

[First Reprint]

SENATE, No. 1306

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED FEBRUARY 25, 2014

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Establishes the “Superstorm Sandy Bill of Rights.”

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on March 17, 2014, with amendments.



1 AN ACT establishing the “Superstorm Sandy Bill of Rights” and
2 supplementing Title 52 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the “Superstorm
8 Sandy Bill of Rights.”

9

10 2. The Legislature finds and declares that:

11 In the autumn of 2012, Superstorm Sandy ravaged New Jersey’s
12 shoreline, as well as many other communities in the State. Sandy
13 inflicted more than \$36 billion of damage on New Jersey, destroyed
14 or damaged more than 72,000 of the State’s homes and businesses,
15 and has driven more than a quarter million State residents to seek
16 governmental assistance. While New Jersey communities have
17 taken certain important steps toward recovery, the work to rebuild
18 is far from complete.

19 Since the recovery effort began, too many victimized individuals,
20 businesses, especially small businesses, and communities have
21 experienced unreasonable inconveniences and unfair treatment in
22 their efforts to obtain governmental assistance. These problems
23 have arisen in the form of unclear application and appeals
24 processes, difficulties in obtaining the status of applications,
25 rejections without any reasoning offered, waiting lists provided
26 without any clear order, disparities in funding offered for African-
27 American and Latino applicants, insufficient and often inaccurate
28 program information offered on State websites, particularly when
29 offered in Spanish, State funding offered to certain communities in
30 amounts disproportionate to the amount of damage endured,
31 insufficient resettlement funding offered to low and moderate
32 income individuals, a failure by the State to correct the
33 inadequacies of its website information, and an overall lack of
34 transparency and refusals to respond to requests under P.L.1963,
35 c.73 (C.47:1A-1 et seq.), commonly known as the open public
36 records act. For these reasons and others, it is necessary for the
37 Legislature to enact the “Superstorm Sandy Bill of Rights.” This
38 legislation establishes standards for the treatment of individuals,
39 small businesses and other businesses, and communities that have
40 been victimized by this tragedy, by Hurricane Irene, or by a severe
41 weather event in the future.

42

43 3. a. As used in P.L. , c. (C.) (pending before the
44 Legislature as this bill):

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted March 17, 2014.

1 "Applicant" means an individual, small business owner, or other
2 entity or party that has applied for benefits under a recovery and
3 rebuilding program.

4 ¹"Benefit" means funding, or any use of funding, that is
5 distributed through a recovery and rebuilding program.¹

6 "Commissioner" means the Commissioner of Community
7 Affairs.

8 "Local unit" means a county or municipality.

9 "Recovery and rebuilding program" means a use by the State, or
10 its contractor, of funding that is initially provided by the State or
11 federal government in response to a severe weather event for the
12 purpose of loss reimbursement, repairs, rebuilding, restorations,
13 relocation assistance, reconstruction, removal of debris, temporary
14 housing, household assistance, relief, hazard mitigation
15 improvements, construction, or other recovery and rebuilding
16 activities deemed to be a recovery and rebuilding program by the
17 State Treasurer, provided that the total amount spent by the State
18 and federal government combined on all recovery and rebuilding
19 program uses for that severe weather event is greater than \$10
20 million. This definition includes State-administered programs, for
21 which the funding has not yet been fully spent, and for which the
22 funding was initially provided by the State or federal government,
23 to rebuild and recover from Superstorm Sandy and Hurricane Irene.

24 "Severe weather event" means Superstorm Sandy, Hurricane
25 Irene, or any future natural disaster, including earthquakes.

26 "State" means the State, any office, department, division, bureau,
27 board, commission, agency, or authority of the State.

28 b. To the greatest extent permissible under federal law, the
29 State shall ensure that each individual, business, and local unit that
30 has applied for, is applying for, or is receiving benefits under a
31 recovery and rebuilding program, shall have the following rights:

32 (1) The right to a plain language explanation of all requirements
33 to apply for and receive benefits, or to appeal a denial of benefits or
34 any other adverse determination, from any recovery and rebuilding
35 program. A description of applicant rights to file appeals, a step-
36 by-step description of the application and appeals process, ¹**[and]**¹
37 a list of all required documents, ¹and a description of the process
38 necessary to correct any deficiency with an application,¹ shall be
39 conveniently available on the State's Internet website;

40 (2) The right to appeal a denial from a recovery and rebuilding
41 program, and obtain a decision within 50 days. An applicant shall
42 have the right to appeal a denial, or any other adverse
43 determination, from a recovery and rebuilding program, an award
44 amount, a placement on a waiting list, a contractor selection, or any
45 other decision that the applicant might reasonably view as
46 unfavorable. The State, or its contractor, shall render a decision on
47 any such appeal within 50 days. If no decision is made within 50
48 days, then the appeal shall be deemed successful, and all relevant

