

## Highlights of Senate Bill 256 introduced by Senator Berkholz in 2009, but not enacted

To help provide context for your review, Chuck Hersey prepared a list of some key highlights and notes based on the very lengthy legislative work group process we instigated several years ago. The language itself is important. But knowing how and why some of it is there is just as important.

- ✓ **Section 1:** Establishes the Bolt test of regulatory purpose for stormwater management. Helps avoid having to reprove it in each place considering a utility.
  
- ✓ **Section 3:** Establishes a wide range of activities as legitimate parts of the true cost of stormwater service. Includes both qualitative and quantitative control which covers conveyance to mitigate flooding.
  
- ✓ **Section 3:** Defines several terms intended to align with activities at the local level and/or permit language.
  
- ✓ **Section 4:** Requires **adoption of a stormwater management plan** prerequisite to creating a utility ordinance. Requires the two be consistent. Incentivizes putting sufficient detail in the locally adopted plan to answer key questions:
  - What are we paying for?
  - Where?
  - How much does it cost?
  
- ✓ **Section 5:** Lays out content of plan. Requires differentiation of who is included and who is not by area, helping meet the voluntary test of Bolt (more on this later).
  
- ✓ **Section 5(1-e):** Requires demonstration/accountability for assuring that what is being done represents cost effective choices. **This was, and still is, critical to obtaining broad support especially from the private sector.**
  
- ✓ **Section 5(1-j):** Establishes that system of credits must be created. Not an option because it is another part of meeting the voluntary test of Bolt.
  
- ✓ **Section 5(1-g):** Establishes that charges must be in proportion to costs, the 3<sup>rd</sup> criterion laid out in Bolt. This must be demonstrated prior to plan ordinance adoption.

- ✓ **Section 5-3:** Incentivizes inter-governmental cooperation by watershed. Taken with Section 5(1-e), it is clear that this effort has to rise to a high level. Otherwise, passing the cost effective test would be difficult.
- ✓ **Section 5 (In-General):** Addresses sense of fairness and due process. Helps assure stakeholders get fair bites at the apple along the way. Could/would be very helpful in responding to future challenges.
- ✓ **Section 8-4:** Another reference designed to meet the proportionality test and avoid what some fear as double dipping.
- ✓ **Section 8-6, Line 21:** Note reference to “stormwater generated” , i.e. a thing requiring a public service.
- ✓ **Section 8-6:** Very importantly, this section specifies 5 different ways to calculate a fee. It also allows for a variation if generally accepted by engineers. The purpose here was to give local government a sufficient number of options that, by statute, meet the proportionality test. This would help clear up uncertainty, more so if the Supreme Court certified the legislation. Another topic we will discuss and which needs a careful analysis based on the Jackson case.
- ✓ **Section 9-2:** More or less restates all the things that can be paid for from an enterprise fund. This is intended to be A to Z, soup to nuts, etc. Note that it includes debt service, another nuance we will discuss at the meeting.
- ✓ **Section 10:** This removes the idea or criticism that crediting for action on private property reducing runoff is an option. It is required because it is a critical element of meeting the voluntary test and the proportionality test. By the way, what better incentive for green infrastructure.
- ✓ **Section 11:** Another key step in the negotiation process designed to further compliance with the voluntary test of Bolt. There is a rebuttable presumption that no one is included until the government demonstrates you are generating a service demand, i.e. runoff from the property is going into the storm system.

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**SUBSTITUTE FOR SENATE**  
**EBILLNO. 256**

Abill to authorize local units of government to create stormwater utilities; to permit the establishment and collection of stormwater utility fees and stormwater system development charges; to provide for the allocation to real property of the costs of planning, constructing, operating, maintaining, financing, and administering stormwater systems; to authorize the adoption of stormwater 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) Sections 51 and 52 of article IV of the state constitution
- 3** of 1963 provide that the legislature shall pass suitable laws for
- 4** the protection and promotion of the public health and that the

1 conservation of natural resources of the state is of paramount  
2 public concern in the interest of the health, safety, and general  
3 welfare of the people of this state.

4 (b) Improper management of stormwater runoff causes erosion  
5 of lands; threatens businesses and residences and other facilities  
6 with water damage from flooding; adversely impacts public health,  
7 safety, and welfare; and creates environmental damage to rivers,  
8 streams, and other bodies of water in Michigan, including the Great  
9 Lakes.

