

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207 Contamination Notification

SPONSOR(S): Kriseman

TIED BILLS: IDEN./SIM. BILLS: SB 358, SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Lowrance	Reese
2) Military & Local Affairs Policy Committee			
3) Natural Resources Appropriations Committee			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

The bill increases the required contamination notifications by requiring additional notice of contamination be provided by the Department of Environmental Protection (DEP) to the following persons within 30 days after receiving the actual contamination notice:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior elected official representing the affected area;
- The state senator, state representative, and United States Representative representing the affected area and both United States Senators;
- All real property owners, presidents and board members of any condominium association or sole owners of condominiums, lessees, and tenants of record of: 1) the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation; 2) any properties within a 500-foot radius of each sampling point at which contamination is discovered, if site-rehabilitation was initiated pursuant to s. 376.30701, F.S., or an administrative or court order and; 3) any properties within a 250-foot radius of each sampling point at which contamination is discovered or any properties identified on a contaminant plume map provided, if site rehabilitation was initiated pursuant to s. 376.3071(5), F.S., s. 376.3078(4), or s. 376.81, F.S.

The bill also requires the DEP to provide additional notice when property at which contamination has been discovered is the site of a private K-12 school or child care facility.

The bill requires the DEP to recoup all costs associated with notification from the person responsible for the site rehabilitation, unless the site is eligible for state-funded clean-up pursuant to s. 376.3071(5), F.S. or dry cleaning restoration pursuant s. 376.3078(4), F.S.

The bill requires local governments, within 30 days after receiving the actual contamination notice, to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area.

The bill appears to have a fiscal impact on state and local governments (See Fiscal Impacts Section Below).

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2003, the Florida Legislature passed Committee Substitute for HB 1123, commonly referred to as Global RBCA, which was signed into law by Governor Bush on June 20, 2003. Global RBCA extended the use of risk-based corrective action to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of chapters 376 and 403, F.S.¹ Risk-based corrective action is not a new principle. It has been used for several years in Florida at contaminated sites under the supervision of specific Department of Environmental Protection (DEP) programs, namely: the Petroleum Program,² the Brownfield Program,³ and the Dry-cleaning Facility Restoration Program.⁴ Risk-based corrective action utilizes site-specific data, modeling results, risk assessment studies, institutional controls (i.e., a deed restriction limiting future use to industrial only), engineering controls (i.e., placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof, to develop a unique remediation strategy for the site that considers the intended use of the property and aims to protect human health and safety and the environment. Based upon this information, risk-based corrective action may incorporate engineering controls, institutional controls, or even alternative cleanup target levels, to achieve a "No Further Action" determination from the DEP.

Shortly after the statute became effective, the DEP commenced the rulemaking process to implement the provisions of Global RBCA. During the rulemaking process there was lengthy debate over the notice provisions that required owners of contaminated property, upon the discovery of contamination beyond their property boundaries, to notify neighboring property owners that pollutants had been discovered on or under their property.

The proposed rule developed for the first rulemaking workshop was published in August 2004 and dramatically increased then existing notice requirements. These new notice provisions were developed in response to criticism of the DEP's actions in certain high profile cases in which property owners had not been notified of the migration of contamination from neighboring sites onto their property.⁵

¹ Section 376.30701, F.S.

² Section 376.3071, F.S.

³ Section 376.81, F.S.

⁴ Section 376.3078, F.S.

⁵ Ralph A. DeMeo, Carl Eldred, Leslie A. Utiger, Lynn S. Scruggs. *Insuring Against Environmental Unknowns*, 23 *J. Land Use & Envtl. L.* 61 (Fall 2007), citing Deborah Alberto, *DEP Investigates Itself in Handling of Coronet*, Tampa Trib. (Sept. 24, 2003); Scott Carroll, *A Stormy End to Tallevast Talks*, Sarasota Herald-Trib. (Dec. 9, 2005); Scott Carroll, *Warrior Women with Community*

Originally, the DEP proposed the requirement of verbal notice to affected property owners within three days of discovery of off-site migration of contaminants. Additionally, constructive notice was to be provided to residents and business tenants of any real property into which contamination migrated from the source property by publishing a “notice, at least 16 square inches in size, in a newspaper of general circulation in the area.”

