



834648

LEGISLATIVE ACTION

Senate

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House

Floor: 1/AD/3R

03/05/2020 04:10 PM

Senator Flores moved the following:

Senate Amendment (with title amendment)

Delete lines 20 - 153

and insert:

Section 1. Paragraph (a) of subsection (2) and subsections (4) and (13) of section 376.3071, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) and subsection (15) is added to that section, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—In addition to the legislative findings set



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12 forth in s. 376.30, the Legislature finds and declares:
13 (h) That Congress enacted the Energy Policy Act of 2005,
14 amending the Clean Water Act, and that the state enacted the
15 Renewable Fuels Standard, to establish a renewable fuel standard
16 requiring the use of ethanol as an oxygenate additive for
17 gasoline and biodiesel as an additive for ultra-low sulfur
18 diesel fuel. An unintended consequence of the inclusion of
19 ethanol in gasoline and biodiesel in diesel fuel has been to
20 cause, and potentially cause, significant corrosion and other
21 damage to storage tanks, piping, and storage tank system
22 components regulated under this chapter. The Legislature further
23 finds that storage tanks, piping, and storage tank system
24 components have been found by the department in its equipment
25 approval process to meet compatibility standards, however, these
26 standards may have subsequently changed due to the introduction
27 of ethanol and biodiesel. The state enacted secondary
28 containment requirements before the mandated introduction of
29 ethanol into gasoline and biodiesel into ultra-low sulfur diesel
30 fuel. Therefore, owners and operators of petroleum storage
31 facilities in the state that complied with the state's secondary
32 containment requirements and installed approved equipment that
33 may not have been evaluated for compatibility with ethanol and
34 biodiesel, cross-contamination due to the storage of gasoline
35 and diesel fuel, and the effects of condensation and minimal
36 amounts of water in storage tanks are at a particular risk for
37 having to repair or replace equipment or take other preventive
38 measures in advance of the equipment's expected useful life in
39 order to prevent releases or discharges of pollutants.

40 (2) INTENT AND PURPOSE.—



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41 (a) It is the intent of the Legislature to establish the
42 Inland Protection Trust Fund to serve as a repository for funds
43 which will enable the department to respond without delay to
44 incidents of inland contamination, and damage or potential
45 damage to storage tank systems caused by ethanol or biodiesel as
46 described in subsection (15) which may result in such incidents,
47 related to the storage of petroleum and petroleum products in
48 order to protect the public health, safety, and welfare and to
49 minimize environmental damage.

50 (4) USES.—Whenever, in its determination, incidents of
51 inland contamination, or potential incidents as provided in
52 subsection (15), related to the storage of petroleum or
53 petroleum products may pose a threat to the public health,
54 safety, or welfare, water resources, or the environment, the
55 department shall obligate moneys available in the fund to
56 provide for:

57 (a) Prompt investigation and assessment of contamination
58 sites.

59 (b) Expeditious restoration or replacement of potable water
60 supplies as provided in s. 376.30(3)(c)1.

61 (c) Rehabilitation of contamination sites, which shall
62 consist of cleanup of affected soil, groundwater, and inland
63 surface waters, using the most cost-effective alternative that
64 is technologically feasible and reliable and that provides
65 adequate protection of the public health, safety, and welfare,
66 and water resources, and that minimizes environmental damage,
67 pursuant to the site selection and cleanup criteria established
68 by the department under subsection (5), except that this
69 paragraph does not authorize the department to obligate funds



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70 for payment of costs which may be associated with, but are not
71 integral to, site rehabilitation, such as the cost for
72 retrofitting or replacing petroleum storage systems.

73 (d) Maintenance and monitoring of contamination sites.

74 (e) Inspection and supervision of activities described in
75 this subsection.

76 (f) Payment of expenses incurred by the department in its
77 efforts to obtain from responsible parties the payment or
78 recovery of reasonable costs resulting from the activities
79 described in this subsection.

80 (g) Payment of any other reasonable costs of
81 administration, including those administrative costs incurred by
82 the Department of Health in providing field and laboratory
83 services, toxicological risk assessment, and other assistance to
84 the department in the investigation of drinking water
85 contamination complaints and costs associated with public
86 information and education activities.

