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BILL ANALYSIS

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Senate Bill 660 (Substitute S-1)
Sponsor: Senator Rosemary Bayer
Committee: Local Government

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INTRODUCTION

The bill would enact the "Stormwater Management Utility Act" to allow a local unit of government to create a stormwater management utility by adopting a stormwater management plan and a stormwater management utility fee ordinance. The plan would have to include details about the utility's service area and the method for calculating the fee, among other things. The fee ordinance would create a fee for residents that received stormwater management services, and the fee would have to be proportionate to a resident's use based on methods generally accepted by stormwater management professionals.

In addition, the fee ordinance would have to provide procedures for the reduction or elimination of the fee according to the owner's use of the utility's service. The burden would be on the property owner to prove that the owner's property relied less upon the stormwater management system than the utility claimed. If a property owner disagreed with the utility's determination, the owner could appeal the determination to an appeals board that the bill would require a utility to create. If the property owner disagreed with the determination of the appeals board, the owner could file an appeal with the circuit court in the county in which the property was located.

The bill would take effect 90 days after its enactment.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local units of government and no fiscal impact on the State. The bill would allow local units of government to collect a new stormwater management utility fee to cover the costs of a stormwater management utility. The bill would add costs to local units of government by codifying the requirement for at least one public hearing, although the cost of a meeting would differ between local units of government. An appeals board also would have to be established that would raise costs to local units of government. In addition, the bill also could increase local court costs, as property owners could file to appeal the appeal board's decision with their circuit court. The fees could or could not cover the entire cost of the stormwater management utility, which could lead to a negative or positive fiscal impact on the local government unit; however, as intended, the costs would be fully covered by the fee, resulting in no fiscal impact to the local government unit.

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CONTENT

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

- Allow a local unit of government to create a stormwater management utility.
- Prescribe requirements for a stormwater management plan, including requirements to hold at least one public hearing about the plan and to post notice of the hearing.
- Allow a local unit of government to adopt a stormwater utility fee ordinance and prescribe requirements for the use of a stormwater management utility fee.
- Require a local unit of government that created a stormwater utility to provide procedures for the reduction or elimination of the stormwater management utility fee for a property whose owner could prove a reduction or elimination of reliance on the stormwater management system.
- Specify that each property owner would have the burden of demonstrating that the stormwater management utility fee reduction or elimination was justified for that property.
- Require a local unit of government that created a stormwater utility to establish an appeals board and provide procedures for appeals of any stormwater management utility fee charged or determined under the bill.
- Prescribe procedures for the appeals process, including that property owners could appeal a determination of the appeals board to the county circuit court.
- Require a stormwater management utility that established a stormwater management utility fee to deposit those fees into a stormwater enterprise fund.
- Prescribe requirements for the creation and use of a stormwater enterprise fund.
- Specify that the bill would be construed as cumulative authority for the exercise of the powers granted to a local unit of government and would not repeal any existing laws or limit or preempt any existing powers or authorities of a local unit of government.

Creation of a Stormwater Management Utility

The bill would allow a local unit of government to create a stormwater management utility and adopt a stormwater management utility fee. "Stormwater" would mean stormwater, rainwater, snowmelt, or other surface water runoff or drainage.

"Local unit of government" would mean a city, village, township, county, or authority established by law. "Stormwater management utility" would mean a system created under the bill through which a local unit of government provides stormwater management services in accordance with a stormwater management plan. "Stormwater management services" would mean one or more of the following:

- The receipt, acceptance, conveyance, transport, storage, treatment, disposal, or regulation of the volume or rate of flow of stormwater through a stormwater management system from a property for purposes of flood control or public health, safety, or welfare.
- The receipt, acceptance, conveyance, transport, storage, treatment, disposal, or regulation of stormwater for the purpose of contributing to, improving, attaining, or maintaining water quality standards, including stormwater treatment, pollution prevention activities, and compliance with local, State, and Federal laws, regulations, or permits to reduce, control, or treat pollutants transported from property into a stormwater management system.

"Stormwater management system" would mean facilities that are owned, operated, designed, maintained, or used by a local unit of government within a set geographical area for the

purpose of providing stormwater management services under the bill. "Facilities" would mean all real and tangible personal property that comprises a stormwater management system, including the land; buildings; basins; pipes; drains; pump stations; outfalls; storage facilities; structures; fixtures such as screens, meters, and control gates; improvements; easements; access rights; rights of way; permits; licenses; leases; machinery; equipment; vehicles; office equipment; furniture; software; hardware; security systems; communications systems; nature-based solutions that use or mimic natural systems to manage stormwater runoff; and other information technology systems.

