ASSEMBLY, No. 187



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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

Introduced Pending Technical Review by Legislative Counsel.



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

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

2. As used in this act:

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

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

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

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

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

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

No stormwater management basin adoption agreement may be entered into unless the participating entity successfully demonstrates to the stormwater management agency that the participating entity is capable of constructing, improving, operating, maintaining, or funding the stormwater management basin, as the case may be, in accordance with the agreed upon terms and conditions and with all State and federal laws, rules, and regulations pertaining to stormwater management. A stormwater management basin adoption agreement shall be for such period as may be agreed upon by the stormwater management agency and the participating entity, and may be terminated by the participating entity upon at least six months’ notice to the stormwater management agency, or by the stormwater management agency at any time without prior notice to the participating entity, for any reason, including, but not limited to, failure of the participating entity to comply with any term or condition of the stormwater management basin adoption agreement.

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

4. A stormwater management agency may:

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

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

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

(1) issuance of a certificate of recognition; and

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

5. a. Except as provided in the “New Jersey Tort Claims Act,” N.J.S.59:1‑1 et seq., no stormwater management agency, or any employee or agent thereof, may be held liable in any civil action to any person for any injury 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.

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

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

(2) a participating entity shall agree to indemnify, and if requested by the stormwater management agency, defend, the stormwater management agency and its employees and agents against all claims made by any person for injuries or damages that may be caused or sustained by the 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; and

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

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

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

8. a. A taxpayer who provides materials, supplies, labor, or funding, or who incurs other costs, including, but not limited to, increased costs for insurance, for the adoption of a stormwater management basin located in a qualified watershed, as that term is defined in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), pursuant to a stormwater management basin adoption agreement entered into in accordance with this act, which is certified by a stormwater management agency pursuant to subsection b. of this section, shall be entitled to a credit as provided herein against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 100 percent of the taxpayer’s total certified expenditures, or $1,000, whichever is lower, provided, however, the credit shall not exceed 50 percent of the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). The order of priority of application of a tax credit under this section and any other tax credits allowed by law shall be as prescribed by the Director of the Division of Taxation.

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

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

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

9. This act shall take effect immediately, and section 8 shall apply to privilege periods beginning on or after January 1 next 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.

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

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