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*Jim Nash*

# Stormwater Management: The Do's and Don'ts of Creating a Stormwater Utility

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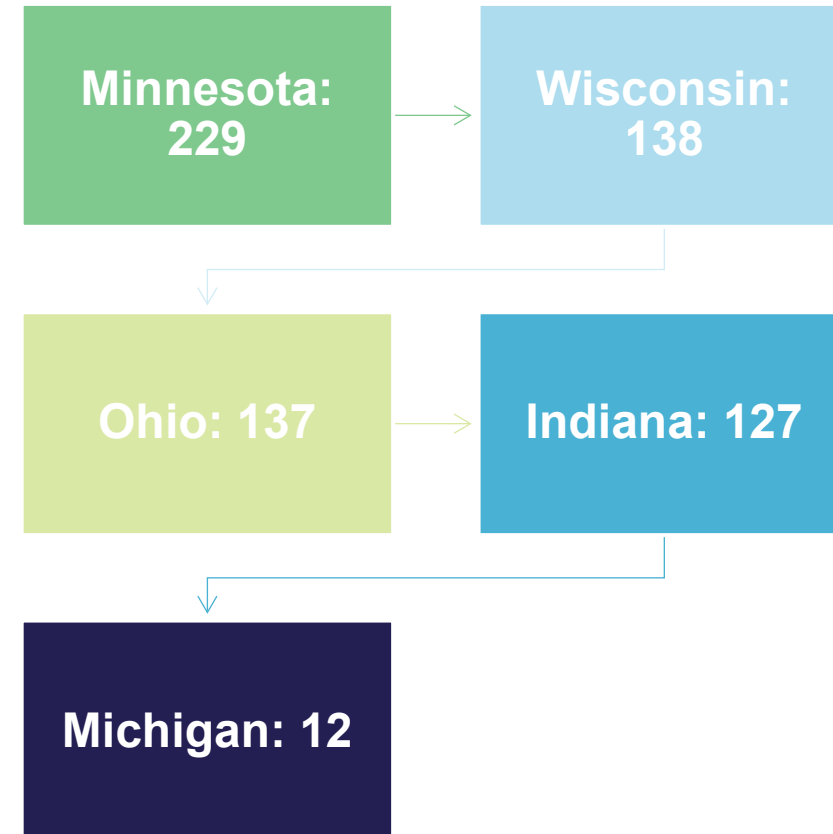


# Stormwater Utilities

- Formal approach to planning, funding, and managing stormwater infrastructure.
- Administered and funded separately from general funds, ensuring a dedicated revenue source for stormwater management.
- Funds used **only** for the cost of municipal services directly related to the management and treatment of stormwater.
- 2,500-3,000+ stormwater utilities in all 50 states, plus D.C.\*



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\*Sources: Western Kentucky University Stormwater Utility Survey 2023; University of North Carolina, School of Government Environmental Finance Center, *The Geography of Stormwater Utilities*



# Constitutional Concerns



## The Headlee Amendment (Michigan Constitution, 1978)

**What it is:** A constitutional amendment passed during a wave of taxpayer backlash against rising local government taxes in the late 1970s.

**Purpose:** To limit the ability of local governments to raise revenue through new taxes without voter approval.

### Key provisions:

- Requires **voter approval** for new local taxes or increases in existing tax rates.
- Limits growth in local government revenue to inflation plus population growth.
- Provides taxpayers legal recourse to challenge unauthorized taxes.



# What's *Bolt* got to do with it?

**Fee-funded stormwater utilities are lawful and constitutional provided they meet the *Bolt* criteria.**



1. Regulatory

"A user fee must serve a regulatory purpose rather than a revenue-raising purpose."



2. Proportionate

"User fees must be proportionate to the necessary costs of the service."