A local unit of government that created a stormwater management utility under the bill would have to adopt a stormwater management plan by resolution and a stormwater management utility fee ordinance.

Stormwater Management Plan

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

- A designated period of time of five years or more within which the local unit of government would have to review and update the plan as necessary.
- The service area of the stormwater management utility.
- A general description of the stormwater management services that would be provided by the stormwater management utility.
- A determination of the properties that would be subject to a stormwater management utility fee, a description of the process and method used to make that determination, and the process and method for determining the addition or subtraction of properties that would be subject to stormwater management utility fees.
- The method of calculating the stormwater management utility fee.
- A description of how a property owner could obtain a reduction or elimination of a stormwater management utility fee.
- A description of the process by which a property owner could appeal the amount of a stormwater management utility fee.
- Any other information that the local unit of government determined was relevant.

Before adopting a proposed plan or an amendment to an existing plan under the bill, the local unit of government would have to hold at least one public hearing on the proposed plan or amendments to an existing plan. The local unit of government would have to provide notice of the date, time, and location of the public hearing and the times and locations where a physical copy of the proposed plan or amendments to an existing plan could be reviewed by the public. The notice would have to contain a statement that the purpose of the public hearing was to present and receive public comment on a proposed plan or amendments to an existing plan. Notice would have to be provided using one of the following methods:

- By publication, at least once, in a newspaper of general circulation in the area of the local unit of government.
- By posting a copy of the notice at the principal office of the local unit of government, and any other locations considered appropriate by the local unit of government, for at least 30 days before the date of the public hearing.
- If the local unit of government maintained a website that was accessible to the public, by posting the notice on the website for 30 days or more before the date of the public hearing.

Stormwater Management Utility Fee

A stormwater management utility could establish and charge a stormwater management utility fee for the use of a stormwater management system and to recover all the costs of

providing stormwater management services, including operation, maintenance, administration, capital, or other related costs.

A proportional stormwater management utility fee could be based on one or more methods generally accepted by licensed professional civil or environmental engineers, financial consultants familiar with municipal utility rate-setting practices, or regional or national professional groups associated with stormwater experts, such as the American Water Works Association, American Society of Civil Engineers, Water Environment Federation, or other similar organizations.

A stormwater management utility fee adopted under the bill would be presumed valid.

"Licensed professional civil or environmental engineer" would mean a professional engineer that is licensed under Article 20 of the Occupational Code, or a professional engineer that is licensed in another state.

Stormwater Management Utility Fee Ordinance

A stormwater management utility fee ordinance that established a stormwater management utility fee would have to provide procedures for the reduction or elimination of the stormwater management utility 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, eliminated runoff, or limited pollutant loadings of stormwater entering the stormwater management system.

Each property owner would have the burden of demonstrating that the stormwater management utility fee reduction or elimination was justified for that property, using methods that were reasonably accurate considering available technology.

A stormwater management utility fee ordinance adopted under the bill would have to establish all the following:

- A statement of billing cycles and due dates for stormwater management utility fees and remedies for delinquent stormwater management utility fees, including the assessment of interest charges and late fees.
- A provision that delinquent stormwater management utility fees, including interest charges and late fees imposed by the bill, would constitute a lien on any of the owner's property if the stormwater management utility fees, including interest charges and late fees imposed by the bill, remained delinquent for three months or more.
- Any other provisions determined necessary by the local unit of government.

The bill specifies that the delinquent stormwater management utility fees, including interest charges and late fees, could be certified to the proper tax authority assessing officer or agency to be entered on the next tax roll against the property to which stormwater management services had been provided. The delinquent amount of the lien would be collected in the same manner as taxes assessed on the tax roll. The time and manner of certification and other details regarding the collection of the delinquent amount and enforcement of the lien would have to be prescribed according to the bill. A lien of this kind would be effective and would have priority over all other liens and encumbrances except those filed or recorded before the date of the judgment only if notice of the lien were filed or recorded as required by State or Federal law. A lien of this kind would be terminated in accordance with the procedures required by State or Federal law within 14 days after the delinquent amount was paid.

A local unit of government could collect a delinquent stormwater management utility fee by any method authorized by law.

A partial payment of delinquent stormwater management utility fees would have to be applied to the oldest delinquent fees, and remaining fees could continue to accrue interest and late fees.

