SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1306 and 1804

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED MARCH 24, 2014

Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Assemblyman JERRY GREEN
District 22 (Middlesex, Somerset and Union)
Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)
Assemblywoman ANGELICA M. JIMENEZ
District 32 (Bergen and Hudson)
Assemblyman JOSEPH A. LAGANA
District 38 (Bergen and Passaic)
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)
Assemblyman CARMELO G. GARCIA
District 33 (Hudson)
Assemblywoman BONNIE WATSON COLEMAN
District 15 (Hunterdon and Mercer)

Co-Sponsored by:
Senator Gordon, Assemblywomen Jasey and Stender

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)
AN ACT establishing the “Superstorm Sandy Bill of Rights” and
supplementing Title 52 of the Revised Statutes.

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 Bill of Rights.”

2. The Legislature finds and declares that:

In the autumn of 2012, Superstorm Sandy ravaged New Jersey’s
shoreline, as well as many other communities in the State. Sandy
inflicted more than $36 billion of damage on New Jersey, destroyed
or damaged more than 72,000 of the State’s homes and businesses,
and has driven more than a quarter million State residents to seek
governmental assistance. While New Jersey communities have
taken certain important steps toward recovery, the work to rebuild
is far from complete.

Since the recovery effort began, too many victimized individuals,
businesses, especially small businesses, and communities have
experienced unreasonable inconveniences and unfair treatment in
their efforts to obtain governmental assistance. These problems
have arisen in the form of unclear application and appeals
processes, difficulties in obtaining the status of applications,
rejections without any reasoning offered, waiting lists provided
without any clear order, disparities in funding offered for African-
American and Latino applicants, insufficient and often inaccurate
program information offered on State websites, particularly when
offered in Spanish, State funding offered to certain communities in
amounts disproportionate to the amount of damage endured,
insufficient resettlement funding offered to low and moderate
income individuals, a failure by the State to correct the
inadequacies of its website information, and an overall lack of
transparency and refusals to respond to requests under P.L.1963,
c.73 (C.47:1A-1 et seq.), commonly known as the open public
records act. For these reasons and others, it is necessary for the
Legislature to enact the “Superstorm Sandy Bill of Rights.” This
legislation establishes standards for the treatment of individuals,
small businesses and other businesses, and communities victimized
by this tragedy, by Hurricane Irene, or by a severe weather event in
the future.

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

"Applicant" means an individual, small business owner, or other
entity or party that has applied for, is applying for, or is receiving
benefits under a recovery and rebuilding program.
“Benefit” means funding, or any use of funding, that is distributed through a recovery and rebuilding program.

“Commissioner” means the Commissioner of Community Affairs.

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

“Local unit” means a county or municipality.

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

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

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

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

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

(2) The right to appeal a denial from a recovery and rebuilding program, and obtain a decision within 50 days. An applicant shall have the right to appeal a denial, or any other adverse determination, from a recovery and rebuilding program, an award amount, a placement on a waiting list, a contractor selection, or any other decision that the applicant might reasonably view as adverse. The State, or its contractor, shall render a decision on any such
appeal within 50 days. If no decision is made within 50 days, then
the appeal shall be deemed successful, and all relevant State and
private entities shall act accordingly. In the event of a successful
appeal the applicant shall have the right to be repositioned on a list
or waiting list for any benefits, or otherwise accommodated, as
though the correct determination had been made at the time of the
initial determination. Nothing in this section shall limit any rights
that an applicant has pursuant to the “Administrative Procedure
Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) or any other applicable
law;

