

# SENATE, No. 217

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator DECLAN J. O'SCANLON, JR.**

**District 13 (Monmouth)**

**SYNOPSIS**

Establishes program providing grants for Superstorm Sandy recovery in exchange for reduction of affordable housing obligation.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning Superstorm Sandy reconstruction and  
2 affordable housing obligations and supplementing Title 52 of the  
3 Revised Statutes.  
4

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

7  
8 1. a. For the purposes of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill):

10 “Eligible property owner” means a property owner who was  
11 deemed eligible by the Department Community Affairs to receive  
12 federal funds dedicated through the Low-to-Moderate Income  
13 Homeowners Rebuilding Program as a result of Superstorm Sandy.

14 b. There is established a special, dedicated, and non-lapsing  
15 account in the General Fund called the Superstorm Sandy  
16 Neighborhood Rebuilding Account. Funds deposited in the account  
17 shall be used exclusively for the purposes established in  
18 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
19 shall be used for no other purpose.

20 c. An eligible property owner may apply to the Department of  
21 Community Affairs for a grant of an amount necessary to complete  
22 the rehabilitation of a property damaged by Superstorm Sandy, up  
23 to \$50,000, to be paid from the Superstorm Sandy Neighborhood  
24 Rebuilding Account.

25 d. In exchange for the receipt of grant funds from the  
26 Superstorm Sandy Neighborhood Rebuilding Account established in  
27 P.L. , c. (C. ) (pending before the Legislature as this bill), an  
28 eligible property owner shall record the following deed restriction  
29 with the county recording officer:  
30

31 DEED RESTRICTION  
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33 In consideration of the grant received from the Sandy  
34 Neighborhood Rebuilding Account, the Owner hereby agrees to  
35 abide by the covenants, terms, and conditions set forth in this Deed  
36 restriction, with respect to the land and improvements located at  
37 block \_\_\_\_, lot \_\_\_\_ in the municipality of \_\_\_\_\_, County of  
38 \_\_\_\_\_, State of New Jersey, and known by street address  
39 \_\_\_\_\_.

40  
41 The covenants contained herein shall run with the land as  
42 follows:  
43

44 (1) For a period of 15 years from the date upon which funds are  
45 awarded to the Owner from the Superstorm Sandy Neighborhood  
46 Rebuilding Account pursuant to P.L. , c. (C. ) (pending before  
47 the Legislature as this bill), the following restrictions on the  
48 property shall be in effect:

1 Article 1. Sales price restriction

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3 A. The sale of the property subject to this deed restriction is  
4 subject to regulations governing controls on affordability, which are  
5 found in New Jersey Administrative Code at Title 5, chapter 93,  
6 subchapter 9 (N.J.A.C. 5:93-9.1 et seq.), and chapter 80,  
7 subchapter 26 (N.J.A.C. 5:80-26.1 et seq.).

8

9 B. The property subject to this deed restriction may be  
10 conveyed only to one or more members of a household who have  
11 been approved in advance and in writing by the Commissioner of  
12 Community affairs, or his designee.

13

14 C. No sale of the property subject to this deed restriction shall  
15 be lawful, unless approved in advance and in writing by the  
16 Commissioner of Community affairs, or his designee, and no sale  
17 shall be for a consideration greater than the maximum permitted  
18 price ("Maximum Resale Price," or "MRP") as determined by the  
19 Commissioner of Community Affairs, or his designee.

20

21 D. No refinancing, equity loan, secured letter of credit, or any  
22 other mortgage obligation or other debt (collectively, "Debt")  
23 secured by the property subject to this deed restriction, may be  
24 incurred except as approved in advance and in writing by the  
25 Commissioner of Community Affairs. At no time shall the  
26 Commissioner of Community Affairs approve any such Debt, if  
27 incurring the Debt would make the total of all such Debt exceed  
28 Ninety-Five Percent (95%) of the applicable MRP.

29

30 E. The Owner of the property subject to this deed restriction  
31 shall at all times maintain the property subject to this deed  
32 restriction as his or her principal place of residence.

