

## Stormwater Management Utilities

April 2024



### RECAP:

## BOLT V. LANSING

The Bolt decision does not prohibit usage-based utility charges. However, such charges must reflect the actual costs of use, metered with relative precision, including a capital investment component

User fees should reflect the actual cost of use of a service provided, and such fees should be borne by those who stand to benefit from the service financed with such fees

User fees should fully serve the regulatory purpose for which they are intended

The Bolt decision gave rise to a many cases with varied treatment of *user fees* & *taxes*

User fees should be imposed in connection with a voluntary service, for those who use and benefit from the service

Billing methods for user fees should be consistent with methods used for other usage-based services

### CLIMATE CHANGE MITIGATION:

## Revolutionizing Stormwater Management through Stormwater Utilities and Green Infrastructure

**SUMMARY:** Over the past few decades, Michigan has faced an increase in unpredictable storm events. Unfortunately, our **existing stormwater infrastructure is not built to handle the frequency and intensity of these storms, creating problems with water runoff and flooding.**

This, in turn, has led to problems such as water pollution, algal blooms, beach closures, threats to public health, and increased infrastructure costs to taxpayers. Polluted runoff also contaminates the environment and endangers aquatic life. **Stormwater utilities can be a part of the solution, by enabling communities to fund modern, green stormwater infrastructure and protect the environment and public health.**

## Key Recommendations

- ✓ **Legislation that effectively** plans for future needs, secures necessary financing, implements sustainable solutions, **encourages green infrastructure, and promotes stormwater utilities.**
- ✓ **Legislation that is Bolt test compliant**, per the Headlee Amendment to the Michigan Constitution, by ensuring user fees serve a regulatory purpose rather than a revenue-raising purpose, are proportionate to the necessary costs of the service, and are voluntary in nature; **property owners can refuse or limit their use of the service.**
- ✓ Legislators, utility companies, and community organizations collaborate to find fair, equitable, and sustainable solutions.



# FLOW

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## The Problem

In 1998, the Michigan Supreme Court case *Bolt v. Lansing* established that the Lansing stormwater service charge was an illegal tax instead of a "user fee." This ruling had a significant chilling effect on the progress of stormwater utilities statewide. According to the *Western Kentucky University Stormwater Utility Survey*, **Michigan has a mere 12 stormwater utilities**, compared to Wisconsin operating over 200, and Minnesota, Indiana, and Ohio each operating over 100 utilities. This unfortunate deadlock has left Michigan vulnerable to climate change risks and impacts without adequate funding sources for managing stormwater and flooding risks in small to mid-sized communities.

## Where We Are Now

The Clean Water Act of 1972 legally requires municipalities to take necessary measures to minimize water pollution from sewer discharges and surface runoff. Despite this mandate, **water pollution due to stormwater runoff remains a serious concern for Michigan residents.** The discharge of untreated sewage and stormwater runoff from urban areas into Michigan's water bodies has led to significant environmental degradation, threatening the health and well-being of aquatic life, and **causing severe health issues for people and communities** who rely on these water resources.

### Predicted Change in Days with more than 1" of Precipitation

Heavy precipitation events are expected to increase in the areas shaded in blue

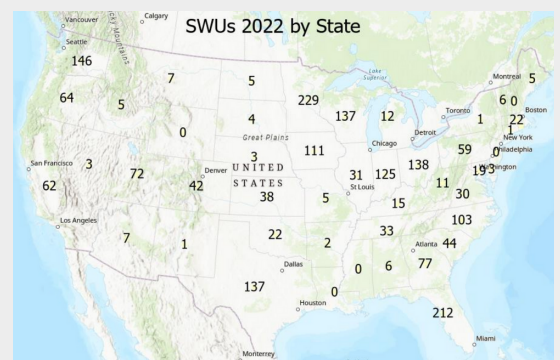
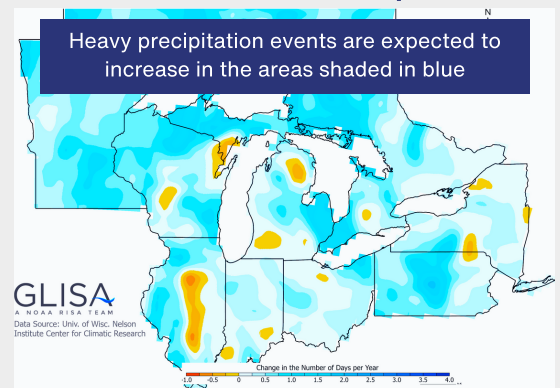


Figure 2. Number of stormwater utilities by state.

## Solution

FLOW is working to develop a legislative solution to enable small and mid-sized communities in Michigan to legally establish stormwater utilities and secure a reliable source of funding for this crucial infrastructure. **Stormwater utilities are essential for managing and mitigating the negative impacts of stormwater runoff, including flood damage, erosion, and pollution.** By granting legal authority and allocating funding mechanisms to utilities, communities can effectively enhance their ability to construct more resilient stormwater management systems. **These improvements will provide long-term benefits** to residents, businesses, and our environment.

<sup>1</sup> Michigan Department of Environment, Great Lakes, and Energy, "Fiscal Year 2020 State Environmental Cleanup Programs Report", <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Reports/Boilerplate/Report-FY2020-Consolidated.pdf?rev=81fdecaf4f0b74b89a6965bb131015fff&hash=AAB42ED12D99875C418FEDE8EA914307>, accessed April 9, 2024.