LEGISLATIVE ACTION

The Committee on Environmental Preservation and Conservation (Simpson) recommended the following:

Senate Amendment (with title amendment)

Between lines 313 and 314 insert:

Section 4. Subsection (6) of section 376.305, Florida Statutes, is amended to read:

(6) The Legislature created the Abandoned Tank Restoration Program in response to the need to provide financial assistance for cleanup of sites that have abandoned petroleum storage
systems. For purposes of this subsection, the term “abandoned petroleum storage system” means a petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department by June 30, 1996, certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to department rules before an eligibility determination. However, if the department determines that the owner of the facility cannot financially comply with the department’s petroleum storage system closure requirements and all other eligibility requirements are met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner’s net worth and the economic impact on the owner in making the determination of the owner’s financial ability. The June 30, 1996, application deadline shall be waived for owners who cannot financially
(c) Sites accepted in the program are eligible for site rehabilitation funding as provided in s. 376.3071.

(d) The following sites are excluded from eligibility:
1. Sites on property of the Federal Government;
2. Sites contaminated by pollutants that are not petroleum products;
3. Sites where the department has been denied site access; or
4. Sites which are owned by a person who had knowledge of the polluting condition when title was acquired unless the person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed $10,000.

This subsection does not relieve a person who has acquired title after July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(e).

Section 5. Paragraph (b) of subsection (5), paragraph (d) of subsection (6), paragraph (b) of subsection (12), and subsection (13) of section 376.3071, Florida Statutes, are amended, and paragraphs (n) and (o) are added to subsection (6) of that section, to read:

376.3071 Inland Protection Trust Fund; creation; purposes;
(5) SITE SELECTION AND CLEANUP CRITERIA.—

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles approved by the property owner to achieve protection of the public health, safety, and welfare, water resources, and the environment in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products’ chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate
monitoring, is proceeding. The department may also, pursuant to criteria provided for in this paragraph, temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, if the public health, safety, and welfare, water resources, and the environment are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may allow concentrations of the petroleum products’ chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if the public health, safety, and welfare, water resources, and the environment are adequately protected.

4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products’ chemicals of concern to humans or the environment. Use of such controls must have prior department approval and may not be acquired with moneys from the fund. When institutional or engineering controls are implemented to control exposure, the removal of such
controls must have prior department approval and must be
accompanied immediately by the resumption of active cleanup or
other approved controls unless cleanup target levels pursuant to
this paragraph have been achieved. Beginning July 1, 2013, site
rehabilitation for a site that qualifies for a conditional
closure or closure with institutional or engineering controls
that require deed restrictions or a work stoppage not due to
insufficient funds may be implemented only with the approval of
the property owner.

5. The additive effects of the petroleum products’
chemicals of concern. The synergistic effects of petroleum
products’ chemicals of concern must also be considered when the
scientific data becomes available.

6. Individual site characteristics which must include, but
not be limited to, the current and projected use of the affected
groundwater in the vicinity of the site, current and projected
land uses of the area affected by the contamination, the exposed
population, the degree and extent of contamination, the rate of
contaminant migration, the apparent or potential rate of
contaminant degradation through natural attenuation processes,
the location of the plume, and the potential for further
migration in relation to site property boundaries.

7. Applicable state water quality standards.
a. Cleanup target levels for petroleum products’ chemicals
of concern found in groundwater shall be the applicable state
water quality standards. Where such standards do not exist, the
cleanup target levels for groundwater shall be based on the
minimum criteria specified in department rule. The department
shall consider the following, as appropriate, in establishing
the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products’ chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a “No Further Action Order” based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area,
where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, if the public health, safety, and welfare, water resources, and the environment are adequately protected.

9. Appropriate cleanup target levels for soils.
   a. In establishing soil cleanup target levels for human exposure to petroleum products’ chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate:
      calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.
   b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals do not apply if the department determines, based upon individual site characteristics, that petroleum products’ chemicals of concern will not leach into the groundwater at levels which pose a threat to public health, safety, and welfare, water resources, or the environment.

