equivalent hydraulic area, calculated as follows:

20 (i) Multiply the impervious area of the property by a  
21 stormwater runoff factor.

22 (ii) Multiply the pervious area of the property by a  
23 stormwater runoff factor.

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

25 (e) Other billing methodologies that can be demonstrated to  
26 provide an equitable distribution of costs in proportion to the  
27 property's use of the stormwater system.

1 (4) A stormwater utility fee or portion thereof charged to a  
2 property for those elements of the stormwater management program  
3 whose cost is attributable to the quality of stormwater managed and  
4 is not covered by other revenue shall be proportionate to the cost  
5 of those elements of the stormwater management program.

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

17 (2) The treasurer of the local unit of government shall expend  
18 money from the fund, upon appropriation, only for the regulatory  
19 purpose of defraying any of the following stormwater management  
20 program costs:

21 (a) Operation, maintenance, planning, engineering,  
22 acquisition, construction, installation, improvement, or  
23 enlargement of a stormwater system, including financing and debt  
24 service costs and indirect and overhead costs that are fairly  
25 chargeable to such activities under applicable generally accepted  
26 accounting principles and the uniform budgeting and accounting act,  
27 1968 PA 2, MCL 141.421 to 141.440a.

1 (b) Administration of the stormwater management program.

2 (c) Development of a stormwater management plan.

3 (d) Providing user education related to the stormwater  
4 management plan or required by federal or state regulations or  
5 required by permits issued to the local unit of government by  
6 federal or state regulatory bodies.

7 (3) If the local unit of government has a website that is  
8 accessible to the public free of charge, the local unit shall post  
9 on its website the most recent audit report for the fund under the  
10 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to  
11 141.440a.

12 Sec. 9. (1) Subject to subsection (2), a stormwater utility  
13 ordinance that imposes a stormwater utility fee shall provide for  
14 the reduction or elimination of the stormwater utility fee for a  
15 property if modifications or improvements made to the property  
16 reduce the rate or volume of or eliminate runoff of or pollutant  
17 loadings in excess of natural levels of stormwater entering the  
18 stormwater system. The property owner has the burden of  
19 demonstrating that the stormwater utility fee reduction or  
20 elimination is justified, using methods that are reasonably  
21 accurate considering available technology.

22 (2) A reduction in or elimination of the stormwater utility  
23 fee under subsection (1) shall be proportionate to the reduction of  
24 the cost of service of the stormwater system to the property.

25 Sec. 10. (1) To ensure that stormwater utility fees are  
26 voluntary, property is not subject to a fee unless the local unit  
27 of government demonstrates both of the following:

1 (a) That the property utilizes the stormwater system.

2 (b) That such utilization imposes a net cost to the stormwater  
3 system when offset by any activities or conditions that reduce the  
4 cost of service to the stormwater system or are reasonably related  
5 to a benefit to the stormwater system provided by that property or  
6 its owner, including, but not limited to, modifications or  
7 improvements described in section 9(1).

8 (2) The local unit of government shall provide the owner of  
9 property initially determined to be subject to a stormwater utility  
10 fee under subsection (1) with the opportunity to demonstrate that  
11 the property either does not utilize the stormwater system or does  
12 not utilize the stormwater system to the extent calculated by the  
13 local unit of government in establishing the stormwater utility fee  
14 and is therefore entitled to the elimination of or a reduction in  
15 the fee. The stormwater utility ordinance shall set forth  
16 procedures to implement this subsection.

17 (3) A stormwater utility ordinance that establishes a  
18 stormwater utility fee shall provide that, when additional property  
19 begins to utilize the stormwater system, a stormwater utility fee,  
20 as determined by the local unit of government, accrues.

21 Sec. 11. A stormwater utility ordinance shall designate an  
22 entity within the local unit of government to administer the  
23 stormwater management utility and shall establish the  
24 administrative duties. A stormwater utility ordinance shall  
25 establish administrative policies and procedures or authorize the  
26 administrator to establish the administrative policies and  
27 procedures. The administrative policies and procedures shall

1 include at least the following topics, as applicable:

2 (a) Criteria used to determine whether a stormwater utility  
3 fee will be billed to the property owner.

