

By Senator Grimsley

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1 A bill to be entitled
2 An act relating to fuel storage; amending s. 376.3071,
3 F.S.; providing legislative findings; revising
4 legislative intent; specifying that funds in the
5 Inland Protection Trust Fund may be used for certain
6 purposes relating to damage or potential damage to
7 petroleum storage systems caused by ethanol or
8 biodiesel; specifying the maximum funds that may be
9 used for such purposes; specifying the process for
10 petroleum storage system owners or operators to
11 request approval for work and payment from the
12 Department of Environmental Protection; authorizing
13 the department to develop forms for certain procedures
14 and request administrative assistance from the
15 Department of Management Services; specifying that
16 certain costs are not eligible for payment; providing
17 that applications for payment may be submitted on a
18 first-come, first-served basis, with purchase orders
19 subject to certain remaining funds; limiting the
20 amount a storage tank owner or operator may receive
21 annually for such measures; specifying that the
22 department may also pay the cost for certain
23 previously completed repairs, replacement, or other
24 preventive measures relating to damage or potential
25 damage to storage tank systems caused by ethanol or
26 biodiesel; requiring the department to ensure that
27 petroleum storage systems approved after a certain
28 date meet certain standards for ethanol blend,
29 biodiesel blend, and other alternative fuel

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30 compatibility; providing effective dates.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Upon the expiration and reversion of the
35 amendments to section 376.3071, Florida Statutes, made pursuant
36 to sections 95 and 126 of chapter 2016-62, Laws of Florida,
37 paragraph (h) is added to subsection (1) of section 376.3071,
38 Florida Statutes, paragraph (a) of subsection (2) of that
39 section and subsection (4) of that section are amended, and
40 subsections (15) and (16) are added to that section, to read:

41 376.3071 Inland Protection Trust Fund; creation; purposes;
42 funding.—

43 (1) FINDINGS.—In addition to the legislative findings set
44 forth in s. 376.30, the Legislature finds and declares:

45 (h) That Congress enacted the Energy Policy Act of 2005,
46 amending the Clean Water Act, to establish a Renewable Fuel
47 Standard requiring the use of ethanol as an oxygenate additive
48 for gasoline and biodiesel as an additive for ultra-low sulfur
49 diesel fuel. An unintended consequence of the inclusion of
50 ethanol in gasoline and biodiesel in diesel fuel has been to
51 cause, and potentially cause, significant corrosion and other
52 damage to storage tanks, piping, and storage tank system
53 components regulated under this chapter. The Legislature further
54 finds that storage tanks, piping, and storage tank system
55 components have been found by the department in its equipment
56 approval process to meet compatibility standards; however, these
57 standards may have subsequently changed due to the introduction
58 of ethanol and biodiesel. This state enacted secondary

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59 containment requirements before Congress' mandated introduction
60 of ethanol into gasoline and biodiesel into ultra-low sulfur
61 diesel fuel. Therefore, owners and operators of petroleum
62 storage facilities in Florida who complied with this state's
63 secondary containment requirements and installed approved
64 equipment that may not have been evaluated for compatibility
65 with ethanol and biodiesel, cross-contamination due to the
66 storage of gasoline and diesel fuel, and the effects of
67 condensation and minimal amounts of water in storage tanks are
68 at a particular risk for having to repair or replace equipment
69 or take other preventive measures in advance of the end of the
70 equipment's expected useful life in order to prevent releases or
71 discharges of pollutants.

72 (2) INTENT AND PURPOSE.—

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

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

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88 provide for:

89 (a) Prompt investigation and assessment of contamination
90 sites.

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

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

105 (d) Maintenance and monitoring of contamination sites.

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

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

112 (g) Payment of any other reasonable costs of
113 administration, including those administrative costs incurred by
114 the Department of Health in providing field and laboratory
115 services, toxicological risk assessment, and other assistance to
116 the department in the investigation of drinking water

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117 contamination complaints and costs associated with public
118 information and education activities.

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

125 (i) Funding of the provisions of ss. 376.305(6) and
126 376.3072.

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

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

139 (l) Repayment of loans to the fund.

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

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146 owed to or expended from the fund.

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

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

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

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

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

170
171 The issuance of a site rehabilitation completion order pursuant
172 to subsection (5) or paragraph (12) (b) for contamination
173 eligible for programs funded by this section does not alter the
174 project's eligibility for state-funded remediation if the

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175 department determines that site conditions are not protective of
 176 human health under actual or proposed circumstances of exposure
 177 under subsection (5). The Inland Protection Trust Fund may be
 178 used only to fund the activities in ss. 376.30-376.317 except
 179 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in
 180 each fiscal year must first be applied or allocated for the
 181 payment of amounts payable by the department pursuant to
 182 paragraph (n) under a service contract entered into by the
 183 department pursuant to s. 376.3075 and appropriated in each year
 184 by the Legislature before making or providing for other
 185 disbursements from the fund. This subsection does not authorize
 186 the use of the fund for cleanup of contamination caused
 187 primarily by a discharge of solvents as defined in s.
 188 206.9925(6), or polychlorinated biphenyls when their presence
 189 causes them to be hazardous wastes, except solvent contamination
 190 which is the result of chemical or physical breakdown of
 191 petroleum products and is otherwise eligible. Facilities used
 192 primarily for the storage of motor or diesel fuels as defined in
 193 ss. 206.01 and 206.86 are not excluded from eligibility pursuant
 194 to this section.

