

# **Storm Water Utility Legislation (HB 5991) Bill Overview**

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*Jim Nash*

# Why is this legislation important?

Rainwater falls onto property...



What do we do with the storm water runoff?

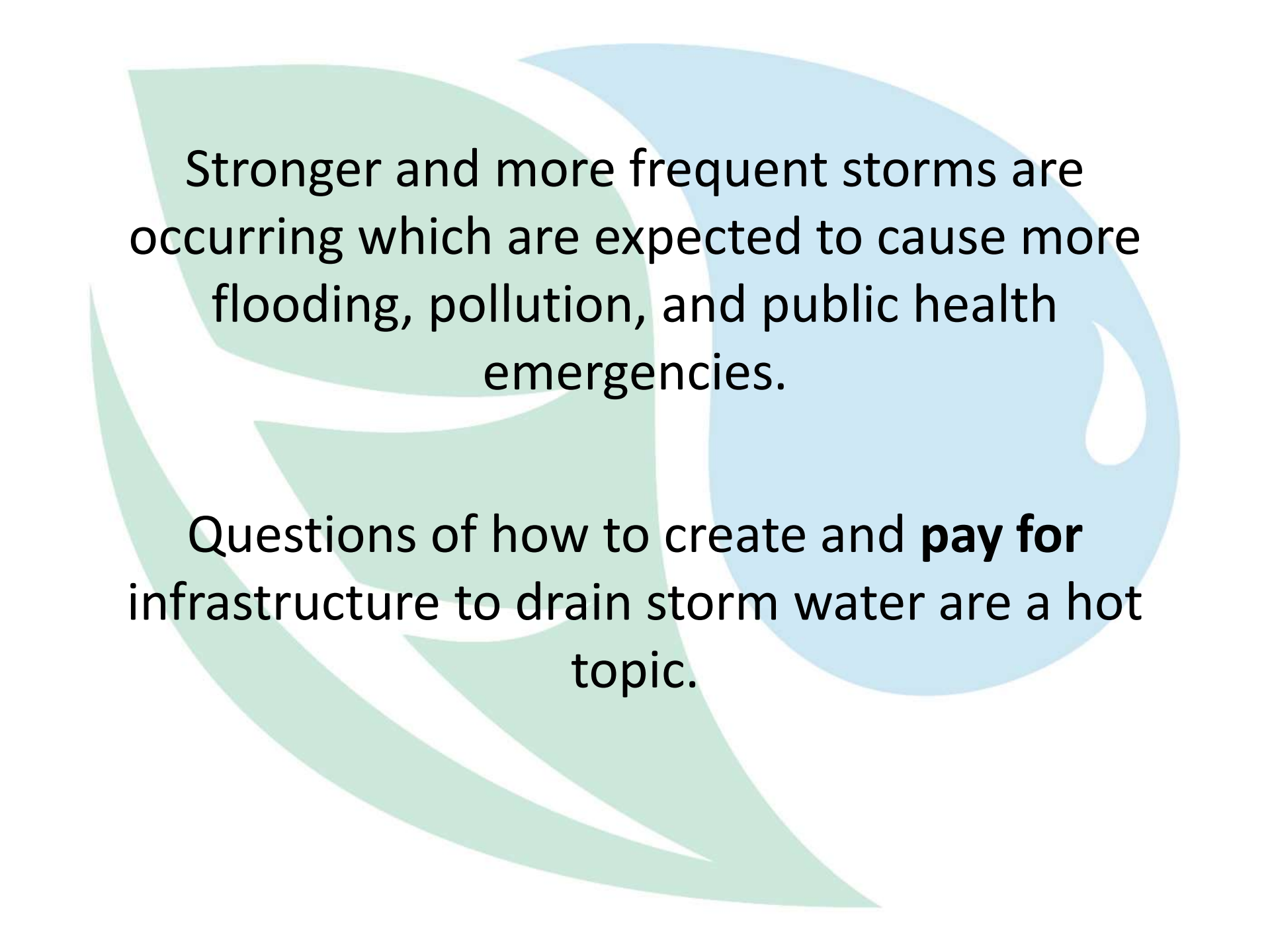
Runoff is diverted through a storm water system to mitigate flooding (among other things).