The DEP eventually modified these proposed notice provisions to require written notice to the DEP within ten days of the confirmed discovery (i.e., laboratory analytical data) of contamination on property beyond the boundaries of the property that is the subject of site rehabilitation activities. The final rule, which became legally effective on April 17, 2005, also sets out the specific information that is to be included when providing such notice to the DEP.

In response to the events at the Tallevast facility, the legislature passed HB 937, which essentially mirrored the notification requirements in Global RBCA. Committee Substitute for HB 937, often referred to as the Tallevast Bill, was signed into law by Governor Bush on May 24, 2004. For the most part, this legislation codified the contamination notification requirements promulgated in chapter 62-780 of the Florida Administrative Code, by requiring anyone conducting site rehabilitation of contaminated property to notify DEP of the existence of contamination and require DEP to notify owners of property at which contamination had been discovered.⁶ Specifically, the statute provides that if at any time during site rehabilitation, conducted pursuant to specific provisions of chapter 376, F.S., the person responsible for site rehabilitation or his or her agent or representative discovers from laboratory analytical results that contamination as defined in applicable DEP rules exists in any medium beyond the boundary of the property at which site rehabilitation was initiated, the person responsible for site rehabilitation shall give actual notice no later than ten days from such discovery to the DEP Division of Waste Management in Tallahassee.⁷ A copy of the notice must also be simultaneously mailed to the applicable DEP District Office, County Health Department, and all known lessees or tenants of the source property.⁸

Within thirty days of receiving the actual notice (or if the DEP already possessed information equivalent to that required by the notice, within thirty days of the effective date of the legislation), the DEP must notify all owners of record of real property, except for owners of property where contamination was discovered and where site rehabilitation was initiated.⁹ This particular provision required the DEP to review all sites undergoing DEP supervised site remediation and identify all instances of actual contamination beyond the source property boundaries.

Effect of Bill

The bill amends s. 376.30702, F.S., to add that the contamination notification requirements in this section also apply to site rehabilitation conducted pursuant to an administrative or court order.

The bill specifies that the contamination notification requirements in s. 376.30702, F.S., are triggered when the person responsible for site rehabilitation, the person’s authorized agent, or another representative of the person discovers contamination in any groundwater, surface water, or soil at or beyond the boundaries of the property at which the site rehabilitation was initiated. The bill further provides that the contamination notice submitted to the DEP must include a contaminant plume map signed and sealed by a Florida-licensed professional engineer or geologist, if such a map is available.

The bill also requires the DEP, within 30 days after receiving the actual contamination notification, to verify that the person responsible for the site rehabilitation has complied with the notice requirements submitted to DEP. If the person fails to comply with the notice requirements, the DEP can pursue enforcement

Support, Sarasota Herald-Trib. (July 19, 2004); Editorial, *Coronet's Problems Were Kept Quiet for Far Too Long*, Tampa Trib. (Aug. 1, 2003).

⁶ Section 376.30702(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 376.30702(3), F.S.

The bill requires that within 30 days after receipt of the actual notice from the person responsible for site rehabilitation, DEP notify the following persons of the contamination:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior administrative official representing the affected area;
- The state senator, state representative, and United States Representative representing the affected area and both United States Senators;
- All real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and the tenants of record for the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation;
- All real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and the tenants of record for any properties within a 500-foot radius of each sampling point at which contamination is discovered, if site rehabilitation was initiated pursuant to s. 376.30701, F.S. or an administrative court order;
- All real property owners, presidents and board members of any condominium associations or sole owners of condominiums, lessees, and tenants of record of any properties within a 250-foot radius of each sampling point at which contamination is discovered or any properties identified on a contaminant plume map provided, if site rehabilitation was initiated by the Inland Protection Trust Fund pursuant to s. 376.3071(5), F.S., dry cleaning facility restoration pursuant to s. 376.3078(4), or brownfield area cleanup pursuant to s. 376.81, F.S.

This bill specifies that the notice provided to local government officials must be mailed by certified mail and must advise the local government of its responsibility to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area. The notice provided to real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and tenants of record can be delivered by certified mail, first-class mail, hand delivery, or door-hanger.

If the property where contamination has been discovered is the site of a school as defined in s. 1003.01, F.S.,¹⁰ the bill requires the DEP to mail a copy of the contamination notification to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to teachers and parents or guardians of students or children attending the school during the period of site rehabilitation.

