

ASSEMBLY, No. 1734

STATE OF NEW JERSEY

INTRODUCED MARCH 25, 1996

By Assemblyman BUCCO, Assemblywoman MURPHY and  
Assemblyman Carroll

1 AN ACT concerning the disclosure of off-site conditions near  
2 residential real estate and amending P.L.1995, c.253.

3

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

6

7 1. Section 12 of P.L.1995, c.253 (C.46:3C-12) is amended to read  
8 as follows:

9 12. The Department of Environmental Protection or a municipality  
10 making available to purchasers lists which disclose the existence and  
11 location of off-site conditions pursuant to this act shall not be liable  
12 for civil damages for withholding or omitting facts pertaining to such  
13 conditions which materially affected the value of the property or  
14 otherwise caused any loss, damage or other injury to the plaintiff,  
15 unless the plaintiff can affirmatively demonstrate that the department  
16 or municipality was in possession of [ , or which a reasonable person  
17 would conclude that it had or should have had knowledge of, those  
18 facts] the information as required to be provided to it by section 5 of  
19 P.L.1995, c.253 (C.46:3C-5) and that the department or municipality  
20 knowingly or intentionally omitted or withheld [the facts] that  
21 information.

22 (cf: P.L.1995, c.253 s.12)

23

24 2. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill amends the "New Residential Construction Off-Site  
30 Conditions Disclosure Act," P.L.1995, c.253 (C.46:3C-1 et seq.) to  
31 limit a municipality's liability under the act to correspond to its limited  
32 duties and responsibilities. The act requires public and private entities  
33 and the Department of Environmental Protection to provide to the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 municipal clerk of each municipality a list of certain off-site conditions  
2 that might affect the value of newly constructed residential real estate  
3 being sold. The municipal clerk's limited responsibility under the act  
4 is to receive these lists and make them available to purchasers of newly  
5 constructed residential real estate on request.

6 Section 12 of the act states that municipalities would be liable for  
7 civil damages for withholding or omitting facts pertaining to  
8 conditions that affect the value of property if the plaintiff demonstrates  
9 that the municipality possessed knowledge or information and  
10 intentionally or knowingly omitted or withheld the facts. This  
11 statement of municipal liability appears to require municipalities to  
12 actively obtain information concerning the location of off-site  
13 conditions, though the act itself gives them no such responsibility. If  
14 a municipality was aware of the existence of off-site conditions within  
15 its boundaries that were never reported to the municipality by the  
16 appropriate entity as required by the act, the municipality could be  
17 held liable for being in possession of the facts but knowingly  
18 withholding them. To protect itself, a municipality would have the  
19 burden of actively obtaining information about the location of off-site  
20 conditions within its borders when the entity required to provide the  
21 municipality with the information failed to do so.

22 This bill revises section 12 of P.L.1995, c.253 (C.46:3C-12) to  
23 reflect the limited obligation of municipalities under the act.  
24 According to the bill, a municipality will be held liable only if a  
25 plaintiff can demonstrate that the municipality was in possession of the  
26 information as required to be provided to it by the act and that the  
27 municipality knowingly or intentionally omitted or withheld that  
28 information. This revision will free municipalities of the burden of  
29 gathering information about off-site conditions in order to protect  
30 themselves from liability.

31

32

33

34

35 Changes liability of municipality under "New Residential Construction  
36 Off-Site Conditions Disclosure Act."