

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1306 and 1804

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED MARCH 24, 2014

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SYNOPSIS

Establishes the "Superstorm Sandy Bill of Rights."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate State Government, Wagering, Tourism & Historic Preservation Committee.

(Sponsorship Updated As Of: 3/28/2014)

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 victimized
40 by this tragedy, by Hurricane Irene, or by a severe weather event in
41 the future.

42

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

45 "Applicant" means an individual, small business owner, or other
46 entity or party that has applied for, is applying for, or is receiving
47 benefits under a recovery and rebuilding program.

1 “Benefit” means funding, or any use of funding, that is
2 distributed through a recovery and rebuilding program.

3 “Commissioner” means the Commissioner of Community
4 Affairs.

5 “Determination” or “decision” means any action or failure to act
6 by the State or contractor that affects an applicant’s status or
7 benefit.

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 activities deemed to be a
16 recovery and rebuilding program by the State Treasurer, provided
17 that the total amount spent by the State and federal government
18 combined on all recovery and rebuilding program uses for that
19 severe weather event is greater than \$10 million. This definition
20 includes State-administered programs, for which the funding has
21 not yet been fully spent, and for which the funding was initially
22 provided by the State or federal government, to rebuild and recover
23 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, authority, employee, or agent of the
28 State.

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

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

41 (2) The right to appeal a denial from a recovery and rebuilding
42 program, and obtain a decision within 50 days. An applicant shall
43 have the right to appeal a denial, or any other adverse
44 determination, from a recovery and rebuilding program, an award
45 amount, a placement on a waiting list, a contractor selection, or any
46 other decision that the applicant might reasonably view as adverse.
47 The State, or its contractor, shall render a decision on any such

1 appeal within 50 days. If no decision is made within 50 days, then
2 the appeal shall be deemed successful, and all relevant State and
3 private entities shall act accordingly. In the event of a successful
4 appeal the applicant shall have the right to be repositioned on a list
5 or waiting list for any benefits, or otherwise accommodated, as
6 though the correct determination had been made at the time of the
7 initial determination. Nothing in this section shall limit any rights
8 that an applicant has pursuant to the "Administrative Procedure
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) or any other applicable
10 law;

11 (3) The right to know where the application or processing stands
12 at all times, including the right to a unique applicant identification
13 number. In conjunction with any recovery and rebuilding program,
14 there shall be a system to track the status of each application,
15 including whether or not additional documentation or materials are
16 needed for benefits to be granted. The system shall be available on
17 the State's Internet website, and shall be searchable by the
18 applicant, but shall not display any personal identifying information
19 to the public. The system shall also be available through the
20 assistance of trained counselors, one of whom shall be assigned to
21 each applicant and shall be available over the telephone and in
22 person. For every 5,000 applicants, at least one office shall exist,
23 and be in operation during normal business hours, and for at least
24 six hours on Saturday, for the purpose of receiving application
25 submissions, addressing applicant questions, and facilitating in-
26 person meetings between applicants and counselors. Office
27 locations shall be accessible via public transportation to the greatest
28 extent possible, as shall the locations of all hearings held to gain
29 public input in response to any severe weather event.
30 Transcriptions of all such hearings shall be promptly sent to the
31 United States Department of Housing and Urban Development, and
32 published on the State's Internet website;

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

1 Additional reasons for a determination shall not be added if an
2 applicant subsequently cures the initial reason for the adverse
3 determination, or demonstrates that it was mistaken;

4 (5) The right to know where the applicant stands on a waiting
5 list, and why. Any applicant placed on a waiting list shall be given
6 a numbered position on that list. Upon initial placement, the
7 applicant shall be informed of this numbered position and provided
8 with an estimated wait time, an estimate of the round of funding the
9 applicant is in, if applicable, and provided with a complete
10 explanation of the rationale behind the placement determination, all
11 via regular mail. The applicant's waiting list placement shall be
12 maintained on the State's Internet website, and shall be searchable
13 for the applicant, but shall not display any personal identifying
14 information to the public. Any changes to the waiting list, as posted
15 on the Internet website, shall be updated on a weekly basis at a
16 minimum;

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

19 (a) Every applicant shall have the right to fair access to recovery
20 and rebuilding programs regardless of race or ethnicity.

