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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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The Committee on Environmental Preservation and Conservation
(Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (h) is added to subsection (1) of
section 376.3071, Florida Statutes, paragraph (a) of subsection
(2) and subsection (4) of that section are amended, and
subsections (15) and (16) are added to that section, to read:

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



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

39 (2) INTENT AND PURPOSE.—



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

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

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

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

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



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69 for payment of costs which may be associated with, but are not
70 integral to, site rehabilitation, such as the cost for
71 retrofitting or replacing petroleum storage systems, unless
72 repair, replacement, or other preventive measures are authorized
73 pursuant to subsection (15).

74 (d) Maintenance and monitoring of contamination sites.

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

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

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

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

94 (i) Funding of the provisions of ss. 376.305(6) and
95 376.3072.

96 (j) Activities related to removal and replacement of
97 petroleum storage systems, if repair, replacement, or other



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98 preventive measures are authorized pursuant to subsection (15),
99 or exclusive of costs of any tank, piping, dispensing unit, or
100 related hardware, if soil removal is approved as a component of
101 site rehabilitation and requires removal of the tank where
102 remediation is conducted under this section, or if such
103 activities were justified in an approved remedial action plan.

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

108 (l) Repayment of loans to the fund.

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

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

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



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127 the advanced cleanup program provided in s. 376.30713.

128 (p) Enforcement of this section and ss. 376.30-376.317 by
129 the Fish and Wildlife Conservation Commission. The department
130 shall disburse 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) Repair of, replacement of, or other preventive measures
136 for storage tanks, piping, or related hardware as provided in
137 subsection (15). Such costs may include equipment, excavation,
138 electrical work, and site restoration.

139
140 The issuance of a site rehabilitation completion order pursuant
141 to subsection (5) or paragraph (12)(b) for contamination
142 eligible for programs funded by this section does not alter the
143 project's eligibility for state-funded remediation if the
144 department determines that site conditions are not protective of
145 human health under actual or proposed circumstances of exposure
146 under subsection (5). The Inland Protection Trust Fund may be
147 used only to fund the activities in ss. 376.30-376.317 except
148 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in
149 each fiscal year must first be applied or allocated for the
150 payment of amounts payable by the department pursuant to
151 paragraph (n) under a service contract entered into by the
152 department pursuant to s. 376.3075 and appropriated in each year
153 by the Legislature before making or providing for other
154 disbursements from the fund. This subsection does not authorize
155 the use of the fund for cleanup of contamination caused



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

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

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

180 1. The petroleum storage system owner or operator may
181 submit a request for payment to the department along with the
182 following information:

183 a. An affidavit from a petroleum storage system specialty
184 contractor attesting to an opinion that the petroleum storage



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185 system has likely been damaged as a result of the storage of
186 fuel blended with ethanol or biodiesel or is not compatible with
187 fuels containing ethanol or biodiesel, or a combination of both.
188 The affidavit must also include a proposal from the specialty
189 contractor for repair or replacement of the equipment, or for
190 the implementation of other preventive measures to reduce the
191 probability of damage. If the specialty contractor proposes
192 replacement of any equipment, the specialty contractor must
193 state the reasons that repair or other preventive measures are
194 not technically or economically feasible or practical.

195 b. Copies of any inspection reports, including photographs,
196 prepared by the specialty contractor or department or local
197 program inspectors documenting the damage or potential for
198 damage to the petroleum storage system.

199 c. A proposal from the specialty contractor showing the
200 proposed scope of the repair, replacement, or other preventive
201 measures, including a detailed list of labor, equipment, and
202 other associated costs. Funding for preventative measures is
203 only available for petroleum storage systems that have not
204 received funding under this subsection. For eligible
205 preventative measures, an owner or operator may only receive
206 funding for up to 5 years or when the petroleum storage system
207 is replaced, whichever comes first. The petroleum storage system
208 specialty contractor who prepared the affidavit and proposed
209 scope of work may not also perform the repair, replacement, or
210 preventive measures.

211 d. For proposals to replace storage tanks or piping, a
212 statement from a certified public accountant indicating the
213 depreciated value of the tanks or piping proposed for



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214 replacement. Applications for such proposals must also include
215 documentation of the age of the storage tank or piping.
216 Historical tank registration records may be used to determine
217 the age of the storage tank and piping. The depreciated value
218 shall be the maximum allowable replacement cost for the storage
219 tank and piping, including prorated labor costs. For the
220 purposes of this paragraph, tanks that are 20 years old or older
221 are deemed to be fully depreciated and have no replacement value
222 and are not eligible for funding under this subsection.

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

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

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

234 2. State that moneys are not due to the owner or operator
235 pursuant to the purchase order until the scope of work
236 authorized by the department has been completed in substantial
237 conformity with the purchase order.

238 3. Specify that the work authorized in the purchase order
239 must be substantially completed and paid for by the petroleum
240 storage system owner or operator within 180 days after the date
241 of the purchase order. After such time, the purchase order is
242 void. This requirement does not apply to preventive measure



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243 purchase orders.

