

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Natural Resources & Public
2 Lands Subcommittee

3 Representative Fischer offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Upon the expiration and reversion of the
8 amendments to section 376.3071, Florida Statutes, made pursuant
9 to sections 95 and 126 of chapter 2016-62, Laws of Florida,
10 paragraph (h) is added to subsection (1) of section 376.3071,
11 Florida Statutes, paragraph (a) of subsection (2) of that
12 section and subsection (4) of that section are amended, and
13 subsections (15) and (16) are added to that section, to read:

14 376.3071 Inland Protection Trust Fund; creation; purposes;
15 funding.—

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

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

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

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42 end of the equipment's expected useful life in order to prevent
43 releases or discharges of pollutants.

44 (2) INTENT AND PURPOSE.—

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

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

61 (a) Prompt investigation and assessment of contamination
62 sites.

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

65 (c) Rehabilitation of contamination sites, which shall
66 consist of cleanup of affected soil, groundwater, and inland

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67 surface waters, using the most cost-effective alternative that
68 is technologically feasible and reliable and that provides
69 adequate protection of the public health, safety, and welfare,
70 and water resources, and that minimizes environmental damage,
71 pursuant to the site selection and cleanup criteria established
72 by the department under subsection (5). ~~, except that~~ This
73 paragraph does not authorize the department to obligate funds
74 for payment of costs which may be associated with, but are not
75 integral to, site rehabilitation, such as the cost for
76 retrofitting or replacing petroleum storage systems, unless
77 repair, replacement, or other preventive measures are authorized
78 pursuant to subsection (15).

79 (d) Maintenance and monitoring of contamination sites.

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

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

86 (g) Payment of any other reasonable costs of
87 administration, including those administrative costs incurred by
88 the Department of Health in providing field and laboratory
89 services, toxicological risk assessment, and other assistance to
90 the department in the investigation of drinking water
91 contamination complaints and costs associated with public

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92 information and education activities.

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

99 (i) Funding of the provisions of ss. 376.305(6) and
100 376.3072.

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

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

113 (l) Repayment of loans to the fund.

114 (m) Expenditure of sums from the fund to cover ineligible
115 sites or costs as set forth in subsection (13), if the
116 department in its discretion deems it necessary to do so. In

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117 such cases, the department may seek recovery and reimbursement
118 of costs in the same manner and pursuant to the same procedures
119 established for recovery and reimbursement of sums otherwise
120 owed to or expended from the fund.

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

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

133 (p) Enforcement of this section and ss. 376.30-376.317 by
134 the Fish and Wildlife Conservation Commission. The department
135 shall disburse moneys to the commission for such purpose.

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

140 (r) Repair of, replacement of, or other preventive
141 measures for storage tanks, piping, or related hardware as

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142 provided in subsection (15). Such costs may include equipment,
143 excavation, electrical work, and site restoration.

144

145 The issuance of a site rehabilitation completion order pursuant
146 to subsection (5) or paragraph (12) (b) for contamination
147 eligible for programs funded by this section does not alter the
148 project's eligibility for state-funded remediation if the
149 department determines that site conditions are not protective of
150 human health under actual or proposed circumstances of exposure
151 under subsection (5). The Inland Protection Trust Fund may be
152 used only to fund the activities in ss. 376.30-376.317 except
153 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in
154 each fiscal year must first be applied or allocated for the
155 payment of amounts payable by the department pursuant to
156 paragraph (n) under a service contract entered into by the
157 department pursuant to s. 376.3075 and appropriated in each year
158 by the Legislature before making or providing for other
159 disbursements from the fund. This subsection does not authorize
160 the use of the fund for cleanup of contamination caused
161 primarily by a discharge of solvents as defined in s.
162 206.9925(6), or polychlorinated biphenyls when their presence
163 causes them to be hazardous wastes, except solvent contamination
164 which is the result of chemical or physical breakdown of
165 petroleum products and is otherwise eligible. Facilities used
166 primarily for the storage of motor or diesel fuels as defined in

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167 ss. 206.01 and 206.86 are not excluded from eligibility pursuant
168 to this section.

