

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1229 Contamination Notification
SPONSOR(S): Kriseman and others
TIED BILLS: None IDEN./SIM. BILLS: SB 114

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Agriculture & Natural Resources Policy Committee, 13 Y, 0 N, Blalock, Reese. Row 2: General Government Policy Council, Blalock, Hamby.

SUMMARY ANALYSIS

The bill increases the contamination notification requirements for persons responsible for site rehabilitation by requiring a notice of contamination be provided to city and county government senior elected officials, U.S. Senators and Representatives from the affected area, and all real property owners, lessees, and tenants of any properties within a 500-ft radius of each sampling point at which contamination is discovered.

The bill requires the DEP to verify that the person responsible for site rehabilitation has complied with the contamination notice requirements, and requires the DEP, within 60 days after receiving the notice of contamination, to mail a copy of any contamination notification it receives to all real property owners, lessees, and tenants of property at which site rehabilitation is being conducted pursuant to risk-based corrective action provisions.

The bill also requires the DEP to provide additional notice of property at which contamination has been discovered if it is the site of a school or child care facility

The bill appears to have a significant fiscal impact on state government, and an insignificant fiscal impact on local governments.

The bill has an effective date of July 1, 2009.

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

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 those conducting site rehabilitation of contaminated property to notify potentially affected persons of the existence of contamination.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 the site rehabilitation, agent, or representative discovers that contamination exists in any “groundwater, surface water, or soil either within” or beyond the boundaries of the property at which site rehabilitation was initiated.

The bill also requires the person responsible for site rehabilitation to provide a copy of the notice to the following additional persons:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;

Carroll, *A Stormy End to Tallevast Talks*, Sarasota Herald-Trib. (Dec. 9, 2005); Scott Carroll, *Warrior Women with Community 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 city manager, the county administrator, or the comparable senior elected official representing the affected area;
- The state senator, state representative, U.S. Senator, U.S. Representative representing the affected area; and
- All real property owners at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation, and all real property owners, lessees, and tenants of any properties within a 500-foot radius of each sampling point at which contamination is discovered.

The bill amends the notice provisions in s. 376.30702(2), F.S., to require further that the notice include:

- A listing of all real property owners at which contamination has been discovered; and
- Separate tables for groundwater, soil, or surface water that list sampling locations identified on the vicinity map.

The bill requires that the notice provided to local government officials must be mailed by certified mail, return receipt requested, and must advise the local government of its responsibilities discussed below. Copies of the notices and receipts must be provided to the DEP as proof of compliance with the notice requirements.

The bill also provides that the notice provided to real property owners, lessees, and tenants can be delivered by certified mail, return receipt requested, hand delivery, or door hanger. Copies of the noticed and receipts, or a copy or sample of the hand-delivered notice or door hanger and a list of addresses where the notice or door hanger was distributed, must be provided to the DEP as proof of compliance with the notice requirements.

The bill requires local governments, within 30 days after receiving the actual notice required in s. 376.30702(2), F.S., 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 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. If the person has not complied with the notice requirements, the DEP can pursue enforcement. Within 60 days after receiving the contamination notification, for sites conducting rehabilitation activities pursuant to the risk-based corrective action provisions, the DEP must mail a copy of the notice to all real property owners at which site rehabilitation is being conducted.

The bill also requires that if the property where contamination has been discovered is a private K-12 school or child care facility as defined in 402.302, F.S.,¹⁰ the DEP must mail a copy of the contamination notification to the governing board, principal, or owner of the school or child care facility and direct the governing board, principal, or owner to provide actual notice annually to teachers and 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 is the site of a school as defined in s. 1003.01, F.S.,¹¹ 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.

¹⁰ 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.

¹¹ 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.

B. SECTION DIRECTORY:

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

Section 2: Provides an effective date of July 1, 2009.

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 that fall within a 500-foot radius of a contamination location and public schools within a 1-mile radius. The DEP further stated that it is the agency responsible for site rehabilitation at sites that are eligible for state-funded cleanup programs, and therefore, 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:

The bill requires local governments to mail a copy of any contamination notification that is received to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area. This appears to result in an insignificant fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The additional notice requirements and potential increase in the number of contamination notifications that may be required to be mailed as a result of this bill could cause persons responsible for site rehabilitation to incur additional costs if it is discovered that contamination exists in any groundwater, surface water, or soil either within or beyond the boundaries of the property.

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 where contamination is discovered on their property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill requires local governments to mail a copy of any contamination notification that they receive to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area, and therefore, appears to require counties or municipalities to

spend funds or take an 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 line 148, the purpose of section 376.30702(4)(b) is unclear, but appears to be duplicative because the person responsible for site rehabilitation is already required to notify the real property owner pursuant to section 376.30702(2)(a)6. The proposed new provision requires the DEP to send the owner of the property at which site rehabilitation is being conducted a copy of the notice that has already been received from the person responsible for site rehabilitation.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.