This invokes a **public service!**



The regulatory purpose of that public service may be different across the state, but the **fundamental problem** of what to do with runoff **remains the same.**





Stronger and more frequent storms are occurring which are expected to cause more flooding, pollution, and public health emergencies.

Questions of how to create and **pay for** infrastructure to drain storm water are a hot topic.



## Fair and Transparent

- Uniform standards of paying for drainage projects
- Encourage investment in green infrastructure
- Collect fees rather than property taxes





# *Bolt v. Lansing*

*459 Mich 152; 587 NW2d 264 (1998)*

In 1998, the Michigan Supreme Court issued an opinion detailing the difference between a tax and a fee under Michigan's constitution. This court case involved the city's storm water charge to its residents.

# *Bolt* Requirements

In order for a fee not to be deemed an illegal tax, fees must meet three requirements:

1. Serve a **regulatory purpose** (as opposed to revenue-raising)
2. Be **proportionate** to the necessary costs of service
3. Be **voluntary** (must be able to refuse or limit use of the service)





# House Bill 5991

- Storm Water Advisory Committee and Drafting Subcommittee
- Introduced by Representative Michael McCready (Birmingham)
- Referred to Committee on Local Government



# Steps to Create a Storm Water Utility

1. Notice of intent to prepare plan
2. Prepare storm water management plan
3. Notice of public hearing to adopt plan
4. Resolution adopting plan
5. Prepare ordinance consistent with plan
6. Adopt ordinance

# Regulatory Purpose

HB 5991 - Section 3

- Protect against water pollution
- Protect against flooding
- Enable property owners to fulfill legal obligations regarding development of property and storm water

# Storm Water Management Plan

HB 5991 – Section 4

- Sets forth the requirements for everything that must be included in the plan
  - Examples: planning period, geographic limits, type of services, projected costs, impervious area, etc.
- Sets forth the required notices and notice methods

# Enabling the Storm Water Fee

HB 5991 – Section 5

- A fee may be charged to pay for the storm water management program.
- Ordinance must include method(s) used to determine the fee
- Fee must be proportionate to the costs
- May define rate categories

# 1-Time Storm Water Fee

HB 5991 – Section 6

- The utility may charge a 1-time fee for connection to the storm water system.
- Sets forth the method of calculation for such 1-time fee.

# Storm Water Utility Fee

HB 5991 – Section 7

- The utility may assess a fee for use of the storm water system.
- The method must be based on runoff.
- Lists available calculation methods for **quantity** of runoff
- Fee for **quality** of runoff must be proportionate



# Storm Water Utility Fund

HB 5991 – Section 8

- Must establish a fund
- Details how money from the fund may be expended
- Audit report must be posted online for public view

# Voluntariness of Fee

HB 5991 – Section 9

- The fee must be able to be reduced or eliminated.
  - Modifications or improvements to the property may reduce the rate or volume of or eliminate runoff or pollutant loadings in excess of natural levels of storm water entering the storm water system.
- A reduction must be proportionate to the cost.

# Presumption regarding Voluntariness

HB 5991 - Section 10

- Property is not subject to a fee unless demonstrated:
  - Property uses the system, and
  - Use creates a cost to the system
- Property owner has opportunity to challenge finding of system use and cost

# Administration of Utility

HB 5991 – Section 11

- Ordinance must set forth the designation of administrators and duties
- Set forth policies and procedures
  - Billing, fees, disputes, type and manner of service, procedures for fee reductions, appeals, and enforcement policies

# Unpaid Fees

HB 5991 – Section 12

- Ordinance must set forth and establish remedies for unpaid fees
- Unpaid fees may be collected by any method authorized by law.

# Appeals

HB 5991 – Section 13

- Ordinance must establish appeals policies
- Procedure for appeals
- Establish a storm water utility appeals board
  - Appointed by local unit of government
  - Consist of three members, two of whom shall be licensed P.E.'s not employed by the local unit of government
- Sole remedy is prospective correct recalculation



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