

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 132

INTRODUCER: Senator Joyner

SUBJECT: Contamination Notification

DATE: January 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Pre-meeting
2.			ED	
3.			CA	
4.			BC	
5.				
6.				

I. Summary:

The bill increases the requirements for public notification and the categories of contaminated sites. The bill expands the number of people and the number of elected and administrative officials who must be notified by the Department of Environmental Protection (DEP) around a contaminated site. It requires local governments to mail the notice to affected homeowners' or applicable neighborhood associations.

The bill expands school notice requirements when contamination has been discovered on the site of a public or private K-12 school or a child care facility. It also expands the requirements of notification when public and private schools and child care facilities are within a 500-foot radius of certain categories of contaminated sites and within a 250-foot radius of other categories of contaminated sites. It requires the DEP and local governments to recover the notification costs unless the site is eligible for the state-funded cleanup.

The bill substantially amends s. 376.30702, Florida Statutes.

II. Present Situation:

The DEP's Division of Waste Management (DVM) implements state and federal laws to protect the environment from the improper handling and disposal of solid and hazardous wastes. DVM also oversees and contracts for the cleanup of sites contaminated with petroleum products, dry-cleaning solvents, or other hazardous wastes. The DEP's website provides a Contamination Locator Map so residents may search for contaminated sites in their area and subscribe to receive e-mail

notifications when clean up actions take place at certain requested sites. The website also explains the process of public notification when contamination is discovered on a property¹.

The DEP requires risk-based corrective actions (RBCA) be used when cleaning up the following sites: petroleum contaminated sites subject to s. 376.3071(5), F.S., dry-cleaning solvent contaminated sites subject to s. 376.3078(4), F.S., or brownfield sites subject to s. 376.81, F.S. Each of these statutes also requires notification of affected parties when the DEP approves a cleanup plan that allows contamination to remain beyond the boundaries of the source property while cleanup is underway. These provisions are designed to facilitate early notification of the discovery of contamination. The responsible parties that fail to comply with the requirements are subject to penalties outlined in s. 376.302, and 403.161(1) (b) F.S., which may include fines and civil litigation.

The DEP also has rules and provisions in place to address businesses and property owners that regularly deal with potentially harmful pollutants. For example, there are a large number of sites eligible for petroleum and dry-cleaning solvent cleanup programs. These businesses are taxed to fund this program and are required to clean-up when contamination occurs on these sites. The DEP closely monitors this program utilizing a standard operation of procedures manual and an approved list of clean-up contractors.

The 2005 legislature established s. 376.30702, F.S., which outlines the Legislature's intent, provides the requirements for initial notice of contamination beyond property boundaries, the DEP's responsibilities for notice and provides the DEP with rule making authority to implement the law. It requires that if the property is subject to RBCA statutes and contamination is discovered beyond the property boundaries while the site is rehabilitated then the owners of the property where the contamination is discovered must be notified.

The notification process begins with a dot that represents a contaminated test well on a map. One acre equals approximately 43,560 square feet and one quarter of an acre equals approximately 10,890 square feet. If a 500-foot radius circle is drawn around the test site, potentially 72 ¼ acre lots of property owners would be notified. If a 250-foot radius circle was drawn around the test site, potentially 18 ¼ acre lots of property owners would be notified.

However, this notification is only required to be provided for specific properties from which samples are actually collected and analyzed in a laboratory. Consequently, some people who may be affected by contamination may not be notified of its presence. For example, if samples are collected only from the property of the contaminated site under investigation, or if samples are collected in a road right-of-way rather than on private property, or if not all parcels in the vicinity of a contaminated site are sampled then not all affected parties will be notified. If the property at which contamination has been discovered is a school as defined in section 1003.01, F.S., (i.e. public schools) the DEP is required to direct the local school board to notify the teachers and parents or guardians of students attending the school of the contamination.²

The contents of the notification include some of the following requirements:

¹ www.dep.state.fl.us/wast/default.htm (last visited 1/20/11)

² Department of Environmental Protection's staff analysis, 11/01/10, SB 132.

- a listing of all record owners of any real property at which the contamination has been discovered;
- separate tables for groundwater, soil, and surface water that contain sampling date, name of contaminants detected above cleanup target levels; the contaminant concentrations and whether clean up is based on health, nuisance, organoleptic, or aesthetic concerns; and
- a vicinity map.³

III. Effect of Proposed Changes:

Section 1 amends s. 376.30702(1), F.S., to clarify that current contamination notification requirements apply to site rehabilitation activities conducted pursuant to an administrative or court order.

Subsection (2) makes technical and conforming changes and also provides an option to submit a contaminant plume map to the DEP in addition to a vicinity map and data tables.

