

# HOUSE BILL NO. 4691

June 05, 2019, Introduced by Reps. Webber, Garza, Manoogian, Howell, Eisen and Jones and referred to the Committee on Regulatory Reform.

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 stormwater runoff, snow melt runoff,  
18 and surface runoff and drainage.

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 management  
 5 program, including, but not limited to, how to obtain a reduction  
 6 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 features that are located or  
 12 partially located within the geographic limits of a system service  
 13 area and that are owned, operated, designed, maintained, or used by  
 14 a local unit of government for collecting, storing, treating,  
 15 conveying, or attenuating stormwater, such as roads, streets,  
 16 highways, catch basins, curbs, gutters, storm ditches, storm and  
 17 combined sewers and appurtenant features, pipes, interceptors,  
 18 conduits, swales, storm drains, gulches, gullies, flumes, culverts,  
 19 bridges, siphons, retention basins, detention basins, treatment  
 20 facilities, screening facilities, disinfection facilities, dams,  
 21 floodwalls, levees, pumping stations, and other similar features.

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

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

26 Sec. 3. (1) A stormwater management utility established after  
 27 the effective date of this section shall accomplish 1 or more of  
 28 the following regulatory purposes:

29 (a) Protect against economic loss, property damage, threats to



1 public health and safety, and damage to the environment and natural  
2 resources from water pollution or from flooding or other instances  
3 of high volumes or rates of stormwater runoff.

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

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

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

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

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

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

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

25 (b) The service area of the stormwater management utility. The  
26 service area may consist of all of the territory of the local unit  
27 of government, a portion of the territory of the local unit, or all  
28 or a portion of the territory of 2 or more local units that jointly  
29 develop the plan.



1 (c) The type and level of stormwater management services to be  
2 provided by the stormwater management utility, including system  
3 reliability, level of flood protection, pollution control, and  
4 structural condition of system components.

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

9 (e) Recommendations for efficiencies to minimize costs.

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

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

19 (h) The method of calculating any stormwater utility fees  
20 proportionate to the cost of providing the locally determined level  
21 of service of stormwater management.

22 (i) Provisions to ensure that the cost of those elements of  
23 the stormwater management program directly or indirectly related to  
24 the amount of stormwater managed will be allocated in proportion to  
25 the amount of stormwater runoff from a property conveyed by the  
26 stormwater system, employing methods that are relatively accurate  
27 considering available technology.

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



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

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

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

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

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

20 (3) Before adopting a stormwater management plan, a local unit  
21 of government must hold at least 1 public hearing on the proposed  
22 plan. The local unit shall give notice specifying the time, place,  
23 and purpose of the hearing and the place where a copy of the  
24 proposed plan is available for public inspection. The notice shall  
25 be given by all of the following means:

26 (a) If the local unit has a website that is accessible to the  
27 public free of charge, by posting the notice on the website at  
28 least 14 days before the hearing and maintaining the posting until  
29 the time of the hearing. The posting shall include a copy of the



1 proposed plan.

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

12 (c) By first-class mail to the county drain commissioner or  
13 water resources commissioner and to each local unit located  
14 adjacent to or located, in whole or in part, within the local unit  
15 preparing the stormwater management plan. If the local unit has a  
16 website that is accessible to the public free of charge, the notice  
17 under this subdivision shall include the website address at which a  
18 copy of the proposed plan is posted under subdivision (a). The  
19 notice under this subdivision shall be deposited in the United  
20 States mail at least 14 days before the date of the hearing.

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

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

26 (2) A stormwater utility ordinance may provide for a  
27 stormwater utility fee on property serviced by a stormwater system  
28 to pay the proportionate costs of the stormwater management  
29 program. A stormwater utility fee shall not include components



1 other than as described in this section and sections 6 and 7.

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

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

8 (5) A stormwater utility fee shall be proportionate to the  
9 direct and indirect cost to the local unit of government of  
10 providing stormwater management to each property in a stormwater  
11 management utility that uses the stormwater system that is not  
12 financed by revenue received by the local unit of government from  
13 any other source.

