

1                                   **EMISSIONS SETTLEMENT AMENDMENTS**

2   2017 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Timothy D. Hawkes**

5                                   Senate Sponsor: Brian E. Shiozawa

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7 **LONG TITLE**

8 **General Description:**

9           This bill enacts the Environmental Mitigation and Response Act and modifies vehicle  
10 registration requirements.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ establishes the Environmental Mitigation and Response Act, including establishing  
14 an expendable special revenue fund;

15           ▶ states that the director of the Department of Environmental Quality may administer  
16 the expendable special revenue fund;

17           ▶ states that, in certain circumstances, vehicle registration may not be denied on the  
18 basis of:

- 19                   • a defeat device; or
- 20                   • an Environmental Protection Agency-approved modification; and

21           ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23           None

24 **Other Special Clauses:**

25           None

26 **Utah Code Sections Affected:**

27 AMENDS:

28           **19-1-202**, as last amended by Laws of Utah 2009, Chapter 377

29           **41-6a-1642**, as last amended by Laws of Utah 2015, Chapter 258

30 ENACTS:

31 [19-1-601](#), Utah Code Annotated 1953

32 [19-1-602](#), Utah Code Annotated 1953

33 [19-1-603](#), Utah Code Annotated 1953

34 [19-1-604](#), Utah Code Annotated 1953

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36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section [19-1-202](#) is amended to read:

38 **[19-1-202. Duties and powers of the executive director.](#)**

39 (1) The executive director shall:

40 (a) administer and supervise the department;

41 (b) coordinate policies and program activities conducted through boards, divisions, and  
42 offices of the department;

43 (c) approve the proposed budget of each board, division, and office within the  
44 department;

45 (d) approve all applications for federal grants or assistance in support of any  
46 department program;

47 (e) with the governor's specific, prior approval, expend funds appropriated by the  
48 Legislature necessary for participation by the state in any fund, property, or service provided by  
49 the federal government; and

50 (f) in accordance with Section [19-1-301](#), appoint one or more administrative law  
51 judges to hear an adjudicative proceeding within the department.

52 (2) The executive director may:

53 (a) issue orders to enforce state laws and rules established by the department except  
54 where the enforcement power is given to a board created under Section [19-1-106](#), unless the  
55 executive director finds that a condition exists that creates a clear and present hazard to the  
56 public health or the environment and requires immediate action, and if the enforcement power  
57 is vested with a board created under Section [19-1-106](#), the executive director may with the

58 concurrence of the governor order any person causing or contributing to the condition to  
59 reduce, mitigate, or eliminate the condition;

60 (b) with the approval of the governor, participate in the distribution, disbursement, or  
61 administration of any fund or service, advanced, offered, or contributed by the federal  
62 government for purposes consistent with the powers and duties of the department;

63 (c) accept and receive funds and gifts available from private and public groups for the  
64 purposes of promoting and protecting the public health and the environment and expend the  
65 funds as appropriated by the Legislature;

66 (d) make policies not inconsistent with law for the internal administration and  
67 government of the department, the conduct of its employees, and the custody, use, and  
68 preservation of the records, papers, books, documents, and property of the department;

69 (e) create advisory committees as necessary to assist in carrying out the provisions of  
70 this title;

71 (f) appoint division directors who may be removed at the will of the executive director  
72 and who shall be compensated in an amount fixed by the executive director;

73 (g) advise, consult, and cooperate with other agencies of the state, the federal  
74 government, other states and interstate agencies, affected groups, political subdivisions, and  
75 industries in carrying out the purposes of this title;

76 (h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act,  
77 employ employees necessary to meet the requirements of this title;

78 (i) authorize any employee or representative of the division to conduct inspections as  
79 permitted in this title;

80 (j) encourage, participate in, or conduct any studies, investigations, research, and  
81 demonstrations relating to hazardous materials or substances releases necessary to meet the  
82 requirements of this title;

83 (k) collect and disseminate information about hazardous materials or substances  
84 releases;

85 (l) review plans, specifications, or other data relating to hazardous substances releases