4 (b) Procedures for updating billing data based upon changes in  
5 property boundaries, ownership, and stormwater runoff  
6 characteristics, and stormwater runoff calculation methods.

7 (c) Billing and payment procedures of the stormwater  
8 management utility including the billing period, billing  
9 methodology, credit application procedures, and penalties.

10 (d) Policies establishing the type and manner of service that  
11 will be provided by the stormwater management utility.

12 (e) Regulations governing the resolution of stormwater  
13 management disputes that arise between property owners within the  
14 stormwater management utility.

15 (f) Procedures for granting and modifying the reduction or  
16 elimination of a fee, as authorized pursuant to section 9.

17 (g) Procedures for appeals as described in section 13.

18 (h) Enforcement policies and procedures.

19 (i) A process by which fees, formulas for calculating fees,  
20 and formulas for calculating fee reductions will be reviewed and  
21 updated at least every 3 years.

22 Sec. 12. (1) A stormwater utility ordinance shall establish  
23 remedies for any unpaid stormwater utility fees as described in  
24 this section.

25 (2) A local unit of government may collect a stormwater  
26 utility fee by any method authorized by law.

27 (3) A partial payment of delinquent stormwater utility fees

1 shall be applied to the oldest delinquent fees, and remaining fees  
2 may continue to accrue interest and penalties.

3       Sec. 13. (1) A stormwater utility ordinance or the  
4 administrative policies and procedures adopted under the ordinance  
5 shall provide a procedure for appeals, the establishment of an  
6 appeals board, and the reduction or elimination of any stormwater  
7 utility fee. The procedure shall include at least all of the  
8 following:

9       (a) Any property owner liable for a stormwater utility fee may  
10 appeal the determination that the property utilizes the stormwater  
11 system or the amount of a stormwater utility fee, including a  
12 determination on a reduction in or the elimination of the fee under  
13 section 9. An appeal may be based on the quantity or quality of  
14 stormwater runoff generated, the reductions established, the  
15 reductions allocated, or any other matter relating to the  
16 determination of the stormwater utility fee.

17       (b) An appeal under subdivision (a) shall be heard by a  
18 stormwater utility appeals board appointed by the local unit of  
19 government. The appeals board shall consist of 3 members, 2 of whom  
20 shall be licensed professional engineers not employed by the local  
21 unit of government.

22       (c) An appeal of a stormwater utility fee shall not be brought  
23 more than 1 year after the fee was billed.

24       (d) To prevail in an appeal of a stormwater utility fee, the  
25 appellant must demonstrate in accordance with the requirements of  
26 the stormwater management plan that the property does not use the  
27 system to the extent determined by the local unit of government in

1 the calculation of that property's stormwater utility fee or that  
2 there was a mathematical error in the calculation.

3 (e) The sole remedy for a property owner who prevails in an  
4 appeal of a stormwater utility fee is a prospective correct  
5 recalculation of the stormwater utility fee.

6 (f) If in an appeal of a stormwater utility fee a local unit  
7 of government finds that the requirements of subdivision (d) have  
8 not been met, that finding is conclusive until the property is  
9 modified to either increase or decrease the utilization of the  
10 system. The property owner remains eligible for a reduction in or  
11 elimination of fees under the stormwater utility ordinance.

12 (g) A property owner making an appeal shall provide the  
13 appeals board with information necessary to make a determination.

14 (2) A person aggrieved by a decision of the appeals board on  
15 an appeal under this section may appeal to the circuit court in  
16 which the property is located.

17 Sec. 14. (1) This act does not expand existing authority of  
18 local units of government.

19 (2) This act does not limit existing authority of local units  
20 of government to cooperate with respect to or jointly create and  
21 operate stormwater management utilities, subject to section 3(1).

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