195 (15) PETROLEUM STORAGE SYSTEM REPAIR OR REPLACEMENT DUE TO
 196 DAMAGE CAUSED BY ETHANOL OR BIODIESEL; OTHER PREVENTIVE
 197 MEASURES.—The department shall pay, in accordance with this
 198 subsection, up to \$10 million each fiscal year from the fund for
 199 the costs of labor and equipment to repair or replace petroleum
 200 storage systems that may have been damaged due to the storage of
 201 fuels blended with ethanol or biodiesel, or for preventive
 202 measures to reduce the potential for such damage.

203 (a) A petroleum storage system owner or operator may

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204 request payment from the department for the repair or
205 replacement of petroleum storage tanks, integral piping, or
206 ancillary equipment that may have been damaged, or is subject to
207 damage, by the storage of fuels blended with ethanol or
208 biodiesel or for other preventive measures to ensure
209 compatibility with ethanol or biodiesel in accordance with the
210 following procedures:

211 1. The petroleum storage system owner or operator may
212 submit a request for payment to the department along with the
213 following information:

214 a. An affidavit from a petroleum storage system specialty
215 contractor attesting to an opinion that the petroleum storage
216 system may have been damaged as a result of the storage of fuel
217 blended with ethanol or biodiesel or may not be compatible with
218 fuels containing ethanol or biodiesel, or a combination of both.
219 The affidavit must also include a proposal from the specialty
220 contractor for repair or replacement of the equipment, or for
221 the implementation of other preventive measures to reduce the
222 probability of damage. If the specialty contractor proposes
223 replacement of any equipment, the specialty contractor must
224 state the reasons that repair or other preventive measures are
225 not technically or economically feasible or practical.

226 b. Copies of any inspection reports, including photographs,
227 prepared by the specialty contractor or department or local
228 program inspectors documenting the damage or potential for
229 damage to the petroleum storage system.

230 c. A proposal from the specialty contractor showing the
231 proposed scope of the repair, replacement, or other preventive
232 measures, including a detailed list of labor, equipment, and

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233 other associated costs. In the case of replacement or repair,
234 the proposal must also include provisions for any preventive
235 measures needed to prevent a recurrence of the damage, such as
236 the use of corrosion inhibitors, the application of coatings
237 compatible with ethanol or biodiesel, as appropriate, and the
238 adoption of a maintenance plan.

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

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

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

258 1. Reflect a payment due to the owner for the cost of the
259 scope of work approved by the department, less a deductible of
260 25 percent.

261 2. State that no moneys are due to the owner pursuant to

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262 the purchase order until the scope of work authorized by the
263 department has been completed in substantial conformity with the
264 purchase order.

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

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

276 (c)1. Except for maintenance contracts, the applicant may
277 request that the department make payment following completion of
278 the work authorized by the department, in accordance with the
279 terms of the purchase order. The request must include a
280 sufficient demonstration that the work has been completed in
281 substantial conformance with the purchase order and that the
282 costs have been fully paid. Upon such a showing, the department
283 must issue the payment in accordance with the terms of the
284 purchase order.

285 2. For maintenance contracts, the department must make
286 periodic payments in accordance with the schedule specified in
287 the purchase order upon satisfactory showing that maintenance
288 work has been completed and costs have been paid by the owner or
289 operator as specified in the purchase order.

290 (d) The department may develop forms to be used for

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291 application and payment procedures. Until such forms are
292 developed, an applicant may submit the required information in
293 any format, as long as the documentation is complete.

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

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

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

306 1. Proposal costs or costs related to preparation of the
307 application and required documentation;

308 2. Certified public accountant costs;

309 3. Except as provided in subsection (k), any costs in
310 excess of the amount approved by the department pursuant to
311 paragraph (b) or which are not in substantial conformance with
312 the purchase order;

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

316 5. Facilities that are not in compliance with department
317 storage tank rules, until the noncompliance issues have been
318 resolved; or

319 6. Costs associated with damage to petroleum storage

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320 systems caused in whole or in part by causes other than the
321 storage of fuels blended with ethanol or biodiesel.

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

325 (i) A petroleum storage system owner or operator may not
326 receive more than \$200,000 annually for equipment replacement,
327 repair, or preventive measures at any single facility, or
328 \$500,000 annually in aggregate for all facilities it owns or
329 operates.

330 (j) Owners or operators who have incurred costs for repair,
331 replacement, or other preventive measures as described in this
332 subsection during the period of July 1, 2015, through June 30,
333 2017, may apply to request payment for such costs from the
334 department using the procedure in paragraphs (b), (c), and (d).
335 The department may not disburse payment for approved
336 applications for such work until all purchase orders for
337 previously approved applications have been paid and unless funds
338 remain available for the fiscal year. Such payment is subject to
339 a deductible of 25 percent of the cost of the scope of work
340 approved by the department pursuant to the application specified
341 under this paragraph.

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

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