169 (15) PETROLEUM STORAGE SYSTEM REPAIR OR REPLACEMENT DUE TO
170 DAMAGE CAUSED BY ETHANOL OR BIODIESEL; OTHER PREVENTIVE
171 MEASURES.—The department shall pay, in accordance with this
172 subsection, up to \$10 million each fiscal year from the fund for
173 the costs of labor and equipment to repair or replace petroleum
174 storage systems that have likely been damaged due to the storage
175 of fuels blended with ethanol or biodiesel, or for preventive
176 measures to reduce the potential for such damage.

177 (a) A petroleum storage system owner or operator may
178 request payment from the department for the repair or
179 replacement of petroleum storage systems including: tanks,
180 integral piping, or related hardware that have likely been
181 damaged, or is subject to damage, by the storage of fuels
182 blended with ethanol or biodiesel or for other preventive
183 measures to ensure compatibility with ethanol or biodiesel in
184 accordance with the following procedures:

185 1. The petroleum storage system owner or operator may
186 submit a request for payment to the department along with the
187 following information:

188 a. An affidavit from a petroleum storage system specialty
189 contractor attesting to an opinion that the petroleum storage
190 system has likely been damaged as a result of the storage of
191 fuel blended with ethanol or biodiesel or is not compatible with

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192 fuels containing ethanol or biodiesel, or a combination of both.
193 The affidavit must also include a proposal from the specialty
194 contractor for repair or replacement of the equipment, or for
195 the implementation of other preventive measures to reduce the
196 probability of damage. If the specialty contractor proposes
197 replacement of any equipment, the specialty contractor must
198 state the reasons that repair or other preventive measures are
199 not technically or economically feasible or practical.

200 b. Copies of any inspection reports, including
201 photographs, prepared by the specialty contractor or department
202 or local program inspectors documenting the damage or potential
203 for damage to the petroleum storage system.

204 c. A proposal from the specialty contractor showing the
205 proposed scope of the repair, replacement, or other preventive
206 measures, including a detailed list of labor, equipment, and
207 other associated costs. Funding for preventative measures is
208 only available for petroleum storage systems that have not
209 received funding under subsection (15). For eligible
210 preventative measures, an owner or operator may only receive
211 funding for up to five years or when the petroleum storage
212 system is replaced, whichever comes first. The petroleum storage
213 system specialty contractor who prepared the affidavit and
214 proposed scope of work may not also perform the repair,
215 replacement, or preventive measures.

216 d. For proposals to replace storage tanks or piping, a

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217 statement from a certified public accountant indicating the
218 depreciated value of the tanks or piping proposed for
219 replacement. Applications for such proposals must also include
220 documentation of the age of the storage tank or piping.
221 Historical tank registration records may be used to determine
222 the age of the storage tank and piping. The depreciated value
223 shall be the maximum allowable replacement cost for the storage
224 tank and piping, including prorated labor costs. For the
225 purposes of this paragraph, tanks that are 20 years old or older
226 are deemed to be fully depreciated and have no replacement value
227 and are not eligible for funding under subsection (15).

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

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

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

239 2. State that no moneys are due to the owner or operator
240 pursuant to the purchase order until the scope of work
241 authorized by the department has been completed in substantial

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242 conformity with the purchase order.

243 3. Specify that the work authorized in the purchase order
244 must be substantially completed and paid for by the petroleum
245 storage system owner or operator within 180 days after the date
246 of the purchase order. After such time, the purchase order is
247 void. This requirement does not apply to preventive measure
248 purchase orders.

249 4. Develop a maintenance completion and payment deadline
250 schedule for approved applicants for preventive measure purchase
251 orders. The failure of an owner or operator to meet these
252 scheduled deadlines shall invalidate the purchase order for all
253 future payments due pursuant to the order. An approved
254 maintenance plan for preventive measures may not exceed five
255 years. Owners and operators may not receive funding for
256 preventive measures for a petroleum storage system after
257 receiving funds under subsection (15) for the replacement of
258 that petroleum storage system.

259 (c)1. Except for preventive measure purchase orders, the
260 applicant may request that the department make payment following
261 completion of the work authorized by the department, in
262 accordance with the terms of the purchase order. The request
263 must include a sufficient demonstration that the work has been
264 completed in substantial conformance with the purchase order and
265 that the costs have been fully paid. Upon such a showing, the
266 department must issue the payment in accordance with the terms

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267 of the purchase order.