87 (h) Establishment and implementation of the compliance
88 verification program as authorized in s. 376.303(1)(a),
89 including contracting with local governments or state agencies
90 to provide for the administration of such program through
91 locally administered programs, to minimize the potential for
92 further contamination sites.

93 (i) Funding of the provisions of ss. 376.305(6) and
94 376.3072.

95 (j) Activities related to removal and replacement of
96 petroleum storage systems, if repair, replacement, or other
97 preventive measures are authorized under subsection (15), or
98 exclusive of costs of any tank, piping, dispensing unit, or



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99 related hardware, if soil removal is approved as a component of
100 site rehabilitation and requires removal of the tank where
101 remediation is conducted under this section, or if such
102 activities were justified in an approved remedial action plan.

103 (k) Reasonable costs of restoring property as nearly as
104 practicable to the conditions which existed before activities
105 associated with contamination assessment or remedial action
106 taken under s. 376.303(4).

107 (l) Repayment of loans to the fund.

108 (m) Expenditure of sums from the fund to cover ineligible
109 sites or costs as set forth in subsection (13), if the
110 department in its discretion deems it necessary to do so. In
111 such cases, the department may seek recovery and reimbursement
112 of costs in the same manner and pursuant to the same procedures
113 established for recovery and reimbursement of sums otherwise
114 owed to or expended from the fund.

115 (n) Payment of amounts payable under any service contract
116 entered into by the department pursuant to s. 376.3075, subject
117 to annual appropriation by the Legislature.

118 (o) Petroleum remediation pursuant to this section
119 throughout a state fiscal year. The department shall establish a
120 process to uniformly encumber appropriated funds throughout a
121 state fiscal year and shall allow for emergencies and imminent
122 threats to public health, safety, and welfare, water resources,
123 and the environment as provided in paragraph (5)(a). This
124 paragraph does not apply to appropriations associated with the
125 free product recovery initiative provided in paragraph (5)(c) or
126 the advanced cleanup program provided in s. 376.30713.

127 (p) Enforcement of this section and ss. 376.30-376.317 by



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128 the Fish and Wildlife Conservation Commission and the Department
129 of Environmental Protection. The department shall ~~may~~ disburse
130 moneys to the commission for such purpose.

131 (q) Payments for program deductibles, copayments, and
132 limited contamination assessment reports that otherwise would be
133 paid by another state agency for state-funded petroleum
134 contamination site rehabilitation.

135 (r) Payments for the repair or replacement of, or other
136 preventive measures for, storage tanks, piping, or system
137 components as provided in subsection (15). Such costs may
138 include equipment, excavation, electrical work, and site
139 restoration.

140
141 The issuance of a site rehabilitation completion order pursuant
142 to subsection (5) or paragraph (12)(b) for contamination
143 eligible for programs funded by this section does not alter the
144 project's eligibility for state-funded remediation if the
145 department determines that site conditions are not protective of
146 human health under actual or proposed circumstances of exposure
147 under subsection (5). The Inland Protection Trust Fund may be
148 used only to fund the activities in ss. 376.30-376.317 except
149 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in
150 each fiscal year must first be applied or allocated for the
151 payment of amounts payable by the department pursuant to
152 paragraph (n) under a service contract entered into by the
153 department pursuant to s. 376.3075 and appropriated in each year
154 by the Legislature before making or providing for other
155 disbursements from the fund. This subsection does not authorize
156 the use of the fund for cleanup of contamination caused



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157 primarily by a discharge of solvents as defined in s.
158 206.9925(6), or polychlorinated biphenyls when their presence
159 causes them to be hazardous wastes, except solvent contamination
160 which is the result of chemical or physical breakdown of
161 petroleum products and is otherwise eligible. Facilities used
162 primarily for the storage of motor or diesel fuels as defined in
163 ss. 206.01 and 206.86 are not excluded from eligibility pursuant
164 to this section.

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

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

185 2. Regardless of whether ownership has changed, owners or



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186 operators of property that is contaminated by petroleum or
187 petroleum products from a petroleum storage system may apply for
188 such program by filing a written report of the contamination
189 incident, including evidence that such incident occurred before
190 January 1, 1995, with the department. Incidents of petroleum
191 contamination discovered after December 31, 1994, at sites which
192 have not stored petroleum or petroleum products for consumption,
193 use, or sale after such date shall be presumed to have occurred
194 before January 1, 1995. An operator's filed report shall be an
195 application of the owner for all purposes.