10 (c) The constitution and laws of this state authorize local  
11 units of government to provide stormwater management services and  
12 systems that will contribute to the protection and preservation of  
13 the public health, safety, and welfare, and to the protection of  
14 this state's natural resources.

15 (d) Control of the quantity and quality of stormwater flow  
16 from developed and undeveloped property is essential to protect and  
17 improve the quality of surface and groundwater in this state,  
18 thereby protecting its natural resources and the health, safety,  
19 and welfare of its citizens.

20 (e) It is in the interest of protecting both the waters of the  
21 state from pollution and the public health, safety, and welfare to  
22 enable local units of government to fund stormwater management  
23 with a user fee system that allocates the cost of these services  
24 to property owners in a local unit of government based upon the  
25 extent to which each property contributes to the need for storm  
26 water management provided by the local unit of government.

27 (f) The federal clean water act and rules and regulations

1 promulgated thereunder place increased mandates on local unit of  
 2 government to develop, implement, conduct, and make available to  
 3 their citizens and property owners stormwater management services  
 4 that address water quality, velocity, and volume impacts of storm  
 5 water runoff.

6 (g) The national pollutant discharge elimination system  
 7 regulations promulgated under the federal clean water act require  
 8 local unit of government to, among other things, submit permit  
 9 applications for municipal separate storm sewers systems and  
 10 implement controls and improvements to stormwater management  
 11 systems, which controls and improvements requires substantial  
 12 capital outlay on the part of local unit of government.

13 (h) It is the intent of the legislature to provide a mechanism  
 14 by which local unit of government under existing authorities may  
 15 establish a system of true user fees and charges to defray the  
 16 costs of implementing a regulatory program to manage stormwater  
 17 and to encourage communities to work cooperatively to manage storm  
 18 water.

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

21 Sec. 3. As used in this act:

22 (a) "Fund" means the stormwater enterprise fund established  
 23 by local unit of government pursuant to section 9.

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

26 (c) "Local unit of government" means a city, village,  
 27 township, or county.

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

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

8 (f) "Stormwater" means that term as defined in 40 CFR  
9 122.26 (b) (13).

10 (g) "Stormwater management" means one or more of the following  
11 undertaken only to the extent authorized by other state law or by  
12 federal law:

13 (i) The quantitative control through the storm water system of  
14 the increased volume and rate of surface runoff caused by  
15 impervious areas.

16 (ii) The qualitative control of storm water through the storm  
17 water system, pollution prevention activities, and ordinance to  
18 reduce, eliminate, or treat pollutants that might otherwise be  
19 carried by storm water.

20 (iii) Public education, information, and outreach programs  
21 concerning the potential impacts of storm water pollution on water  
22 quality.

23 (h) "Stormwater management plan" means a plan described in  
24 section 5.

25 (i) "Stormwater management program" means one or more aspects  
26 of stormwater management undertaken by a local unit of government  
27 only to the extent authorized by other state law or by federal law.

1 (j) "Stormwatersystem" means roads, streets, highways, catch  
 2 basins, curbs, gutters, ditches, stormsewers and appurtenant  
 3 features, lakes, ponds, channels, swales, storm drains, canals,  
 4 creeks, streams, gulches, gullies, flumes, culverts, siphons,  
 5 retention or detention basins, dams, floodwalls, levees, pumping  
 6 stations, and others similar facilities, and natural water courses  
 7 and features that are located within the geographic limit of a  
 8 local unit of government and are designed or actively managed by  
 9 the local unit of government for collecting, storing, treating, or  
 10 conveying stormwater.

11 (k) "Stormwater system development charge" or "charge" means  
 12 a charge provided for under section 6.

13 (l) "Stormwater utility fee" or "fee" means a charge provided  
 14 for under section 8.

15 (m) "Stormwater utility ordinance" means an ordinance adopted  
 16 by the governing body of a local unit of government pursuant to  
 17 section 4.

18 Sec. 4. (1) Subject to subsection (3), a local unit of  
 19 government may adopt a stormwater utility ordinance under this  
 20 act. A stormwater utility ordinance may provide for a stormwater  
 21 system development charge or a stormwater utility fee, or both, on  
 22 property located within that local unit of government to finance a  
 23 stormwater management program.