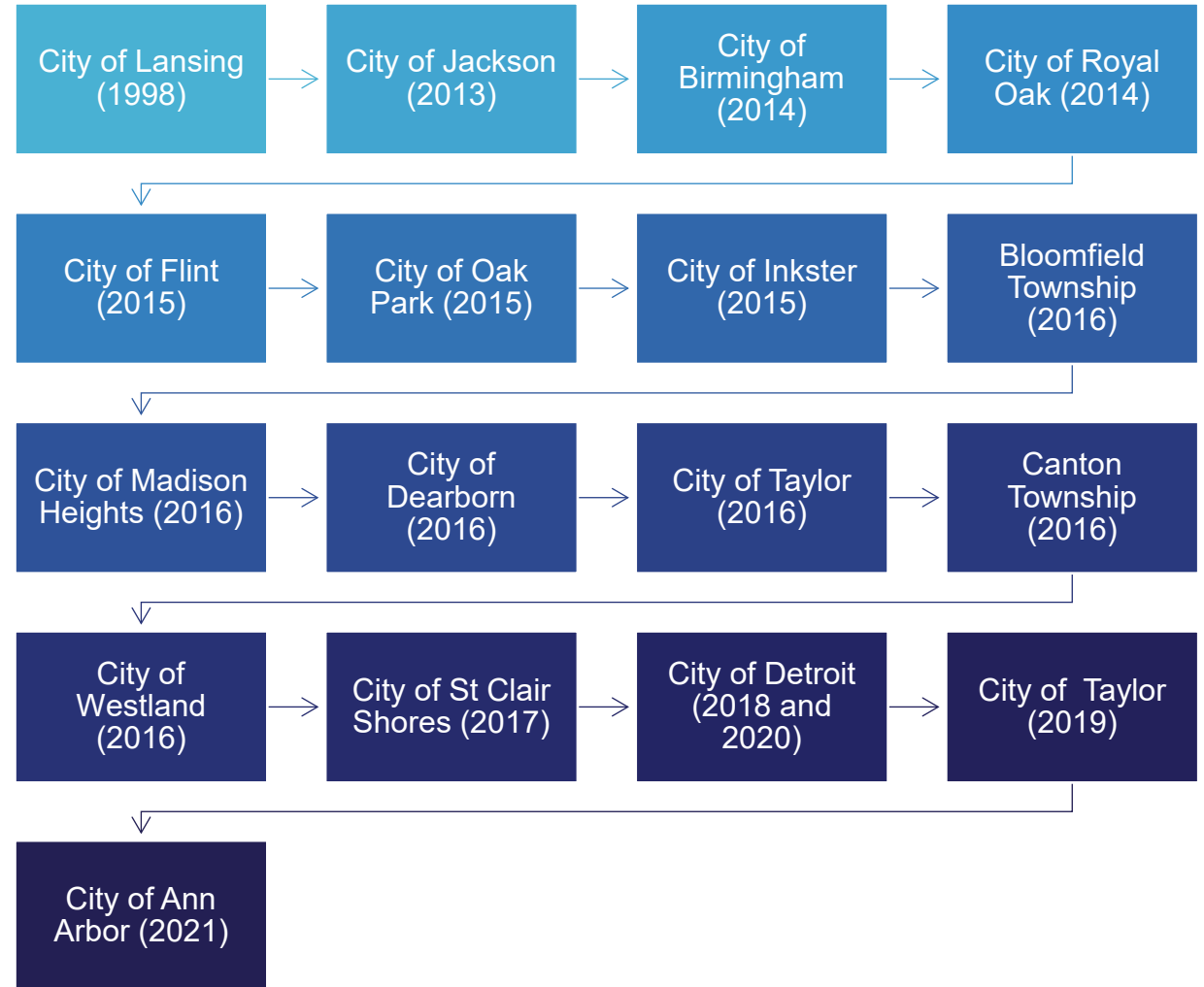


3. Voluntary

"A user fee is voluntary in that users are able to refuse or limit their use of the commodity or service."

# Post *Bolt* Landscape

- Since the *Bolt* decision, the Headlee Amendment has been used to challenge a variety of government fees, including water, sewer, stormwater charges, and many others.
- Post-*Bolt* decisions reflected variability in how proportionality, regulatory purpose, and voluntariness were evaluated.
- Bolt-related litigation drove years of legal uncertainty and extensive court activity.
- But recent judicial trends indicate increasing predictability, deceleration in new cases, and fewer successful challenges.



# Case Study – The City of Ann Arbor



*Platt Convenience, Inc. v City  
of Ann Arbor, No. 359013*  
(Mich. App. Oct 4, 2024)  
(per curiam published opinion)



# Case Study – The City of Detroit



***Binns v City of Detroit, No. 337609***  
and  
***DAART v City of Detroit, No. 339176***  
(consolidated cases)  
(Mich. Ct. of App. Nov. 14, 2024)  
(per curiam unpublished opinion)