196 (b) Subject to annual appropriation from the fund, sites
197 meeting the criteria of this subsection are eligible for up to
198 \$400,000 of site rehabilitation funding assistance in priority
199 order pursuant to subsections (5) and (6). Sites meeting the
200 criteria of this subsection for which a site rehabilitation
201 completion order was issued before June 1, 2008, do not qualify
202 for the 2008 increase in site rehabilitation funding assistance
203 and are bound by the pre-June 1, 2008, limits. Sites meeting the
204 criteria of this subsection for which a site rehabilitation
205 completion order was not issued before June 1, 2008, regardless
206 of whether they have previously transitioned to nonstate-funded
207 cleanup status, may continue state-funded cleanup pursuant to
208 this section until a site rehabilitation completion order is
209 issued or the increased site rehabilitation funding assistance
210 limit is reached, whichever occurs first. The department may not
211 pay expenses incurred beyond the scope of an approved contract.

212 (c) The department may also approve supplemental funding of
213 up to \$100,000 for additional remediation and monitoring if such
214 remediation and monitoring is necessary to achieve a



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215 determination of "No Further Action."

216 (d) Upon notification by the department that rehabilitation
217 funding assistance is available for the site pursuant to
218 subsections (5) and (6), the property owner, operator, or person
219 otherwise responsible for site rehabilitation shall provide the
220 department with a limited contamination assessment report and
221 shall enter into a Petroleum Cleanup Participation Program site
222 rehabilitation agreement with the department. The limited
223 contamination assessment report must be sufficient to support
224 the proposed course of action and to estimate the cost of the
225 proposed course of action. The agreement must provide for a 25-
226 percent cost savings to the department, a copayment by the
227 owner, operator, or person otherwise responsible for conducting
228 site rehabilitation, or a combination of cost savings and a
229 copayment. Cost savings to the department may be demonstrated in
230 the form of reduced rates by the proposed agency term contractor
231 or the difference in cost associated with a Risk Management
232 Options Level I closure versus a Risk Management Options Level
233 II closure. For the purpose of this paragraph, the term:

234 1. "Risk Management Options Level I" means a "No Further
235 Action" closure without institutional controls or without
236 institutional and engineering controls. This closure option
237 applies subject to conditions in department rules and
238 agreements.

239 2. "Risk Management Options Level II" means a "No Further
240 Action" closure where institutional controls and, if
241 appropriate, engineering controls apply if the controls are
242 protective of human health, public safety, and the environment.
243 This closure option applies subject to conditions in department



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244 rules and agreements ~~The owner, operator, or person otherwise~~
245 ~~responsible for conducting site rehabilitation shall adequately~~
246 ~~demonstrate the ability to meet the copayment obligation. The~~
247 ~~limited contamination assessment report and the copayment costs~~
248 ~~may be reduced or eliminated if the owner and all operators~~
249 ~~responsible for restoration under s. 376.308 demonstrate that~~
250 ~~they cannot financially comply with the copayment and limited~~
251 ~~contamination assessment report requirements. The department~~
252 ~~shall take into consideration the owner's and operator's net~~
253 ~~worth in making the determination of financial ability. In the~~
254 ~~event the department and the owner, operator, or person~~
255 ~~otherwise responsible for site rehabilitation cannot complete~~
256 ~~negotiation of the cost sharing agreement within 120 days after~~
257 ~~beginning negotiations, the department shall terminate~~
258 ~~negotiations and the site shall be ineligible for state funding~~
259 ~~under this subsection and all liability protections provided for~~
260 ~~in this subsection shall be revoked.~~

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

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

270 (g) Upon the filing of a discharge reporting form under
271 paragraph (a), the department or local government may not pursue
272 any judicial or enforcement action to compel rehabilitation of



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273 the discharge. This paragraph does not prevent any such action
274 with respect to discharges determined ineligible under this
275 subsection or to sites for which rehabilitation funding
276 assistance is available pursuant to subsections (5) and (6).