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

17 Sec. 6. (1) A stormwater management utility may assess a 1-  
18 time stormwater utility fee for connection to the stormwater system  
19 of newly developed or modified property benefited by the stormwater  
20 system. The purpose of the fee is to finance the capital costs to  
21 the local unit of government of elements of the public stormwater  
22 system needed to serve that property and not otherwise financed by  
23 the property developer or by revenue received by the local unit of  
24 government from any other source.

25 (2) A stormwater utility fee under subsection (1) shall be  
26 computed based on the newly developed or modified property's  
27 proportionate share of the local unit of government's cost to  
28 expand the stormwater system to manage the additional stormwater  
29 from that property, including, if appropriate, the newly developed





1 or modified property's proportionate share of the local unit of  
2 government's existing capital investment in the stormwater system.  
3 This proportionate share shall be calculated consistent with the  
4 method used by the local unit of government under section 7  
5 considering the available data at the time of the property's  
6 development or modification.

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

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

12 (3) A stormwater utility fee or portion thereof charged to a  
13 property for those elements of the stormwater management program  
14 whose cost is attributable to the quantity of stormwater runoff  
15 from each individual property or category of properties shall be  
16 calculated, consistent with stormwater management plan provisions  
17 under section 4(1)(i), using 1 or more methods generally accepted  
18 by licensed professional engineers or regional or national  
19 professional groups associated with stormwater experts, including,  
20 but not limited to, the following methods:

21 (a) Impervious area, based solely on the impervious area of  
22 the property.

23 (b) Equivalent residential unit or equivalent service unit,  
24 based on the impervious area of the property in comparison to the  
25 typical impervious area associated with single-family residential  
26 properties within the service area of the stormwater management  
27 utility.

28 (c) Intensity of development, based on the total area of the  
29 property multiplied by a rate category. A rate category shall apply



1 to properties with statistically similar stormwater-runoff-  
 2 generating characteristics. The stormwater utility fee shall be  
 3 proportionate to the percentage of the property's impervious area  
 4 to its total area.

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

6 (i) Multiply the impervious area of the property by a  
 7 stormwater runoff factor.

8 (ii) Multiply the pervious area of the property by a stormwater  
 9 runoff factor.

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

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

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

19 Sec. 8. (1) A stormwater utility ordinance that establishes a  
 20 stormwater utility fee shall establish a stormwater fund. All  
 21 stormwater utility fees collected by the local unit of government  
 22 shall be deposited into the fund. The treasurer of the local unit  
 23 of government may receive money or other assets from any other  
 24 source for deposit into the fund. Money in the fund shall be  
 25 invested pursuant to 1943 PA 20, MCL 129.91 to 129.97a. The  
 26 treasurer shall credit to the fund interest and earnings from fund  
 27 investments. Money in the fund at the close of the fiscal year  
 28 shall remain in the fund and shall not lapse to the general fund of  
 29 the local unit.



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

5 (a) Operation, maintenance, planning, engineering,  
6 acquisition, construction, installation, improvement, or  
7 enlargement of a stormwater system, including financing and debt  
8 service costs and indirect and overhead costs that are fairly  
9 chargeable to such activities under applicable generally accepted  
10 accounting principles and the uniform budgeting and accounting act,  
11 1968 PA 2, MCL 141.421 to 141.440a.

12 (b) Administration of the stormwater management program.

13 (c) Development of a stormwater management plan.

14 (d) Providing user education related to the stormwater  
15 management plan or required by federal or state regulations or  
16 required by permits issued to the local unit of government by  
17 federal or state regulatory bodies.

18 (3) If the local unit of government has a website that is  
19 accessible to the public free of charge, the local unit shall post  
20 on its website the most recent audit report for the fund under the  
21 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to  
22 141.440a.