24 (2) A stormwater utility ordinance shall not modify any of  
 25 the following:

26 (a) The terms of an existing national pollution discharge  
 27 elimination system permit issued under part 31 of the natural

1 resources and environmental protection act, 1994 PA 451, MCL  
 2 324.3101 to 324.3133, and the federal water pollution control act,  
 3 33 USC 1251 to 1387.

4 (b) Water quality standards provided for under part 31 of the  
 5 natural resources and environmental protection act, 1994 PA 451, 6  
 MCL 324.3101 to 324.3133.

7 (3) Before adopting a stormwater utility ordinance, the  
 8 legislative body of a local unit of government shall by resolution  
 9 adopt a stormwater management plan. The stormwater utility  
 10 ordinance shall be consistent with the stormwater management plan.

11 Sec. 5. (1) A stormwater management plan shall contain at  
 12 least all of the following elements:

13 (a) Geographic limits of stormwater management districts. A  
 14 stormwater management district shall encompass property with  
 15 similar cost of service characteristics and uses. A storm water  
 16 management district may consist of all of the territory of the  
 17 local unit of government, or a portion of the territory of the  
 18 local unit of government, or all or a portion of the territory of 2  
 19 or more local units of government that have agreed to jointly  
 20 manage stormwater within that district.

21 (b) Stormwater management services to be provided to each  
 22 stormwater management district.

23 (c) The planning period covered by the stormwater management  
 24 plan.

25 (d) Projected expenses of the stormwater management program  
 26 within each stormwater management district for each year of the  
 27 stormwater management plan planning period as well as steps taken



1 to reduce expenses.

2 (e) Documentation of an analysis undertaken to evaluate the  
3 comparative cost-effectiveness of stormwater management  
4 alternatives.

5 (f) Projected impervious area and, if applicable under section  
6 8(6), total area of each class of property within each stormwater  
7 management district.

8 (g) The method of calculating any stormwater utility fees and  
9 stormwater development charges proportionate to the necessary cost  
10 of providing the necessary level of stormwater management  
11 services.

12 (h) A determination of which properties will be subject to any  
13 stormwater utility fee for use of a stormwater system owned and  
14 operated by the local unit of government, as required under section  
15 11(1), and the process and method that was used to make that  
16 determination.

17 (i) A description of the components of the stormwater system  
18 owned and operated by the local unit of government.

19 (j) A description of how the credits under section 10 will be  
20 applied and calculated.

21 (k) Documentation of the response to the request for  
22 cooperation under subsection (3).

23 (2) Before preparing a stormwater management plan, a local  
24 unit of government shall give notice to residents of the local unit  
25 of government, by publication in a newspaper of general circulation  
26 within the local unit of government, that it intends to prepare a  
27 stormwater management plan. If the local unit of government has a

1 website that is accessible to the public free of charge, the notice  
2 shall be posted on the website.

3 (3) Before preparing a stormwater management plan, a local  
4 unit of government shall also give notice to each local unit of  
5 government located in the same watershed and to the county drain  
6 commissioner of each county in which the watershed is located. The  
7 notice under this subsection shall explain that the local unit of  
8 government intend to prepare a stormwater management plan and  
9 request the recipient's cooperation and comment, including comment  
10 on jointly managing stormwater. The notice under this subsection  
11 shall be given by first-class mail or personal delivery.

12 (4) Before adopting a stormwater management plan, a local  
13 unit of government shall hold a public hearing on the proposed  
14 plan. The local unit of government shall give notice of the hearing  
15 by publication in a newspaper of general circulation within the  
16 local unit of government at least 14 days before the hearing.  
17 Notices shall also be given to all persons to whom real property  
18 within the local unit of government is assessed and to the  
19 occupants of all structures within the local unit of government by  
20 personal delivery or first-class mail, at least 14 days before the  
21 hearing. If the name of the occupant is not known, the term  
22 "occupant" may be used for the intended recipient of the notice.  
23 Notice need not be given to more than 1 occupant of a structure,  
24 except that if a structure contains more than 1 dwelling unit or  
25 spatial area owned or leased by different persons, 1 occupant of  
26 each unit or spatial area shall be given notice. If a single  
27 structure contains more than 4 dwelling units or other distinct

1 spatial areas owned or leased by different persons, notice may be  
2 given to the manager or owner of the structure, who shall be  
3 requested to post the notice at the primary entrance to the  
4 structure.