277 (h) The following are excluded from participation in the
278 program:

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

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

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

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

295 (15) ETHANOL OR BIODIESEL DAMAGE; PREVENTIVE MEASURES.—The
296 department shall pay, pursuant to this subsection, up to \$10
297 million each fiscal year from the fund for the costs of labor
298 and equipment to repair or replace petroleum storage systems
299 that may have been damaged due to the storage of fuels blended
300 with ethanol or biodiesel, or for preventive measures to reduce
301 the potential for such damage.



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302 (a) A petroleum storage system owner or operator may
303 request payment from the department for the repair or
304 replacement of petroleum storage tanks, integral piping, or
305 ancillary equipment that may have been damaged, or is subject to
306 damage, by the storage of fuels blended with ethanol or
307 biodiesel or for other preventive measures to ensure
308 compatibility with ethanol or biodiesel in accordance with the
309 following procedures:

310 1. The petroleum storage system owner or operator may
311 submit a request for payment to the department along with the
312 following information:

313 a. An affidavit from a petroleum storage system specialty
314 contractor attesting to an opinion that the petroleum storage
315 system may have been damaged as a result of the storage of fuel
316 blended with ethanol or biodiesel or may not be compatible with
317 fuels containing ethanol or biodiesel, or a combination of both.
318 The affidavit must also include a proposal from the specialty
319 contractor for repair or replacement of the equipment, or for
320 the implementation other preventive measures to reduce the
321 probability of damage. If the specialty contractor proposes
322 replacement of any equipment, the affidavit must include the
323 reasons that repair or other preventive measures are not
324 technically or economically feasible or practical.

325 b. Copies of any inspection reports, including photographs,
326 prepared by the specialty contractor or department or local
327 program inspectors documenting the damage or potential for
328 damage to the petroleum storage system.

329 c. A proposal from the specialty contractor showing the
330 proposed scope of the repair, replacement, or other preventive



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331 measures, including a detailed list of labor, equipment, and
332 other associated costs. In the case of replacement or repair,
333 the proposal must also include provisions for any preventive
334 measures needed to prevent a recurrence of the damage, such as
335 the use of corrosion inhibitors, the application of coatings
336 compatible with ethanol or biodiesel, as appropriate, and the
337 adoption of a maintenance plan.

338 d. For proposals to replace storage tanks or piping, a
339 statement from a certified public accountant indicating the
340 depreciated value of the tanks or piping proposed for
341 replacement. Applications for such proposals must also include
342 documentation of the age of the storage tank or piping.
343 Historical tank registration records may be used to determine
344 the age of the storage tank and piping. The depreciated value
345 shall be the maximum allowable replacement cost for the storage
346 tank and piping, exclusive of labor costs. For the purposes of
347 this paragraph, tanks that are 20 years old or older are deemed
348 to be fully depreciated and have no replacement value.

349 2. The department shall review applications for
350 completeness, accuracy, and the reasonableness of costs and
351 scope of work. Within 30 days after receipt of an application,
352 the department must approve or deny the application, propose
353 modification to the application, or request additional
354 information.

355 (b) If an application is approved, the department shall
356 issue a purchase order to the petroleum storage system owner or
357 operator. The purchase order shall:

358 1. Reflect a payment due to the owner for the cost of the
359 scope of work approved by the department, less a deductible of



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360 25 percent.

361 2. State that a payment is not due to the owner pursuant to
362 the purchase order until the scope of work authorized by the
363 department has been completed in substantial conformity with the
364 purchase order.

365 3. Except for preventive maintenance contracts, specify
366 that the work authorized in the purchase order must be
367 substantially completed and paid for by the petroleum storage
368 system owner or operator within 180 days after the date of the
369 purchase order. After such time, the purchase order is void.

370 4. For preventive maintenance contracts, the department
371 shall develop a maintenance completion and payment schedule for
372 approved applicants. The failure of an owner or operator to meet
373 scheduled payments shall invalidate the purchase order for all
374 future payments due pursuant to the order.

375 (c)1. Except for maintenance contracts, the applicant may
376 request that the department make payment following completion of
377 the work authorized by the department, in accordance with the
378 terms of the purchase order. The request must include a
379 sufficient demonstration that the work has been completed in
380 substantial compliance with the purchase order and that the
381 costs have been fully paid. Upon such a showing, the department
382 must issue the payment pursuant to the terms of the purchase
383 order.