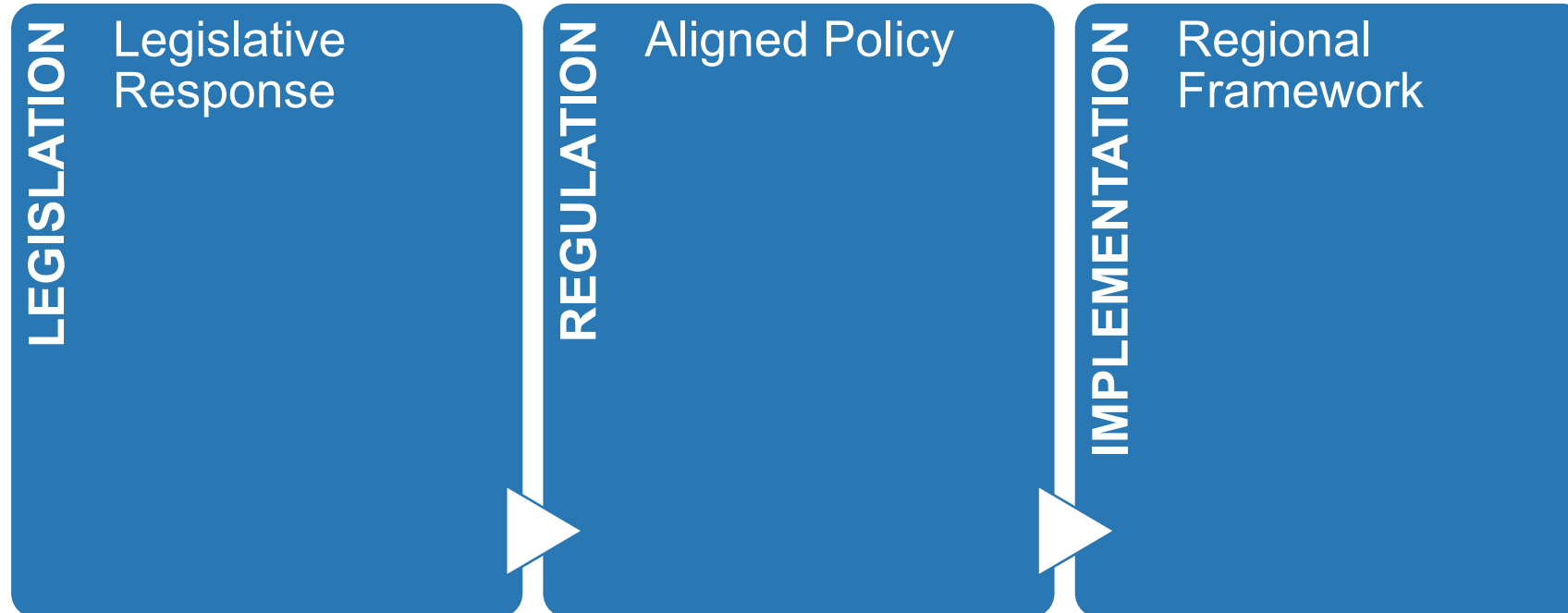
# Case Study – The City of Jackson



*Jackson County v City of Jackson*  
*302 Mich App 90 (2013)*



# Stabilizing Stormwater Utilities



# Legislative Clarification

## Stormwater Management Utility Act



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### No Mandates

Establishing a utility is optional for local units of government.

### No State Funding

Like other utilities (water, sewer, electricity) customers pay a user fee based on usage.

### No Uncertainty

Provides step-by-step guidance for municipalities to establish a utility that satisfies *Bolt*.

### No Taxes

User fees deposited into an enterprise fund to invest in infrastructure for flooding and to comply with pollution control permits.

**Senate Bill 0660'2023 & Senate Bill 0441'2025**



# Regulatory Alignment

## *Support for Stormwater Utilities*

- In general, EGLE supports tools and policies that promote sustainable and equitable infrastructure investment.
  - Stormwater Utilities are a local funding tool, not a regulatory program.
  - May help local governments comply with stormwater permit obligations.
  - Strengthens financial capacity for local systems.
  - Improves ability to access Clean Water State Revolving Fund Loans.



EGLE

# Regional Implementation

## *SEMCOG's Stormwater Utility Workbook*



- SEMCOG is working on a Stormwater Utility Workbook to provide a Michigan-specific and practical resource for communities to evaluate whether a stormwater utility is appropriate and, if so, how to proceed.
- The workbook is intended to address legal, engineering, and administrative considerations and provide step-by-step guidance.
- Goal is to help communities move forward with more confidence.



# Tips for Developing a Defensible Stormwater Utility



DO	DON'T
Tie fees directly to stormwater management in infrastructure and services	Use fees as general fund revenue substitutes or generators
Establish a clear regulatory purpose	Depend on labels instead of structure
Support rates with a cost-of-service study	Set rates without cost justification
Use rational, engineering-based allocation methods	Ignore proportionality considerations
Dedicate revenue exclusively to stormwater management functions	Comingle revenues with unrelated funds
Provide credits / adjustments where justified	Adopt arbitrary rate structures
Obtain legal and technical guidance	Disregard Bolt factors and related litigation risks
Document your system infrastructure	Fail to have clear records defining your system
Perform a system needs assessment and address in CIP	Refuse to spend time and resources on documenting needs and planning for them



# Common Litigation Triggers



Weak  
Regulatory  
Basis and  
Nexus

Poor Cost  
Justification

Allocation Not  
Proportional

General  
Revenue  
Characteristics

Administrative  
Record Gaps

Overly  
Aggressive Rate  
Structures

Inaccurate  
Statements by  
Government  
Officials

Shortcuts



# Municipal Checklist



- ✓ Define stormwater services and regulatory objectives
- ✓ Conduct cost-of-service / rate study
- ✓ Select defensible allocation methodology
- ✓ Establish dedicated revenue mechanisms
- ✓ Create credit / adjustment framework
- ✓ Build administrative and technical record
- ✓ Coordinate legal and engineering review
- ✓ Implement transparency and governance policies
- ✓ Monitor and periodically update rates



# Contact Information



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