1 State and private entities shall act accordingly. In the event of a
2 successful appeal, the applicant shall have the right to be
3 repositioned on a list or waiting list for any benefits, or otherwise
4 accommodated, as though the correct determination had been made
5 at the time of the initial determination;

6 (3) The right to know where the application or processing stands
7 at all times, including the right to a unique applicant identification
8 number. In conjunction with any recovery and rebuilding program,
9 there shall be a system to track the status of each application¹,
10 including whether or not additional documentation or materials are
11 needed for benefits to be granted¹. The system shall be available on
12 the State's Internet website ¹["without"], and shall be searchable by
13 the applicant, but shall not display¹ any personal identifying
14 information ¹[","] to the public. The system shall also be available¹
15 over the telephone, and through the assistance of trained counselors,
16 one of whom shall be assigned to each applicant ¹and shall be
17 available over the telephone and in person. For every 5,000
18 applicants, at least one office shall exist, and be in operation during
19 normal business hours, and for at least six hours on Saturday, for
20 the purpose of receiving application submissions, addressing
21 applicant questions, and facilitating in-person meetings between
22 applicants and counselors. Office locations shall be accessible via
23 public transportation to the greatest extent possible, as shall the
24 locations of all hearings held to gain public input in response to any
25 severe weather event. Transcriptions of all such hearings shall be
26 promptly sent to the United States Department of Housing and
27 Urban Development, and published on the State's Internet website¹;

28 (4) The right to know why the State, or its contractor, has
29 rejected the applicant from a recovery and rebuilding program,
30 placed the applicant on a waiting list, or made or failed to make any
31 other determination that the applicant may reasonably consider
32 adverse. Each applicant, including each applicant who is rejected,
33 placed on a waiting list, or subjected to any determination that may
34 reasonably be considered adverse, shall be provided a full list of
35 reasons for any program decision at the time of the decision. Such
36 reasons shall include, but shall not be limited to (a) a description
37 and copy of the formula and calculations used to determine the
38 amount of the proposed award for any program for which they are
39 approved, and (b) for any program with a prioritization or
40 randomization process, or both, a description of that process and a
41 detailed calculation showing all factors used in such process and
42 how such factors were used to assess the applicant's application.
43 Additional reasons for a determination shall not be added if an
44 applicant subsequently cures the initial reason for the adverse
45 determination, or demonstrates that it was mistaken;

46 (5) The right to know where the applicant stands on a waiting
47 list, and why. Any ¹["recovery and rebuilding"]¹ applicant placed on

1 a waiting list shall be given a numbered position on that list. Upon
2 initial placement, the applicant shall be informed of this numbered
3 position and provided with an estimated wait time, an estimate of
4 the round of funding the applicant is in, if applicable, and provided
5 with¹ a complete explanation of the rationale behind the placement
6 determination¹, all¹ via regular mail. The applicant's waiting list
7 placement shall be maintained on the State's Internet website, and
8 shall be searchable for the applicant, but **1[without]** shall not
9 display¹ any personal identifying information to the public¹. Any
10 changes to the waiting list, as posted on the Internet website, shall
11 be updated on a weekly basis at a minimum;

12 (6) The right to fair access to recovery and rebuilding programs
13 regardless of race or ethnicity.

14 (a) Not later than the 30th day next following the enactment of
15 P.L. , c. (C.) (pending before the Legislature as this bill),
16 the commissioner shall complete a report documenting all accepted,
17 waitlisted, rejected, and withdrawn applications, by race and
18 ethnicity of the applicant, and by the urban, suburban, or rural
19 location of the applicant's municipality.¹ for recovery and
20 rebuilding program benefits related to Superstorm Sandy. The
21 report shall detail the reasons for accepted status, waitlisted status,
22 rejections, and withdrawals, sorted by the municipality wherein the
23 damaged property is located. The report shall be updated on a
24 monthly basis until all program funding has been disbursed. The
25 report shall also provide an account of the measures taken to
26 comply with paragraph (7) of this subsection regarding Spanish
27 language accessibility.¹ Upon completion, the initial report, as well
28 as each monthly update, shall immediately be provided to the
29 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
30 to the State Auditor, and posted on the State's Internet website. Not
31 later than one year following the enactment of P.L. , c. (C.)
32 (pending before the Legislature as this bill), the State Auditor shall
33 complete an audit of the first four months of the commissioner's
34 reporting, and submit an audit report to the Legislature, pursuant to
35 section 2 of P.L.1991, c.164 (C.52:14-19.1), detailing the results of
36 the audit. This audit, and audit report submission to the
37 Legislature, shall be updated on an annual basis until all funding
38 has been disbursed.

