

Legislative History Checklist
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Synopsis: Requires sellers of newly constructed residential real estate to disclose the availability in municipalities of information on certain off-site conditions.*

Bill No.: A2646

P.L. 1995, c. 253

Identical to: S2062 (SCS)
Substituted for: S2062 (SCS)
Combined with:
Last Session Bill No.:

See Above Bill(s) for Additional History

NJSA: 46:3C-1 et seq.

Sponsor(s): Geist

Date Introduced: 03/13/95

Committee Reference:

Statement:

Public Hearing:

Assembly:

Solid and Hazardous Waste
Housing

No
Yes

No
No

Senate:

(Without reference)

Sponsor Statement: Yes

Fiscal Note: No

Dates of Passage:

Assembly:

06/26/95 (70-1)
06/29/95 (73-0)

Senate:

06/26/95 (40-0)

Amended During Passage: Yes

Governor's Action:

Veto: No

Date of Veto:

Date of Approval: 09/12/95

Message on Signing: No

Additional Information:

P.L.1995, CHAPTER 253, approved September 12, 1995
Assembly Committee Substitute (Second Reprint) for
1995 Assembly No. 2646

1 AN ACT concerning the disclosure of off-site conditions near
2 residential real estate and supplementing Title 46 of the
3 Revised Statutes.

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

7 1. This act shall be known, and may be cited, as the "New
8 Residential Construction Off-Site Conditions Disclosure Act."

9 2. The Legislature finds and declares that the purchase of a
10 residence involves a substantial portion of the average
11 household's net worth, and the decision to purchase a particular
12 residence requires consideration of a wide range of factors
13 concerning the area in which the residential real estate is
14 located; that the professionals who engage in the business of
15 selling newly-constructed residential real estate can facilitate
16 prudent decision-making with respect to the purchase of
17 residences by advising purchasers of the availability of
18 information concerning factors which can reasonably be
19 determined to exist and which may affect the value of the
20 residence; that the due diligence responsibilities of purchasers
21 and the disclosure duties of sellers of residential real estate are
22 mutually interdependent and, therefore, ambiguity in the
23 definition and assignment of the sellers' disclosure duties may
24 inadvertently diminish the due diligence efforts of purchasers, or
25 unnecessarily increase the costs of residential real estate
26 transactions; and that there currently exists ambiguity
27 concerning the disclosure duties of the sellers of residential real
28 estate.

29 The Legislature therefore determines that it is in the public
30 interest to define the entirety of the disclosure duties of the
31 sellers of newly-constructed residential real estate and to create
32 a public repository of relevant off-site conditions which may be
33 accessed by purchasers of such real estate.

34 3. As used in this act:
35 "Newly constructed" means any dwelling unit not previously
36 occupied, excluding dwelling units constructed solely for lease
37 and units governed by the "National Manufactured Housing
38 Construction and Safety Standards Act of 1974," 42 U.S.C. §5401
39 et seq.

40 "Off-site conditions" ¹[means] mean¹ those conditions which
41 may materially affect the value of the residential real estate
42 property and shall be limited to the following:

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted June 19, 1995.

² Senate floor amendments adopted June 26, 1995.

1 (1) The latest Department of Environmental Protection listing
2 of sites included on the National Priorities List pursuant to the
3 "Comprehensive Environmental Response, Compensation and
4 Liability Act of 1980," 42 U.S.C. §9601 et seq.;

5 (2) The latest sites known to and confirmed by the Department
6 of Environmental Protection and included on the New Jersey
7 master list of known hazardous discharge sites, prepared pursuant
8 to P.L.1982, c.202 (C.58:10-23.15 et seq.);

9 (3) Overhead electric utility transmission lines conducting
10 240,000 volts or more;

11 (4) Electrical transformer substations;

12 (5) Underground gas transmission lines as defined in 49
13 C.F.R.192.3 ;

14 (6) Sewer pump stations of a capacity equal to, or in excess of
15 0.5 million gallons per day and sewer trunk lines in excess of 15
16 inches in diameter;

17 (7) Sanitary landfill facilities as defined pursuant to section 3
18 of P.L.1970, c.39 (C.13:1E-3);

19 (8) Public wastewater treatment facilities; and

20 (9) Airport safety zones as defined pursuant to section 3 of
21 P.L.1983, c.260 (C.6:1-82).

22 "Person" means an individual, firm, corporation, limited
23 liability corporation, partnership, association, trust or other legal
24 entity or any combination thereof.

25 "Property" means a lot or plat upon which a residence has
26 been, or will be, constructed.

27 "Project" means the development site upon which residential
28 real estate for one or more purchasers is being constructed.

