

SENATE, No. 2536

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 4, 2013

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

Senator Weinberg

SYNOPSIS

Authorizes deployment of integrity monitors in implementation of certain Hurricane Sandy recovery and rebuilding projects.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2013)

1 AN ACT authorizing the deployment of integrity monitors in the
2 implementation of certain Hurricane Sandy recovery and
3 rebuilding projects, supplementing Title 52 of the Revised
4 Statutes.

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

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9 1. The Legislature finds and declares that:

10 a. Hurricane Sandy has inflicted approximately
11 \$30,000,000,000 worth of damage upon the State and exposed the
12 need for more than \$7,000,000,000 in mitigation efforts to buttress
13 the State's defenses from future storms, according to the
14 Governor's initial estimates of November of 2012;

15 b. The State of New Jersey, with the assistance of the federal
16 government, shall endeavor to repair, rebuild, and revive the
17 portions of the State devastated by Hurricane Sandy;

18 c. The State of New Jersey is duty bound to its residents to
19 ensure that all resources dedicated to the recovery from Hurricane
20 Sandy be applied in an efficient manner and that the State should
21 take all necessary precaution to prevent, detect, and remediate
22 waste, fraud, and abuse;

23 d. Given the severity of the damage caused by Hurricane Sandy
24 and the magnitude of the resources necessary to begin the recovery
25 process there is a potential for the influx of federal assistance to
26 stretch the State's capacity for efficient oversight; and

27 e. The use of integrity monitors as independent oversight
28 providers may be an effective measure to supplement the State's
29 existing compliance control mechanisms to prevent the inefficient
30 expenditure of Hurricane Sandy recovery resources.

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32 2. a. (1) For each State contract involving a Hurricane Sandy
33 recovery and rebuilding project, the State Treasurer shall cause the
34 following contractual conditions to be included in the contract:

35 The contract recipient shall procure the services of an integrity
36 monitor from the qualified integrity monitor database established
37 pursuant to subsection b. of this section during the initial
38 implementation of the contract, unless this condition is waived by
39 the State Treasurer upon a determination of sufficient contract
40 recipient compliance controls; and

41 The State Treasurer shall have the authority to require that a
42 contract recipient procure the services of an integrity monitor from
43 the qualified integrity monitor database established pursuant to
44 subsection b. of this section for any duration of the contract upon a
45 determination by the State Treasurer that an integrity monitor is
46 necessary to alleviate potential or ongoing inefficiency or that the
47 size or nature of the contract makes the procurement of an integrity
48 monitor prudent.

1 (2) For Hurricane Sandy recovery and rebuilding projects not
2 involving a State contract, the State Treasurer shall procure the
3 services of an integrity monitor from the qualified integrity monitor
4 database established pursuant to subsection b. of this section during
5 the initial implementation of the Hurricane Sandy recovery and
6 rebuilding project, unless this condition is waived by the State
7 Treasurer upon a determination of sufficient funding recipient
8 compliance controls.

9 For Hurricane Sandy recovery and rebuilding projects not
10 involving a State contract, the State Treasurer shall have the
11 authority to procure the services of an integrity monitor from the
12 qualified integrity monitor database established pursuant to
13 subsection b. of this section for any duration of a Hurricane Sandy
14 recovery and rebuilding project upon a determination by the State
15 Treasurer that an integrity monitor is necessary to alleviate potential
16 or ongoing inefficiency or that the size or nature of the Hurricane
17 Sandy recovery and rebuilding project makes the procurement of an
18 integrity monitor prudent.

19 (3) If the State Treasurer issues an integrity monitor service
20 condition waiver pursuant to this subsection, the State Treasurer
21 shall provide the Senate President and the Speaker of the General
22 Assembly a report in accordance with section 2 of P.L.1991, c.164
23 (C.52:14-19.1), which report shall detail the reasoning associated
24 with the waiver and the contract or funding recipient's compliance
25 controls. The report shall be due within ten business days of the
26 issuance of the waiver.

27 b. To facilitate the use of integrity monitors pursuant to
28 subsection a. of this section, the State Treasurer shall establish a
29 qualified integrity monitor database which shall identify the
30 integrity monitors that that State Treasurer has determined to be
31 qualified to provide integrity monitor services. The qualified
32 integrity monitor database shall be a publicly accessible database.

33 The State Treasurer shall administer a transparent process for
34 determining the qualification of an integrity monitor, which
35 determinations shall be based on a range of meritorious factors
36 established by the State Treasurer that emphasize the capacity of
37 integrity monitors to prevent, detect, and remediate inefficiency and
38 malfeasance in the implementation of Hurricane Sandy recovery
39 and rebuilding projects. The State Treasurer's decision and
40 reasoning as to the qualification of an integrity monitor for
41 inclusion in the qualified integrity monitor database shall be made
42 available through the database.

