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
forth in s. 376.30, the Legislature finds and declares:

(h) That Congress enacted the Energy Policy Act of 2005, amending the Clean Water Act, and that the state enacted the Renewable Fuels Standard, to establish a renewable fuel standard requiring the use of ethanol as an oxygenate additive for gasoline and biodiesel as an additive for ultra-low sulfur diesel fuel. An unintended consequence of the inclusion of ethanol in gasoline and biodiesel in diesel fuel has been to cause, and potentially cause, significant corrosion and other damage to storage tanks, piping, and storage tank system components regulated under this chapter. The Legislature further finds that storage tanks, piping, and storage tank system components have been found by the department in its equipment approval process to meet compatibility standards, however, these standards may have subsequently changed due to the introduction of ethanol and biodiesel. The state enacted secondary containment requirements before the mandated introduction of ethanol into gasoline and biodiesel into ultra-low sulfur diesel fuel. Therefore, owners and operators of petroleum storage facilities in the state that complied with the state’s secondary containment requirements and installed approved equipment that may not have been evaluated for compatibility with ethanol and biodiesel, cross-contamination due to the storage of gasoline and diesel fuel, and the effects of condensation and minimal amounts of water in storage tanks are at a particular risk for having to repair or replace equipment or take other preventive measures in advance of the equipment’s expected useful life in order to prevent releases or discharges of pollutants.

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

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

(a) Prompt investigation and assessment of contamination sites.

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

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare, and water resources, and that minimizes environmental damage, pursuant to the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not authorize the department to obligate funds
for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

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

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

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

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

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

(j) Activities related to removal and replacement of petroleum storage systems, if repair, replacement, or other preventive measures are authorized under subsection (15), or exclusive of costs of any tank, piping, dispensing unit, or
related hardware, if soil removal is approved as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section, or if such activities were justified in an approved remedial action plan.

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

(l) Repayment of loans to the fund.

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

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

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

(p) Enforcement of this section and ss. 376.30-376.317 by
the Fish and Wildlife Conservation Commission and the Department of Environmental Protection. The department may disburse moneys to the commission for such purpose.

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

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

The issuance of a site rehabilitation completion order pursuant to subsection (5) or paragraph (12)(b) for contamination eligible for programs funded by this section does not alter the project’s eligibility for state-funded remediation if the department determines that site conditions are not protective of human health under actual or proposed circumstances of exposure under subsection (5). The Inland Protection Trust Fund may be used only to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the fund in each fiscal year must first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before making or providing for other disbursements from the fund. This subsection does not authorize the use of the fund for cleanup of contamination caused
primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are not excluded from eligibility pursuant to this section.

(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. Regardless of whether ownership has changed, owners or
operators of property that 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.

(b) Subject to annual appropriation from the fund, sites meeting the criteria of this subsection are eligible for up to $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) The department may also approve supplemental funding of up to $100,000 for additional remediation and monitoring if such remediation and monitoring is necessary to achieve
determination of “No Further Action.”

   (d) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the property 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 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. The agreement must provide for a 25-percent cost savings to the department, a copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation, or a combination of cost savings and a copayment. Cost savings to the department may be demonstrated in the form of reduced rates by the proposed agency term contractor or the difference in cost associated with a Risk Management Options Level I closure versus a Risk Management Options Level II closure. For the purpose of this paragraph, the term:

   1. “Risk Management Options Level I” means a “No Further Action” closure without institutional controls or without institutional and engineering controls. This closure option applies subject to conditions in department rules and agreements.

   2. “Risk Management Options Level II” means a “No Further Action” closure where institutional controls and, if appropriate, engineering controls apply if the controls are protective of human health, public safety, and the environment. This closure option applies subject to conditions in department
rules and agreements 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.

(e) 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.

(f) 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.

(g) 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).

(h) 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.

(15) ETHANOL OR BIODIESEL DAMAGE; PREVENTIVE MEASURES.—The department shall pay, pursuant to this subsection, up to $10 million each fiscal year from the fund for the costs of labor and equipment to repair or replace petroleum storage systems that may have been damaged due to the storage of fuels blended with ethanol or biodiesel, or for preventive measures to reduce the potential for such damage.
(a) A petroleum storage system owner or operator may request payment from the department for the repair or replacement of petroleum storage tanks, integral piping, or ancillary equipment that may have been damaged, or is subject to damage, by the storage of fuels blended with ethanol or biodiesel or for other preventive measures to ensure compatibility with ethanol or biodiesel in accordance with the following procedures:

1. The petroleum storage system owner or operator may submit a request for payment to the department along with the following information:
   a. An affidavit from a petroleum storage system specialty contractor attesting to an opinion that the petroleum storage system may have been damaged as a result of the storage of fuel blended with ethanol or biodiesel or may not be compatible with fuels containing ethanol or biodiesel, or a combination of both. The affidavit must also include a proposal from the specialty contractor for repair or replacement of the equipment, or for the implementation other preventive measures to reduce the probability of damage. If the specialty contractor proposes replacement of any equipment, the affidavit must include the reasons that repair or other preventive measures are not technically or economically feasible or practical.
   b. Copies of any inspection reports, including photographs, prepared by the specialty contractor or department or local program inspectors documenting the damage or potential for damage to the petroleum storage system.
   c. A proposal from the specialty contractor showing the proposed scope of the repair, replacement, or other preventive
measures, including a detailed list of labor, equipment, and other associated costs. In the case of replacement or repair, the proposal must also include provisions for any preventive measures needed to prevent a recurrence of the damage, such as the use of corrosion inhibitors, the application of coatings compatible with ethanol or biodiesel, as appropriate, and the adoption of a maintenance plan.

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

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

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

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

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

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

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

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

2. For maintenance contracts, the department must make periodic payments pursuant to the schedule specified in the purchase order upon satisfactory showing that maintenance work has been completed and costs have been paid by the owner or operator as specified in the purchase order.
(d) The department may develop forms to be used for application and payment procedures. Until such forms are developed, an applicant may submit the required information in any format, as long as the documentation is complete.

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

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

(g) Payments may not be made for the following:
   1. Proposal costs or costs related to preparation of the application and required documentation;
   2. Certified public accountant costs;
   3. Except as provided in subsection (k), any costs in excess of the amount approved by the department under paragraph (b) or which are not in substantial compliance with the purchase order;
   4. Costs associated with storage tanks, piping, or ancillary equipment that has previously been repaired or replaced for which costs have been paid under this section;
   5. Facilities that are not in compliance with department storage tank rules, until the noncompliance issues have been resolved; or
6. Costs associated with damage to petroleum storage systems caused in whole or in part by causes other than the storage of fuels blended with ethanol or biodiesel.

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

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

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

(k) For new petroleum requirement registrations after July 1, 2019, the department shall only register equipment that meets applicable standards for compatibility for ethanol blends, biodiesel blends, and other alternative fuels that are likely to be stored in such systems.
And the title is amended as follows:

Delete lines 3 - 8

and insert:

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