23 Sec. 9. (1) Subject to subsection (2), a stormwater utility  
24 ordinance that imposes a stormwater utility fee shall provide for  
25 the reduction or elimination of the stormwater utility fee for a  
26 property if a modification or improvement made to that property or  
27 to that and 1 or more other properties reduces the rate or volume  
28 of or eliminates runoff of or pollutant loadings in excess of  
29 natural levels of stormwater entering the stormwater system. Each



1 property owner has the burden of demonstrating that the stormwater  
2 utility fee reduction or elimination is justified for that  
3 property, using methods that are reasonably accurate considering  
4 available technology.

5 (2) A reduction in or elimination of the stormwater utility  
6 fee under subsection (1) shall be proportionate to the reduction of  
7 the cost of service of the stormwater system to the property or  
8 properties.

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

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

13 (b) That such utilization imposes a net cost to the stormwater  
14 system when offset by any activities or conditions that reduce the  
15 cost of service to the stormwater system or are reasonably related  
16 to a benefit to the stormwater system provided by that property or  
17 its owner, including, but not limited to, modifications or  
18 improvements described in section 9(1).

19 (2) The local unit of government shall provide the owner of  
20 property initially determined to be subject to a stormwater utility  
21 fee under subsection (1) with the opportunity to demonstrate that  
22 the property either does not utilize the stormwater system or does  
23 not utilize the stormwater system to the extent calculated by the  
24 local unit of government in establishing the stormwater utility fee  
25 and is therefore entitled to the elimination of or a reduction in  
26 the fee. The stormwater utility ordinance shall set forth  
27 procedures to implement this subsection.

28 (3) A stormwater utility ordinance that establishes a  
29 stormwater utility fee shall provide that, when additional property



1 begins to utilize the stormwater system, a stormwater utility fee,  
2 as determined by the local unit of government, accrues.

3       Sec. 11. A stormwater utility ordinance shall designate an  
4 entity within the local unit of government to administer the  
5 stormwater management utility and shall establish the  
6 administrative duties. A stormwater utility ordinance shall  
7 establish administrative policies and procedures or authorize the  
8 administrator to establish the administrative policies and  
9 procedures. The administrative policies and procedures shall  
10 include at least the following topics, as applicable:

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

13       (b) Procedures for updating billing data based upon changes in  
14 property boundaries, ownership, and stormwater runoff  
15 characteristics, and stormwater runoff calculation methods.

16       (c) Billing and payment procedures of the stormwater  
17 management utility including the billing period, billing  
18 methodology, credit application procedures, and penalties.

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

21       (e) Procedures for granting and modifying the reduction or  
22 elimination of a fee, as authorized pursuant to section 9.

23       (f) Procedures for appeals as described in section 13.

24       (g) Enforcement policies and procedures.

25       (h) A process by which fees, formulas for calculating fees,  
26 and formulas for calculating fee reductions will be reviewed and  
27 updated at least every 3 years.

28       Sec. 12. (1) A stormwater utility ordinance shall establish  
29 remedies for any unpaid stormwater utility fees as described in



1 this section.

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

4 (3) A partial payment of delinquent stormwater utility fees  
5 shall be applied to the oldest delinquent fees, and remaining fees  
6 may continue to accrue interest and penalties.

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

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

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

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

28 (d) To prevail in an appeal of a stormwater utility fee, the  
29 appellant must demonstrate in accordance with the requirements of



1 the stormwater management plan that the property does not use the  
2 system to the extent determined by the local unit of government in  
3 the calculation of that property's stormwater utility fee or that  
4 there was a mathematical error in the calculation.

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

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

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

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

19 Sec. 14. This act does not do any of the following:

20 (a) Expand existing authority of local units of government.

21 (b) Limit existing authority of local units of government to  
22 cooperate with respect to or jointly create and operate stormwater  
23 management utilities, subject to section 3(1).

24 (c) Require a local unit of government with a separated storm  
25 sewer system to adopt a stormwater utility fee or a rate model that  
26 includes a stormwater utility fee.

27 (d) Require a local unit of government with a combined storm  
28 and sanitary sewer system to adopt a stormwater utility fee or a  
29 rate model that includes a stormwater utility fee.



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