384 2. For maintenance contracts, the department must make
385 periodic payments pursuant to the schedule specified in the
386 purchase order upon satisfactory showing that maintenance work
387 has been completed and costs have been paid by the owner or
388 operator as specified in the purchase order.



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389 (d) The department may develop forms to be used for
390 application and payment procedures. Until such forms are
391 developed, an applicant may submit the required information in
392 any format, as long as the documentation is complete.

393 (e) The department may request the assistance of the
394 Department of Management Services or a third-party administrator
395 to assist in the administration of the application and payment
396 process. Any costs associated with this administration shall be
397 paid from the funds identified in this section.

398 (f) This subsection does not affect the obligations of
399 facility owners or operators or petroleum storage system owners
400 or operators to timely comply with department rules regarding
401 the maintenance, replacement, and repair of petroleum storage
402 systems in order to prevent a release or discharge of
403 pollutants.

404 (g) Payments may not be made for the following:

405 1. Proposal costs or costs related to preparation of the
406 application and required documentation;

407 2. Certified public accountant costs;

408 3. Except as provided in subsection (k), any costs in
409 excess of the amount approved by the department under paragraph
410 (b) or which are not in substantial compliance with the purchase
411 order;

412 4. Costs associated with storage tanks, piping, or
413 ancillary equipment that has previously been repaired or
414 replaced for which costs have been paid under this section;

415 5. Facilities that are not in compliance with department
416 storage tank rules, until the noncompliance issues have been
417 resolved; or



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418 6. Costs associated with damage to petroleum storage
419 systems caused in whole or in part by causes other than the
420 storage of fuels blended with ethanol or biodiesel.

421 (h) Applications may be submitted on a first-come, first-
422 served basis. However, the department may not issue purchase
423 orders unless funds remain for the current fiscal year.

424 (i) A petroleum storage system owner or operator may not
425 receive more than \$200,000 annually for equipment replacement,
426 repair, or preventive measures at any single facility, or
427 \$500,000 annually in aggregate for all facilities owned or
428 operated by the owner or operator it owns or operates.

429 (j) Owners or operators that have incurred costs for
430 repair, replacement, or other preventive measures as described
431 in this subsection during the period of July 1, 2015, through
432 June 30, 2019, may apply to request payment for such costs from
433 the department using the procedure in paragraphs (b), (c), and
434 (d). The department may not disburse payment for approved
435 applications for such work until all purchase orders for
436 previously approved applications have been paid and unless funds
437 remain available for the fiscal year. Such payment is subject to
438 a deductible of 25 percent of the cost of the scope of work
439 approved by the department under this paragraph.

440 (k) For new petroleum requirement registrations after July
441 1, 2019, the department shall only register equipment that meets
442 applicable standards for compatibility for ethanol blends,
443 biodiesel blends, and other alternative fuels that are likely to
444 be stored in such systems.

445
446 ===== T I T L E A M E N D M E N T =====



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447 And the title is amended as follows:

448 Delete lines 3 - 8

449 and insert:

450 376.3071, F.S.; providing legislative findings,
451 declarations, and intent; authorizing the Department
452 of Environmental Protection to use funds from the
453 Inland Protection Trust Fund to pay for specified
454 activities related to removal and replacement of
455 petroleum storage systems; providing for petroleum
456 storage system repair or replacement due to damage
457 caused by ethanol or biodiesel and for preventive
458 measures to reduce the potential for such damage;
459 revising requirements for a limited contamination
460 assessment report required to be provided by a
461 property owner, an operator, or a person otherwise
462 responsible for site rehabilitation to the Department
463 of Environmental Protection under the Petroleum
464 Cleanup Participation Program; providing requirements
465 for requesting and receiving payments for such repair,
466 replacement, and measures; providing construction;
467 prohibiting payments for certain costs; limiting the
468 payment amount a petroleum storage system owner or
469 operator is eligible to receive annually; requiring
470 the department, after a specified date, to only
471 register storage system equipment that meets certain
472 fuel standards; amending s.