This paragraph does not restrict the department from temporarily postponing completion of any site rehabilitation program for which funds are being expended whenever such postponement is necessary in order to make funds available for rehabilitation of
a contamination site with a higher priority status.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(d) The department rules implementing this section must:

1. Specify that only qualified vendors may submit responses on a competitive solicitation. The department rules must also

2. Include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation. and

3. Include requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

4. Establish a procedure by October 1, 2015, for the processing of invoices and the direct assignment of tasks that are less than $500,000. This procedure may not involve the use of MyFloridaMarketPlace. Invoices and assignment of tasks may be processed pursuant to chapter 287.

(n) For sites that are within the priority scoring range eligible for funding, excluding sites that are within a cost-share program, a site owner or operator may select three agency term contractors. The department will then select one of the three agency term contractors based on the best value to be determined by a combination of the agency term contractor’s Invitation to Negotiate ranking and Schedule E rates.

(o)1. Both the selected agency term contractor and the property owner, or responsible party, who selects the agency term contractor must execute a sworn affidavit testifying that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind, directly or indirectly, in exchange for the selection of the...
agency term contractor in connection with the cleanup of the petroleum contaminated property, except for the compensation paid by the department to the agency term contractor pursuant to the agency term contractor’s contract with the department. If the department subsequently determines that remuneration did occur, the department may seek recovery of the costs of cleanup of specific properties from all parties responsible for the property contamination, and the property is ineligible for participation in any cleanup program.

2. Pursuant to the terms and conditions of the agency term contractor’s contract with the department, the agency term contractor must disclose any conflict of interest to the department. The agency term contractor shall be conclusively determined to have a conflict of interest with regard to any site if it has given or offered remuneration, in cash or in kind, directly or indirectly, to the property owner or responsible party, or the owner’s or responsible party’s designee, to obtain work associated with such property. The department retains the right to investigate and determine if an agency term contractor has a conflict of interest with regard to any property. The department may terminate the agency term contractor’s contract with the department or may terminate the agency term contractor’s work assignment to a particular property based upon the department’s assessment of the potential conflict of interest.

(12) SITE CLEANUP.—

(b) Low-scored site initiative.—Notwithstanding subsections (5) and (6), a site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site
initiative regardless of whether the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

   a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.

   b. Excessively contaminated soil, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

   c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

   d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

   e. The area of groundwater containing the petroleum products’ chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated or is located below a state road or a state road’s right-of-way.

   f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of “No Further Action.” Such determination acknowledges that minimal contamination exists onsite and that such contamination
is not a threat to the public health, safety, or welfare, water resources, or the environment. If no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of costs for the low-scored site initiative as follows:

   a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment, including 6 months of groundwater monitoring, not to exceed $35,000 for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

   b. Following the assessment, the department may approve up to an additional $35,000 for interim source removal pursuant to department rule to achieve a “No Further Action” order or a site rehabilitation completion order pursuant to subparagraph 2.

   c. For low-scored site initiative sites that were completed before July 1, 2015, the department may approve up to an additional $35,000 for supplemental site assessment pursuant to department rule or to achieve a “No Further Action” order or a site rehabilitation completion order pursuant to subparagraph 2.

   d. To provide pricing levels on the best terms to the department, only an agency term contractor may participate in the low-scored site initiative.

   e. Completed low-scored site initiative sites shall be granted priority 2 scoring status for ongoing assessment or remedial activity pursuant to department rule.
f. All The assessment work shall be completed no later than 9 months after the department issues its approval. If groundwater monitoring is required after the assessment in order to satisfy the conditions of sub-subparagraph 1.c., the department may authorize an additional 6 months to complete the monitoring.

g. No more than $10 million for the low-scored site initiative may be encumbered from the fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

h. Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility is subject to an annual appropriation from the fund. Additionally, funding for eligible sites is contingent upon annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program,
notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received before January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property, regardless of whether ownership has changed, which is contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before January 1, 1995. An operator’s filed report shall be an application of the owner for all purposes. Sites reported to the department after December 31, 1998, are not eligible for the program.