29 "Public wastewater treatment facility" means a structure or
30 land involving the collection, conveyance, storage, reduction,
31 recycling, reclamation, disposal, separation or other treatment of
32 wastewater or sewage sludge.

33 "Purchaser" means a buyer of newly constructed residential
34 real estate.

35 "Residential real estate" means a property or structure or both
36 which will serve as a residence for the purchaser.

37 "Seller" means a real estate broker, real estate salesperson and
38 real estate broker-salesperson as defined in R.S.45:15-3 or a
39 builder as defined in section 2 of P.L.1977, c.487 (C.46:3B-2) who
40 is engaged in the sale of newly constructed residential real estate.

41 4. The municipal clerk of each municipality shall ¹[compile
42 and maintain] receive and make available¹, in the form and
43 manner specified by the Commissioner of Community Affairs
44 after consultation with the Department of Environmental
45 Protection, lists identifying the location of off-site conditions
46 existing within the boundaries of the municipality.

47 5. a. Every person who owns, leases, or maintains any off-site
48 condition, as defined in paragraphs (3), (4), (5), (6), or (9) of
49 section 3 of P.L. , c. (C.) (now before the Legislature as
50 this bill), located in this State, shall provide the municipal clerk
51 of each municipality in which those off-site conditions are
52 located, a list in the form and manner specified by the
53 Commissioner of Community Affairs, of the location of the
54 off-site conditions within the boundaries of the municipality.

1 The provisions of this subsection shall apply whether or not the
2 person provides any service within a municipality in which an
3 off-site condition exists.

4 b. Every person subject to the provisions of subsection a. of
5 this section shall submit the required lists within one year of the
6 effective date of this act and shall update the lists, as necessary,
7 as of August 31 of every year.

8 The person providing the lists pursuant to this section shall also
9 send to the municipal clerk of each municipality receiving the list
10 a statement as follows:

11 "This list identifies [insert type] off-site conditions owned,
12 leased or maintained by [insert name and address of provider] as
13 defined in the "New Residential Construction Off-Site Conditions
14 Disclosure Act," P.L. , c. (C.) (now before the
15 Legislature as this bill), which as of [date] have been identified as
16 existing within [name of municipality]."

17 6. a. The Commissioner of Environmental Protection shall
18 provide the municipal clerk of each municipality with lists, in the
19 form and manner specified by the Commissioner of Community
20 Affairs, after consultation with the Department of Environmental
21 Protection, of the location of all off-site conditions, as defined in
22 paragraphs (1), (2) and (7) of section 3 of P.L. , c. (C.)
23 (now before the Legislature as this bill), located within the
24 boundaries of the municipality.

25 b. The Commissioner of Environmental Protection shall submit
26 the lists within one year of the effective date of this act and
27 shall update the lists, as necessary, as of August 31 of every
28 year. The department shall also send to the municipal clerk of
29 each municipality receiving the lists a statement as follows:

30 "This list identifies [insert type] off-site conditions as defined
31 in the "New Residential Construction Off-Site Conditions
32 Disclosure Act," P.L. , c. (C.) (now before the
33 Legislature as this bill), which as of [date] have been identified
34 and listed by the Department of Environmental Protection as
35 existing within [name of municipality]."

36 7. A municipality ¹[maintaining] that receives and makes
37 available¹ the lists required under this act may charge
38 purchasers by the page for its actual reproduction costs.

39 8. At the time of entering into a contract for the sale of newly
40 constructed residential real estate, the seller shall provide the
41 purchaser with a notice of the availability of the lists of the
42 off-site conditions that exist not only within the boundaries of
43 the municipality in which the residential real estate is located
44 but also within any other municipality located within one-half
45 mile of the residential real estate. The notice shall be as follows:

46
47 "NOTIFICATION REGARDING OFF-SITE CONDITIONS
48

49 Pursuant to the "New Residential Construction Off-Site
50 Conditions Disclosure Act," P.L. ,c. (C.) (now before the
51 Legislature as this bill), sellers of newly constructed residential
52 real estate are required to notify purchasers of the availability of
53 lists disclosing the existence and location of off-site conditions
54 which may affect the value of the residential real estate being

1 sold. The lists are to be ¹[maintained] made available¹ by the
2 municipal clerk of the municipality within which the residential
3 real estate is located and in other municipalities which are within
4 one-half mile of the residential real estate. The address(es) and
5 telephone number(s) of the municipalities relevant to this project
6 and the appropriate municipal offices where the lists are
7 ¹[maintained] made available¹ are listed below. Purchasers are
8 encouraged to exercise all due diligence in order to obtain any
9 additional or more recent information that they believe may be
10 relevant to their decision to purchase the residential real estate.
11 Purchasers are also encouraged to undertake an independent
12 examination of the general area within which the residential real
13 estate is located in order to become familiar with any and all
14 conditions which may affect the value of the residential real
15 estate.