Stormwater Management Utility Fee Appeals Process

A stormwater management utility fee ordinance adopted under the bill would have to establish an appeals board and provide procedures for appeals of any stormwater management utility fee charged or determined under the bill. The appeals procedures would have to include, at a minimum, all the following:

- Any property owner liable for a stormwater management utility fee could appeal the determination that the property utilized the stormwater management system or the amount of a stormwater management utility fee, including a determination on a reduction or the elimination of the stormwater management utility fee; an appeal would have to be based on the quantity or quality of stormwater deposited into the stormwater management utility system, the reductions established, the reductions allocated, or any other matter relating to the determination or validity of the fee.
- An appeal of a stormwater management utility fee would have to be brought in accordance with the stormwater management utility's prescribed process within six months of the date the challenged stormwater management utility fee was first billed.
- To prevail in an appeal of a stormwater management utility fee, the appellant would have to demonstrate, in accordance with the requirements of the stormwater management plan, that the property did not use the stormwater management system to the extent determined by the stormwater management utility in the calculation of that property's stormwater management utility fee from the applicable appeal date to the date that the appeal was resolved or that there was a mathematical error in the calculation.
- The sole remedy for a property owner that prevailed in an appeal of a stormwater management utility fee would be a recalculation of the fee that was subject to the appeal; if the recalculated fee were less than the amount of the original fee that was subject to the appeal, the property owner would have to receive a refund or credit for any difference that was paid to the stormwater management utility from the appeal date to the date the appeal was resolved.
- If, in an appeal of a stormwater management utility fee, the appeals board found that the requirements above had not been met, that finding would be conclusive until the property was modified to either increase or decrease the utilization of the system in a manner that made the property owner eligible for a reduction or elimination of the fee.

The property owner that filed an appeal would have the burden of providing the appeals board with information necessary to support the appeal. A property owner could file an appeal of a determination of the appeals board with the circuit court in the county in which the owner's property was located. Notwithstanding any other provision of law, a property owner would have to continue to pay an assessed stormwater management utility fee unless otherwise determined by a stormwater management utility.

The bill would allow the stormwater management utility to provide a refund to a property owner for the difference that was paid if the property owner no longer owned the property and provided proof that the amount of the stormwater management utility fee that was subject to the appeal was paid, or could credit the amount subject to the appeal to the account attributed to the property.

Stormwater Enterprise Fund

A stormwater management utility that established a stormwater management utility fee would have to establish a stormwater enterprise fund. All stormwater management utility fees collected by a stormwater management utility would have to be deposited into the fund. The treasurer of the local unit of government could receive money or other assets from any other source for deposit into the fund. Money in the fund could be invested in accordance with applicable law or policies established by the local unit of government, as applicable. The treasurer would have to credit the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the general fund of the local unit of government.

The treasurer of the local unit of government would have to spend money from the fund only for the purposes of defraying the costs of the stormwater management utility.

If the local unit of government maintained a website that was accessible to the public, the local unit of government would have to post on its website the most recent annual comprehensive financial report of the local unit of government that included the information regarding the fund.

Exemptions

The bill specifies that it would be construed as cumulative authority for the exercise of the powers granted to a local unit of government and would not repeal any existing laws or limit or preempt any existing powers or authorities of a local unit of government. The bill would not require a local unit of government with a combined sewer system or separated storm sewer system to establish a stormwater management utility, or to otherwise comply with the bill to assess a stormwater fee. The bill would apply only to a stormwater management utility created by a local government under the bill after its effective date.

BACKGROUND

In 1998, the Michigan Supreme Court case *Bolt v. City of Lansing* found that Lansing's stormwater service charge was actually a disguised tax imposed in violation of the Headlee Amendment to the Michigan Constitution, which prohibits a local unit of government from levying a new tax without the approval of a majority of the qualified electors of the unit of local government.¹ The City of Lansing adopted an ordinance creating a storm water enterprise fund to finance the separation of a remaining portion of the City's combined sanitary and storm sewers.² Under the ordinance, the fund would bear a portion of the costs of a combined sewer overflow control program that was intended to comply with Federal Clean Water Act standards. The City created an annual storm water service charge to pay for part of this program. This fee was "imposed on each parcel of real property located in the City using a formula that attempt[ed] to roughly estimate each parcel's storm water runoff".³ When Alexander Bolt received a \$59.83 charge for his 5,400-square foot property, he sued, successfully arguing that the fee imposed was a tax, not a user fee, and therefore violated the Michigan Constitution.

¹ Michigan Municipal League, Dickinson Wright PLLC, "FACT SHEET: Bolt Refresher", December 2017.

² *Id.*

³ *Bolt v. City of Lansing*, 459 Mich. 152 (1998).

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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.