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

1 (c) For all future recovery and rebuilding programs, reporting
2 and auditing shall follow the same parameters as required for
3 Superstorm Sandy. The commissioner shall complete and submit
4 the initial report not later than the first day of the first month next
5 following commencement of the program, and shall update the
6 report monthly, also following the same parameters as required for
7 Superstorm Sandy, until all program funding is disbursed. The
8 State Auditor shall complete the initial audit and submit the initial
9 audit report, covering the first four months of the commissioner's
10 reporting, not later than the first day of the twelfth month next
11 following commencement of the program. This audit and audit
12 report submission shall be updated on an annual basis, to reflect the
13 most recent information available, until all funding has been
14 disbursed;

15 (7) The right to access all information on recovery and
16 rebuilding programs in both English and Spanish. Whether online,
17 over the telephone, or through in-person communications, all
18 information provided on a recovery and rebuilding program in
19 English shall be available concurrently, accurately, and
20 comprehensively in Spanish, and in any other languages required
21 pursuant to State or federal law. Recovery and rebuilding program
22 funding shall be used to conduct outreach efforts to Spanish
23 speaking communities, including paid media campaigns and direct
24 outreach to community organizations. If the funding for a recovery
25 and rebuilding program is distributed in multiple rounds over time,
26 then Spanish speaking individuals shall be prioritized in later round
27 distributions if the State's outreach efforts to Spanish speaking
28 communities are not fully implemented prior to any earlier-round
29 distribution;

30 (8) The right of a local unit to obtain funding for itself and for all
31 recovery and rebuilding programs to distribute benefits within local
32 units solely based on the following factors: the extent of physical
33 damage caused by the severe weather event, the extent of need
34 among those of modest income in conformance with paragraph (10)
35 of this subsection, and the extent of future severe weather risk. All
36 funding distributions shall be based on an objective and complete
37 survey of the level of physical damage, with prioritization based
38 solely on a consistent application of standards which benefit and
39 provide funding to local units, and to businesses, and individuals
40 within local units that are most impacted and have the greatest need,
41 and which enable the local units, businesses, and individuals that
42 are most impacted and have the greatest need to receive benefits
43 that allow them to recover, rebuild their lives, and be better
44 positioned to avoid or protect against physical damage from future
45 severe weather events. If benefits for a recovery and rebuilding
46 program are distributed in multiple rounds over time, then
47 applicants, including local units, and businesses and individuals in

1 those local units, not receiving benefits in the first round shall be
2 given priority in future rounds. Priority in future rounds shall be
3 consistent with the provisions of this act and shall be based upon
4 the level of physical damage, level of need among those of modest
5 income, and extent of future severe weather risk. Funding decisions
6 by the State and its contractors shall not overlook local units,
7 businesses, and individuals that are significantly impacted by the
8 severe weather event, but are located outside of the counties and
9 other areas that are generally most impacted by the severe weather
10 event. In response to a severe weather event, if it is possible for a
11 local unit to apply directly for a federal benefit, in addition to
12 obtaining the federal benefit through the State, and this direct
13 application would result in greater funding throughout New Jersey,
14 then the State shall promptly provide municipalities with guidance
15 on the process for this direct application;

16 (9) The right to simultaneously seek benefits through more than
17 one recovery and rebuilding program, and through insurance. If an
18 applicant is compensated, but not fully compensated through
19 insurance, or through one recovery and rebuilding program, they
20 shall not be prohibited from applying and being fairly considered
21 for benefits under another recovery and rebuilding program. If
22 necessary, the State or its contractor may prioritize recovery and
23 rebuilding program applicants who are not also seeking benefits
24 through other recovery and rebuilding programs, or through
25 insurance, but the State may not deny an applicant because of the
26 other application, or because the applicant is appealing a denial
27 from another application. This paragraph shall not be construed to
28 enable any applicant to obtain benefits that exceed the total amount
29 of the applicant's loss resulting from the severe weather event, or to
30 permit the duplication of benefits from federal and State programs;

31 (10) The right for victims with modest income to obtain a fair
32 portion of recovery and rebuilding program benefits.

33 (a) No less than 60 percent of funding awarded through the
34 Superstorm Sandy Homeowner Resettlement Program shall be
35 allocated to individuals of low or moderate income, meaning those
36 individuals occupying households with a gross household income
37 equal to 80 percent or less of the median gross household income
38 for households of the same size, and within the same housing
39 region, as defined by subsection b. of section 4 of P.L.1985, c.222
40 (C.52:27D-304). No person shall be denied Superstorm Sandy
41 benefits, or the benefits of any other recovery and rebuilding
42 program, on the basis of the receipt of any other form of public
43 assistance that is unrelated to the severe weather event.