43 c. An integrity monitor shall be subject to the malfeasance and
44 inefficiency reporting protocol imposed by the State Treasurer. The
45 State Treasurer's reporting protocol shall require an integrity
46 monitor upon a finding of a likely criminal violation to make a
47 report forthwith to the Attorney General.

1 d. For purposes of executing the oversight functions of an
2 integrity monitor relative to accessing State government records, an
3 integrity monitor shall be deemed to be an agent of State
4 government and shall be afforded all rights of access associated
5 thereto. Provided however, if an integrity monitor's access to State
6 government records may compromise sensitive information the
7 chief executive officer of the entity in possession of the State
8 government records may limit the integrity monitor's access
9 accordingly. If a chief executive officer denies sensitive
10 information to an integrity monitor pursuant to this subsection, the
11 chief executive officer shall provide the integrity monitor with its
12 reasoning for the denial in a written notice.

13 e. To expedite the implementation of integrity monitors for
14 Hurricane Sandy recovery and rebuilding projects, the State
15 Treasurer's procurement of integrity monitors shall be exempt from
16 public contracting laws, rules, and regulations, except that this
17 exemption shall be contingent on the transparent administration of a
18 procurement process wherein the State Treasurer: publicly posts the
19 need and qualification for integrity monitor service contracts,
20 selects an integrity monitor service provider from integrity monitors
21 qualified pursuant to subsection b. of this section that respond to a
22 particular public posting, and maintains the application of conflict
23 of interest provisions associated with public contracting laws, rules,
24 and regulations.

25 f. On the first business day of each even numbered month each
26 integrity monitor shall provide to the State Treasurer for
27 distribution to the Legislature, in accordance with section 2 of
28 P.L.1991, c.164 (C.52:14-19.1), and the Governor a report detailing
29 the integrity monitor's provision of services during the two month
30 period second preceding the due date of the report and any
31 previously unreported provision of services, which shall include,
32 but not be limited to, detailed findings concerning the integrity
33 monitor's provision of services and recommendations for corrective
34 or remedial action relative to findings of malfeasance and
35 inefficiency. The report shall include a privilege log which shall
36 detail each denial of sensitive information that the integrity monitor
37 exercises in preparing the report for transmission to the Legislature
38 and the Governor pursuant to this subsection. The report shall not
39 include any information which may compromise a potential
40 criminal investigation or prosecution or any proprietary
41 information. The State Treasurer shall have the authority to specify
42 reporting requirements for an integrity monitor pursuant to this
43 subsection relative to the specific services provided by an integrity
44 monitor.

45 No report shall become due for an integrity monitor until at least
46 three months after commencing duties as an integrity monitor. The
47 State Treasurer shall provide the integrity monitor reports received

1 pursuant to this subsection to the Legislature and the Governor
2 within ten business days of receipt.

3 g. As used in this section:

4 “Hurricane Sandy recovery and rebuilding project” means (1) the
5 use of funds provided pursuant to federal legislation enacted by the
6 113th Congress of the United States of America which contains, but
7 is not limited to, disaster assistance for impacts associated with
8 Hurricane Sandy, or other major storms, in New Jersey; and (2) the
9 use of funds disbursed through the State treasury for undertakings
10 to address the damage associated with the State of Emergency
11 identified in the Governor’s Executive Order 104, dated October 27,
12 2012, concerning Hurricane Sandy, which undertakings shall
13 include emergency operations, loss reimbursement, repairs,
14 rebuilding, restorations, reconstruction, removal of debris,
15 temporary housing, household assistance, relief, hazard mitigation
16 improvements, construction, and other recovery and rebuilding
17 activities deemed to be a Hurricane Sandy recovery and rebuilding
18 project by the State Treasurer.

19 “Integrity monitor” means a private entity that contracts to
20 provide services to ensure legal compliance, detect misconduct, and
21 promote best practices in the administration of Hurricane Sandy
22 recovery and rebuilding projects, which services may include, but
23 shall not be limited to, legal, investigative, accounting, engineering,
24 other professional specialties, risk assessment, developing
25 compliance system constructs, loss prevention, and monitoring.

26 “Sensitive information” means information which if disclosed to
27 an integrity monitor would jeopardize compliance with State or
28 federal law, threaten public health, welfare, or safety, or harm the
29 competitive economic position of a party.

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31 3. This act shall take effect immediately.