33

34 F. Except as set forth in Article 2, below, at no time shall the  
35 Owner of the property subject to this deed restriction lease or rent  
36 the property subject to this deed restriction to any person or  
37 persons, except on a short-term hardship basis as approved in  
38 advance and in writing by the Commissioner of Community Affairs.

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40 G. No improvements may be made to the property subject to  
41 this deed restriction that would affect its bedroom configuration,  
42 and in any event, no improvement made to the property subject to  
43 this deed restriction will be taken into consideration to increase the  
44 MRP, except for improvements approved in advance and in writing  
45 by the Commissioner of Community Affairs.

1 H. The affordable housing covenants, declarations and  
2 restrictions implemented by this deed restriction and by  
3 incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect  
4 despite the entry and enforcement of any judgment of foreclosure  
5 with respect to the property subject to this deed restriction so long  
6 as the property remains subject to the affordability controls being  
7 implemented by this deed restriction.

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9 I. The property subject to this deed restriction is subject to a  
10 fifteen (15) year affordability control period that commenced on the  
11 date upon which funds were awarded to the Owner from the  
12 Superstorm Sandy Neighborhood Rebuilding Account pursuant to  
13 P.L. , c. (C. ) (pending before the Legislature as this bill),  
14 which is \_\_\_\_\_.

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16 Article 2. Rental Price Restriction

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18 A. Rental of the property subject to this deed restriction subject  
19 to regulations known as the Uniform Housing Affordability  
20 Controls, which are found in New Jersey Administrative Code at  
21 Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, et seq, the  
22 “Uniform Controls”).

23

24 B. If the property subject to this deed restriction is to be rented  
25 to an eligible tenant, the property shall be used solely for the  
26 purpose of providing rental dwelling units for low- or moderate-  
27 income households, and no commitment for any such dwelling unit  
28 shall be given or implied, without exception, to any person who has  
29 not been certified for that unit in writing by the Commissioner of  
30 Community Affairs or his designee.

31

32 C. No improvements may be made to the property subject to  
33 this deed restriction that would affect the bedroom configuration of  
34 any of its dwelling units, and any improvements to the property  
35 subject to this deed restriction must be approved in advance and in  
36 writing by the Commissioner of Community Affairs or his designee.

37

38 D. The Owner shall notify the Commissioner of Community  
39 Affairs of any foreclosure actions filed with respect to the property  
40 within five (5) business days of service upon Owner.

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42 E. The Owner shall notify the Commissioner of Community  
43 Affairs within three (3) business days of the filing of any petition  
44 for protection from creditors or reorganization filed by or on behalf  
45 of the Owner.

1 Article 3. Foreclosure

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3 A. This deed restriction shall not be terminated in the event of a  
4 Judgment of Foreclosure on the property subject to this deed  
5 restriction.

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7 B. The terms and restrictions of this property subject to this  
8 deed restriction shall be subordinated only to the First Purchase  
9 Money Mortgage lien on the Affordable Housing Property and in no  
10 way shall impair the First Purchase Money Mortgagee's ability to  
11 exercise the contract remedies available to it in the event of any  
12 default of such mortgage as such remedies are set forth in the First  
13 Purchase Money Mortgage documents for the property subject to  
14 this deed restriction.

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16 C. An Execution of Foreclosure sale by any other class of  
17 creditor or mortgagee shall not result in a release of the property  
18 subject to this deed restriction from the provisions and restrictions  
19 of this deed restriction.

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21 Article 4. Remedies for Breach of Affordable Housing Covenants

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23 A. A breach of the covenants described herein will cause  
24 irreparable harm to the public, in light of the public policies set  
25 forth in the New Jersey Fair Housing Act, the Uniform Housing  
26 Affordability Control rules found at N.J.A.C. 5:80-26, and the  
27 obligation for the provision of low and moderate-income housing.

28

29 B. In the event of a threatened breach of any of the covenants  
30 contained herein by the Owner, or any successor in interest of the  
31 property subject to this deed restriction, the Commissioner of  
32 Community Affairs shall have all remedies provided at law or  
33 equity, including the right to seek injunctive relief or specific  
34 performance.

