

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 937 Contamination Notification
SPONSOR(S): Galvano and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Perkins	Kliner
2) Water & Natural Resources Committee			
3) Agriculture Committee			
4) State Resources Council			
5) _____			

SUMMARY ANALYSIS

The bill provides for contamination notification requirements and specific criteria associated with each notice provided by the source property owner, the Department of Environmental Protection (DEP), and the site rehabilitator.

The bill may have a fiscal impact on state and local government; however, it is indeterminate due to the uniqueness of each potential contaminated site and the unknown costs associated with each site.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill provides for increased contamination notification requirements for DEP.

Promote Personal Responsibility and Safeguard Individual Liberty: The bill requires when a property owner or its representative of the source property from which contamination originates discovers that a contaminate could reasonably have migrated into any property beyond the boundaries of the source property, the owner is to give written certified notice to DEP no later than 10 days from the discovery of contamination. The surrounding property owners and businesses benefit directly from this notification in having more timely and comprehensive information on the progress of the cleanup of nearby properties. In addition, notification will aid them in making better informed decisions regarding their potential risks of exposure and appropriate ways to reduce or eliminate risk.

The bill does not appear to implicate any other House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 376, F.S., is titled Pollution Discharge Prevention and Removal. DEP is authorized under Chapter 376, F.S., to regulate certain facilities and to clean up or require responsible parties to clean up discharges of contamination. Clean up activities associated with contaminated sites are primarily governed within Chapter 376, F.S., relating to petroleum, drycleaning solvent, brownfields, and Risk-based Correction Action provisions.

Current notice requirement provisions do not require either the responsible party or DEP to provide "early notice" to persons who may be affected when contamination may have migrated from the property where it originated into other areas off-site. Currently, DEP is authorized to define what tasks must be completed in order to clean up sites and is aware of the need for timely notification relating to contamination. DEP is currently addressing that need through a combination of rulemaking and internal procedures now under development. In cooperation with the Department of Health, DEP is also currently developing an implementation strategy to manage the notification process on a priority basis dependant upon the risk that a particular contaminated site presents. DEP reports that this approach is consistent with risk-based corrective action principals which recognize that the risk posed by contamination is directly related to the amount of exposure someone has to the contamination.¹

DEP reports there is a backlog of approximately 2,000 sites where contamination is known to be offsite, and it is unknown if a notice has been sent. The number of properties affected may be significantly greater than 2,000 sites, if multiple properties have been affected by a single contamination site. Because there are thousands of sites around the state that may trigger notice requirements, DEP plans to use a phased notice process based on the level of risk at each site.²

Effect of Proposed Change

The bill creates two definitions in section 376.031, F.S.:

- **Cleanup target level** is defined to mean the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.

¹ DEP, 2005 Bill Analysis

² Id.

- **Contaminant** is defined to mean any physical, chemical, biological, or radiological substance present in any medium that may result in adverse effects to human health or the environment or that create an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

The bill creates section 376.30702, F.S., relating to contamination notification requirements pursuant to the following:

Source Property Owner Notification Requirement:

At any time the property owner or its representative of the source property from which contamination originates discovers that a contaminate could “reasonably have migrated” into any property beyond the boundaries of the source property, the owner is required to give written certified notice to DEP no later than 10 days from the discovery of contamination.

DEP Notification Requirement:

Within 10 days after receiving written certified notice, DEP is required to send a copy of the notice to all record property owners of any real property into which the contamination reasonably could have migrated. The DEP notice is to include the following elements:

- Location of source property along with property owner contact information.
- Sampling data with specific contaminant concentration level findings and recommendations.
- Vicinity maps illustrating sampling areas and sampling data along with property boundaries for the source property and the real property into which the contamination could reasonably have migrated.

The bill provides for the appropriate DEP district office and the appropriate county health department to receive copies of notices to include the following criteria:

- Listing of all property owners of any real property into which the contamination could reasonably have migrated.
- Affidavits that property owners have been notified.
- Parcel identification number for any such real property.
- Owner address as it appears in county property tax records and telephone number.

Note: The bill does not specify the party responsible for sending this notice out; however, it appears to place the responsibility on DEP. In addition, the bill contains language to reference that compliance with this notification does not constitute notice to all record owners. This would appear to conflict with the notice criteria contained within proposed section 376.30702(2)(b), F.S., requiring affidavits that all property owners have been notified.

