

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; requiring
17 the department to review and approve applications 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; providing applicability of
22 certain purchase order requirements; specifying that
23 the department may also pay the cost for certain
24 previously completed repairs, replacement, or other
25 preventive measures relating to damage or potential

26 damage to storage tank systems caused by ethanol or
 27 biodiesel; requiring the department to ensure that
 28 petroleum storage systems approved after a certain
 29 date meet certain standards for ethanol blend,
 30 biodiesel blend, and other alternative fuel
 31 compatibility; providing effective dates.

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

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

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

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

46 (h) That Congress enacted the Energy Policy Act of 2005,
 47 amending the Clean Air Act, to establish a Renewable Fuel
 48 Standard requiring the use of ethanol as an oxygenate additive
 49 for gasoline and biodiesel as an additive for ultra-low sulfur
 50 diesel fuel. An unintended consequence of the inclusion of

51 ethanol in gasoline and biodiesel in diesel fuel has been to
52 cause, and potentially cause, significant corrosion and other
53 damage to petroleum storage system components regulated under
54 this chapter. The Legislature further finds that petroleum
55 storage system components have been found by the department in
56 its equipment approval process to meet compatibility standards;
57 however, these standards may have subsequently changed due to
58 the introduction of ethanol and biodiesel. This state enacted
59 secondary containment requirements before Congress' mandated
60 introduction of ethanol into gasoline and biodiesel into ultra-
61 low sulfur diesel fuel. Therefore, owners and operators of
62 petroleum storage facilities in Florida who complied with this
63 state's secondary containment requirements and installed
64 approved equipment that may not have been evaluated for
65 compatibility with ethanol and biodiesel, cross-contamination
66 due to the storage of gasoline and diesel fuel, and the effects
67 of condensation and minimal amounts of water in storage tanks
68 are at a particular risk for having to repair or replace
69 equipment or take other preventive measures in advance of the
70 end of the equipment's expected useful life in order to prevent
71 releases or 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
 88 | provide for:

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

91 | (b) Expeditious restoration or replacement of potable
 92 | water 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, unless
105 repair, replacement, or other preventive measures are authorized
106 pursuant to subsection (15).

107 (d) Maintenance and monitoring of contamination sites.

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

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

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

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

126 further contamination sites.

127 (i) Funding of the provisions of ss. 376.305(6) and
128 376.3072.

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

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

141 (l) Repayment of loans to the fund.

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

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

151 to annual appropriation by the Legislature.

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

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

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

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

172
173 The issuance of a site rehabilitation completion order pursuant
174 to subsection (5) or paragraph (12) (b) for contamination
175 eligible for programs funded by this section does not alter the

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

197 (15) PETROLEUM STORAGE SYSTEM REPAIR OR REPLACEMENT DUE TO
198 DAMAGE CAUSED BY ETHANOL OR BIODIESEL; OTHER PREVENTIVE
199 MEASURES.—The department shall pay, in accordance with this
200 subsection, up to \$10 million each fiscal year from the fund for

201 the costs of labor and equipment to repair or replace petroleum
202 storage systems that have likely been damaged due to the storage
203 of fuels blended with ethanol or biodiesel, or for preventive
204 measures to reduce the potential for such damage.

205 (a) A petroleum storage system owner or operator may
206 request payment from the department for the repair or
207 replacement of petroleum storage systems, including tanks,
208 integral piping, or related hardware, that have likely been
209 damaged, or are subject to damage, by the storage of fuels
210 blended with ethanol or biodiesel or for other preventive
211 measures to ensure compatibility with ethanol or biodiesel in
212 accordance with the following procedures:

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

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

226 state the reasons that repair or other preventive measures are
227 not technically or economically feasible or practical.

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

232 c. A proposal from the specialty contractor showing the
233 proposed scope of the repair, replacement, or other preventive
234 measures, including a detailed list of labor, equipment, and
235 other associated costs. Funding for preventative measures is
236 only available for petroleum storage systems that have not
237 received funding under this subsection. For eligible
238 preventative measures, an owner or operator may only receive
239 funding for up to 5 years or when the petroleum storage system
240 is replaced, whichever comes first. The petroleum storage system
241 specialty contractor who prepared the affidavit and proposed
242 scope of work may not also perform the repair, replacement, or
243 preventive measures.

244 d. For proposals to replace storage tanks or piping, a
245 statement from a certified public accountant indicating the
246 depreciated value of the tanks or piping proposed for
247 replacement. Applications for such proposals must also include
248 documentation of the age of the storage tank or piping.
249 Historical tank registration records may be used to determine
250 the age of the storage tank and piping. The depreciated value

251 shall be the maximum allowable replacement cost for the storage
252 tank and piping, including prorated labor costs. For the
253 purposes of this paragraph, tanks that are 20 years old or older
254 are deemed to be fully depreciated and have no replacement value
255 and are not eligible for funding under this subsection.

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

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

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

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

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

276 purchase orders.

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

287 (c)1. Except for preventive measure purchase orders, the
288 applicant may request that the department make payment following
289 completion of the work authorized by the department, in
290 accordance with the terms of the purchase order. The request
291 must include a sufficient demonstration that the work has been
292 completed in substantial conformance with the purchase order and
293 that the costs have been fully paid. Upon such a showing, the
294 department must issue the payment in accordance with the terms
295 of the purchase order.

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

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

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

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

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

319 1. Proposal costs or costs related to preparation of the
320 application and required documentation;

321 2. Certified public accountant costs;

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

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

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

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

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

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

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

351 June 30, 2017, may apply to request payment for such costs from
352 the department using the procedure in paragraphs (b), (c), and
353 (d). The department may not disburse payment for approved
354 applications for such work until all purchase orders for
355 previously approved applications have been paid and unless funds
356 remain available for the fiscal year. Such payment is subject to
357 a deductible of 25 percent of the cost of the scope of work
358 approved by the department pursuant to the application specified
359 under this paragraph.

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

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