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STATEMENT

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36 This bill authorizes the deployment of integrity monitors in the
37 implementation of Hurricane Sandy recovery and rebuilding
38 projects. The purpose of this bill is to reinforce the State’s
39 compliance control mechanisms given the potential for the pending
40 influx of federal assistance to strain the State’s capacity for efficient
41 oversight.

Authority to Deploy Integrity Monitors

42 The bill authorizes the State Treasurer to cause the use of
43 integrity monitors in two classes of Hurricane Sandy recovery and
44 rebuilding projects, those involving State contracts and those not
45 involving State contracts.

46 For Hurricane Sandy recovery and rebuilding projects involving
47 State contracts, the bill authorizes the State Treasurer to make the
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1 use of an integrity monitor a contractual condition that may be
2 exercised to alleviate potential or ongoing inefficiency or in caution
3 due to the size or nature of the contract. The bill makes the use of
4 an integrity monitor during the initial stages of a contract's
5 implementation the default scenario, unless waived by the State
6 Treasurer upon a determination of sufficient compliance controls.

7 For Hurricane Sandy recovery and rebuilding projects not
8 involving State contracts, the bill authorizes the State Treasurer to
9 procure the services of an integrity monitor to service the project to
10 alleviate potential or ongoing inefficiency or in caution due to the
11 size or nature of the project. The bill makes the use of an integrity
12 monitor during the initial stages of a project's implementation the
13 default scenario, unless waived by the State Treasurer upon a
14 determination of sufficient compliance controls.

15 **Database of Qualified Integrity Monitors**

16 To facilitate the use of integrity monitors, the bill charges the
17 State Treasurer with establishing a qualified integrity monitor
18 database that is accessible to the public. The bill requires the State
19 Treasurer to administer a transparent process for qualifying
20 integrity monitors for inclusion in the database. The bill directs the
21 State Treasurer to base integrity monitor qualification on
22 meritorious factors established by the State Treasurer, which
23 emphasize the capacity of integrity monitors to prevent, detect, and
24 remediate inefficiency and malfeasance in Hurricane Sandy
25 recovery and rebuilding projects. The bill denotes that the State
26 Treasurer's decisions and reasoning as to integrity monitor
27 qualifications are to be made available through the database.

28 **Reporting Protocol**

29 The bill subjects all integrity monitors to malfeasance and
30 inefficiency reporting protocol imposed by the State Treasurer. The
31 bill specifies that the State Treasurer's reporting protocol must
32 require an integrity monitor to expediently report a finding of a
33 likely criminal violation to the Attorney General.

34 The bill also includes a two month reporting requirement for
35 integrity monitors for transmission to the Legislature and the
36 Governor, through the State Treasurer. The bill specifies that the
37 integrity monitor's report must detail the integrity monitor's
38 provision of services for the second most recently closed two month
39 period. The bill requires that the report must include a privilege log
40 that details the denial of any sensitive information to the Legislature
41 and Governor. The bill denotes that the integrity monitor's report
42 cannot include any information that may compromise a criminal
43 investigation or proprietary information. The bill authorizes the
44 State Treasurer to contour the reporting detail relative to the
45 specific services provided by an integrity monitor.

46 **Key Definitional Terms and Administrative Matters**

47 Generally, the bill defines a Hurricane Sandy recovery and
48 rebuilding project as a project relying on: (i) federal funding

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1 provided through Hurricane Sandy, or other major storm, disaster
2 assistance legislation enacted by the current Congress; or (ii)
3 funding supplied through the State treasury to address the damage
4 associated with Hurricane Sandy.

5 The bill defines an integrity monitor as a private service provider
6 that strives to ensure legal compliance, detect misconduct, and
7 promote best administrative practices. The bill denotes that the
8 types of services provided by an integrity monitor include legal,
9 investigative, accounting, engineering, other professional
10 specialties, risk assessment, developing compliance system
11 constructs, loss prevention, and monitoring.

12 The bill qualifies an integrity monitor as a State agent for
13 purposes of accessing State government records, except that access
14 may be limited by chief executive officer of the possessing State
15 entity if access may compromise sensitive information. Generally,
16 the bill defines sensitive information as information that if disclosed
17 may violate State or federal law, threaten public welfare, or
18 compromise a party's economic position.

19 The bill allows the State Treasurer's procurement of integrity
20 monitors to bypass public procurement laws to expedite
21 implementation. However, the bill's exemption from public
22 procurement law is contingent on the State Treasurer's transparent
23 administration of a procurement process that satisfies three
24 conditions: (i) public posting of available integrity monitor service
25 contracts and the qualifications thereto; (ii) the selection of an
26 integrity monitor from qualified candidates that respond to a
27 posting; and (iii) application of standing conflict of interest law in
28 the field of public procurement.