16 The purchaser has five (5) business days from the date the
17 contract is executed by the purchaser and the seller to send
18 notice of cancellation of the contract to the seller. The notice of
19 cancellation shall be sent by certified mail. The cancellation will
20 be effective upon the notice of cancellation being mailed. If the
21 purchaser does not send a notice of cancellation to the seller in
22 the time or manner described above, the purchaser will lose the
23 right to cancel the contract as provided in this notice.

24

25 MUNICIPALITY _____

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27 ADDRESS _____

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29 TELEPHONE NUMBER _____

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31 9. The purchaser may cancel the contract by sending a written
32 notice of cancellation to the seller within five business days from
33 the date the contract is executed by the purchaser and the seller,
34 informing the seller that the purchaser is canceling the contract.
35 The notice of cancellation shall be sent by certified mail. If the
36 purchaser fails to send the notice of cancellation in the time and
37 manner provided for in this section, the purchaser shall lose the
38 right to cancel the contract pursuant to this act and the contract
39 shall be otherwise legally binding.

40 10. a. By providing the purchaser with the notice of the
41 availability of the lists, as required by section 8 of P.L. , c
42 (C.) (now before the Legislature as this ¹[act] bill¹), the
43 seller shall be deemed to have disclosed fully the off-site
44 conditions relating to the residential real estate and shall be
45 deemed to have satisfied fully the seller's disclosure duties
46 pursuant to New Jersey law notwithstanding that (1) the lists
47 required to be submitted to the municipal clerk of each
48 municipality pursuant to sections 5 and 6 of P.L. , c.
49 (C.) (now before the Legislature as this bill) have not been, or
50 are not yet required to be submitted or (2) a municipal clerk has
51 not ¹[compiled or does not maintain] received or made available
52 the lists as required pursuant to section 4 of P.L. , c.
53 (C.) (now before the Legislature as this bill) or (3) there is any
54 error, omission or inaccuracy in the ¹[compilation or maintenance

1 of the)¹ lists ¹as made available by the municipality¹ . This
2 furnishing of the notice shall be available to the seller as a
3 defense to any claim that the seller failed to disclose any off-site
4 conditions.

5 b. A seller's responsibility to disclose those conditions that
6 may materially affect the value of the residential real estate, but
7 which are not part of the project, shall be fully met when notice
8 is provided in accordance with the provisions of P.L. , c.
9 (C.)(now before the Legislature as this bill). The furnishing
10 of the notice shall be available to the seller as a defense to any
11 claim that the seller failed to disclose any conditions which are
12 not part of the project.

13 c. With respect to any residential real estate contracts
14 entered into and fully executed prior to the effective date of this
15 act, no seller shall be deemed to have breached any duty to
16 disclose, nor shall any seller be liable to any person for any loss,
17 damage, or any other injury for failure to have disclosed the
18 existence of any off-site condition or any other condition which
19 is not part of the residential real estate, except in any specific
20 cases in which ²there has been an action filed in the Superior
21 Court prior to April 25, 1995, or in which² the Appellate Division
22 of Superior Court or the Supreme Court has issued a decision
23 prior to the effective date of this act.

24 d. The provisions of P.L. , c. (C.)(now before the
25 Legislature as this bill) shall not be interpreted to affect the
26 disclosure requirements for conditions off-site contained in "The
27 Planned Real Estate Development Full Disclosure Act," P.L.1977,
28 c.419 (C.45:22A-21 et seq.) ¹[or],¹ the "Air Safety and Zoning
29 Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) or in any other
30 statutory provision.

31 11. No seller, unless otherwise required by section 5, as a
32 condition of completeness or approval pursuant to the "Municipal
33 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), or any
34 other law ¹[or],¹ rule or regulation adopted pursuant thereto.
35 shall be required to compile or to contribute to the compilation
36 of, in whole or in part, the lists of off-site conditions required to
37 be ¹[maintained] made available¹ by municipal clerks pursuant to
38 this act.

39 12. The Department of Environmental Protection or a
40 municipality making available to purchasers lists which disclose
41 the existence and location of off-site conditions pursuant to this
42 act shall not be liable for civil damages for withholding or
43 omitting facts pertaining to such conditions which materially
44 affected the value of the property or otherwise caused any loss,
45 damage or other injury to the plaintiff, unless the plaintiff can
46 affirmatively demonstrate that the department or municipality
47 was in possession of, or which a reasonable person would conclude
48 that it had or should have had knowledge of, those facts and the
49 department or municipality knowingly or intentionally omitted or
50 withheld the facts.

