

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 introduced.



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):

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

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1 “Commissioner” means the Commissioner of Community
2 Affairs.

3 “Local unit” means a county or municipality.

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

19 “Severe weather event” means Superstorm Sandy, Hurricane
20 Irene, or any future natural disaster, including earthquakes.

21 “State” means the State, any office, department, division, bureau,
22 board, commission, agency, or authority of the State.

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

27 (1) The right to a plain language explanation of all requirements
28 to apply for and receive benefits, or to appeal a denial of benefits or
29 any other adverse determination, from any recovery and rebuilding
30 program. A description of applicant rights to file appeals, a step-
31 by-step description of the application and appeals process, and a list
32 of all required documents, shall be conveniently available on the
33 State’s Internet website;

34 (2) The right to appeal a denial from a recovery and rebuilding
35 program, and obtain a decision within 50 days. An applicant shall
36 have the right to appeal a denial, or any other adverse
37 determination, from a recovery and rebuilding program, an award
38 amount, a placement on a waiting list, a contractor selection, or any
39 other decision that the applicant might reasonably view as
40 unfavorable. The State, or its contractor, shall render a decision on
41 any such appeal within 50 days. If no decision is made within 50
42 days, then the appeal shall be deemed successful, and all relevant
43 State and private entities shall act accordingly. In the event of a
44 successful appeal, the applicant shall have the right to be
45 repositioned on a list or waiting list for any benefits, or otherwise
46 accommodated, as though the correct determination had been made
47 at the time of the initial determination;

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1 (3) The right to know where the application or processing stands
2 at all times, including the right to a unique applicant identification
3 number. In conjunction with any recovery and rebuilding program,
4 there shall be a system to track the status of each application. The
5 system shall be available on the State's Internet website without any
6 personal identifying information, over the telephone, and through
7 the assistance of trained counselors, one of whom shall be assigned
8 to each applicant;

9 (4) The right to know why the State, or its contractor, has
10 rejected the applicant from a recovery and rebuilding program,
11 placed the applicant on a waiting list, or made or failed to make any
12 other determination that the applicant may reasonably consider
13 adverse. Each applicant, including each applicant who is rejected,
14 placed on a waiting list, or subjected to any determination that may
15 reasonably be considered adverse, shall be provided a full list of
16 reasons for any program decision at the time of the decision. Such
17 reasons shall include, but shall not be limited to (a) a description
18 and copy of the formula and calculations used to determine the
19 amount of the proposed award for any program for which they are
20 approved, and (b) for any program with a prioritization or
21 randomization process, or both, a description of that process and a
22 detailed calculation showing all factors used in such process and
23 how such factors were used to assess the applicant's application.
24 Additional reasons for a determination shall not be added if an
25 applicant subsequently cures the initial reason for the adverse
26 determination, or demonstrates that it was mistaken;

27 (5) The right to know where the applicant stands on a waiting
28 list, and why. Any recovery and rebuilding applicant placed on a
29 waiting list shall be given a numbered position on that list. Upon
30 initial placement, the applicant shall be informed of this numbered
31 position and provided with a complete explanation of the rationale
32 behind the placement determination via regular mail. The
33 applicant's waiting list placement shall be maintained on the State's
34 Internet website, and shall be searchable for the applicant, but
35 without any personal identifying information. Any changes to the
36 waiting list, as posted on the Internet website, shall be updated on a
37 weekly basis at a minimum;

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

40 (a) Not later than the 30th day next following the enactment of
41 P.L. , c. (C.) (pending before the Legislature as this bill),
42 the commissioner shall complete a report documenting all accepted,
43 waitlisted, rejected, and withdrawn applications, by race and
44 ethnicity of the applicant, for recovery and rebuilding program
45 benefits related to Superstorm Sandy. The report shall detail the
46 reasons for accepted status, waitlisted status, rejections, and
47 withdrawals, sorted by the municipality wherein the damaged
48 property is located. The report shall be updated on a monthly basis

1 until all program funding has been disbursed. Upon completion, the
2 initial report, as well as each monthly update, shall immediately be
3 provided to the Legislature pursuant to section 2 of P.L.1991, c.164
4 (C.52:14-19.1), to the State Auditor, and posted on the State's
5 Internet website. Not later than one year following the enactment
6 of P.L. , c. (C.) (pending before the Legislature as this
7 bill), the State Auditor shall complete an audit of the first four
8 months of the commissioner's reporting, and submit an audit report
9 to the Legislature, pursuant to section 2 of P.L.1991, c.164
10 (C.52:14-19.1), detailing the results of the audit. This audit, and
11 audit report submission to the Legislature, shall be updated on an
12 annual basis until all funding has been disbursed.

