SENATE, No. 532



STATE OF NEW JERSEY

217th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator JENNIFER BECK

District 11 (Monmouth)

Co-Sponsored by:

Senators Kyrillos and Holzapfel

SYNOPSIS

Establishes "Superstorm Sandy Homeowners Protection Act."

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee with technical review.



An Act establishing the "Superstorm Sandy Homeowners Protection Act" and supplementing P.L.2013, c.37 (C.52:15D-1 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the "Superstorm Sandy Homeowners Protection Act."

2. Unless the context clearly indicates otherwise, as used in P.L. , c. (C. ) (pending before the Legislature as this bill):

"Act in reliance" means that, in response to reaching grant award completion, the applicant moves out of the home, moves the contents of the home into temporary storage containers, makes financial commitments, or takes other substantial action in anticipation of RREM program or LMI program work that would not have been taken but for reaching grant award completion.

"Applicant" means an individual that has applied for, is applying for, or is receiving benefits under a recovery and rebuilding program.

"Commissioner" means the Commissioner of Community Affairs or an individual authorized to act on his behalf.

"Builder" means a home improvement contractor, home elevation contractor, new home builder or any other person, including a subcontractor, who performs or contracts to perform a home improvement, elevation, or construction project for a program participant through, or paid for with funds provided by, the RREM program or LMI program.

"Debar" means to permanently ban a builder from conducting any work in New Jersey consisting of the construction of a "new home," as defined under section 2 of "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-2), and "home improvements," as defined under section 2 of the "Contractors' Registration Act," P.L.2004, c.16 (C.56:8-137).

"Department" means the Department of Community Affairs.

"FEMA" means the Federal Emergency Management Agency.

"Final inspection" means a property review conducted by a RREM/LMI contractor after the builder has completed construction on a Sandy-impacted property utilizing RREM or LMI program funding.

"Grant award" means an estimate of construction costs for a home improvement, elevation, or construction project.

"Grant award completion" means that the department, or its agents or contractors, has led the applicant through the RREM program or LMI program application process, has prepared a grant award agreement document containing all necessary award calculations, and has offered the document to the applicant for the applicant's signature.

"Home improvement, elevation, or construction project" means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, modernizing, elevating, rebuilding, or construction of residential or noncommercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways; sidewalks; swimming pools; terraces; patios; landscaping; fences; porches; windows; doors; cabinets; kitchens; bathrooms; garages; basements, including basement waterproofing; fire protection devices; security protection devices; central heating and air conditioning equipment; water softeners, heaters, and purifiers; solar heating or water systems; insulation; siding; wall-to-wall carpeting or attached or inlaid floor coverings; and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property. The term includes converting existing commercial structures into residential or noncommercial property, and includes any of the above activities performed under emergency conditions

"Housing advisor" means a professional, assigned by a RREM/LMI contractor, whose principal duty is to help applicants navigating the RREM or LMI program by assisting the applicants with eligibility determinations, application processing, and execution of grant awards.

"Homeowner-selected builder" means a builder participating in Pathway B.

"Initial site inspection" means an in-person property review of a Sandy-impacted property by a RREM/LMI contractor to confirm existing site conditions and to collect information about the project site to be utilized in making property eligibility determinations.

"LMI program" means the Low-to-Moderate Income Homeowners Rebuilding Program.

"Notice to proceed" means a letter to the builder stating the date the builder can begin work, subject to the conditions of the construction contract.

"Pathway B" means the option for completing home improvement, elevation, or construction projects utilizing RREM funds in which the applicant seeks, identifies, and selects his own general contractor.

"Pathway C" means the option for completing home improvement, elevation, or construction projects utilizing RREM funds in which the applicant uses an assigned builder selected by the RREM program.

"Pre-construction meeting" means a meeting, coordinated by the RREM/LMI contractor, between the RREM/LMI contractor, housing advisor, and applicant to execute an Amendment to the Homeowner Grant Agreement, a Private Escrow Agreement, and sign Exhibit J of the Design/Build Agreement.

"Principal residence" means a home which an applicant occupied as his or her primary residence on October 29, 2012. Principal residence does not mean second homes, vacation homes, or rental properties.

"Program participant" means an applicant who has reached grant award completion in the RREM program or the LMI program.

"Project manager" means a professional, assigned by a RREM/LMI contractor, whose responsibilities include coordinating with applicants, providing RREM and LMI program details, and offering technical assistance for the completion of an applicant's scope of work to ensure it complies with LMI and RREM construction standards. The project manager also inspects the construction while it is in progress and approves payment requests as construction is completed.