51 13. The Department of Community Affairs and the
52 Department of Environmental Protection shall report to the
53 Legislature and the Governor 18 months after the effective date
54 of this act concerning the impact of this act and the staffing

[2R] ACS for A2846

6

1 levels and costs needed to properly effectuate its purposes. The
2 Department of Community Affairs shall also focus its attention
3 in the report on the municipalities' role and success in
4 effectuating the act. Both departments shall make
5 recommendations they deem necessary to improve the procedures
6 required by the act and to impose penalties for noncompliance
7 with section 4, section 5.a., and section 6.a. The Department of
8 Environmental Protection shall address the feasibility of
9 providing maps of off-site conditions.

10 14. This act shall take effect immediately and shall apply to
11 every contract for the sale of residential real estate entered into
12 after the effective date, except that subsection c. of section 10
13 of this act shall apply retroactively to residential real estate
14 contracts entered into prior to the effective date.

15

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17

18

19 Requires sellers of newly constructed residential real estate to
20 disclose the availability in municipalities of information on
21 certain off-site conditions.

ASSEMBLY, No. 2646

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Assemblyman GEIST

1 AN ACT concerning the disclosure of off-site conditions by
2 sellers of residential real estate.

3

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

6 1. This act shall be known, and may be cited, as the
7 "Residential Real Estate Sellers Disclosure Act."

8 2. The Legislature finds and declares that the purchase of a
9 residence involves a substantial portion of the average
10 household's net worth, and the decision to purchase a particular
11 residence requires consideration of a wide range of factors
12 concerning the area in which the residential real estate is
13 located; that the professionals who engage in the business of
14 selling residential real estate can facilitate prudent
15 decision-making with respect to the purchase of residences by
16 providing objective information concerning factors which can
17 reasonably be determined to exist and which may affect the value
18 of the residence; that the due diligence responsibilities of buyers
19 and the disclosure duties of sellers of residential real estate are
20 mutually interdependent and, therefore, ambiguity in the
21 definition and assignment of the sellers' disclosure duties may
22 inadvertently diminish the due diligence efforts of buyers, or
23 unnecessarily increase the costs of residential real estate
24 transactions; and that there currently exists ambiguity
25 concerning the disclosure duties of the sellers of residential real
26 estate.

27 The Legislature therefore determines that it is in the public
28 interest to define the entirety of the disclosure duties of the
29 sellers of residential real estate and to create a public repository
30 of relevant off-site conditions which may be accessed by buyers
31 of residential real estate.

32 3. As used in this act:

33 a. "Off-site conditions" means any of the following:

34 (1) Sites listed on the National Priorities List pursuant to the
35 "Comprehensive Environmental Response, Compensation and
36 Liability Act of 1980," 42 U.S.C. § 9601 et seq.;

37 (2) Sites listed on the New Jersey master list of hazardous
38 discharge sites, prepared pursuant to P.L.1982, c.202
39 (C.58:10-23.13 et seq.);

40 (3) Overhead electric utility transmission lines conducting
41 240,000 volts or more;

42 (4) Above-ground electrical transformer substations;

43 (5) Underground gas transmission lines as defined in 49 C.F.R.
44 192.1;

- 1 (6) Sewer pump stations of a capacity equal to, or in excess of
2 0.5 million gallons per day and sewer trunk lines in excess of 15
3 inches in diameter;
- 4 (7) Sanitary landfill facilities as defined pursuant to section 3
5 of P.L.1970, c.39 (C.13:1E-3);
- 6 (8) Public wastewater treatment facilities; and
- 7 (9) Stationary sources of air emissions which exceed a
8 threshold of 100 tons per year for any criteria pollutant for which
9 a national primary ambient air quality standard has been
10 established pursuant to 42 U.S.C. § 7409.
- 11 b. "Person" means an individual, firm, corporation, limited
12 liability corporation, partnership, association, trust or other legal
13 entity or any combination thereof.
- 14 c. "Purchaser" means a buyer of residential real estate.
- 15 d. "Property" means a lot or plat upon which a residence has
16 been, or will be, constructed.
- 17 e. "Public wastewater treatment facility" means a structure
18 or land involving the collection, conveyance, storage, reduction,
19 recycling, reclamation, disposal, separation or other treatment of
20 wastewater or sewage sludge.
- 21 f. "Residential real estate" means a property or structure
22 which serves or will serve as a residence for the buyer.
- 23 g. "Seller" means an agent, broker, builder or other
24 professional engaged in the business of selling residential real
25 estate.
- 26 4. The governing body of each municipality shall compile and
27 maintain, in the form and manner specified by the Commissioner
28 of the Department of Community Affairs, certified lists and
29 maps identifying the location of all off-site conditions existing
30 within the boundaries of the municipality.
- 31 5. a. Every person who owns, leases, or maintains any off-site
32 condition, as defined in paragraphs (3), (4), (5), (6), or (8) of
33 subsection a. of section 3 of P.L. , c. (C.) (now before the
34 Legislature as this bill), located in this State, shall provide the
35 governing body of each municipality in which those off-site
36 conditions are located, a certified list and map, in the form and
37 manner specified by the Commissioner of the Department of
38 Community Affairs, of the location of all those off-site
39 conditions within the boundaries of the municipality. The
40 provisions of this subsection shall apply whether or not the person
41 provides any service within a municipality in which an off-site
42 condition exists.
- 43 b. Every person subject to the provisions of subsection a. of
44 this section shall submit the certified lists and maps within three
45 months of the effective date of this act and shall update the lists
46 and maps as of December 31 of every year.
- 47 The person providing the lists and maps pursuant to this section
48 shall also send to the governing body of each municipality
49 receiving the list and maps a certification as follows:
- 50 "This list or map identifies all [insert type] off-site conditions
51 owned, leased or maintained by [insert name and address of
52 provider] as defined in the "Residential Real Estate Sellers
53 Disclosure Act," P.L. , c. (C.) (now before the
54 Legislature as this bill), which as of [date] have been identified as

