

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1734

STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

The Assembly Housing Committee reports favorably Assembly Bill No. 1734.

This bill amends the "New Residential Construction Off-Site Conditions Disclosure Act," P.L.1995, c.253 (C.46:3C-1 et seq.) to limit a municipality's liability to correspond to its limited duties and responsibilities under the act. The act requires public and private entities and the Department of Environmental Protection to provide to the municipal clerk of each municipality a list of certain off-site conditions that might affect the value of newly constructed residential real estate being sold. The municipal clerk's limited responsibility under the act is to receive these lists and make them available to purchasers of newly constructed residential real estate on request.

Section 12 of the act states that municipalities would be liable for civil damages for withholding or omitting facts pertaining to conditions that affect the value of property if the plaintiff demonstrates that the municipality possessed knowledge or information and intentionally or knowingly omitted or withheld the facts, or if a reasonable person would conclude that the municipality should have had such knowledge or information. This statement of municipal liability appears to require municipalities to actively obtain information concerning the location of off-site conditions, although the act itself gives them no such responsibility. If a municipality was aware of the existence of off-site conditions within its boundaries, or it is reasonable to presume that they should have been aware, but the conditions were never reported to the municipality by the appropriate entity as required by the act, the municipality could be held liable for not ascertaining readily knowable facts, or being in possession of the facts but knowingly withholding them. To protect itself, a municipality would have the burden of actively obtaining information about the location of off-site conditions within its borders when the entity required to provide the municipality with the information failed to do so.

This bill revises section 12 of P.L.1995, c.253 (C.46:3C-12) to reflect the limited obligation of municipalities under the act. According to the bill, a municipality will be held liable only if a plaintiff can demonstrate that the municipality was in possession of the information as required to be provided to it by the act and that the

municipality knowingly or intentionally omitted or withheld that information. This revision will free municipalities of the burden of gathering information about off-site conditions in order to protect themselves from liability.