244 4. Develop a maintenance completion and payment deadline
245 schedule for approved applicants for preventive measure purchase
246 orders. The failure of an owner or operator to meet these
247 scheduled deadlines shall invalidate the purchase order for all
248 future payments due pursuant to the order. An approved
249 maintenance plan for preventive measures may not exceed 5 years.
250 An owner or operator may not receive funding for preventive
251 measures for a petroleum storage system after receiving funds
252 under this subsection for the replacement of that petroleum
253 storage system.

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

263 2. For preventive measures purchase orders, the department
264 must make periodic payments in accordance with the schedule
265 specified in the purchase order upon satisfactory showing that
266 maintenance work has been completed and costs have been paid by
267 the owner or operator as specified in the purchase order.

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



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272 (e) The department may request the assistance of the
273 Department of Management Services or a third-party administrator
274 to assist in the administration of the application and payment
275 process. Any costs associated with this administration shall be
276 paid from the funds identified in this section. Not more than 3
277 percent of the appropriated funds may be used for
278 administration.

279 (f) This subsection may not affect the obligations of a
280 facility owner or operator or petroleum storage system owner or
281 operator to timely comply with department rules regarding the
282 maintenance, replacement, and repair of petroleum storage
283 systems in order to prevent a release or discharge of
284 pollutants.

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

286 1. Proposal costs or costs related to preparation of the
287 application and required documentation;

288 2. Certified public accountant costs;

289 3. Except as provided in paragraph (j), any costs in excess
290 of the amount approved by the department pursuant to paragraph
291 (b) or which are not in substantial conformance with the
292 purchase order;

293 4. Costs associated with storage tanks, piping, or related
294 hardware that has previously been repaired or replaced for which
295 costs have been paid under this section;

296 5. Facilities that are not in compliance with department
297 storage tank rules, until the noncompliance issues have been
298 resolved; or

299 6. Costs associated with damage to petroleum storage
300 systems caused in whole or in part by causes other than the



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301 storage of fuels blended with ethanol or biodiesel.

302 (h) The department must review and approve applications on
303 a first-come, first-served basis. However, the department may
304 not issue purchase orders unless funds remain for the current
305 fiscal year.

306 (i) A petroleum storage system owner or operator may not
307 receive more than \$200,000 annually for equipment replacement,
308 repair, or preventive measures at any single facility, or
309 \$500,000 annually in aggregate for all facilities it owns or
310 operates. An approved maintenance plan for preventive measures
311 may not exceed 5 years. An owner or operator may not receive
312 funding for preventive measures for a petroleum storage system
313 after receiving funds under this subsection for the replacement
314 of that petroleum storage system.

315 (j) An owner or operator who has incurred costs for repair,
316 replacement, or other preventive measures as described in this
317 subsection during the period of July 1, 2015, through June 30,
318 2017, may apply to request payment for such costs from the
319 department using the procedure in paragraphs (b), (c), and (d).
320 The department may not disburse payment for approved
321 applications for such work until all purchase orders for
322 previously approved applications have been paid and unless funds
323 remain available for the fiscal year. Such payment is subject to
324 a deductible of 25 percent of the cost of the scope of work
325 approved by the department pursuant to the application specified
326 under this paragraph.

327 (16) COMPLIANCE WITH COMPATIBILITY STANDARDS.—The
328 department shall ensure that petroleum storage systems approved
329 after July 1, 2017, meet applicable standards for compatibility



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330 for ethanol blends, biodiesel blends, and other alternative
331 fuels that are likely to be stored in such systems.

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

333

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

335 And the title is amended as follows:

336 Delete everything before the enacting clause
337 and insert:

338 A bill to be entitled
339 An act relating to fuel storage; amending s. 376.3071,
340 F.S.; providing legislative findings; revising
341 legislative intent; specifying that funds in the
342 Inland Protection Trust Fund may be used for certain
343 purposes relating to damage or potential damage to
344 petroleum storage systems caused by ethanol or
345 biodiesel; specifying the maximum funds that may be
346 used for such purposes; specifying the process for
347 petroleum storage system owners or operators to
348 request approval for work and payment from the
349 Department of Environmental Protection; authorizing
350 the department to develop forms for certain procedures
351 and request administrative assistance from the
352 Department of Management Services or a third party
353 administrator; specifying that certain costs are not
354 eligible for payment; requiring the department to
355 review and approve applications on a first-come,
356 first-served basis, with purchase orders subject to
357 certain remaining funds; limiting the amount a storage
358 tank owner or operator may receive annually for such



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359 measures; providing applicability of certain purchase
360 order requirements; specifying that the department may
361 also pay the cost for certain previously completed
362 repairs, replacement, or other preventive measures
363 relating to damage or potential damage to storage tank
364 systems caused by ethanol or biodiesel; requiring the
365 department to ensure that petroleum storage systems
366 approved after a certain date meet certain standards
367 for ethanol blend, biodiesel blend, and other
368 alternative fuel compatibility; providing an effective
369 date.