1 existing within [name of municipality]."

2 6. a. The Commissioner of Environmental Protection shall
3 provide the governing body of each municipality with a certified
4 list and map of the location of all off-site conditions, as defined
5 in paragraphs (1), (2), (7), and (9) of subsection a. of section 3 of
6 P.L. , c. (C.) (now before the legislature as this bill).
7 located within the boundaries of the municipality.

8 b. The Commissioner of Environmental Protection shall submit
9 the certified lists and maps within three months of the effective
10 date of this act and shall update the lists and maps as of
11 December 31 of every year. The department shall also send to
12 the governing body of each municipality receiving the lists and
13 maps a certification as follows:

14 "This [list or map] identifies all [insert type] off-site conditions
15 as defined in the "Residential Real Estate Sellers Disclosure
16 Act," P.L. , c. (C.)(now before the Legislature as this
17 bill), which as of [date] have been identified by the Department
18 of Environmental Protection as existing within [name of
19 municipality]."

20 7. At the time of entering into a contract for the sale of
21 residential real estate, the seller shall provide the purchaser with
22 a notice of the availability of the certified lists and maps of the
23 off-site conditions that exist both within the boundaries of the
24 municipality in which the property is located and within any
25 municipality located within one-half mile of the subject
26 property. The notice shall be as follows:

27
28 "NOTIFICATION REGARDING OFF-SITE CONDITIONS
29

30 Pursuant to the "Residential Real Estate Sellers Disclosure
31 Act," P.L. .c. (C.) (now before the Legislature as this
32 bill), sellers of residential real estate are required to notify
33 purchasers of the availability of the certified lists and maps
34 disclosing the existence and location of off-site conditions which
35 may affect the value of the property being sold. The lists and
36 maps are maintained within the jurisdiction of the municipality
37 within which the property is located and in other municipalities
38 which are within one-half mile of the property. The address(es)
39 and telephone number(s) of the municipalities relevant to this
40 project and the appropriate municipal offices where the certified
41 lists and maps are maintained are listed below. Purchasers are
42 encouraged to contact the municipalities to obtain any additional
43 or more recent information that may be relevant to their
44 purchase of the property. You may wish to undertake an
45 independent examination of the general area within which the
46 property is located in order to become familiar with any and all
47 off-site conditions which may affect the value of the property.

48
49 MUNICIPALITY _____

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51 ADDRESS _____

52
53 TELEPHONE NUMBER _____

1 8. By providing the purchaser with the notice of the lists and
2 maps, as required by section 7 of this act, the seller shall be
3 deemed to have disclosed fully the off-site conditions relating to
4 the affected property and shall be deemed to have satisfied fully
5 the seller's disclosure duties pursuant to New Jersey law. The
6 provision of the notice shall be available to the seller as a
7 defense to any claim that the seller failed to disclose any off-site
8 conditions.

9 9. No seller, as a condition of completeness or approval
10 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
11 (C.40:55D-1 et seq.), or any other law or rule or regulation
12 adopted pursuant thereto, shall be required to compile or to
13 contribute to the compilation of, in whole or in part, the lists and
14 maps of off-site conditions required to be maintained by the
15 governing body of municipalities by this act.

16 10. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill establishes and defines the duties of professional
22 sellers of residential real estate to disclose off-site conditions
23 which may affect the value of the property being sold.

