

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 937 CS Contamination Notification
SPONSOR(S): Galvano and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	5 Y, 0 N, w/CS	Perkins	Kliner
2) Water & Natural Resources Committee	10 Y, 0 N, w/CS	Smith	Lotspeich
3) Agriculture Committee	(W/D)		
4) State Resources Council		Perkins	Hamby
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill provides for contamination notification requirements when contamination has migrated beyond the property boundary of the originally contaminated site, and provides specific criteria associated with each notice provided by 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 person responsible for site rehabilitation discovers from laboratory analytical results that comply with appropriate quality assurance protocols specified by DEP rules, that contamination exists in any medium beyond the boundaries of the property at which the person responsible for site rehabilitation, such person will give notice no later than 10 days from the discovery to DEP, and will simultaneously mail a copy of the notice to the appropriate DEP district office and county health department, and all known lessees and tenants of the source property. 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.

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 cleanup or require responsible parties to cleanup discharges of contamination. Cleanup 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 cleanup 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 four 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.

- **Contamination** is defined to mean the presence of free product or any contaminant in surface water, groundwater, soil, sediment, or upon the land, in concentrations that exceed the applicable cleanup target levels or that result in contaminated sediment, as specified in DEP rules.
- **Person responsible for site rehabilitation** is defined to mean the person performing site rehabilitation pursuant to the requirements of ss. 376.3071(5), 376.3078(4), 376.81, or 376.30701, F.S. Such persons may include, but are not limited to, any person who has legal responsibility for site rehabilitation pursuant to chapters 376 or 403, F.S.; DEP when it conducts site rehabilitation; a real property owner; a facility owner or operator; any person responsible for brownfield site rehabilitation; or any person who voluntarily rehabilitates a site and seeks acknowledgement from DEP for approval of site rehabilitation program tasks.
- **Temporary point of compliance** is defined to mean the boundary represented by one or more designated monitoring wells at which groundwater cleanup target levels may not be exceeded while site rehabilitation is proceeding.

The bill creates section 376.30702, F.S., relating to contamination notification requirements. The Legislature finds and declares that when contamination is discovered by any person as a result of site rehabilitation activities pursuant to risk-based corrective action provisions, it is in the public's best interest that potentially affected persons be notified of the existence of contamination.

The bill creates certain notice responsibilities and criteria for the site rehabilitator and DEP pursuant to the following provisions:

Site Rehabilitator Notification Requirement:

The bill requires a property owner (or other authorized agents) to give notice of contamination that has reasonably migrated into any medium beyond the boundaries of the property. The owner must give notice to the Division of Waste Management no less than **10 days** after the discovery of contamination. Copies of the notice must also be given to the appropriate department district office, county health department, and all known lessees and tenants of the source property. Notice must be given via certified mail, and on a form adopted by the DEP.

The notice is to include the following information:

- Location of the property at which site rehabilitation was initiated and contact information for the person responsible for site rehabilitation.
- A listing of all record owners of any real property other than the property at which the site rehabilitation was conducted or discovered, the parcel identification number, the owner's address listed in the county tax office, and the owner's telephone number. (This requirement **does not** apply to the notice to known tenants and lessees of the source property).
- Sampling data with specific contaminant concentration level findings and recommendations.
- Vicinity maps illustrating sampling areas and sampling data along with property boundaries for which site rehabilitation was initiated and other property at which contamination was discovered during the site rehabilitation.

DEP Notification Requirement:

Within **30 days** after receiving written certified notice or within **30 days** of the effective date of this bill, if DEP already possesses information equivalent to that required by the notice, DEP is required to send a copy of the notice to all record property owners of any real property, other than the property at which site rehabilitation was initiated, that contamination was discovered. The DEP notice is to include the following information:

- A letter identifying sources of additional information about contamination. DEP may collaborate with the Department of Health regarding this letter.
- Telephone numbers to which further inquires should be directed.

The bill authorizes DEP rulemaking to implement the provisions of this bill and directs DEP to adopt any necessary rules and forms to implement the contamination notification requirements contained within this bill.

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. 376.301, F.S., relating to definitions.

Section 2. Creates s. 376.30702, F.S., relating to contamination notification requirements.

Section 3. Amends s. 287.0595(1)(a), F.S., relating to statute cross reference.

Section 4. Amends s. 316.302(2)(f), F.S., relating to statute cross reference.

Section 5. Provides the act will take effect September 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 the 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 bill requires property owners to provide notice of contamination in specified circumstances. Such notice will entail unknown costs.

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. All known lessees and tenants of the contaminated property will also receive timely notice of contamination.

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:

The bill authorizes DEP rulemaking to implement the provisions of this bill and directs DEP to adopt any necessary rules and forms to implement the contamination notification requirements contained within this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public testimony revealed at the Environmental Regulation Committee on March 23, 2005, that this bill does not address notification to the public that may visit a contaminated site.

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. The enactment of express statutory authority requiring the giving of notice could avert future potential rule challenges regarding notice requirements. The total cost to DEP to implement the provisions of this bill is indeterminate at this time; however, it is known the cost will be significant. The bill provides no additional resources to DEP for implementation.

Drafting Issues: The legislative intent language within section 376.30702(1), F.S., reflects that the discovery of contamination during certain site cleanup activities be reported to DEP, so that potentially affected persons will be notified of the existence of the contamination. On the other hand, the actual notice requirements in section 376.30702(2), F.S., limits notice to those instances when the contamination has migrated beyond the property boundary of a contaminated site. Therefore, there appears to be an inconsistency between the legislative intent with regard to notice and the actual notice requirements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Environmental Regulation Committee favorably adopted two amendments to HB 937:

- Amendment No. 1 – “strike all” amendment relating to conformity to DEP proposed rules.
- Amendment No. 2 – technical amendment to remove “both” on line 61.

The analysis has been amended to reflect the adoption of these amendments.

On April 6, 2005, the Water & Natural Resources Committee favorably adopted a strike all amendment to HB 937 CS:

- Amendment No. 1 – “strike all” amendment relating to certain parties to receive contamination notification.

The analysis has been amended to reflect the adoption of this amendment.