5 (5) Notice under subsection (4) shall specify the time, place,  
6 and purpose of the hearing and the place where a copy of the  
7 proposed stormwater management plan is available for public  
8 inspection. If the local unit of government has a website that is  
9 accessible to the public free of charge, the notice and proposed  
10 stormwater management plans shall be posted on the website and  
11 notice by publication, personal delivery, or first-class mail shall  
12 provide the local unit of government's website address.

13 (6) The local unit of government shall also provide notice of  
14 the hearing under subsection (4) at least 14 days before the  
15 hearing to the local unit of government and drain commissioners  
16 described in subsection (3). The notice under this subsection shall  
17 be made by personal delivery, first-class mail, or electronic mail.  
18 However, the local unit of government preparing the stormwater  
19 management plans shall not give notice by electronic mail unless, in  
20 the notice described in subsection (3), the local unit of  
21 government stated that it intended to give notice by electronic  
22 mail and the recipient did not respond by objecting to the use of  
23 electronic mail. The notice under this subsection shall specify the  
24 time, place, and purpose of the hearing and include a copy of the  
25 proposed stormwater management plan. However, notice by electronic  
26 mail may contain a link to a website on which the proposed storm  
27 water management plan is posted if the website is accessible to the

1 public free of charge.

2 (7) A storm water management plan may be extended or otherwise  
3 amended by resolutions subject to the procedures set forth in  
4 subsections (4) to (6).

5 Sec. 6. (1) A storm water utility ordinance may provide for a  
6 storm water development charge. The storm water development charge  
7 is a 1-time charge on newly developed or modified property to  
8 finance the capital costs to the local unit of government of  
9 components of the public storm water system needed to serve that  
10 property and not financed by the property developer or by revenue  
11 received by the local unit of government from any other source.

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

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

16 (a) The newly developed or modified property's proportionate  
17 share of the local unit of government's necessary cost to expand  
18 the storm water system to manage the additional storm water from  
19 that property.

20 (b) The newly developed or modified property's proportionate  
21 share of the local unit of government's capital investment in the  
22 storm water system. The newly developed or modified property's  
23 proportionate share shall be calculated consistent with the method  
24 used by the local unit of government to calculate storm water  
25 utility fees as described in section 8.

26 Sec. 8. (1) A storm water utility ordinance may impose a storm  
27 water utility fee on property. Revenue from a storm water utility

1 feeshallbedepositedinthefund.

2 (2) Astormwaterutilityordinanceshalldescribethemethod  
3 ormethodsusedtodetermineanystormwaterutilityfee.

4 (3) Alocalunitofgovernmentmaydevelopacorresponding  
5 stormwaterutilityfee,calculationmethod,orbothforeachstorm  
6 watermanagementdistrictdescribedinthestormwatermanagement  
7 plan.

8 (4) Astormwater utilityfeeshallbe proportionatetothe  
9 necessarycosttothelocalunitofgovernmentofprovidingstorm  
10 watermanagementtoeachpropertyina stormwatermanagement  
11 districtnotfinancedbyrevenueceivedbythelocalunitof  
12 governmentfromanyothersource.

13 (5) Astormwaterutilityordinancemaydefineratecategories  
14 forpropertiesforwhichtheproportionatecostofproviding  
15 serviceissimilar.Eachpropertywithinarate categoryshallbe  
16 chargedthesamestormwaterutilityfee.

17 (6) Thestormwatermanagementplanshalldemonstratethatany  
18 stormwaterutilityfeeorportionthereofcharged toaproperty,  
19 forthoseelementsofthestormwater managementprogramwhosecost  
20 isdirectlyrelatedtotheamountofstormwatermanaged,is  
21 proportionatetotheamountofstormwatergeneratedbythat  
22 property.Themethodfordeterminingastormwaterutilityfee  
23 shallbebasedonthestorm-water-generatingcharacteristics,  
24 includingconsiderationofuseoflow-impactdesigntechniques,of  
25 eitherindividualpropertiesorallpropertieswithinarate  
26 category.Alocalunitofgovernment'scostforstormwater  
27 managementattributabletoeachindividualpropertyshallbe

1 calculated using one or more methods generally accepted by licensed  
 2 professional engineers, including, but not limited to, the  
 3 following methods:

4 (a) Impervious area, which is a method that calculates a  
 5 property's stormwater contribution based solely on the impervious  
 6 area of the property.