24 This bill would require the governing body of each municipality
25 to maintain a list and map of the location of the following
26 conditions located within the municipality's borders: Superfund
27 sites hazardous discharge sites, certain electrical transformer
28 substations, interstate underground gas lines, certain sewer
29 pumps, landfills, wastewater treatment facilities, and certain air
30 pollution sources. The list and maps would be provided by private
31 and public entities with regard to the electric, gas, and
32 wastewater conditions and the Department of Environmental
33 Protection with regard to Superfund, hazardous discharge, and
34 landfill sites. Every seller of residential real estate would be
35 required, at the time of entering into a contract for the sale of
36 the property, to provide the buyer with a notice informing the
37 buyer of the availability of the lists and maps in the municipality
38 in which the property is located and in each municipality within
39 one-half mile of the property.

40 In Strawn v. Canuso the Appellate Division found that sellers of
41 residential real estate had certain duties to disclose off-site
42 conditions but offered little guidance as to the extent of the duty
43 or what is required to its satisfaction. This bill defines in its
44 entirety the duty to disclose and those actions necessary to fulfill
45 such duty. By specifying what needs to be disclosed and creating
46 a public repository as the source of information upon which such
47 disclosure shall be based, the bill will assure that the purchasers
48 of residential real estate will be better able to make informed
49 decisions concerning the degree to which they wish to exercise
50 independent research as part of their due diligence
51 responsibilities in entering into the transaction. Nothing in this
52 bill replaces or supersedes the disclosure requirements as set
53 forth in the Planned Real Estate Development Full Disclosure
54 Act or any other state law.

ASSEMBLY HOUSING COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2646
STATE OF NEW JERSEY

DATED: JUNE 8, 1995

The Assembly Housing Committee reports Assembly Bill No. 2646 favorably with a committee substitute.

This committee substitute, entitled the "New Residential Construction Off-Site Conditions Disclosure Act," establishes and defines the duties of professional sellers of residential real estate to disclose the availability of information concerning certain off-site environmental and other conditions which may affect the value of new construction being sold. The provisions reflect the latest case law on the subject by excluding resale homes from its application.

This bill would require the municipal clerk of each municipality to maintain a list or lists of the location of the following conditions located within the municipality's borders: Superfund sites, certain hazardous discharge sites, certain electrical transformer substations and transmission lines, interstate underground gas lines, certain sewer pump stations, landfills, public wastewater treatment facilities, and airport safety zones. The list would be provided by private and public entities with regard to the electric, gas, and wastewater conditions and by the Department of Environmental Protection with regard to Superfund, hazardous discharge and landfill sites. Every seller of residential real estate would be required, at the time of entering into a contract for the sale of the property, to provide the purchaser with a notice informing him or her of the availability of the lists in the municipality in which the property is located and in each municipality within one-half mile of the residential real estate.

In Strawn v. Canuso, decided April 25, 1995, the New Jersey Supreme Court found that sellers of newly constructed residential real estate had certain duties to disclose off-site conditions but offered little guidance as to the extent of the duty or what is required to its satisfaction. This bill defines in its entirety the duty to disclose and those actions necessary to fulfill such duty. By specifying what needs to be disclosed and creating a public repository as the source of information upon which such disclosure must be based, the bill will assure that the purchasers of such residential real estate will be better able to make informed decisions concerning the degree to which they wish to exercise independent research as part of their due diligence responsibilities in entering into the transaction. Nothing in this bill replaces or supersedes the disclosure requirements as set forth in the Planned Real Estate Development Full Disclosure Act, the Airport Safety and Zoning Act of 1983 or any other law.

It is the intent of the bill to limit the disclosure duties and liability of professional sellers of residential real estate, relating to off site conditions, to those actions required to be performed pursuant to the provisions of this bill. After the effective date of this bill, only those actions required to be undertaken pursuant to it

will constitute the duty of sellers of newly constructed residential real estate for off-site conditions. It is also the intent of the bill to reverse the effect of Strawn v. Canuso as the case relates to residential real estate contracts for new construction entered into prior to the bill's effective date. Toward that end, the bill provides that, except where there has been an Appellate Division or Supreme Court decision in a matter prior to the bill's effective date, there is deemed to have been no duty in existence to disclose off-site conditions. The only duty that will be found to exist is that duty created by this bill and only for those residential real estate contracts involving new construction entered into after the bill's effective date.

The committee also included in its substitute several provisions that provide reasonable limits on the liability of the Department of Environmental Protection and any municipality making the lists available to prospective home purchasers. In addition, the committee substitute directs the Departments of Environmental Protection and Community Affairs to report to the Governor and the Legislature on their experience with the program after 18 months. Information concerning its administrative impact, the role of municipalities, recommendations for procedural improvements and penalties, the feasibility in the future of providing maps of off-site conditions is required as well.

