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LEGISLATIVE ACTION

Senate

.

House

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Floor: WD/2R

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04/28/2017 10:34 AM

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Senator Grimsley moved the following:

Senate Amendment (with title amendment)

Delete lines 215 - 229

and insert:

Section 5. Paragraph (h) is added to subsection (1) of section 376.3071, Florida Statutes, paragraph (a) of subsection (2), subsection (4), and paragraph (h) of subsection (6) 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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12 (1) FINDINGS.—In addition to the legislative findings set
13 forth in s. 376.30, the Legislature finds and declares:

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

40 (2) INTENT AND PURPOSE.—



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

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

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

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

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



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

75 (d) Maintenance and monitoring of contamination sites.

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

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

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

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

95 (i) Funding of the provisions of ss. 376.305(6) and
96 376.3072.

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



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

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

109 (l) Repayment of loans to the fund.

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

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

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



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128 the advanced cleanup program provided in s. 376.30713.

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

132 (q) Payments for program deductibles, copayments, and
133 limited contamination assessment reports that otherwise would be
134 paid by another state agency for state-funded petroleum
135 contamination site rehabilitation.

136 (r) Repair of, replacement of, or other preventive measures
137 for underground storage tanks, piping, or related hardware as
138 provided in subsection (15). Such costs may include equipment,
139 excavation, electrical work, and site restoration, all of which
140 must be specifically related to the repair or replacement.

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



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

166 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

167 (h) The contractor, or the person to whom ~~which~~ the
168 contractor has assigned its right to payment pursuant to
169 paragraph (e), shall make prompt payment to subcontractors and
170 suppliers for their costs associated with an approved contract
171 pursuant to s. 287.0585, except that the contractor, or the
172 person to whom the contractor has assigned its right to payment
173 pursuant to paragraph (e), may remit payments to subcontractors
174 and suppliers within 30 working days after the contractor's
175 receipt of payment by the department before the penalties
176 required by s. 287.0585(1) are applicable.

177 (15) UNDERGROUND PETROLEUM STORAGE SYSTEM REPAIR OR
178 REPLACEMENT DUE TO DAMAGE CAUSED BY ETHANOL OR BIODIESEL; OTHER
179 PREVENTIVE MEASURES.—The department shall pay, in accordance
180 with this subsection, up to \$10 million each fiscal year from
181 the fund for the costs of labor and equipment to repair or
182 replace underground petroleum storage systems that have likely
183 been damaged due to the underground storage of fuels blended
184 with ethanol or biodiesel, or for preventive measures to reduce
185 the potential for such damage.



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186 (a) An underground petroleum storage system owner or
187 operator may request payment from the department for the repair
188 or replacement of underground petroleum storage systems,
189 including tanks, integral piping, or related hardware, that have
190 likely been damaged, or are subject to damage, by the
191 underground storage of fuels blended with ethanol or biodiesel
192 or for other preventive measures to ensure compatibility with
193 ethanol or biodiesel in accordance with the following
194 procedures:

195 1. The underground petroleum storage system owner or
196 operator may submit a request for payment to the department
197 along with the following information:

198 a. An affidavit from an underground petroleum storage
199 system specialty contractor attesting to an opinion that the
200 underground petroleum storage system has likely been damaged as
201 a result of the storage of fuel blended with ethanol or
202 biodiesel or is not compatible with fuels containing ethanol or
203 biodiesel, or a combination of both. The affidavit must also
204 include a proposal from the specialty contractor for repair or
205 replacement of the equipment, or for the implementation of other
206 preventive measures to reduce the probability of damage. If the
207 specialty contractor proposes replacement of any equipment, the
208 specialty contractor must state the reasons that repair or other
209 preventive measures are not technically or economically feasible
210 or practical.

211 b. Copies of any inspection reports, including photographs,
212 prepared by the specialty contractor or department or local
213 program inspectors documenting the damage or potential for
214 damage to the underground petroleum storage system.



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215 c. A proposal from the specialty contractor showing the
216 proposed scope of the repair, replacement, or other preventive
217 measures, including a detailed list of labor, equipment, and
218 other associated costs. Funding for preventative measures is
219 only available for underground petroleum storage systems that
220 have not received funding under this subsection. For eligible
221 preventative measures, an owner or operator may only receive
222 funding for up to 5 years or when the underground petroleum
223 storage system is replaced, whichever comes first. The
224 underground petroleum storage system specialty contractor who
225 prepared the affidavit and proposed scope of work may not also
226 perform the repair, replacement, or preventive measures.

227 d. For proposals to replace underground storage tanks or
228 pipings, a statement from a certified public accountant
229 indicating the depreciated value of the tanks or pipings proposed
230 for replacement. Applications for such proposals must also
231 include documentation of the age of the storage tank or pipings.
232 Historical tank registration records may be used to determine
233 the age of the storage tank and pipings. The depreciated value
234 shall be the maximum allowable replacement cost for the storage
235 tank and pipings, including prorated labor costs. For the
236 purposes of this paragraph, tanks that are 20 years old or older
237 are deemed to be fully depreciated and have no replacement value
238 and are not eligible for funding under this subsection.

239 2. The department shall review applications for
240 completeness, accuracy, and reasonableness of costs. The
241 department shall determine whether the proposed scope of work is
242 reasonable and appropriate for the site in question. The
243 department must, within 30 days after receipt of an application,



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244 approve it, deny it, propose modification to it, or request
245 additional information.

246 (b) If an application is approved, the department shall
247 issue a purchase order to the underground petroleum storage
248 system owner or operator. The purchase order shall:

249 1. Reflect a payment due to the owner or operator for the
250 cost of the scope of work approved by the department, less a
251 deductible of 50 percent.

