

Understanding Michigan's 'Stormwater Utility Act'

Current Legal Financial Constraints and Prospects for Improved Stormwater Management

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Stormwater Management (Flooding/Pollution Control): A Basic Function of Local Government

Federal/state stormwater regulations, yet no funding for compliance

3% of land in USA is urban area	13% - 18% of water pollution issues are caused by urban stormwater	700% - 1,000% is estimated cost (\$) elevation from 'running sewers to failure'
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More heavy storm events and urbanization with impervious surfaces

Why does this matter?

- Stormwater utilities are the most stable, dedicated, efficient, equitable revenue source for financing municipal stormwater management.
- Michigan's stormwater utility adoption rate is the lowest relative to its neighboring states as a result of the stifling legal constraints.

Would the Bill work?

Michigan's 'Stormwater Utility Act' advises local governments on how to navigate the legal constraints, encouraging adoption of more stormwater utilities.

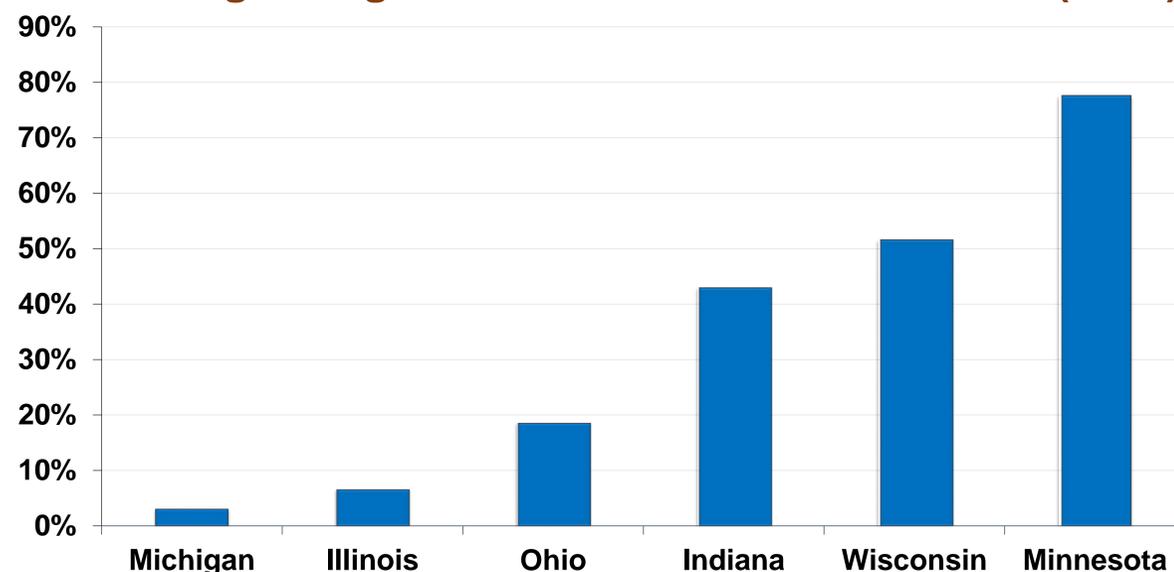
Michigan's Stifling Legal Constraints

- Headlee Amendment (1978) of the Michigan Constitution Section 31 requires a voter approval of any local tax
- Bolt (1998) / Jackson (2013) stormwater utility court cases Affirming 3-part test for a restrictive definition of 'Fee' vs. 'Tax'

Measuring the Impact of Legal Constraints

$$\text{Stormwater Utility Adoption Rate} = \frac{\text{Number of Stormwater Utilities Adopted}}{\text{Number of Stormwater Discharge Permittees}}$$

Michigan Lags Behind in Stormwater Utilities (2017)



Hypothetical Trial Run in Michigan Courts

**"Voluntariness":
Ability to Refuse
or Limit Use**

Property must
utilize stormwater
system and
impose a net cost

Majority court
opinions have not
been swayed by
credit systems

Likely No

**Regulatory Purpose,
Not Revenue Raising**

Shall accomplish
a prescribed
regulatory
purpose in Bill

Cannot include
work financed by
revenue from any
other source

Perhaps Yes

**Proportionality to
Costs/Benefits
Conferred**

Correlate fees to
costs and define
benefits with
specificity

Many details left
to discretion of
local government

Likely Yes

Takeaway & Recommendation

- Bill is limited in effectiveness when one considers key majority court opinions.
- Unclear how future courts will rule, may resemble Bolt (1998) minority opinion.
- 'In-Totality' in Bolt (1998) / Graham (1999) suggests '2 for 3' may be adequate.
- Despite shortcomings, Bill should be enacted – it is the only pragmatic option.