"Recovery and rebuilding program" means the use of funding provided by the federal government intended to help to rebuild and recover from Superstorm Sandy, through the RREM program or LMI program.

"RREM/LMI contractor" means an entity selected by the department to manage the implementation and operation of the RREM and LMI programs.

"RREM program" means the Reconstruction, Rehabilitation, Elevation, and Mitigation Program.

"RREM-selected builder" means a builder participating in Pathway C.

"Substantiated complaint" means a complaint against a builder that, in the commissioner's opinion, would lead a reasonable person to doubt the builder's ability or willingness to complete RREM or LMI work in a responsible manner.

"Superstorm Sandy-impacted property" means a structure or property that existed on October 28, 2012 and was damaged or destroyed by Superstorm Sandy or damaged or destroyed by water, wind, or flood incidental to Superstorm Sandy, and the reconstruction or renovation of which is funded through the RREM program or LMI program.

"Superstorm Sandy recovery and rebuilding program contract" means a written agreement for the performance of a home improvement, elevation, or construction project, including all agreements under which the builder is to perform labor, render services, or furnish materials in connection therewith, for a program participant through, or paid for with funds provided by, the RREM program or LMI program.

3. a. If the department allows an applicant, whose principal residence has been damaged as a result of Superstorm Sandy, to reach grant award completion under the RREM program or LMI program even though federal law, rules, regulations, or policy guidelines do not permit the grant award, and the applicant signs the agreement and acts in reliance, then the department shall pay the applicant the equivalent of the full amount of funding necessary to improve the applicant's principal residence in accordance with the terms of the grant award agreement, up to the full amount of the grant award agreement. These payments shall be provided through the funding allocated under section 18 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. The applicant shall not be entitled to full payment if any portion of the RREM or LMI grant would have amounted to a duplicative benefit under the RREM or LMI programs, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. s.5155). In such case, the applicant shall still be entitled to any portion of the grant award that is not duplicative.

c. The applicant shall not be entitled to payment if the applicant misrepresents information essential to the department in determining RREM or LMI eligibility.

d. The department shall identify and notify applicants who may be entitled to payment under this section and shall collect information from the applicant necessary for the department to determine that the applicant is entitled to relief under this section.

4. a. Notwithstanding the limit on applicability to new home builders contained in subsection a. of section 5 of the "Contractors' Registration Act," P.L.2004, c.16 (C.56:8-140), or any other provision of law to the contrary, it is deemed an unlawful practice under the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), for any builder, in connection with the performance of any home improvement, elevation, or construction project that is the subject of a Superstorm Sandy recovery and rebuilding program contract, to:

(1) use or employ any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission with respect to the home improvement, elevation, or construction project or the work performed or to be performed;

(2) perform work that, after a reasonable opportunity to correct, materially fails to comply with the standards and requirements set forth in the Superstorm Sandy recovery and rebuilding program contract;

(3) perform work that, after a reasonable opportunity to correct, fails to comply with applicable provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.); or

(4) willfully or unreasonably fail to timely perform material work required under the terms of a Superstorm Sandy recovery and rebuilding program contract.

b. Notwithstanding the bar after an election of remedies set forth in section 9 of "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-9), or any other provision of law to the contrary, the initiation of a procedure to enforce a remedy under "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.), or an action to enforce any other remedy, shall not prohibit a program participant from initiating an action under the New Jersey Consumer Fraud Act, P.L.1960, c.39 (C.56:8-1 et seq.), for any unlawful practice of a builder set forth in subsection a. of this section, provided that no award or settlement agreement has been reached or judgment rendered prior to the effective date of P.L.    , c. (C. ) (pending before the Legislature as this bill), and provided that the program participant withdraws from arbitration, and withdraws any other complaint, as applicable, prior to initiating an action under P.L.1960, c.39 (C.56:8-1 et seq.).

c. For the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), a program participant may withdraw from arbitration under "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.), at any time prior to the rendering of a judgment, or prior to the parties reaching an award agreement.