The bill provides DEP may authorize a temporary extension of the point of compliance beyond the boundary of the source property, in conjunction with natural attenuation with active monitoring or active remediation.

Site Rehabilitator Notification Requirement:

The bill requires the party responsible for the site rehabilitation to provide certified written “actual notice” to the appropriate county health department and all record property owners of any real property into which the point of compliance extends into. The “actual notice” criteria is to include the following:

- Description of the location of the subject site and contact information of the person responsible for the site rehabilitation.
- Repository location of rehabilitation documents and strategy available for public inspection.
- DEP contact source to address any questions or copies of DEP’s actions regarding the site.
- A paragraph including the statement: “persons receiving this notice shall have the opportunity to comment on the department’s proposed action within 30 days after the receipt of the notice.”

The bill requires the party responsible for the site rehabilitation to provide an additional “constructive notice” in a newspaper to residents other than identifiable lessees, if different from the real property

owners notified pursuant to the actual notice, and business tenants of any real property into which the point of compliance would be extended. The constructive notice criteria includes the same information as the actual notice in addition to the following requirements:

- Publishing the notice one time in newspaper of general circulation pursuant to specific publishing criteria set-up.
- Newspaper notice is to include a 30-day comment period from the newspaper publishing date.
- Copies of actual and constructive notice to be submitted by the party responsible for site rehabilitation to DEP as proof of notice compliance.

The bill requires an additional notice when using a temporary point of compliance beyond the boundary of the source property to facilitate natural attenuation with monitoring or active remediation to be issued every 5 years, unless in the intervening time a notice has been issued that the contamination no longer affects the property into which the point of compliance was extended. *Note: The bill does not specify the party responsible for sending this notice out; however, it appears to place the responsibility on the site rehabilitator.*

The bill requires the site rehabilitation party to post "Warning Signs" pursuant to DEP rules at sites where a risk of exposure to the public exists due to contamination of the soil, sediment, or surface water with hazardous waste as defined in section 403.703, F.S.

These notifications should aid in increasing public awareness of potential contamination which may result in increased public health safety as a result of timely notification requirements contained within this bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 376.031, F.S., relating to definitions.

Section 2. Creates s. 376.3072, F.S., relating to contamination notification requirements.

Section 3. Provides the act will take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: DEP reports that there are significant start up costs associated with the requirements of this bill due to the additional resources required to include personnel to oversee implementation and tracking system developed to effectively manage the noticing requirements. Additional start up costs may also be required for the Department of Health, as it may receive increased public inquiry as it relates to the large number of notice recipients who may have questions about health effects from contaminated sites. These costs are unknown due to the unknown nature of contaminated sites at this point in time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: County health departments may see an increase in activity as they may receive increased public inquiry as it relates to the large number of notice recipients who may have

questions about health effects from contaminated sites. These costs are unknown due to the unknown nature of contaminated sites at this point in time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The surrounding property owners and businesses benefit directly from this bill in having more timely and comprehensive information on the progress of the cleanup of nearby properties. In addition, it will aid them in making better informed decisions regarding their potential risks of exposure and appropriate ways to reduce or eliminate risk.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:

- Proposed s. 376.3072(1), F.S., related to “source property,” “contamination,” and “reasonably have migrated” terminology may be subject to interpretation.
- Proposed s. 376.30702 (2), F.S., does not specify the party responsible for sending the notice and may be subject to interpretation.
- Line(s) 71 and 72 appear to conflict with line(s) 79 and 80.
- Proposed s. 376.30702(3), F.S., related to “person responsible for site rehabilitation” terminology may be subject to interpretation.
- Proposed s. 376.30702(4), F.S., does not specify the party responsible for sending the notice and may be subject to interpretation.

DEP Comments: The department agrees with the bill’s concept that those who are potentially affected by the migration of significant levels of contaminants from a site should be timely notified of that fact. DEP is addressing that need through a combination of rulemaking and internal procedures now under development. While the enactment of express statutory authority requiring the giving of notice could avert future potential rule challenges regarding notice requirements, the bill, as drafted, presents significant implementation problems.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.