The bill also requires that if the property where contamination has been discovered is the site of a private K-12 school or child care facility as defined in 402.302, F.S.,¹¹ the DEP must mail a copy of the contamination notification to the governing board, principle, or owner of the school or child care facility and direct the governing board, principal, or owner to provide actual notice annually to teachers, parents or guardians of students, or children attending the school or child care facility during the period of site rehabilitation.

If any property within a 1-mile radius of the property at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701 or an administrative or court order is the site of a

¹⁰ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹¹ Under 402.302, F.S., "Child care facility" includes any child care center or child care arrangement that provides child care for more than five children unrelated to the operator and that receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included: Public schools and nonpublic schools and their integral programs; Summer camps having children in full-time residence; Summer day camps; Bible schools normally conducted during vacation periods; and Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

school as defined in s. 1003.01, F.S.,¹² the bill requires the DEP to mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school. Further, if any property within a 250-foot radius of the property at which contamination has been discovered during site rehabilitation pursuant to s. 376.3071(5), F.S., s. 376.3078(4), F.S., or s. 376.81, F.S., is the site of a school as defined in s. 1003.01, F.S.,¹³ the DEP must mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school.

Within 30 days after receiving the actual notice from the DEP, the bill requires the local government to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area.

The bill provides that the DEP shall recover all costs of postage, materials, and labor associated with notification from the responsible party, except when site rehabilitation is eligible for state-funded cleanup pursuant to the risk-based corrective action provisions found in s. 376.3071(5), F.S., or s. 376.3078(4), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.30702, F.S., relating to contamination notification.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Environmental Protection (DEP), there will be manageable startup costs to establish procedures for identifying parcels and schools that fall within a specified radius of a contamination location or are within an area defined by a plume map provided with a notice to the department. Because the department is the person responsible for site rehabilitation at sites that are eligible for state-funded cleanup programs, it will incur significant costs to identify and notify a large number of property owners, lessees and tenants each year. The Department of Health (DOH) may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Most local governments own contaminated property. They may incur increased costs associated with complying with the new notification requirements for those properties. The bill also requires local governments to mail a copy of any contamination notification that is received to the president or equivalent officer of each homeowner's association or neighborhood association within the

¹² Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹³ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

potentially affected area. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools within a 250 foot radius of a contaminated site.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have a negative fiscal impact on the private sector by requiring the person responsible for site rehabilitation to reimburse the DEP for all costs associated with the additional contamination notification requirements established in the bill. Private K-12 schools and child care facilities will incur some costs to annually notify teachers and parents or guardians attending the school.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires local governments to mail a copy of any received contamination notification that they receive to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area. Consequently, the bill appears to require counties or municipalities to spend funds or take action requiring the expenditure of funds. However, this requirement appears to have an insignificant fiscal impact on local governments and would be exempt from the mandate provision.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 122 & 126, the bill indicates a particular radius (500 ft or 250 ft) from the contaminated "sampling point." However, on lines 172 & 180, the bill indicates that a particular radius be drawn from the contaminated "property." The irregularity of property boundaries could lead to arbitrary radius distinctions.

On line 133, 196, & 198, it is unclear who "local government officials" refers to. Assuming that "local government officials" on line 133 refers to the officials enumerated in subsection (3)(a)(1) and (3)(a)(2), clarification as to which of these parties is responsible for notifying the president or equivalent officers of each homeowners' association within the potentially affected area is still required to alleviate duplicative notification.

On lines 133-140, the bill provides explicit instruction on how to provide notice to local governments and to property owners, lessees and tenants and how persons responsible for site rehabilitation must demonstrate compliance with the law. However, similar instruction is not provided for notices sent to the department district office, the county health department, or state and federal elected officials.

On line 151-154, the bill provides that if the person responsible for site rehabilitation has not complied with the notice requirements, the department may pursue enforcement action. However, similar enforcement mechanisms are not provided for either local governments or school officials in meeting their notification requirements. Nor has the bill delegated specific rulemaking authority to DEP to pursue enforcement if such entities fail to comply with their notification requirements.

On line 160, 168, 179, & 186, it is unclear whether the superintendent is to send out contamination notifications to school officials immediately following receipt of the contamination notification from DEP and then annually thereafter; whether the superintendent has a quantified timeframe to send notification to school officials followed by annual notifications; or whether an alternative to either of these approaches was intended.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.