13 JUN 19 PM 2:55



Assembly Amendments
(Proposed by Assemblyman Geist) X

to
ASSEMBLY, No. 2646 (ACS)

(Sponsored by Assemblyman Geist)

REPLACE SECTION 3 TO READ:

3. As used in this act:

"Newly constructed" means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease and units governed by the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. §5401 et seq. (1)

"Off-site conditions" ¹[means] mean¹ those conditions which may materially affect the value of the residential real estate property and shall be limited to the following:

why needed?

(1) The latest Department of Environmental Protection listing of sites included on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq.;

(2) The latest sites known to and confirmed by the Department of Environmental Protection and included on the New Jersey master list of known hazardous discharge sites, prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.);

(3) Overhead electric utility transmission lines conducting 240,000 volts or more;

(4) Electrical transformer substations;

(5) Underground gas transmission lines as defined in 49 C.F.R. 192.3 ;

(6) Sewer pump stations of a capacity equal to, or in excess of 0.5 million gallons per day and sewer trunk lines in excess of 15 inches in diameter;

(7) Sanitary landfill facilities as defined pursuant to section 3 of P.L.1970, c.39 (C.13:1E-3);

(8) Public wastewater treatment facilities; and

(9) Airport safety zones as defined pursuant to section 3 of P.L.1983, c.260 (C.6:1-82).

"Person" means an individual, firm, corporation, limited liability corporation, partnership, association, trust or other legal entity or any combination thereof.

"Property" means a lot or plat upon which a residence has been, or will be, constructed.

"Project" means the development site upon which residential real estate for one or more purchasers is being constructed.

"Public wastewater treatment facility" means a structure or land involving the collection, conveyance, storage, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater or sewage sludge.

"Purchaser" means a buyer of newly constructed residential real estate.

"Residential real estate" means a property or structure or both which will serve as a residence for the purchaser.

"Seller" means a real estate broker, real estate salesperson and real estate broker-salesperson as defined in R.S.45:15-3 or a builder as defined in section 2 of P.L.1977, c.467 (C.46:3B-2) who is engaged in the sale of newly constructed residential real estate.

REPLACE SECTION 4 TO READ:

4. The municipal clerk of each municipality shall ¹[compile and maintain] receive and make available¹ in the form and manner specified by the Commissioner of Community Affairs after consultation with the Department of Environmental Protection, lists ~~provided pursuant to sections 5 and 6 of P.L. 1977, c. 467 (now before the Legislature as this bill)~~ identifying the location of off-site conditions existing within the boundaries of the municipality.

Handwritten notes:
will be
in the
bill
1977
c. 467

REPLACE SECTION 7 TO READ:

7. A municipality ¹[maintaining] that receives and makes available¹ the lists required under this act may charge purchasers by the page for its actual reproduction costs.

REPLACE SECTION 8 TO READ:

8. At the time of entering into a contract for the sale of newly constructed residential real estate, the seller shall provide the purchaser with a notice of the availability of the lists of the off-site conditions that exist not only within the boundaries of the municipality in which the residential real estate is located but also within any other municipality located within one-half mile of the residential real estate. The notice shall be as follows:

"NOTIFICATION REGARDING OFF-SITE CONDITIONS

Pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act," P.L. .c. (C.) (now before the Legislature as this bill), sellers of newly constructed residential real estate are required to notify purchasers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be ¹[maintained] made available¹ by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the municipalities relevant to this project and the appropriate municipal offices where the lists are ¹[maintained] made available¹ are listed below. Purchasers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Purchasers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

The purchaser has five (5) business days from the date the contract is executed by the purchaser and the seller to send notice of cancellation of the contract to the seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the purchaser does not send a notice of cancellation to the seller in the time or manner described above, the purchaser will lose the right to cancel the contract as provided in this notice.

MUNICIPALITY _____

ADDRESS _____

TELEPHONE NUMBER _____

REPLACE SECTION 10 TO READ:

10. a. By providing the purchaser with the notice of the availability of the lists, as required by section 8 of P.L. . c. (C.) (now before the Legislature as this ^{bill} fact), the seller shall be deemed to have disclosed fully the off-site conditions relating to the residential real estate and shall be deemed to have satisfied fully the seller's disclosure duties pursuant to New Jersey law notwithstanding that (1) the lists required to be submitted to the municipal clerk of each municipality pursuant to sections 5 and 6 of P.L. . c. (C.) (now before the Legislature as this bill) have not been, or are not yet required to be submitted or (2) a municipal clerk has not ^{why} [compiled or does not maintain] received or made available the lists as required pursuant to section 4 of P.L. . c. (C.) (now before the Legislature as this bill) or (3) there is any error, omission or inaccuracy in the [compilation or maintenance of the] lists ^(C) as made available by the municipality. This furnishing of the notice shall be available to the seller as a defense to any claim that the seller failed to disclose any off-site conditions.