(b) Subject to annual appropriation from the fund, sites meeting the criteria of this subsection are eligible for up to $1 million $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections (5) and (6). Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before June 1, 2008, regardless of whether they have previously
transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay expenses incurred beyond the scope of an approved contract.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program site rehabilitation agreement with the department. The agreement must provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner’s and operator’s net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot complete negotiation of the cost-sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall
be ineligible for state funding under this subsection and all
liability protections provided for in this subsection shall be
revoked.

(d) A report of a discharge made to the department by a
person pursuant to this subsection or any rules adopted pursuant
to this subsection may not be used directly as evidence of
liability for such discharge in any civil or criminal trial
arising out of the discharge.

(e) This subsection does not preclude the department from
pursuing penalties under s. 403.141 for violations of any law or
any rule, order, permit, registration, or certification adopted
or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under
paragraph (a), the department or local government may not pursue
any judicial or enforcement action to compel rehabilitation of
the discharge. This paragraph does not prevent any such action
with respect to discharges determined ineligible under this
subsection or to sites for which rehabilitation funding
assistance is available pursuant to subsections (5) and (6).

(g) The following are excluded from participation in the
program:

1. Sites at which the department has been denied reasonable
site access to implement this section.

2. Sites that were active facilities when owned or operated
by the Federal Government.

3. Sites that are identified by the United States
Environmental Protection Agency to be on, or which qualify for
listing on, the National Priorities List under Superfund. This
exception does not apply to those sites for which eligibility
has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

Section 6. Paragraph (a) of subsection (2) and subsection (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—
(2) The department may approve an application for advanced cleanup at eligible sites, before funding based on the site’s priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. An application proposing that the department enter into a performance-based contract for the cleanup of 10 or more sites may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the cost-share requirement. For an
application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department’s review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(4) The department may enter into contracts for a total of up to $25 million of advanced cleanup work in each fiscal
year. However, a facility or an applicant who bundles multiple
sites as specified in subparagraph (2)(a)1. may not be approved
for more than $5 million of cleanup activity in each fiscal
year. A property owner or responsible party may enter into a
voluntary cost-share agreement in which the property owner or
responsible party commits to bundle multiple sites and lists the
facilities that will be included in those future bundles. The
facilities listed are not subject to agency term contractor
assignment pursuant to department rule. The department reserves
the right to terminate the voluntary cost-share agreement if the
property owner or responsible party fails to submit an
application to bundle multiple sites within an open application
period in which it is eligible to participate. For the purposes
of this section, the term “facility” includes, but is not
limited to, multiple site facilities such as airports, port
facilities, and terminal facilities even though such enterprises
may be treated as separate facilities for other purposes under
this chapter.

And the title is amended as follows:
Between lines 17 and 18
insert:

amending s. 376.305, F.S.; removing the requirement
that applications for the Abandoned Tank Restoration
Program must have been submitted to the Department of
Environmental Protection by a certain time; deleting
provisions relieving certain persons from liability;
amending s. 376.3071, F.S.; prohibiting the department
from incorporating risk-based corrective actions
principles not approved by the property owner;
prohibiting site rehabilitation from being implemented
on certain sites without the approval of the property
owner; requiring the department to establish a
procedure by rule for the processing of certain
invoices and the direct assignment of tasks by a
certain date; authorizing site owners and operators to
select agency term contractors from which the
department must select from under certain
circumstances; requiring the property owner or
responsible party selecting the agency term contractor
and the selected agency term contractor to execute a
sworn affidavit testifying to certain terms; requiring
agency term contractors to disclose any conflict of
interest to the department; revising the conditions
for eligibility and methods for payment of costs for
the low-scored site initiative; clarifying that a
change in ownership does not preclude a site from
entering into the program; revising the eligibility
requirements for receiving rehabilitation funding
assistance; increasing the amount of funding
assistance available; amending s. 376.30713, F.S.;
revising the number of sites for certain advanced
cleanup applications; increasing the total amount for
which the department may contract for advanced cleanup
work in a fiscal year; authorizing property owners and
responsible parties to enter into voluntary cost-share
agreements under certain circumstances;