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

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

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

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

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

(b) Not later than the 30th day next following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the commissioner shall complete a report documenting all accepted, waitlisted, rejected, and withdrawn applications, by race and ethnicity, by renter or homeowner status, and by urban, suburban, or rural location of the applicable municipalities, for recovery and rebuilding program benefits related to Superstorm Sandy. The report shall detail the reasons for accepted status, waitlisted status, rejections, and withdrawals, sorted by the municipality wherein the damaged property is located. The report shall be updated on a monthly basis until all program funding has been disbursed. The report shall also provide an account of the measures taken to comply with paragraph (7) of this subsection regarding Spanish language accessibility. Upon completion, the initial report, as well as each monthly update, shall immediately be provided to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the State Auditor, and posted on the State’s publicly accessible severe weather event Internet website. Not later than one year following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the State Auditor shall complete an audit of the first four months of the commissioner’s reporting, and submit an audit report to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), detailing the results of the audit. This audit, and audit report submission to the Legislature, shall be updated on an annual basis until all funding has been disbursed, and shall be posted on the State’s publicly accessible severe weather event Internet website.
(c) For all future recovery and rebuilding programs, reporting and auditing shall follow the same parameters as required for Superstorm Sandy. The commissioner shall complete and submit the initial report not later than the first day of the first month next following commencement of the program, and shall update the report monthly, also following the same parameters as required for Superstorm Sandy, until all program funding is disbursed. The State Auditor shall complete the initial audit and submit the initial audit report, covering the first four months of the commissioner’s reporting, not later than the first day of the twelfth month next following commencement of the program. This audit and audit report submission shall be updated on an annual basis, to reflect the most recent information available, until all funding has been disbursed;

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

(8) The right of a local unit to obtain funding for itself and for all recovery and rebuilding programs to distribute benefits within local units solely based on the following factors: the extent of physical damage caused by the severe weather event, the extent of need among those of modest income in conformance with paragraph (10) of this subsection, and the extent of future severe weather risk. All funding distributions shall be based on an objective and complete survey of the level of physical damage, with prioritization based solely on a consistent application of standards which benefit and provide funding to local units, and to businesses, and individuals within local units that are most impacted and have the greatest need, and which enable the local units, businesses, and individuals that are most impacted and have the greatest need to receive benefits that allow them to recover, rebuild their lives, and be better positioned to avoid or protect against physical damage from future severe weather events. If benefits for a recovery and rebuilding program are distributed in multiple rounds over time, then applicants, including local units, and businesses and individuals in
those local units, not receiving benefits in the first round shall be
given priority in future rounds. Priority in future rounds shall be
consistent with the provisions of this act and shall be based upon
the level of physical damage, level of need among those of modest
income, and extent of future severe weather risk. Funding decisions
by the State and its contractors shall not overlook local units,
businesses, and individuals that are significantly impacted by the
severe weather event, but are located outside of the counties and
other areas that are generally most impacted by the severe weather
event. In response to a severe weather event, if it is possible for a
local unit to apply directly for a federal benefit, in addition to
obtaining the federal benefit through the State, and this direct
application would result in greater funding throughout New Jersey,
then the State shall promptly provide municipalities with guidance
on the process for this direct application;
(9) The right to simultaneously seek benefits through more than
one recovery and rebuilding program, and through insurance. If an
applicant is compensated, but not fully compensated through
insurance, or through one recovery and rebuilding program, they
shall not be prohibited from applying and being fairly considered
for benefits under another recovery and rebuilding program. If
necessary, the State or its contractor may prioritize recovery and
rebuilding program applicants who are not also seeking benefits
through other recovery and rebuilding programs, or through
insurance, but the State may not deny an applicant because of the
other application, or because the applicant is appealing a denial
from another application. This paragraph shall not be construed to
enable any applicant to obtain benefits that exceed the total amount
of the applicant’s loss resulting from the severe weather event, or to
permit the duplication of benefits from federal and State programs;
(10) The right for victims with modest income to obtain a fair
portion of recovery and rebuilding program benefits.
(a) No less than 60 percent of funding awarded through the
Superstorm Sandy Homeowner Resettlement Program shall be
allocated to individuals of low or moderate income, meaning those
individuals occupying households with a gross household income
equal to 80 percent or less of the median gross household income
for households of the same size, and within the same housing
region, as defined by subsection b. of section 4 of P.L.1985, c.222
(C.52:27D-304). No person shall be denied Superstorm Sandy
benefits, or the benefits of any other recovery and rebuilding
program, on the basis of the receipt of any other form of public
assistance that is unrelated to the severe weather event.
(b) The State shall establish clear and uniform standards for the
grant of recovery and rebuilding program benefits to applicants who
live, or used to live at the time of the severe weather event, in a
manufactured home or mobile home as defined in section 3 of
In all cases, owners and occupants of manufactured or mobile homes shall have the ability to obtain assistance and benefits equivalent to owners and occupants of other homes, taking into account the particular needs of such owners and occupants arising out of land lease law and circumstance.