13 (b) For all future recovery and rebuilding programs, reporting
14 and auditing shall follow the same parameters as required for
15 Superstorm Sandy. The commissioner shall complete and submit
16 the initial report not later than the first day of the first month next
17 following commencement of the program, and shall update the
18 report monthly, also following the same parameters as required for
19 Superstorm Sandy, until all program funding is disbursed. The
20 State Auditor shall complete the initial audit and submit the initial
21 audit report, covering the first four months of the commissioner's
22 reporting, not later than the first day of the twelfth month next
23 following commencement of the program. This audit and audit
24 report submission shall be updated on an annual basis, to reflect the
25 most recent information available, until all funding has been
26 disbursed;

27 (7) The right to access all information on recovery and
28 rebuilding programs in both English and Spanish. Whether online,
29 over the telephone, or through in-person communications, all
30 information provided on a recovery and rebuilding program in
31 English must be available concurrently, accurately, and
32 comprehensively in Spanish, and in any other languages required
33 pursuant to State or federal law;

34 (8) The right of a local unit to obtain funding solely based on
35 the following factors: the extent of physical damage caused by the
36 severe weather event, the extent of need among those of modest
37 income in conformance with paragraph (9) of this subsection, and
38 the extent of future severe weather risk. All funding distributions
39 shall be based on an objective and complete survey of the level of
40 physical damage, with prioritization based solely on a consistent
41 application of standards which benefit the local units, businesses,
42 and individuals that are most impacted and have the greatest need,
43 and which enable the local units, businesses, and individuals that
44 are most impacted and have the greatest need to receive benefits
45 that allow them to recover, rebuild their lives, and be better
46 positioned to avoid or protect against physical damage from future
47 severe weather events. Funding decisions by the State and its
48 contractors shall not overlook local units, businesses, and

1 individuals that are significantly impacted by the severe weather
2 event, but are located outside of the counties and other areas that
3 are generally most impacted by the severe weather event;

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

16 (10) The right for victims with modest income to obtain a fair
17 portion of recovery and rebuilding program benefits. No less than
18 60 percent of funding awarded through the Superstorm Sandy
19 Homeowner Resettlement Program shall be allocated to individuals
20 of low or moderate income, meaning those individuals occupying
21 households with a gross household income equal to 80 percent or
22 less of the median gross household income for households of the
23 same size, and within the same housing region, as defined by
24 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304). No
25 person shall be denied Superstorm Sandy benefits, or the benefits of
26 any other recovery and rebuilding program, on the basis of the
27 receipt of any other form of public assistance that is unrelated to the
28 severe weather event;

29 (11) The right to know how funding is allocated and how
30 funding decisions are made, including transparency with regard to
31 criteria used to award funding for specific building projects. Basic
32 information displaying the beneficiaries of all contracts for the
33 expenditure of recovery and rebuilding program funds shall be
34 updated on the State's Internet website on a weekly basis, together
35 with a full and current explanation of the criteria and process by
36 which applications are prioritized. Changes to program policy and
37 information on new contractor awards shall immediately be posted
38 on the State's Internet website; and

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

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47 4. a. A public official, officer, employee, or custodian who
48 knowingly and willfully violates P.L. , c. (C.) (pending

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

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

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33 5. This act shall take effect immediately.

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STATEMENT

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38 This bill would establish the "Superstorm Sandy Bill of Rights."
39 This tragic storm inflicted immense damage to this State, and has
40 driven more than a quarter million State residents to seek
41 governmental assistance.

42 Since the recovery effort began, too many victimized individuals,
43 businesses, and communities have experienced unreasonable
44 suffering, inconveniences, and unfair treatment in their efforts to
45 obtain governmental assistance. These problems have arisen in the
46 form of unclear application and appeals processes, difficulties in
47 obtaining the status of applications, rejections without any
48 reasoning offered, waiting lists provided without any clear order,

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1 disparities in funding offered for African-American and Latino
2 applicants, insufficient and often inaccurate program information,
3 particularly in Spanish, State funding offered to certain
4 communities in amounts disproportionate to the amount of damage
5 endured, insufficient resettlement funding offered to low and
6 moderate income individuals, and an overall lack of transparency
7 and refusals to respond to OPRA requests.

8 This bill would establish standards for the treatment of
9 individuals, businesses, and local units that have been victimized by
10 this tragedy. This bill would require that, to the greatest extent
11 permitted under federal law, each individual, business, and local
12 unit that has been victimized by this tragedy, shall have rights to
13 transparent and fair access to all recovery funding. This access
14 would be based on consistent and transparent standards, focused on
15 the recovery efforts of those most impacted, and with the greatest
16 need. Specifically, this bill would require (1) a clear explanation of
17 application requirements, (2) certain rights to appeal unfavorable
18 decisions, (3) rights to knowledge of where an application stands,
19 (4) the right to know why a rejection occurred, (5) the right to
20 knowledge of waiting list placement, (6) the right to fair access
21 regardless of race or ethnicity, (7) the right to access program
22 information in languages other than English, (8) the right for local
23 units to obtain benefits based on the level of damage, (9) the right
24 to apply for benefits through more than one program, and through
25 insurance, (10) the right for victims of modest income to obtain a
26 fair portion of benefits, (11) rights to knowledge of how contracting
27 decisions are made, and (12) the right to be treated with dignity and
28 respect. The bill would also impose similar standards for any future
29 disasters and unspent recovery funding from prior disasters.

30 A public official, officer, employee, or custodian who knowingly
31 and willfully violates provisions of this bill, and unreasonably
32 impedes access to program benefits as a result, could be subject to a
33 civil penalty of \$1,000 to \$5,000. An applicant who is subject to an
34 unfavorable decision may challenge the decision by filing an action
35 in Superior Court.