39 (b) For all future recovery and rebuilding programs, reporting
40 and auditing shall follow the same parameters as required for
41 Superstorm Sandy. The commissioner shall complete and submit
42 the initial report not later than the first day of the first month next
43 following commencement of the program, and shall update the
44 report monthly, also following the same parameters as required for
45 Superstorm Sandy, until all program funding is disbursed. The
46 State Auditor shall complete the initial audit and submit the initial
47 audit report, covering the first four months of the commissioner's

1 reporting, not later than the first day of the twelfth month next
2 following commencement of the program. This audit and audit
3 report submission shall be updated on an annual basis, to reflect the
4 most recent information available, until all funding has been
5 disbursed;

6 (7) The right to access all information on recovery and
7 rebuilding programs in both English and Spanish. Whether online,
8 over the telephone, or through in-person communications, all
9 information provided on a recovery and rebuilding program in
10 English **‘[must] shall’** be available concurrently, accurately, and
11 comprehensively in Spanish, and in any other languages required
12 pursuant to State or federal law¹. Recovery and rebuilding program
13 funding shall be used to conduct outreach efforts to Spanish
14 speaking communities, including paid media campaigns and direct
15 outreach to community organizations. If the funding for a recovery
16 and rebuilding program is distributed in multiple rounds over time,
17 then Spanish speaking individuals shall be prioritized in later round
18 distributions if the State’s outreach efforts to Spanish speaking
19 communities are not fully implemented prior to any earlier-round
20 distribution¹;

21 (8) The right of a local unit to obtain funding solely based on the
22 following factors: the extent of physical damage caused by the
23 severe weather event, the extent of need among those of modest
24 income in conformance with paragraph **‘[(9)] (10)’** of this
25 subsection, and the extent of future severe weather risk. All
26 funding distributions shall be based on an objective and complete
27 survey of the level of physical damage, with prioritization based
28 solely on a consistent application of standards which benefit the
29 local units, businesses, and individuals that are most impacted and
30 have the greatest need, and which enable the local units, businesses,
31 and individuals that are most impacted and have the greatest need to
32 receive benefits that allow them to recover, rebuild their lives, and
33 be better positioned to avoid or protect against physical damage
34 from future severe weather events. ‘If benefits for a recovery and
35 rebuilding program are distributed in multiple rounds over time,
36 then a local unit that does not receive benefits from a prior
37 distribution in such proportion shall receive priority in the receipt of
38 benefits from a future distribution to compensate for the
39 difference.¹ Funding decisions by the State and its contractors shall
40 not overlook local units, businesses, and individuals that are
41 significantly impacted by the severe weather event, but are located
42 outside of the counties and other areas that are generally most
43 impacted by the severe weather event¹. In response to a severe
44 weather event, if it is possible for a local unit to apply directly for a
45 federal benefit, in addition to obtaining the federal benefit through
46 the State, and this direct application would result in greater funding
47 throughout New Jersey, then the State shall promptly provide

1 municipalities with guidance on the process for this direct
2 application¹;

3 (9) The right to simultaneously seek benefits through more than
4 one recovery and rebuilding program, and through insurance. If an
5 applicant is compensated, but not fully compensated through
6 insurance, or through one recovery and rebuilding program, they
7 shall not be prohibited from obtaining the rest of the compensation
8 they are owed through another recovery and rebuilding program. If
9 necessary, the State or its contractor may prioritize recovery and
10 rebuilding program applicants who are not also seeking benefits
11 through other recovery and rebuilding programs, or through
12 insurance, but the State may not deny an applicant because of the
13 other application, or because the applicant is appealing a denial
14 from another application;

15 (10) The right for victims with modest income to obtain a fair
16 portion of recovery and rebuilding program benefits. No less than
17 60 percent of funding awarded through the Superstorm Sandy
18 Homeowner Resettlement Program shall be allocated to individuals
19 of low or moderate income, meaning those individuals occupying
20 households with a gross household income equal to 80 percent or
21 less of the median gross household income for households of the
22 same size, and within the same housing region, as defined by
23 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304). No
24 person shall be denied Superstorm Sandy benefits, or the benefits of
25 any other recovery and rebuilding program, on the basis of the
26 receipt of any other form of public assistance that is unrelated to the
27 severe weather event¹. The State shall establish clear and uniform
28 standards for the grant of recovery and rebuilding program benefits
29 to applicants who live, or used to live at the time of the severe
30 weather event, in a manufactured home or mobile home as defined
31 in section 3 of P.L.1975, c.217 (C.52:27D-121). Funding for a local
32 unit to address infrastructure that has been damaged by a severe
33 weather event shall only be distributed to the local unit if the local
34 unit commits to addressing the needs of both renters and
35 homeowners, including rebuilding and, if necessary, home
36 replacement¹;