b. A seller's responsibility to disclose those conditions that may materially affect the value of the residential real estate, but which are not part of the project, shall be fully met when notice is provided in accordance with the provisions of P.L. . c. (C.) (now before the Legislature as this bill). The furnishing of the notice shall be available to the seller as a defense to any claim that the seller failed to disclose any conditions which are not part of the project.

c. With respect to any residential real estate contracts entered into and fully executed prior to the effective date of this act, no seller shall be deemed to have breached any duty to disclose, nor shall any seller be liable to any person for any loss, damage, or any other injury for failure to have disclosed the existence of any off-site condition or any other condition which is not part of the residential real estate, except in any specific cases in which the Appellate Division of Superior Court or the Supreme Court has issued a decision prior to the effective date of this act.

d. The provisions of P.L. , c. (C.) (now before the Legislature as this bill) shall not be interpreted to affect the disclosure requirements for conditions off-site contained in "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) ¹{or},¹ the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) or in any other statutory provision.

REPLACE SECTION 11 TO READ:

11. No seller, unless otherwise required by section 5, as a condition of completeness or approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), or any other law ¹{or},¹ rule or regulation adopted pursuant thereto, shall be required to compile or to contribute to the compilation of, in whole or in part, the lists of off-site conditions required to be ¹{maintained} made available¹ by municipal clerks pursuant to this act.

STATEMENT

The amendments would clarify that this ~~act~~ only requires municipalities to receive and make available lists regarding off-site conditions to inquiring purchasers of newly constructed residential real estate. Originally, the substitute required municipalities to compile and maintain the lists required to be submitted pursuant to the ~~act~~. The amendments also contain technical changes.

SENATE Amendments
(Proposed by Senator MATHEUSSEN)

to

ASSEMBLY, No.2646 (ACS) (1R)
(Sponsored by Assemblyman GEIST)

ADOPTED
JUN 26 1995

REPLACE SECTION 10 TO READ:

10. a. By providing the purchaser with the notice of the availability of the lists, as required by section 8 of P.L. , c (C.) (now before the Legislature as this ¹[act] bill¹), the seller shall be deemed to have disclosed fully the off-site conditions relating to the residential real estate and shall be deemed to have satisfied fully the seller's disclosure duties pursuant to New Jersey law notwithstanding that (1) the lists required to be submitted to the municipal clerk of each municipality pursuant to sections 5 and 6 of P.L. , c. (C.)(now before the Legislature as this bill) have not been, or are not yet required to be submitted or (2) a municipal clerk has not ¹[compiled or does not maintain] received or made available¹ the lists as required pursuant to section 4 of P.L. , c. (C.)(now before the Legislature as this bill) or (3) there is any error, omission or inaccuracy in the ¹[compilation or maintenance of the]¹ lists ¹as made available by the municipality¹. This furnishing of the notice shall be available to the seller as a defense to any claim that the seller failed to disclose any off-site conditions.

b. A seller's responsibility to disclose those conditions that may materially affect the value of the residential real estate, but which are not part of the project, shall be fully met when notice is provided in accordance with the provisions of P.L. , c. (C.)(now before the Legislature as this bill). The furnishing of the notice shall be available to the seller as a defense to any claim that the seller failed to disclose any conditions which are not part of the project.

c. With respect to any residential real estate contracts entered into and fully executed prior to the effective date of this act, no seller shall be deemed to have breached any duty to disclose, nor shall any seller be liable to any person for any loss, damage, or any other injury for failure to have disclosed the existence of any off-site condition or any other condition which is not part of the residential real estate, except in any specific cases in which ²there has been an action filed in the Superior Court prior to April 25, 1995, or in which² the Appellate Division of Superior Court or the Supreme Court has issued a decision prior to the effective date of this act.

d. The provisions of P.L. , c. (C.)(now before the Legislature as this bill) shall not be interpreted to affect the disclosure requirements for conditions off-site contained in "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) ¹[or] ¹ the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) or in any other statutory provision.

STATEMENT

This Senate amendment to A-2646 (ACS)(1R) limits the retroactive immunity from a duty to disclose off-site conditions with respect to residential real estate contracts that are executed prior to the effective date of the act. The amendment provides that the retroactive immunity in the bill shall not apply to any actions filed in Superior Court prior to April 25, 1995.

This Senate amendment would make A-2646 (ACS)(1R) identical to S-2062 (SCS).