5. a. The Attorney General shall establish a confidential intake procedure for program participants to submit complaints about builders, which procedure shall ensure that complaints are referred to:

(1) the department, so that the department may have an opportunity to take the actions permitted under section 6 of P.L.     , c. (C. ) (pending before the Legislature as this bill); and

(2) the Division of Consumer Affairs in the Department of Law and Public Safety, so that the division may have an opportunity to take action to address the complaints.

b. The department shall establish a telephone hotline and an Internet-based method to accept complaints concerning homeowner-selected builders, RREM-selected builders, and LMI builders from applicants. The department shall categorize the complaints it receives pursuant to this section in a manner that the department determines will increase the transparency and efficiency of the RREM and LMI programs.

c. The department shall publish substantiated complaints, received pursuant to subsections a. and b. of this section, on its Internet website. The department shall publish on its Internet website all penalties and fines assessed against homeowner-selected builders and LMI builders, by the State, a county, municipality, or any political subdivision thereof, concerning the builder's performance on LMI or RREM program-funded projects.

d. The department shall publish on its Internet website licensing information for all homeowner-selected builders, RREM-selected builders, and LMI builders, which the State requires to perform work under the LMI and RREM programs. At the request of the department, the Division of Consumer Affairs in the Department of Law and Public Safety shall provide the department with licensing information for home improvement contractors and homebuilders.

e. The department shall notify all applicants, through e-mail or by mailed letter, that the department accepts complaints about homeowner-selected builders, RREM-selected builders, and LMI builders submitted to the department by program participants via a telephone hotline and on its Internet website and that certain substantiated complaints are accessible to the public.

6. a. The commissioner may notify applicants who have applied for assistance through the RREM program under Pathway B or through the LMI program, but have not yet selected builders for such work, of any builder who has been the subject of substantiated complaints pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), or other complaints, including but not limited to those received pursuant to section 6 of "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-6).

b. Upon receipt of a complaint pursuant to section 5 of P.L.    , c. (C. ) (pending before the Legislature as this bill), or other complaints, including but not limited to those received pursuant to section 6 of "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-6), the commissioner may conduct investigations into allegations against a builder. In pursuit of such investigations, the commissioner shall be authorized to hold hearings in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) applicable to contested cases, to subpoena witnesses and compel their attendance, to require the production of papers, records or documents, administer oaths or affirmations to witnesses, to inspect such relevant books, papers, records, or documents of such builder at his place of business during business hours, and to conduct inspections of RREM and LMI construction sites on which the builder has worked.

c. The commissioner, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, may deny, suspend, or revoke any certificate of registration of a builder, or may debar a builder, after affording the builder the opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) applicable to contested cases, if, in connection to RREM program or LMI program work, the builder has:

(1) willfully committed fraud in connection to a Superstorm Sandy recovery and rebuilding program contract;

(2) completed a home improvement, elevation, or construction project in a grossly negligent manner; or

(3) willfully violated applicable provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), despite a reasonable opportunity to correct.

7. a. To the greatest extent feasible, the builder shall refrain from asking an applicant to leave their home until the need to disconnect utilities, begin renovation work, or other project needs, make the applicant's continued presence untenable.

b. If a RREM-selected builder cannot complete agreed-upon construction within 90 days of the issuance of the Notice to Proceed, then the RREM-selected builder shall provide rental compensation for each unexcused day that the applicant is required to vacate the house while construction occurs. The amount of compensation the RREM-selected builder shall provide an applicant shall be based on the United States Department of Housing and Urban Development's fair market rental cost and utility cost formula for the county of the damaged home and how many bedrooms are in that home.

c. Notwithstanding the provisions of subsection b. of this section, the department, in consultation with the project manager, may excuse a RREM-selected builder from paying fair market rent pursuant to subsection a. of this section if the RREM-selected builder missed the 90-day deadline due to circumstances beyond the RREM-selected builder's control.

d. On the first of each month following the effective date of P.L.     , c. (C. ) (pending before the Legislature as this bill), the department shall publish on its Internet website the names of RREM-selected builders that have still not completed construction two weeks after the expiration of the 90-day deadline; provided, however, that the department shall not publish the names of RREM-selected builders that it has excused from paying fair market rent pursuant to subsection c. of this section. The department shall publish on its Internet website the RREM-selected builder's reason for the delay and the date on which the 90-day period expired.

e. The department shall refer a RREM-selected builder to the Division of Consumer Affairs in the Department of Law and Public Safety for review if the department believes that a violation of subsection a. of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill) contributed to the RREM-selected builder's failure to meet the 90-day deadline.

