

ASSEMBLY, No. 5790

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 7, 2019

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Permits business entities and nonprofit organizations to adopt certain responsibilities related to stormwater management basins; provides corporation business tax credit for adoption of stormwater management basins in certain watersheds.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning stormwater management basins and
2 supplementing Title 40 of the Revised Statutes and P.L.1945,
3 c.162 (C.54:10A-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. This act shall be known and may be cited as the “Adopt a
9 Stormwater Management Basin Act.”
10

11 2. As used in this act:

12 “Participating entity” means a business entity or nonprofit
13 organization that has entered into a stormwater management basin
14 adoption agreement with a stormwater management agency in
15 accordance with this act.

16 “Qualified watershed” means the respective watersheds of Lake
17 Hopatcong in Morris and Sussex counties, Budd Lake in Morris
18 County, Swartswood Lake in Sussex County, Greenwood Lake in
19 Passaic County, and Lake Musconetcong in Morris and Sussex
20 Counties.

21 “Stormwater management agency” means the State, or any
22 political subdivision thereof, including, but not limited to, any
23 department, county, municipality, commission, utility, or authority,
24 or any agency thereof, that has ownership or control over a
25 stormwater management basin or a site suitable therefor.

26 “Stormwater management basin” means an excavation or
27 embankment and related areas designed to retain stormwater runoff,
28 which may be either a detention or infiltration basin that is normally
29 dry, a retention basin that retains water in a permanent pool, or an
30 area of constructed wetlands that is planted mainly with wetland
31 vegetation.

32 “Stormwater management basin adoption agreement” means an
33 agreement between a stormwater management agency and a
34 business entity or nonprofit organization by which the business
35 entity or nonprofit organization agrees to provide for the
36 construction, improvement, operation, or maintenance of a
37 stormwater management basin over which the stormwater
38 management agency has ownership or control, or to provide a
39 specified amount of funding therefor in a manner prescribed by the
40 agreement, as the case may be.
41

42 3. a. A stormwater management agency that owns or has control
43 over an existing stormwater management basin or a site suitable
44 therefor may enter into a stormwater management basin adoption
45 agreement that imposes no cost on the stormwater management
46 agency except as provided pursuant to section 4 of this act.

47 No stormwater management basin adoption agreement may be
48 entered into unless the participating entity successfully

1 demonstrates to the stormwater management agency that the
2 participating entity is capable of constructing, improving, operating,
3 maintaining, or funding the stormwater management basin, as the
4 case may be, in accordance with the agreed upon terms and
5 conditions and with all State and federal laws, rules, and regulations
6 pertaining to stormwater management. A stormwater management
7 basin adoption agreement shall be for such period as may be agreed
8 upon by the stormwater management agency and the participating
9 entity, and may be terminated by the participating entity upon at
10 least six months' notice to the stormwater management agency, or
11 by the stormwater management agency at any time without prior
12 notice to the participating entity, for any reason, including, but not
13 limited to, failure of the participating entity to comply with any
14 term or condition of the stormwater management basin adoption
15 agreement.

16 b. Nothing in this act shall be deemed to relieve a stormwater
17 management agency of its responsibilities to comply with the
18 conditions and requirements of any permit issued by the
19 Department of Environmental Protection concerning stormwater
20 management.

21

22 4. A stormwater management agency may:

23 a. provide at no cost to a participating entity materials,
24 supplies, or services that the stormwater management agency deems
25 appropriate to assist the participating entity with its responsibilities
26 under the stormwater management basin adoption agreement;

27 b. advertise and promote a stormwater management basin
28 adoption program established by the stormwater management
29 agency pursuant to this act; and

30 c. provide for appropriate public recognition of a participating
31 entity, including, but not limited to:

32 (1) issuance of a certificate of recognition; and

33 (2) authorization for the participating entity to pay for and erect
34 a sign or signs at the applicable stormwater management basin,
35 consistent with any applicable municipal ordinance, indicating the
36 name and address of the participating entity, and that the
37 participating entity has assumed those responsibilities performed
38 pursuant to the stormwater management basin adoption agreement
39 as a public service in accordance with this act. The stormwater
40 management agency shall determine the size, color, style, and
41 location of any such sign or signs that may be erected. A
42 stormwater management agency may pay for a sign or signs erected
43 in accordance with this paragraph if the participating entity is a
44 nonprofit organization.