35

36 (2) If the Owner retains ownership of the property subject to this  
37 deed restriction for longer than 15 years from the date upon which  
38 funds were awarded to the Owner from the Superstorm Sandy  
39 Neighborhood Rebuilding Account, the Owner shall, upon the first  
40 subsequent transfer of the ownership of the property, pay an amount  
41 equal to the amount received from Superstorm Sandy Neighborhood  
42 Rebuilding Account to the Department of Community Affairs for  
43 deposit into the New Jersey Affordable Housing Trust Fund  
44 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-  
45 320).

46

47 e. he grant of funds to an eligible property owner from the  
48 Superstorm Sandy Neighborhood Rebuilding Account in exchange

1 for the recording of a deed restriction shall constitute a binding  
2 contract between the eligible property owner and the Department of  
3 Community Affairs.

4  
5 2. a. Notwithstanding any law, rule, or regulation to the  
6 contrary, a municipality located within a county which was  
7 impacted by Superstorm Sandy may propose the transfer of up to  
8 20% of its fair share affordable housing obligation by depositing  
9 funds into the Superstorm Sandy Neighborhood Rebuilding  
10 Account.

11 b. A municipality which is a defendant in an exclusionary  
12 zoning suit and which has not obtained substantive certification  
13 pursuant to P.L.1985, c.222 (C.52:27D:3011 et al.) may request the  
14 court to be permitted to fulfill a portion of its fair share affordable  
15 housing obligation by donating funds to the Superstorm Sandy  
16 Neighborhood Rebuilding Account, established pursuant to section  
17 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
18 If the court believes the request to be reasonable, and determines  
19 that a deposit into the Superstorm Sandy Neighborhood Rebuilding  
20 Account would result in an increase in deed-restricted affordable  
21 units for a period of at least 15 years, the court shall request the  
22 Commissioner of Community Affairs to review the proposed  
23 agreement and to determine a match with an eligible property  
24 owner, as defined in subsection a. of section 1 of P.L. , c. (C. )  
25 (pending before the Legislature as this bill). The court may  
26 establish time limitations for the commissioner's review, and shall  
27 retain jurisdiction over the matter during the period of review. If  
28 the court determines that the agreement provides a realistic  
29 opportunity for the provision of low and moderate income housing,  
30 it shall provide the sending municipality a credit against its fair  
31 share affordable housing obligation in the manner provided in this  
32 section.

33 c. The schedule for fulfilling a portion of a municipality's fair  
34 share affordable housing obligation, up to 20%, in exchange for a  
35 deposit into the Superstorm Sandy Neighborhood Rebuilding  
36 Account, shall be at the rate of two units for every \$50,000  
37 deposited; provided, however, that the minimum donation  
38 increment shall be \$50,000.

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40 3. The Commissioner of Community Affairs, pursuant to the  
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
42 seq.), shall adopt rules and regulations necessary to effectuate the  
43 provisions of this act, which may include revisions to the deed  
44 restriction language established in section 1 of P.L. , c. (C. )  
45 (pending before the Legislature as this bill).

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47 4. This act shall take effect immediately.

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STATEMENT

This bill establishes the Superstorm Sandy Neighborhood Rebuilding Account. Under the bill, a municipality in one of the counties impacted by Superstorm Sandy may deposit funds into the account in exchange for a reduction in its affordable housing obligation at the rate of two units for every \$50,000 deposited. A property owner who was deemed eligible by the Department Community Affairs (DCA) to receive federal funds dedicated for Low and Moderate Income homeowners through the federal Rehabilitation, Reconstruction, Elevation and Mitigation Program would be permitted to apply to DCA for a grant of up to \$50,000.

In exchange for the receipt of grant funds from the Superstorm Sandy Neighborhood Rebuilding Account, an eligible property owner would be required to record a 15-year deed restriction to establish affordability controls on the property. During the 15-year period, the rental price and sales price of the property would be restricted in accordance with existing affordability control regulations. If the owner does not sell property until after the conclusion of the 15-year period, the owner would be required to pay the amount originally granted from the "Superstorm Sandy Neighborhood Rebuilding Account" into the New Jersey Affordable Housing Trust Fund to be used for the construction and rehabilitation of affordable units throughout the State.