252 2. State that moneys are not due to the owner or operator
253 pursuant to the purchase order until the scope of work
254 authorized by the department has been completed in substantial
255 conformity with the purchase order.

256 3. Specify that the work authorized in the purchase order
257 must be substantially completed and paid for by the underground
258 petroleum storage system owner or operator within 180 days after
259 the date of the purchase order. After such time, the purchase
260 order is void. This requirement does not apply to preventive
261 measure purchase orders.

262 4. Develop a maintenance completion and payment deadline
263 schedule for approved applicants for preventive measure purchase
264 orders. The failure of an owner or operator to meet these
265 scheduled deadlines shall invalidate the purchase order for all
266 future payments due pursuant to the order. An approved
267 maintenance plan for preventive measures may not exceed 5 years.
268 An owner or operator may not receive funding for preventive
269 measures for an underground petroleum storage system after
270 receiving funds under this subsection for the replacement of
271 that underground petroleum storage system.

272 (c)1. Except for preventive measure purchase orders, the



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273 applicant may request that the department make payment following
274 completion of the work authorized by the department, in
275 accordance with the terms of the purchase order. The request
276 must include a sufficient demonstration that the work has been
277 completed in substantial conformance with the purchase order and
278 that the costs have been fully paid. Upon such a showing, the
279 department must issue the payment in accordance with the terms
280 of the purchase order.

281 2. For preventive measures purchase orders, the department
282 must make periodic payments in accordance with the schedule
283 specified in the purchase order upon satisfactory showing that
284 maintenance work has been completed and costs have been paid by
285 the owner or operator as specified in the purchase order.

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

290 (e) The department may request the assistance of the
291 Department of Management Services or a third-party administrator
292 to assist in the administration of the application and payment
293 process. Any costs associated with this administration shall be
294 paid from the funds identified in this section. Not more than 3
295 percent of the appropriated funds may be used for
296 administration.

297 (f) This subsection may not affect the obligations of a
298 facility owner or operator or underground petroleum storage
299 system owner or operator to timely comply with department rules
300 regarding the maintenance, replacement, and repair of
301 underground petroleum storage systems in order to prevent a



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302 release or discharge of pollutants.

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

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

305 application and required documentation;

306 2. Certified public accountant costs;

307 3. Except as provided in paragraph (j), any costs in excess

308 of the amount approved by the department pursuant to paragraph

309 (b) or which are not in substantial conformance with the

310 purchase order;

311 4. Costs associated with underground storage tanks, piping,

312 or related hardware that has previously been repaired or

313 replaced for which costs have been paid under this section;

314 5. Facilities that are not in compliance with department

315 underground storage tank rules, until the noncompliance issues

316 have been resolved; or

317 6. Costs associated with damage to underground petroleum

318 storage systems caused in whole or in part by causes other than

319 the storage of fuels blended with ethanol or biodiesel.

320 (h) The department must review and approve applications on

321 a first-come, first-served basis. However, the department may

322 not issue purchase orders unless funds remain for the current

323 fiscal year.

324 (i) An underground petroleum storage system owner or

325 operator may not receive more than \$200,000 annually for

326 equipment replacement, repair, or preventive measures at any

327 single facility, or \$500,000 annually in aggregate for all

328 facilities it owns or operates. An approved maintenance plan for

329 preventive measures may not exceed 5 years. An owner or operator

330 may not receive funding for preventive measures for an



331 underground petroleum storage system after receiving funds under
332 this subsection for the replacement of that underground
333 petroleum storage system.

334 (j) An owner or operator who has incurred costs for repair,
335 replacement, or other preventive measures as described in this
336 subsection during the period of July 1, 2015, through June 30,
337 2017, may apply to request payment for such costs from the
338 department using the procedure in paragraphs (b), (c), and (d).
339 The department may not disburse payment for approved
340 applications for such work until all purchase orders for
341 previously approved applications have been paid and unless funds
342 remain available for the fiscal year. Such payment is subject to
343 a deductible of 50 percent of the cost of the scope of work
344 approved by the department pursuant to the application specified
345 under this paragraph.

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

352
353 ===== T I T L E A M E N D M E N T =====

354 And the title is amended as follows:

355 Delete lines 30 - 31

356 and insert:

357 legislative findings; revising legislative intent;
358 specifying that funds in the Inland Protection Trust
359 Fund may be used for certain purposes relating to



360 damage or potential damage to underground petroleum
361 storage systems caused by ethanol or biodiesel;
362 providing an exception to prompt payment requirements
363 to subcontractors and suppliers; specifying the
364 maximum funds that may be used for such purposes;
365 specifying the process for underground petroleum
366 storage system owners or operators to request approval
367 for work and payment from the department; authorizing
368 the department to develop forms for certain procedures
369 and request administrative assistance from the
370 Department of Management Services or a third-party
371 administrator; specifying that certain costs are not
372 eligible for payment; requiring the department to
373 review and approve applications on a first-come,
374 first-served basis, with purchase orders subject to
375 certain remaining funds; limiting the amount an
376 underground storage tank owner or operator may receive
377 annually for such measures; providing applicability of
378 certain purchase order requirements; specifying that
379 the department may also pay the cost for certain
380 previously completed repairs, replacement, or other
381 preventive measures relating to damage or potential
382 damage to underground storage tank systems caused by
383 ethanol or biodiesel; requiring the department to
384 ensure that underground petroleum storage systems
385 approved after a certain date meet certain standards
386 for ethanol blend, biodiesel blend, and other
387 alternative fuel compatibility; amending s. 376.30713,