45

46 5. a. Except as provided in the "New Jersey Tort Claims Act,"
47 N.J.S.59:1-1 et seq., no stormwater management agency, or any
48 employee or agent thereof, may be held liable in any civil action to

1 any person for any injury or damages that may be caused or
2 sustained by any participating entity, or any employee, agent,
3 contractor, member, or volunteer thereof, during the course of, or as
4 a result of, any activity related to the performance of a stormwater
5 management basin adoption agreement.

6 b. As a condition of any stormwater management basin
7 adoption agreement entered into in accordance with this act:

8 (1) a participating entity, and each employee, agent, contractor,
9 member, or volunteer of that participating entity assisting in
10 performance of the stormwater management basin adoption
11 agreement, shall sign a waiver releasing the stormwater
12 management agency and its employees and agents from any civil
13 liability for any injury or damages, except those arising from
14 criminal or willful, wanton, or grossly negligent conduct, that may
15 be sustained by the participating entity, or any employee, agent,
16 contractor, member, or volunteer thereof, as the case may be, during
17 the course of, or as a result of, any activity related to the
18 performance of the stormwater management basin adoption
19 agreement;

20 (2) a participating entity shall agree to indemnify, and if
21 requested by the stormwater management agency, defend, the
22 stormwater management agency and its employees and agents
23 against all claims made by any person for injuries or damages that
24 may be caused or sustained by the participating entity, or any
25 employee, agent, contractor, member, or volunteer thereof, during
26 the course of, or as a result of, any activity related to the
27 performance of a stormwater management basin adoption
28 agreement; and

29 (3) a participating entity shall obtain and retain insurance in an
30 amount sufficient for the purposes set forth in this section.

31

32 6. While performing responsibilities pursuant to a stormwater
33 management basin adoption agreement entered into in accordance
34 with this act, a participating entity and its employees, agents,
35 contractors, members, and volunteers shall not be considered to be
36 “public employees” or “State employees” for the purposes of the
37 “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., or otherwise be
38 accorded any of the protections set forth therein.

39

40 7. A stormwater management basin adoption agreement entered
41 into in accordance with this act shall not be subject to the
42 requirements and provisions of the “Local Public Contracts Law,”
43 P.L.1971, c.198 (C.40A:11-1 et seq.).

44

45 8. a. A taxpayer who provides materials, supplies, labor, or
46 funding, or who incurs other costs, including, but not limited to,
47 increased costs for insurance, for the adoption of a stormwater
48 management basin located in a qualified watershed, as that term is

1 defined in section 1 of P.L. , c. (C.) (pending before the
2 Legislature as this bill), pursuant to a stormwater management basin
3 adoption agreement entered into in accordance with this act, which
4 is certified by a stormwater management agency pursuant to
5 subsection b. of this section, shall be entitled to a credit as provided
6 herein against the tax imposed pursuant to section 5 of P.L.1945,
7 c.162 (C.54:10A-5), in an amount equal to 100 percent of the
8 taxpayer's total certified expenditures, or \$1,000, whichever is
9 lower, provided, however, the credit shall not exceed 50 percent of
10 the tax liability otherwise due pursuant to section 5 of P.L.1945,
11 c.162 (C.54:10A-5). The order of priority of application of a tax
12 credit under this section and any other tax credits allowed by law
13 shall be as prescribed by the Director of the Division of Taxation.

14 b. In order to qualify for the tax credit pursuant to subsection a.
15 of this section, the taxpayer shall apply for and obtain a certification
16 from the stormwater management agency that certifies that the
17 taxpayer was a participating entity for the applicable privilege
18 period and that the stormwater management basin is located in a
19 qualified watershed. The certification shall indicate the date when
20 the taxpayer became a participating entity, include a copy of the
21 stormwater management basin adoption agreement, and state, to the
22 best of the stormwater management agency's knowledge, that the
23 materials, supplies, labor, or other costs incurred by the taxpayer, or
24 the funding provided by the taxpayer, have been expended by the
25 taxpayer and have not previously qualified for and received a credit
26 pursuant to this section.