7 (b) Equivalent residential unit or equivalent service unit,  
 8 which is a method that calculates a property's stormwater  
 9 contribution based solely on the impervious area of the property in  
 10 comparison to the impervious area associated with all single- and  
 11 multifamily residential properties within the geographic limit of  
 12 the district.

13 (c) Single-family residential unit, which is a method that  
 14 calculates a property's stormwater contribution based solely on  
 15 the impervious area of the property in comparison to the impervious  
 16 area of a typical single-family residence within the geographic  
 17 limit of the district.

18 (d) Intensity of development, which is a method that  
 19 calculates the property's stormwater contribution based on the  
 20 total area of the property multiplied by one of several rate  
 21 categories. Each rate category includes those properties with  
 22 statistically similar storm-water-generating characteristics, with  
 23 the stormwater utility fee proportionate to the percentage of the  
 24 property's impervious area to its total area.

25 (e) Equivalent hydraulic area, which is a method that  
 26 calculates the property's stormwater contribution as follows:

27 (i) Multiply the impervious area of the property by a storm

1 waterrunofffactor.

2 (ii) Multiplytheperviousareaofthepropertybyastorm  
3 waterrunofffactor.

4 (iii) Addtheproductsundersubparagraphs(i) and(ii).

5 (7) Thestormwatermanagementplanshalldemonstratethatany  
6 stormwaterutilityfeeorportionthereofchargedtoaproperty,  
7 forthoseelementsofthestormwatermanagementprogramwhoscost  
8 isnotdirectlyrelatedtotheamountofstormwatermanagedandis  
9 notcoveredbystormwaterdevelopmentchargesorotherrevenue, is  
10 proportionatetothenecessarycostofimplementingthestormwater  
11 managementprogram.

12 Sec. 9. (1) Astormwaterutilityordinancethatestablishesa  
13 stormwaterutilityfeeor astormwatersystemdevelopmentcharge  
14 shallestablishastormwaterenterprise fund. Allrevenuefrom  
15 stormwaterutilityfeesandstormwatersystemdevelopmentcharges  
16 shallbedepositedinthefund. Thetreasurerofthelocalunitof  
17 governmentmayreceivemoneyorotherassetsfromanyothersource  
18 fordepositintothefund. Moneyinthefundshallbeinvested  
19 pursuantto1943PA20, MCL129.91to129.97a. Thetreaser shall  
20 credittothefundinterestandearningsfromfundinvestments.  
21 Moneyinthefundatthecloseofthefiscalyearshallremainin  
22 thefundandshallnotlapsetothegeneralfundofthelocalunit  
23 ofgovernment.

24 (2) Thetreasurerofthelocalunitofgovernmentshallexpend  
25 money fromthefund, uponappropriation, onlytodefraythecosts  
26 foranyofthefollowinginimplementingastormwatermanagement  
27 program:

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

8 (b) Administration of the stormwater management program.

9 (c) Development of a stormwater management plan.

10 (d) Activities required in order to comply with federal and  
 11 state law and regulations related to stormwater and permits issued  
 12 thereunder.

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

16 (f) Providing public education, information, or outreach  
 17 programs related to the stormwater management plan or required by  
 18 federal or state regulations, or required by permits issued to the  
 19 local unit of government by federal or state regulatory bodies.

20 (3) The local unit of government shall post on its website the  
 21 most recent audit report for the fund under the uniform budgeting  
 22 and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

23 Sec. 10. (1) Subject to subsection (2), a stormwater utility  
 24 ordinance that imposes a stormwater utility fee shall grant  
 25 credits that reduce the stormwater utility fee calculated for a  
 26 property for any activities or conditions that reduce the cost of  
 27 service to the stormwater system or are reasonably related to a



1 benefit to the stormwater system provided by that property or its  
2 owner or occupant, including, but not limited to, all of the  
3 following:

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

5 (b) Increased landscape and vegetative control practices.

6 (c) Direct drainage of the property to waters of this state  
7 that are not part of the stormwater system.

8 (d) The degree of permeability of the surfaces on the  
9 property.

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

11 (f) Components of the stormwater system that manage upstream  
12 or off-site stormwater.

13 (g) Facilities that reuse stormwater for irrigation or other  
14 on-site purposes.