8. Within 60 days of the effective date of P.L. , c.     (C.        ) (pending before the Legislature as this bill), the department shall publish on its Internet website:

a. Integrity oversight monitor reports provided to the State Treasurer for distribution, pursuant to section 2 of P.L.2013, c.37 (C.52:15D-2).

b. Audits prepared by the State Comptroller, pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.), and any non-privileged, investigative materials concerning the performance and management of recovery and rebuilding programs utilized during the course of the State Comptroller's investigation.

c. A comprehensive description of the process through which applicants may challenge their estimated cost of repair or work in place assessment, including:

(1) a statement notifying applicants that the estimated cost of repair provided by a project manager is only an estimate, and is subject to change as work on the residence proceeds; and

(2) a statement notifying applicants that they may seek two scope of work adjustments for additional LMI and RREM funding if the cost of work on Superstorm Sandy-impacted property exceeds the amount indicated in the applicant's estimated cost of repair, so long as the applicant does not exceed the maximum grant permitted under the LMI or RREM programs.

d. Federally-required Quarterly Performance Reports completed by New York and Connecticut, reflecting their progress in disbursing federal aid money for Superstorm Sandy recovery.

e. A plain language description of Increased Cost of Compliance coverage, understandable to a person with little or no experience in construction, insurance, and the administration of federal grant money for disaster relief and recovery.

f. An explanation of the categories of repairs for which LMI and RREM program funding is available, including a definition of "reasonable and necessary costs."

g. Notification to applicants that FEMA has reopened some Sandy-related claims under the National Flood Insurance Program and has mailed thousands of letters to applicants who were originally denied coverage for their Sandy-related losses, and that applicants must respond to FEMA's letters within 90 days.

h. Questions frequently received from applicants concerning recovery and rebuilding programs and the answers thereto. The answers provided by the department shall be understandable to a person with little or no experience in construction and the administration of federal grant money for disaster relief and recovery.

i. An organizational chart providing the name, title, phone number, and e-mail address of department personnel involved in the disbursement of funds through the RREM and LMI programs.

j. A list of hyperlinks to other federal, State, or local government websites, which, in the department's opinion, provide important information about the RREM and LMI programs.

9. The department shall provide to all applicants in Pathway B and the LMI program, at the pre-construction meeting, a best practices tip sheet, which shall include, but not be limited to:

a. The department's recommendation that applicants in Pathway B and the LMI program only hire builders that have posted a $25,000 performance bond;

b. A reminder to applicants to check the department's website for background information and performance data on certain builders and subcontractors;

c. A notice that applicants should retain all documents received from housing advisors, project managers, builders, and federal, State, and local agencies concerning their grant award; and

d. A reminder that applicants may submit complaints concerning recovery and rebuilding programs to their project manager, the department, or the Attorney General.

10. a. At a minimum, the project manager shall be present at the initial site inspection, pre-construction meeting, and RREM final inspection. The project manager shall give an applicant five days' notice when scheduling an in-person visit. The applicant may invite his homeowner-selected builder to any meeting between the applicant and the project manager, and the homeowner-selected builder shall make every reasonable effort to attend the meeting upon the applicant's request.

b. A project manager in Pathway B shall present the grant award summary to the applicant, in writing, and shall explain the grant award summary to the applicant in a manner understandable to a person with little or no experience in construction and the administration of federal grant money for disaster relief and recovery. At the request of an applicant, a project manager in Pathway B shall provide the estimated cost of repair to the applicant.

c. At the pre-construction meeting, a Pathway B project manager shall explain to the applicant that the RREM program allows for two scope of work adjustments, one adjustment available during construction and one adjustment available to the applicant at the completion of the grant award. A Pathway B project manager shall explain the scope of work adjustment process in a manner understandable to a person with little or no experience in construction and the administration of federal grant money for disaster relief and recovery.

11. a. An applicant, for whose benefit an agreement is made between a RREM-selected builder and its subcontractor, by way of a written or oral contract, shall have the same right to enforce the agreement as the applicant would have had if the agreement had been made directly with the applicant.

b. An agreement between a RREM-selected builder and its subcontractor to perform work on an applicant's property for which the subcontractor is compensated, in whole or in part, using RREM program funding, shall be construed to have been made for the benefit of the applicant.

c. The rights of an applicant pursuant to this section shall be deemed to have become vested, subject always to such express or implied conditions, limitations, or infirmities of the contract to which the rights of the RREM-selected builder or the agreement are subject, without any act or knowledge on the part of the applicant, the moment the agreement becomes legally binding on the subcontractor, unless there is some stipulation, agreement, or understanding in the contract to the contrary.