44 (b) The State shall establish clear and uniform standards for the
45 grant of recovery and rebuilding program benefits to applicants who
46 live, or used to live at the time of the severe weather event, in a
47 manufactured home or mobile home as defined in section 3 of

1 P.L.1975, c.217 (C.52:27D-121). In all cases, owners and
2 occupants of manufactured or mobile homes shall have the ability to
3 obtain assistance and benefits equivalent to owners and occupants
4 of other homes, taking into account the particular needs of such
5 owners and occupants arising out of land lease law and
6 circumstance.

7 (c) Funding for a local unit to address infrastructure that has
8 been damaged by a severe weather event shall only be distributed to
9 the local unit if the local unit commits to addressing the needs of
10 both renters and homeowners, including rebuilding and, if
11 necessary, home replacement.

12 (d) Benefits shall be distributed to renters and homeowners in
13 urban communities in proportion to the damage sustained by each
14 category of residents in urban communities and shall be distributed
15 to renters and homeowners in suburban communities in proportion
16 to the damage sustained by each category of residents in suburban
17 communities. The proportions shall be based upon the percentage
18 of affected renters or homeowners in urban or suburban
19 communities, as applicable;

20 (11) The right to know how funding is allocated and how funding
21 decisions are made, including transparency with regard to criteria
22 used to award funding for specific building projects. Basic
23 information displaying the recipients of all contracts for the
24 expenditure of recovery and rebuilding program funds shall be
25 updated on the State's Internet website on a weekly basis, together
26 with a full and current explanation of the criteria and process by
27 which contractor applications, and all other recovery and rebuilding
28 program applications, are prioritized. Changes to program policy
29 and information on new contractor awards shall immediately be
30 posted on the State's Internet website. For any recovery and
31 rebuilding program, the benefit application and appeals process, and
32 the guidelines to control project eligibility, shall include, but not be
33 limited to the following features:

34 (a) Any applicant who is denied recovery and rebuilding
35 program benefits prior to the availability of this basic information
36 on the State's Internet website, shall be entitled to an expedited
37 review of any appeal of that denial. With respect to applications by
38 individuals for Community Development Block Grant Disaster
39 Recovery benefits related to Superstorm Sandy that were denied
40 prior to the effective date of P.L. , c. (C.) (pending
41 before the Legislature as this bill), for which no appeal was filed or
42 reviewed, or both, the State shall review the rejection through
43 reprocessing the applicant's file within one month regardless of
44 whether there was an appeal, and notify the applicant as to the
45 applicant's status upon review, providing the opportunity for an
46 appeal if there is an adverse decision upon review. If any applicant
47 is deemed eligible upon appeal pursuant to this section, the

1 applicant shall be placed in the position of priority that the applicant
2 would have been in if the applicant had been deemed eligible at the
3 initial date of the State's prior adverse decision.

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

8 (c) The State shall adhere to the process that is initially
9 developed throughout the existence of the program unless there is a
10 substantial need to change the process. If a process change is
11 necessary, eligible applicants shall be given notice of the change
12 before the altered requirements take effect.

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

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

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

25 (g) As soon as possible upon the initial establishment of a
26 recovery and rebuilding program, the State shall notify applicants
27 and the public whether, and to what extent, an applicant may pursue
28 any reconstruction or rehabilitation work prior to the applicant's
29 receipt of a benefit without forfeiting eligibility for any benefit or
30 reimbursement for the completed work.

31 (h) An applicant shall receive expedited application review if
32 the applicant is no longer living in his primary residence, because,
33 as a result of the severe weather event, such primary residence has
34 substantial damage under the standards of the "Flood Hazard Area
35 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), and rules and
36 regulations adopted pursuant thereto.

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); 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 of
2 records who knowingly and willfully violates P.L. , c. (C.)
3 (pending before the Legislature as this bill), and this violation is
4 found to have unreasonably impeded access to recovery and
5 rebuilding program benefits under the totality of the circumstances,
6 shall be 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 been
24 designated to hear such cases because of that judge's knowledge
25 and expertise in matters relating to the distribution of disaster aid.
26 The right to institute a proceeding under this paragraph shall be
27 solely that of the applicant. The State, or State contractor
28 responsible for the unfavorable decision, shall have the burden of
29 proving that the decision is authorized by law. If it is determined
30 that the unfavorable decision was improper, the court shall order the
31 benefit granted at an appropriate level. An applicant who prevails
32 in a proceeding shall be entitled to a reasonable attorney's fee from
33 the State or its contractors, as appropriate.

34

35 5. This act shall take effect immediately.