15 (h) Public education or information programs conducted by the  
16 property owner or occupant related to stormwater management and  
17 its impacts.

18 (i) Other components of the stormwater system, programs, or  
19 activities that result in a measurable reduction in stormwater  
20 runoff or pollutant loadings.

21 (2) A credit under subsection (1) shall be proportionate to  
22 the reduction of the cost of service to the stormwater system or  
23 to the value of the benefit provided to the stormwater system. If  
24 a credit granted under this section equals or exceeds the amount of  
25 the stormwater utility fee that would otherwise be imposed upon a  
26 parcel, the credit reduces the stormwater utility fee to zero. If  
27 the credit exceeds the amount of the stormwater utility fee that

1 would otherwise be imposed upon a parcel, the excess amount shall  
 2 be credited against the stormwater utility fee that would  
 3 otherwise be imposed upon another parcel or parcels owned by the  
 4 same owner and located within the local unit of government, if any.

5       Sec. 11. (1) There is a rebuttable presumption that property  
 6 is not subject to a stormwater utility fee or stormwater  
 7 development charge. It is the burden of the local unit of  
 8 government to demonstrate in the plan that property utilizes the  
 9 stormwater system. Before assessing the fee or charge, the local  
 10 unit of government shall demonstrate that such utilization imposes  
 11 a net cost to the stormwater system when offset by any activities  
 12 or conditions that reduce the cost of service to the stormwater  
 13 system or are reasonably related to a benefit to the stormwater  
 14 system provided by that property or its owner or occupant,  
 15 including, but not limited to, the conditions listed in section  
 16 10 (1) .

17       (2) The local unit of government shall provide the owner of  
 18 property initially determined to be subject to a stormwater  
 19 utility fee or stormwater system development charge under  
 20 subsection (1) with the opportunity to demonstrate that the  
 21 property either does not utilize the stormwater system or does not  
 22 impose a net cost to the stormwater system and is therefore exempt  
 23 from the stormwater utility fee or stormwater system development  
 24 charge. The stormwater utility ordinance shall set forth the  
 25 procedure for a property owner to claim such an exemption.

26       (3) A stormwater utility ordinance that establishes a storm  
 27 water utility fee or stormwater system development charge shall

1 provide that when additional property begins to utilize the storm  
2 water system, a stormwater utility fee or storm water system  
3 development charge accrues, as determined by the local unit of  
4 government.

5       Sec. 12. A stormwater utility ordinance shall designate an  
6 entity within the local unit of government to administer the storm  
7 water utility and shall establish the administrative duties. A  
8 stormwater utility ordinance shall establish a set of  
9 administrative policies and procedures or authorize the  
10 administrator to establish the administrative policies and  
11 procedures. The administrative policies and procedures shall  
12 include at least the following topics, as applicable:

13       (a) Subject to section 15, criteria used to determine whether  
14 a stormwater utility fee will be billed to the property owner or  
15 occupant and how to allocate the stormwater utility fee to  
16 multiple occupants of a single property.

17       (b) Procedures for updating billing data based upon changes in  
18 property boundaries, ownership, and storm water runoff  
19 characteristics.

20       (c) Billing and payment procedures of the stormwater utility  
21 that define the billing period, billing methodology, and penalties.

22       (d) Policies establishing the type and manner of service that  
23 will be provided by the stormwater utility.

24       (e) Regulations governing the resolution of stormwater  
25 management disputes that arise between property owners within the  
26 district.

27       (f) Procedures for granting and modifying any credits

1 authorized pursuant to section 10.

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

3 (h) Enforcement policies and procedures.

4 (i) A process by which fees, formulas for calculating fees,  
5 and credits will be reviewed and updated at least every 3 years.

6 Sec. 13. (1) A stormwater utility ordinance shall establish  
7 remedies for any unpaid stormwater utility fees and stormwater  
8 system development charges as described in this section.

9 (2) A stormwater utility fee or stormwater system  
10 development charge may be a lien on the property on which the fee  
11 is imposed. Fees or charges delinquent for 6 months or more may be  
12 certified annually to the property tax assessing officer or agency.  
13 An officer or agency to whom fees are certified shall enter the  
14 lien on the next tax roll against the respective properties. The  
15 fees or charges shall be collected and the liens shall be enforced  
16 in the same manner as provided for the collection of taxes assessed  
17 upon the roll, and the enforcement of the lien for such taxes. The  
18 lien is superior to all other liens except tax liens. The time and  
19 manner of certification and other details regarding the collection  
20 of fees or charges and the enforcement of the liens shall be  
21 prescribed by the stormwater utility ordinance.