12. a. At the regular meeting held between the department and RREM/LMI contractors, the department shall continue to ensure that RREM/LMI contractors have a complete understanding of the requirements for grant funding through recovery and rebuilding programs. Upon request from a RREM/LMI contractor at one of the regular meetings, the department shall provide to the RREM/LMI contractor, access to department personnel with expertise in recovery and rebuilding programs to advise the RREM/LMI contractor.

b. RREM and LMI project managers and housing advisors shall respond within one business day to any question or request made by an applicant with whom the project manager or housing advisor has a duty to provide services pursuant to the RREM program or LMI program. A project manager or housing advisor may seek advice or assistance from a RREM/LMI contractor, who may consult with department personnel with expertise in recovery and rebuilding programs at the regular meetings between RREM/LMI contractors and the department. A project manager or housing advisor that contacts an applicant within one business day to notify the applicant that the project manager or housing advisor has sought assistance from a RREM/LMI contractor shall be deemed to have complied with the one-day requirement set forth in this subsection.

c. If an applicant requests a meeting with his project manager or housing advisor, then the project manager or housing advisor shall meet with the applicant within five business days from the applicant's request for a meeting.

d. (1) The department shall notify project managers and housing advisors of any material changes to the LMI program or RREM program within two business days of the change.

(2) The project manager shall notify all applicants with whom he has contracted to provide services under the LMI program or RREM program of the material changes within one business day of receiving notice from the department.

e. A project manager or housing advisor that resigns or is discharged from his position as a project manager or housing advisor shall notify all applicants with whom the project manager or housing advisor contracted to provide services under the LMI program or RREM program of the departure within one business day. The RREM/LMI contractor shall assign a replacement project manager or housing advisor to all applicants with whom the outgoing project manager or housing advisor contracted to provide services under the LMI program or RREM program within five business days.

13. a. A project manager shall monitor the progress of work performed pursuant to a RREM or LMI grant and assist the applicant with the project schedule agreed to by the applicant and his builder.

b. A RREM/LMI contractor shall submit, at a minimum, biweekly reports to the department on the progress of projects for which the project manager is responsible. The reports required pursuant to this subsection may be submitted to the department at the regular meetings held between the department and RREM/LMI contractors.

c. A project manager shall receive complaints about homeowner-selected builders and LMI builders, and, if appropriate, deliver the complaints to a representative with the Division of Consumer Affairs in the Department of Law and Public Safety. The division shall investigate complaints submitted by project managers for violations of subsection a. of section 4 of P.L. , c.     (C.        ) (pending before the Legislature as this bill), and take such other licensing and regulatory action as may be appropriate.

d. Throughout the investigation conducted by the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to subsection c. of this section, the project manager shall make reasonable efforts to provide updates to the applicant who submitted the complaint, concerning the status of the investigation.

e. Project managers, homeowner-selected builders, RREM-selected builders, and LMI builders shall have a duty to report, to the Division of Consumer Affairs in the Department of Law and Public Safety, suspected violations of subsection a. of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill).

14. Where feasible, an applicant shall obtain an elevation certificate from a licensed land surveyor, registered professional engineer, registered architect, or other community official authorized by State or local law to certify elevation information prior to the initial site inspection. If an applicant is unable to obtain an elevation certificate prior to the initial site inspection, then the applicant's builder may seek a scope of work adjustment in the event the estimated cost of repair changes after the applicant obtains an elevation certificate.

15. a. The construction code official, planning board, board of adjustment, and other local officials and offices, shall, to the greatest extent feasible, expedite all site plans, variances, construction permits, road opening permits, and other applications for program participants, and shall be as responsive as possible to questions from program participants.

b. Upon request from a local construction code official, the department shall provide to the local construction code official, additional construction code enforcement personnel from the Division of Codes and Standards in the department to assist with inspection of Sandy-impacted property receiving RREM or LMI funding and enforcement of the local building code. The department shall provide personnel from the department within five business days of the local construction code official's request.

16. For the purposes of site plan and variance approval of a Superstorm Sandy-impacted property that adheres to the same footprint as the destroyed home, the planning board and board of adjustment shall continue any non-conforming use designation on the property and grandfather pre-existing conditions, so long as the board does not view this treatment as likely to result in a safety hazard.

17. All homeowners and other persons impacted by Superstorm Sandy shall be treated with dignity and respect throughout the continuing process of recovery.

18. The Legislature shall annually appropriate such sums as are necessary to make the payments required under section 3 of P.L.    , c. (C. ) (pending before the Legislature as this bill) following request by the commissioner. The State Treasurer, upon warrant of the Director of the Office of Management and Budget in the Department of the Treasury, shall pay such costs from moneys appropriated for the purposes of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

19. This act shall take effect immediately.