

**By** the Committee on Environmental Preservation and Conservation;  
and 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 or a third party  
16      administrator; specifying that certain costs are not  
17      eligible for payment; requiring the department to  
18      review and approve applications on a first-come,  
19      first-served basis, with purchase orders subject to  
20      certain remaining funds; limiting the amount a storage  
21      tank owner or operator may receive annually for such  
22      measures; providing applicability of certain purchase  
23      order requirements; specifying that the department may  
24      also pay the cost for certain previously completed  
25      repairs, replacement, or other preventive measures  
26      relating to damage or potential damage to storage tank  
27      systems caused by ethanol or biodiesel; requiring the  
28      department to ensure that petroleum storage systems  
29      approved after a certain date meet certain standards

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30 for ethanol blend, biodiesel blend, and other  
31 alternative fuel compatibility; providing an effective  
32 date.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. Paragraph (h) is added to subsection (1) of  
37 section 376.3071, Florida Statutes, paragraph (a) of subsection  
38 (2) and subsection (4) of that section are amended, and  
39 subsections (15) and (16) are added to that section, to read:

40 376.3071 Inland Protection Trust Fund; creation; purposes;  
41 funding.—

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

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

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

70 (2) INTENT AND PURPOSE.—

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

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

87 (a) Prompt investigation and assessment of contamination

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88 sites.

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

91 (c) Rehabilitation of contamination sites, which shall  
92 consist of cleanup of affected soil, groundwater, and inland  
93 surface waters, using the most cost-effective alternative that  
94 is technologically feasible and reliable and that provides  
95 adequate protection of the public health, safety, and welfare,  
96 and water resources, and that minimizes environmental damage,  
97 pursuant to the site selection and cleanup criteria established  
98 by the department under subsection (5). ~~except that~~ This  
99 paragraph does not authorize the department to obligate funds  
100 for payment of costs which may be associated with, but are not  
101 integral to, site rehabilitation, such as the cost for  
102 retrofitting or replacing petroleum storage systems, unless  
103 repair, replacement, or other preventive measures are authorized  
104 pursuant to subsection (15).

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 related hardware 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 have likely been damaged due to the storage  
201 of 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 systems, including tanks,  
206 integral piping, or related hardware, that have likely been  
207 damaged, or are subject to damage, by the storage of fuels  
208 blended with ethanol or biodiesel or for other preventive  
209 measures to ensure compatibility with ethanol or biodiesel in  
210 accordance with the 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 has likely been damaged as a result of the storage of  
217 fuel blended with ethanol or biodiesel or is not 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. Funding for preventative measures is  
234 only available for petroleum storage systems that have not  
235 received funding under this subsection. For eligible  
236 preventative measures, an owner or operator may only receive  
237 funding for up to 5 years or when the petroleum storage system  
238 is replaced, whichever comes first. The petroleum storage system  
239 specialty contractor who prepared the affidavit and proposed  
240 scope of work may not also perform the repair, replacement, or  
241 preventive measures.

242 d. For proposals to replace storage tanks or piping, a  
243 statement from a certified public accountant indicating the  
244 depreciated value of the tanks or piping proposed for  
245 replacement. Applications for such proposals must also include  
246 documentation of the age of the storage tank or piping.  
247 Historical tank registration records may be used to determine  
248 the age of the storage tank and piping. The depreciated value  
249 shall be the maximum allowable replacement cost for the storage  
250 tank and piping, including prorated labor costs. For the  
251 purposes of this paragraph, tanks that are 20 years old or older  
252 are deemed to be fully depreciated and have no replacement value  
253 and are not eligible for funding under this subsection.

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

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

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

265 2. State that moneys are not due to the owner or operator  
266 pursuant to the purchase order until the scope of work  
267 authorized by the department has been completed in substantial  
268 conformity with the purchase order.

269 3. Specify that the work authorized in the purchase order  
270 must be substantially completed and paid for by the petroleum  
271 storage system owner or operator within 180 days after the date  
272 of the purchase order. After such time, the purchase order is  
273 void. This requirement does not apply to preventive measure  
274 purchase orders.

275 4. Develop a maintenance completion and payment deadline  
276 schedule for approved applicants for preventive measure purchase  
277 orders. The failure of an owner or operator to meet these  
278 scheduled deadlines shall invalidate the purchase order for all  
279 future payments due pursuant to the order. An approved  
280 maintenance plan for preventive measures may not exceed 5 years.  
281 An owner or operator may not receive funding for preventive  
282 measures for a petroleum storage system after receiving funds  
283 under this subsection for the replacement of that petroleum  
284 storage system.

285 (c)1. Except for preventive measure purchase orders, the  
286 applicant may request that the department make payment following  
287 completion of the work authorized by the department, in  
288 accordance with the terms of the purchase order. The request  
289 must include a sufficient demonstration that the work has been  
290 completed in substantial conformance with the purchase order and

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291 that the costs have been fully paid. Upon such a showing, the  
292 department must issue the payment in accordance with the terms  
293 of the purchase order.

294 2. For preventive measures purchase orders, the department  
295 must make periodic payments in accordance with the schedule  
296 specified in the purchase order upon satisfactory showing that  
297 maintenance work has been completed and costs have been paid by  
298 the owner or operator as specified in the purchase order.

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

303 (e) The department may request the assistance of the  
304 Department of Management Services or a third-party administrator  
305 to assist in the administration of the application and payment  
306 process. Any costs associated with this administration shall be  
307 paid from the funds identified in this section. Not more than 3  
308 percent of the appropriated funds may be used for  
309 administration.

310 (f) This subsection may not affect the obligations of a  
311 facility owner or operator or petroleum storage system owner or  
312 operator to timely comply with department rules regarding the  
313 maintenance, replacement, and repair of petroleum storage  
314 systems in order to prevent a release or discharge of  
315 pollutants.

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

317 1. Proposal costs or costs related to preparation of the  
318 application and required documentation;

319 2. Certified public accountant costs;

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

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

327 5. Facilities that are not in compliance with department  
328 storage tank rules, until the noncompliance issues have been  
329 resolved; or

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

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

337 (i) A petroleum storage system owner or operator may not  
338 receive more than \$200,000 annually for equipment replacement,  
339 repair, or preventive measures at any single facility, or  
340 \$500,000 annually in aggregate for all facilities it owns or  
341 operates. An approved maintenance plan for preventive measures  
342 may not exceed 5 years. An owner or operator may not receive  
343 funding for preventive measures for a petroleum storage system  
344 after receiving funds under this subsection for the replacement  
345 of that petroleum storage system.

346 (j) An owner or operator who has incurred costs for repair,  
347 replacement, or other preventive measures as described in this  
348 subsection during the period of July 1, 2015, through June 30,

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349 2017, may apply to request payment for such costs from the  
350 department using the procedure in paragraphs (b), (c), and (d).  
351 The department may not disburse payment for approved  
352 applications for such work until all purchase orders for  
353 previously approved applications have been paid and unless funds  
354 remain available for the fiscal year. Such payment is subject to  
355 a deductible of 25 percent of the cost of the scope of work  
356 approved by the department pursuant to the application specified  
357 under this paragraph.

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

363 Section 2. This act shall take effect July 1, 2017.  
364