22 (3) A lien for a stormwater utility fee shall not be  
23 certified under subsection (2) if the clerk of the local unit of  
24 government has been notified that an occupant of the property other  
25 than the owner is responsible for the payment of the stormwater  
26 utility fee. The notice shall be accompanied by a copy of the  
27 lease, if any, under which the occupant possesses the property and

1 a cash deposit in an amount specified by the stormwater utility  
2 ordinance as security for the payment of the delinquent amount.

3 (4) A local unit of government may collect a stormwater  
4 utility fee or stormwater system development charge by any lawful  
5 method, including any method authorized under the revised  
6 judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

7 (5) A partial payment of delinquent stormwater utility fees  
8 or stormwater system development charges shall be applied to the  
9 oldest delinquent fees or charges, and remaining fees or charges  
10 may continue to accrue interest and penalties.

11 Sec. 14. (1) A stormwater utility ordinance or the  
12 administrative policies and procedures adopted under the ordinance  
13 shall provide a procedure for appeals and the adjustment or  
14 elimination of any stormwater utility fee or stormwater system  
15 development charge. The procedure shall include at least all of the  
16 following:

17 (a) Any property owner or occupant liable for a stormwater  
18 utility fee or stormwater system development charge may appeal the  
19 determination that the property utilizes the stormwater system,  
20 the stormwater utility fee, the stormwater development charge, or  
21 a credit. An appeal may be based on the amount of stormwater  
22 generated, the credit established, the credits allocated, or any  
23 other matter relating to the determination of the stormwater  
24 utility fee or stormwater development charge.

25 (b) An appeal under subdivision (a) shall be brought to a  
26 stormwater utility appeals board appointed by the local unit of  
27 government. The appeals board shall consist of 3 licensed

1 professional engineers not employed by the local unit of  
2 government.

3 (c) An appeal of a storm water utility fee or storm water  
4 system development charges shall not be brought more than 1 year  
5 after the fee or charge was billed.

6 (d) For an appeal of a storm water utility fee to be  
7 successful, the appellant shall demonstrate that the amount of  
8 storm water generated by the property is materially less than the  
9 amount used by the local unit of government in the calculation of  
10 that property's storm water utility fee or that there was a  
11 mathematical error in the calculation.

12 (e) If the local unit of government finds that the  
13 requirements for a successful appeal under subdivision (d) have  
14 been met, the sole remedy to the property owner is a correct  
15 recalculation of the storm water utility fee.

16 (f) If in an appeal of a storm water utility fee a local unit  
17 of government finds that the requirements of subdivision (d) have  
18 not been met, that finding is conclusively with respect to that  
19 property until the expiration of 7 years after the final judgment  
20 on appeal, or until the property is modified so as not to utilize  
21 the storm water system or so as to materially reduce its net cost  
22 to the storm water system, whichever occurs first. The property  
23 owner remains eligible for credits and exemptions under the storm  
24 water utility ordinance.

25 (g) A property owner or occupant making an appeal shall  
26 provide information necessary to make a determination.

27 (2) A person aggrieved by a decision of the local unit of

1 government on an appeal under this section may appeal to the  
2 circuit court.

3       Sec. 15. Notwithstanding section 13(3), a local unit of  
4 government's stormwater utility ordinances shall provide that a  
5 property owner is liable for payment of any stormwater utility fee  
6 even if the property owner has authorized the local unit of  
7 government to bill stormwater utility fees to an occupant of the  
8 property other than the owner.

9       Sec. 16. This act does not expand existing authority of local  
10 units of government.

11       Enacting section 1. It is the intent of the legislature that  
12 the senate or house of representatives request from the supreme  
13 court by resolution, pursuant to section 8 of article III of the  
14 state constitution of 1963, an opinion on the constitutionality of  
15 this act if the governor has not already requested an opinion.

16       Enacting section 2. This act takes effect when the supreme  
17 court issues its opinion on the constitutionality of this act in  
18 response to a request described in enacting section 1 or 60 days  
19 after the supreme court declines to issue an opinion on the  
20 constitutionality of this act.