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

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

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

(a) Any applicant who is denied recovery and rebuilding program benefits prior to the availability of this basic information on the State’s Internet website, shall be entitled to an expedited review of any appeal of that denial. With respect to applications by individuals for Community Development Block Grant Disaster Recovery benefits related to Superstorm Sandy that were denied prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), for which no appeal was filed or reviewed, or both, the State shall review the rejection through reprocessing the applicant’s file within one month regardless of whether there was an appeal, and notify the applicant as to the applicant’s status upon review, providing the opportunity for an appeal if there is an adverse decision upon review. If any applicant is deemed eligible upon appeal pursuant to this section, the
applicant shall be placed in the position of priority that the applicant
would have been in if the applicant had been deemed eligible at the
initial date of the State’s prior adverse decision.
(b) The State’s Internet website shall contain information on
how all recovery and rebuilding program funding has been and will
be allocated, including information about every step in the
allocation process for all rounds of funding distribution.
(c) The State shall adhere to the process that is initially
developed throughout the existence of the program unless there is a
substantial need to change the process. If a process change is
necessary, eligible applicants shall be given notice of the change
before the altered requirements take effect.
(d) An applicant shall not be precluded from recovery and
rebuilding program benefits only because his or her address is a
post office box.
(e) Superstorm Sandy benefits shall be set aside to assist
applicants who did not receive benefits from a prior benefit
distribution due to the lack of clarity or transparency in the process
by which benefits were distributed.
(f) With the exception of home elevation projects, any applicant
shall have the right, if desired, to select their contractor of choice
for work on their property. If their contractor of choice is not
registered in accordance with State regulations, then a registration
process shall be offered to the contractor on an expedited basis.
(g) As soon as possible upon the initial establishment of a
recovery and rebuilding program, the State shall notify applicants
and the public whether, and to what extent, an applicant may pursue
any reconstruction or rehabilitation work prior to the applicant’s
receipt of a benefit without forfeiting eligibility for any benefit or
reimbursement for the completed work.
(h) An applicant shall receive expedited application review if
the applicant is no longer living in his primary residence, because,
as a result of the severe weather event, such primary residence has
substantial damage under the standards of the “Flood Hazard Area
Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), and rules and
regulations adopted pursuant thereto.
(i) Clear guidelines and procedures shall be promulgated to
assist local contractors to obtain recovery and rebuilding program
work in accordance with section 3 of the “Housing and Urban
Development Act of 1968” (12 U.S.C. s.1701u); and
(12) The right to be treated with dignity and respect throughout
the recovery process. When interacting with victims of a severe
weather event, the State, including the Department of Community
Affairs, the Department of Banking and Insurance, and all other
State entities involved in the recovery, shall answer questions and
complaints in a timely manner, and otherwise treat victims with
dignity and respect.
4. a. A public official, officer, employee, or custodian of records who knowingly and willfully violates P.L. , c. (C. ) (pending before the Legislature as this bill), and this violation is found to have unreasonably impeded access to recovery and rebuilding program benefits under the totality of the circumstances, shall be personally subject to a civil penalty of $1,000 for an initial violation, $2,500 for a second violation that occurs within 10 years of an initial violation, and $5,000 for a third violation that occurs within 10 years of an initial violation. This penalty shall be collected and enforced through proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the Rules of Court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section. Appropriate disciplinary proceedings may be initiated against a public official, officer, employee, or custodian against whom a penalty has been imposed.

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

5. This act shall take effect immediately.