Subsection (3) expands DEP notification requirements of contamination to include:

- city mayor or chair of county commission;
- city or county manager;
- the school district superintendent representing the affected area;
- the elected state and federal officials representing the affected area;
- and all real property owners, presidents of any condominium associations or sole owners of condominiums, and lessees and tenants of record of the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation.

Additionally, it will require DEP notification to all real property owners, presidents of any condominium associations or sole owners of condominiums, lessees and tenants of record of any properties within a:

1. 500-foot radius of each sampling point at which contamination is discovered if it is discovered beyond the property boundaries of a property at which site rehabilitation was initiated pursuant to s. 376.30701, F.S., or an administrative or court order.
2. 250-foot radius of each sampling point at which contamination is discovered beyond the property boundaries of the site that initiated the rehabilitation for petroleum contaminated sites subject to s. 376.3071(5), F.S., dry-cleaning solvent contaminated sites subject to s. 376.3078(4), F.S., or brownfield sites subject to s. 376.81, F.S., and at, or in connection with, solid waste management facility sites subject to a groundwater monitoring plan.

Properties identified during site rehabilitation being conducted under ss. 376.3071(5), 376.3078(4), or 376.81, F.S., or at, or in connection with, a permitted solid waste management facility subject to a groundwater monitoring plan may notice based on a plume map. A plume map can narrow down the source and spread of the contamination in an area.

³ Section 376.30702, F.S.

The section also specifies how the notice must be provided to local governments, property owners, lessees and tenants. The DEP must verify within 30 days after receiving notice of the discovery of contamination that the person responsible for site rehabilitation has complied with notice requirements. The statute also authorizes the DEP to pursue enforcement under chapters 376 and 403, F.S., if notice has not been provided appropriately. It removes an outdated provision from the statute that required the DEP to use the information it possessed at the time (September 1, 2005) to provide notices to all record owners of property at which contamination had been discovered beyond property boundaries.

The bill requires that if the property at which contamination has been discovered is the site of a public school, the DEP must mail a copy of the notice to the superintendent of the appropriate school district and directs the superintendents to notice annually to the teachers and parents or guardians of students attending the school. The bill expands school notification to require that similar notification and direction be provided for private K-12 schools and child care facilities.

It specifies that if any property within a 500-foot radius of a property at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701, F.S., or an administrative or court order, is the site of a public school, the DEP must mail a copy of the notice to the superintendent and direct the superintendent to provide notice annually to the principal of the school. Further, if any property within a 250-foot radius of a property at which contamination has been discovered during site rehabilitation pursuant to ss. 376.3071(5), 376.3078(4), or 376.81 F.S., or at, or in connection with, a permitted solid waste management facility subject to a groundwater monitoring plan is the site of a public school similar notification and direction must be provided to the superintendent. The notice must also direct the superintendent to provide notice annually to the principal of the school.

The bill creates s. 376.30702(4), F.S., to require local governments to send a copy of the notice to the president or comparable elected officer of each homeowners' or neighborhood association in the potentially affected area.

The bill also creates s. 376.30702(5), F.S., to direct the DEP to recover its costs for postage, materials and labor associated with notification from the responsible party, unless site rehabilitation is eligible for state-funded cleanup pursuant to ss. 376.3071(5) or 376.3078(4), F.S.

Section 2 provides that the legislation is an important state interest.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since some local governments own contaminated property, they may experience indeterminate costs associated with the new notification requirements as well as increased costs for responding to resident inquiries about notices they receive from DEP, therefore, this bill falls under subsection (a) of section 18 of Article VII, Florida Constitution. Subsection (a) provides that counties and municipalities are not bound by

general laws that require them to spend funds or to take action that requires the expenditure of funds unless certain exemptions or exceptions are met.

As for applicable specified constitutional exceptions, the bill requires similar expenditures by all similarly situated persons (i.e. state and local governments); therefore, the only additional requirement necessary to remove the bill from the purview of this constitutional provision is a finding that the Legislature fulfills an important state interest. The bill contains a finding that its provisions fulfill an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of contaminated property may be more vulnerable to lawsuits simply because of increased public awareness of the presence of contamination. Property owners will benefit from more information about the extent of contamination in their vicinity. However, if contamination does exist, or is presumed to exist, this may adversely affect their property's value. Private K-12 schools and child care facilities will incur increased costs to annually notify teachers and parents or guardians of students attending the school.

C. Government Sector Impact:

The DEP will incur an increase in costs to identify and notify a large number of property owners, lessees and tenants each year that fall under the state-funded cleanup programs. These costs will continue for an indeterminate time because of the large number of sites eligible for the petroleum and dry cleaning solvent cleanup programs. There will also be expenditures to pay contractors tasked with identifying parcel owners, lessees, and tenants and generating and mailing notice letters. As most local governments own contaminated property, they may experience indeterminate costs associated with responding to resident inquiries about notices they receive from the DEP. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools of a contaminated school site. The Department of Health may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
