

# ASSEMBLY, No. 3131

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblywoman CLEOPATRA G. TUCKER**

**District 28 (Essex and Union)**

**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.



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

1 No stormwater management basin adoption agreement may be  
2 entered into unless the participating entity successfully  
3 demonstrates to the stormwater management agency that the  
4 participating entity is capable of constructing, improving, operating,  
5 maintaining, or funding the stormwater management basin, as the  
6 case may be, in accordance with the agreed upon terms and  
7 conditions and with all State and federal laws, rules, and regulations  
8 pertaining to stormwater management. A stormwater management  
9 basin adoption agreement shall be for such period as may be agreed  
10 upon by the stormwater management agency and the participating  
11 entity, and may be terminated by the participating entity upon at  
12 least six months' notice to the stormwater management agency, or  
13 by the stormwater management agency at any time without prior  
14 notice to the participating entity, for any reason, including, but not  
15 limited to, failure of the participating entity to comply with any  
16 term or condition of the stormwater management basin adoption  
17 agreement.

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

23

24 4. A stormwater management agency may:

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

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

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

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

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

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1       5. a. Except as provided in the “New Jersey Tort Claims Act,”  
2 N.J.S.59:1-1 et seq., no stormwater management agency, or any  
3 employee or agent thereof, may be held liable in any civil action to  
4 any person for any injury or damages that may be caused or  
5 sustained by any participating entity, or any employee, agent,  
6 contractor, member, or volunteer thereof, during the course of, or as  
7 a result of, any activity related to the performance of a stormwater  
8 management basin adoption agreement.

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

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

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

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

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

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

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

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

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

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

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

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STATEMENT

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

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

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

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

45       The bill also provides that a stormwater management agency  
46 would be protected from claims by any person for injuries or  
47 damages that may be caused or sustained by any participating  
48 entity, or any employee, agent, contractor, member, or volunteer

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1   thereof, during the course of, or as a result of, any activity related to  
2   the performance of a stormwater management basin adoption  
3   agreement.

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

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