268 2. For preventive measures purchase orders, the department
269 must make periodic payments in accordance with the schedule
270 specified in the purchase order upon satisfactory showing that
271 maintenance work has been completed and costs have been paid by
272 the owner or operator as specified in the purchase order.

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

277 (e) The department may request the assistance of the
278 Department of Management Services or a third-party administrator
279 to assist in the administration of the application and payment
280 process. Any costs associated with this administration shall be
281 paid from the funds identified in this section. No more than
282 three percent of the appropriated funds may be used for
283 administration.

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

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

291 1. Proposal costs or costs related to preparation of the

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- 292 application and required documentation;
- 293 2. Certified public accountant costs;
- 294 3. Except as provided in paragraph (j), any costs in
295 excess of the amount approved by the department pursuant to
296 paragraph (b) or which are not in substantial conformance with
297 the purchase order;
- 298 4. Costs associated with storage tanks, piping, or related
299 hardware that has previously been repaired or replaced for which
300 costs have been paid under this section;
- 301 5. Facilities that are not in compliance with department
302 storage tank rules, until the noncompliance issues have been
303 resolved; or
- 304 6. Costs associated with damage to petroleum storage
305 systems caused in whole or in part by causes other than the
306 storage of fuels blended with ethanol or biodiesel.
- 307 (h) The department must review and approve applications on
308 a first-come, first-served basis. However, the department may
309 not issue purchase orders unless funds remain for the current
310 fiscal year.
- 311 (i) A petroleum storage system owner or operator may not
312 receive more than \$200,000 annually for equipment replacement,
313 repair, or preventive measures at any single facility, or
314 \$500,000 annually in aggregate for all facilities it owns or
315 operates. An approved maintenance plan for preventive measures
316 may not exceed five years. Owners and operators may not receive

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317 funding for preventive measures for a petroleum storage system
318 after receiving funds under subsection (15) for the replacement
319 of that petroleum storage system.

320 (j) Owners or operators who have incurred costs for
321 repair, replacement, or other preventive measures as described
322 in this subsection during the period of July 1, 2015, through
323 June 30, 2017, may apply to request payment for such costs from
324 the department using the procedure in paragraphs (b), (c), and
325 (d). The department may not disburse payment for approved
326 applications for such work until all purchase orders for
327 previously approved applications have been paid and unless funds
328 remain available for the fiscal year. Such payment is subject to
329 a deductible of 25 percent of the cost of the scope of work
330 approved by the department pursuant to the application specified
331 under this paragraph.

332 (16) COMPLIANCE WITH COMPATIBILITY STANDARDS.—The
333 department shall ensure that petroleum storage systems approved
334 after July 1, 2017, meet applicable standards for compatibility
335 for ethanol blends, biodiesel blends, and other alternative
336 fuels that are likely to be stored in such systems.

337 Section 2. This act shall take effect July 1, 2017.

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T I T L E A M E N D M E N T

341

Remove everything before the enacting clause and insert:

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342 An act relating to fuel storage; amending s. 376.3071, F.S.;

343 providing legislative findings; revising legislative intent;

344 specifying that funds in the Inland Protection Trust Fund may be

345 used for certain purposes relating to damage or potential damage

346 to petroleum storage systems caused by ethanol or biodiesel;

347 specifying the maximum funds that may be used for such purposes;

348 specifying the process for petroleum storage system owners or

349 operators to request approval for work and payment from the

350 Department of Environmental Protection; authorizing the

351 department to develop forms for certain procedures and request

352 administrative assistance from the Department of Management

353 Services; specifying that certain costs are not eligible for

354 payment; providing that the department must review and approve

355 applications on a first-come, first-served basis, with purchase

356 orders subject to certain remaining funds; limiting the amount a

357 storage tank owner or operator may receive annually for such

358 measures; specifying that the department may also pay the cost

359 for certain previously completed repairs, replacement, or other

360 preventive measures relating to damage or potential damage to

361 storage tank systems caused by ethanol or biodiesel; requiring

362 the department to ensure that petroleum storage systems approved

363 after a certain date meet certain standards for ethanol blend,

364 biodiesel blend, and other alternative fuel compatibility;

365 providing effective dates.