37 (11) The right to know how funding is allocated and how funding
38 decisions are made, including transparency with regard to criteria
39 used to award funding for specific building projects. Basic
40 information displaying the **'[beneficiaries] recipients'**¹ of all
41 contracts for the expenditure of recovery and rebuilding program
42 funds shall be updated on the State's Internet website on a weekly
43 basis, together with a full and current explanation of the criteria and
44 process by which **'contractor'**¹ applications¹, and all other recovery
45 and rebuilding program applications¹, are prioritized. Changes to
46 program policy and information on new contractor awards shall
47 immediately be posted on the State's Internet website¹. For any

1 recovery and rebuilding program, the benefit application and
2 appeals process, and the guidelines to control project eligibility,
3 shall include, but shall not be limited to the following features:

4 (a) Any applicant who is denied recovery and rebuilding
5 program benefits prior to the availability of this basic information
6 on the State's Internet website, shall benefit from an expedited
7 review of any appeal of that denial.

8 (b) The State's Internet website shall contain information on
9 how all recovery and rebuilding program funding has been and will
10 be allocated, including information about every step in the
11 allocation process for all rounds of funding distribution.

12 (c) The State shall adhere to the process that is initially
13 developed throughout the existence of the program unless there is a
14 substantial need to change the process. If a process change is
15 necessary, applicants shall be given 60 days' notice of the change
16 before the altered requirements take effect.

17 (d) An applicant shall not be precluded from recovery and
18 rebuilding program benefits only because his or her address is a
19 post office box.

20 (e) Superstorm Sandy benefits shall be set aside to assist
21 applicants who did not receive benefits from a prior benefit
22 distribution due to the lack of clarity or transparency in the process
23 by which benefits were distributed.

24 (f) With the exception of home elevation projects, any applicant
25 shall have the right, if desired, to select their contractor of choice
26 for work on their property. If their contractor of choice is not
27 registered in accordance with State regulations, then a registration
28 process shall be offered to the contractor on an expedited basis.

29 (g) An applicant shall not be precluded from a recovery and
30 rebuilding benefit because they begin repair work prior to the
31 receipt of the benefit.

32 (h) An applicant with a primary residence that is not habitable
33 under the standards of the "State Housing Code," adopted pursuant
34 to P.L.1966, c.168 (C.2A:42-74 et seq.), or under applicable
35 standards of local housing or health codes or regulations, shall
36 receive expedited application review.

37 (i) Clear guidelines and procedures shall be promulgated to
38 assist local contractors to obtain recovery and rebuilding program
39 work in accordance with section 3 of the "Housing and Urban
40 Development Act of 1968" (12 U.S.C. s.1701u)¹ ; and

41 (12) The right to be treated with dignity and respect throughout
42 the recovery process. When interacting with victims of a severe
43 weather event, the State, including the Department of Community
44 Affairs, the Department of Banking and Insurance, and all other
45 State entities involved in the recovery, shall answer questions and
46 complaints in a timely manner, and otherwise treat victims with
47 dignity and respect.

1 4. a. A public official, officer, employee, or custodian who
2 knowingly and willfully violates P.L. , c. (C.) (pending
3 before the Legislature as this bill), and this violation is found to
4 have unreasonably impeded access to recovery and rebuilding
5 program benefits under the totality of the circumstances, shall be
6 personally subject to a civil penalty of \$1,000 for an initial
7 violation, \$2,500 for a second violation that occurs within 10 years
8 of an initial violation, and \$5,000 for a third violation that occurs
9 within 10 years of an initial violation. This penalty shall be
10 collected and enforced through proceedings in accordance with the
11 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
12 et seq.), and the Rules of Court governing actions for the collection
13 of civil penalties. The Superior Court shall have jurisdiction of
14 proceedings for the collection and enforcement of the penalty
15 imposed by this section. Appropriate disciplinary proceedings may
16 be initiated against a public official, officer, employee, or custodian
17 against whom a penalty has been imposed.

18 b. In the event of an unsuccessful appeal of a denial from a
19 recovery and rebuilding program, an unsatisfactory placement on a
20 waiting list, or any other decision that the applicant might
21 reasonably view as unfavorable, the applicant may institute a
22 proceeding to challenge the decision by filing an action in Superior
23 Court, which shall be heard by a Superior Court Judge who has
24 been designated to hear such cases because of that judge's
25 knowledge and expertise in matters relating to the distribution of
26 disaster aid. The right to institute a proceeding under this
27 paragraph shall be solely that of the applicant. The State, or State
28 contractor responsible for the unfavorable decision, shall have the
29 burden of proving that the decision is authorized by law. If it is
30 determined that the unfavorable decision was improper, the court
31 shall order the benefit granted at an appropriate level. An applicant
32 who prevails in a proceeding shall be entitled to a reasonable
33 attorney's fee from the State or its contractors, as appropriate.

34

35 5. This act shall take effect immediately.