27 Upon certification, the stormwater management agency shall
28 submit a copy thereof to the taxpayer and to the Director of the
29 Division of Taxation in the Department of the Treasury. When
30 filing a tax return that includes a claim for a credit pursuant to this
31 section, the taxpayer shall include a copy of the certification and a
32 statement that the expenditures certified therein were incurred in the
33 applicable privilege period. Any credit shall be valid in the
34 privilege period in which the certification is approved, and any
35 unused portion thereof may be carried forward for up to four
36 subsequent privilege periods.

37 c. The Director of the Division of Taxation, in consultation with
38 the Commissioner of Environmental Protection, shall adopt rules
39 and regulations, pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), establishing technical
41 specifications and certification requirements for qualification for
42 the tax credit established pursuant to this section.

43
44 9. This act shall take effect immediately, and section 8 shall
45 apply to privilege periods beginning on or after January 1 next
46 following the date of enactment.

STATEMENT

This bill, to be known as the “Adopt a Stormwater Management Basin Act,” would permit a business entity or nonprofit organization (“participating entity”) to adopt certain responsibilities related to a stormwater management basin by entering into an agreement with a stormwater management agency.

Specifically, under the bill, a stormwater management agency would be authorized to enter into a “stormwater management basin adoption agreement” with a participating entity for the construction, improvement, operation, maintenance, or funding of a stormwater management basin. The agreement could only be entered into at no cost to the stormwater management agency. However, the stormwater management agency would be authorized to provide the participating entity with such materials, supplies, or services that the stormwater management agency deems appropriate. The stormwater management agency would also be authorized to advertise and promote a stormwater management basin adoption program, and provide for appropriate public recognition of a participating entity.

No stormwater management basin adoption agreement would be permitted unless the participating entity successfully demonstrates to the stormwater management agency that it is capable of performing its responsibilities in accordance with the terms and conditions of the agreement and with all State and federal laws, rules and regulations pertaining to stormwater management. The bill would also establish the grounds and procedures for termination of a stormwater management basin adoption agreement.

In addition, the bill would authorize a stormwater management agency to advertise any stormwater management basin adoption program established pursuant to this bill and to provide for appropriate public recognition of a participating entity. Specifically, the stormwater management agency would be authorized to issue a certificate of recognition to the participating entity, and would be further authorized to allow for the erection of certain signs at the stormwater management basin. The erection of signs consistent with municipal ordinances would be subject to certain conditions and in accordance with certain specifications, as set forth by the stormwater management agency.

The bill also provides that a stormwater management agency would be protected from claims by any person for injuries or damages that may be caused or sustained by any participating entity, or any employee, agent, contractor, member, or volunteer thereof, during the course of, or as a result of, any activity related to the performance of a stormwater management basin adoption agreement.

1 While performing responsibilities under a stormwater
2 management basin adoption agreement entered into in accordance
3 with the bill, a participating entity and its employees, agents,
4 contractors, members, and volunteers would not be considered to be
5 “public employees” or “State employees” for the purposes of the
6 “New Jersey Tort Claims Act,” or otherwise be accorded any of the
7 protections set forth therein. Furthermore, any stormwater
8 management basin adoption agreement entered into in accordance
9 with this bill would not be subject to the requirements and
10 provisions of the "Local Public Contracts Law."

11 Finally, the bill would provide a tax credit against the
12 corporation business tax for a participating entity that adopts a
13 stormwater management basin located in a qualified watershed.
14 Under the bill a “qualified watershed” means the respective
15 watersheds of Lake Hopatcong in Morris and Sussex counties, Budd
16 Lake in Morris County, Swartswood Lake in Sussex County,
17 Greenwood Lake in Passaic County, and Lake Musconetcong in
18 Morris and Sussex Counties. Specifically, the tax credit would be
19 equal to the amount of the participating entity’s certified
20 expenditures incurred under a stormwater management basin
21 adoption agreement, provided, however, the credit could not exceed
22 \$1,000 or 50 percent of the taxpayer’s total tax liability under the
23 corporation business tax. The bill also establishes procedures by
24 which a taxpayer may apply for the tax credit, including certain
25 requirements related to the certification of eligible expenditures.