

## **HB 4100: Stormwater Utility FAQs**

### **1) Why is infrastructure investment needed to manage what is a part of nature: rainfall?**

Quite simply, when rainfall hits the ground it has to go somewhere. In rural areas or areas with low density development, there may be enough land area to absorb the rainwater. But in developed areas where most residents and businesses are located, a public service demand is invoked once rainfall hits the ground. Why?

First and foremost, rainwater must be removed from private property **to mitigate flooding** and its resulting damages.

Second, our **economic prosperity requires reliable mobility** meaning our roads must be free from flooding as often as feasible.

Third, in some areas, **water contamination problems** often result from pollutants accumulated in rainfall runoff that is then deposited in our rivers and lakes. *Pure Michigan* is about using water as a magnet for economic activity. Contaminated water assets hinder our prosperity.

In short, the issue is NOT whether rainfall infrastructure is needed for all the benefits it provides. The policy issue is **deciding on the choices Michigan views as appropriate** for investing in a service essential to protecting property and supporting prosperity.

### **2) Is the State being asked to provide funding?**

**No.** Local service providers realize that sufficient, sustainable funding will not come from the state. Maintaining, operating, and replacing infrastructure needed to manage rainfall will be a **local responsibility**.

### **3) Why is legislation needed?**

There are two choices for funding public services under Michigan's Constitution: taxes or fees.

Existing Michigan law enables the option of a utility (fees) to manage rainfall. Yet, there is only a handful of rainfall utilities in Michigan compared to more than 1,500 in the country! Neighboring Ohio has more than 100 of them.

In 1998, Michigan's Supreme Court established three criteria for distinguishing a tax from a fee based on the State's Constitution in a case known as the "*Bolt Decision*." **Since that decision, a great deal of confusion continues over how to structure a rainfall utility that complies with the Court's criteria.**

Opinions on how to meet the test of the Court, formal and informal, are many and varied. Communities have tried and failed resulting in lost opportunity for choosing what many view as the most viable option for funding a utility service: a utility.

But, the problem is much larger than communities unsuccessfully attempting to form separate utilities to fund rainfall services. Many communities where rainfall and sewage are served by a single system are being sued. The allegation is their rate structure is out of compliance with the Court's criteria. **Communities are settling lawsuits and paying millions of dollars.** Ironically, these settlements have to be paid for one way or another: with local taxes or fees!

Absent policy action by the Michigan legislature, **the cycle of lawsuits and damage payments will continue and infrastructure needs will go unaddressed.** And, another major failure will eventually happen resulting in a public crisis and finger pointing. Nobody benefits in the status quo ... except for the lawyers who win the lawsuits.

We can solve the problem. **The language in HB 4100 has been very carefully developed wholly focused on specifically defining how to form a rainfall utility that meets the three-part test of Michigan Supreme Court.**

**4) Will passage of HB 4100 require the formation of utilities by local government?**

Absolutely not. **The choice on how to invest in rainfall infrastructure is local, and case by case.** It will remain so after legislative action. The choice is to invest using taxes, using fees, or to neglect investment until a crisis occurs.

While the choice is local, it is **important to recognize that utilities represent a much fairer choice.** Service use has nothing to do with property value. Rather, it is about how much rainfall must be conveyed off property to protect it. For example, billing for electricity is based on usage, not property value.

Currently, a choice to use fees comes with an unnecessarily high risk of facing legal action and paying defense costs and settlement fees. **Making the fairest choice a viable option requires action by the legislature.**

HB 4100 lays out a single framework for forming rainfall utilities designed to comply with the test of the Court. Any local entity choosing this option must follow the specific framework in the law. **Such a single consistent framework is favored by many in the business community.**

**5) Who is subject to charges in an area where a rainwater utility is put in place?**

The Court is clear that charges must be proportional to use. Unlike taxes, exemptions from fees are not possible because they result in disproportionately higher costs to all the other users.

However, the flip side is a critical element of **fairness** to the public. **Actions by a user that lessen costs to the service provider MUST result in a reduced fee.**