86 as provided in this title; ~~and~~

87 (m) maintain, update not less than annually, and make available to the public a record  
88 of sites, by name and location, at which response actions for the protection of the public health  
89 and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or  
90 under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous  
91 calendar year, and those that the department plans to address in the upcoming year pursuant to  
92 this title, including if upon completion of the response action the site:

93 (i) will be suitable for unrestricted use; or

94 (ii) will be suitable only for restricted use, stating the institutional controls identified in  
95 the remedy to which use of the site is subject[-]; and

96 (n) for purposes of implementing environmental mitigation and response actions:

97 (i) accept and receive environmental mitigation and response funds from private and  
98 public groups, including as a condition of a consent decree, settlement agreement, stipulated  
99 agreement, or court order; and

100 (ii) administer the implementation of environmental mitigation and response actions in  
101 accordance with the terms and conditions in which funds were received, including:

102 (A) disbursing funds to private or public entities, governmental units, state agencies, or  
103 Native American tribes;

104 (B) expending funds to implement environmental mitigation and response actions; and

105 (C) returning unused funds to the original source of the funds as a condition of receipt  
106 of the funds, if applicable.

107 Section 2. Section **19-1-601** is enacted to read:

108 **CHAPTER 1. ENVIRONMENTAL MITIGATION AND RESPONSE ACT**

109 **19-1-601. Title.**

110 This chapter is known as the "Environmental Mitigation and Response Act."

111 Section 3. Section **19-1-602** is enacted to read:

112 **19-1-602. Definitions.**

113 As used in this chapter:

114           (1) "Environmental mitigation" means an action or activity intended to remedy, reduce,  
115 or offset known negative impacts to the environment.

116           (2) "Environmental response action" means action taken to prevent, eliminate,  
117 minimize, investigate, monitor, clean up, or remove contaminants in the environment.

118           (3) "Financial assurance" means a mechanism or instrument intended to provide funds  
119 if necessary to the department to conduct closure, monitoring, or cleanup of a specific facility  
120 or site in accordance with the applicable environmental requirements provided in this title.

121           (4) "Funding source" means an individual or entity that provides a monetary  
122 contribution to the Environmental Mitigation and Response Fund.

123           (5) "Natural resource damage" means damages to land, fish, wildlife, biota, air, water,  
124 ground water, drinking water supplies, and other resources that are held in trust for the public  
125 or otherwise controlled by the United States, the state, or local government.

126           (6) "Unused funds" means the remaining funds from a specific funding source  
127 following the complete implementation of the environmental mitigation or response actions  
128 pursuant to the terms and conditions of the contribution.

129           Section 4. Section **19-1-603** is enacted to read:

130           **19-1-603. Environmental Mitigation and Response Fund.**

131           (1) There is created an expendable special revenue fund known as the Environmental  
132 Mitigation and Response Fund.

133           (2) The fund consists of:

134           (a) public and private funding sources made under Subsections (3) and (4);

135           (b) legally binding bankruptcy, financial assurance, or natural resource damage claim  
136 settlements; and

137           (c) interest earnings on cash balances.

138           (3) The department may accept contributions for deposit into the fund from public and  
139 private sources, including from a source as a condition of a consent decree, settlement  
140 agreement, stipulated agreement, or court order.

141           (4) If funds are deposited as part of a consent decree, settlement agreement, stipulated

142 agreement, or court order, the source of the funding may specify terms and conditions in which  
143 the funds may be used, in accordance with the consent decree, settlement agreement, stipulated  
144 agreement, or court order.

145 (5) Unless mandated by court order, the department may refuse funds if the department  
146 determines it is incapable of meeting the terms and conditions of the agreement to obtain the  
147 funds, including covering the costs to administer the fund and oversee the implementation of  
148 the specific mitigation or response action.

149 (6) The fund may account for assets held by the state for:

150 (a) an individual;

151 (b) a private or public entity;

152 (c) another governmental unit, including a local or federal agency;

153 (d) a state agency; or

154 (e) a Native American tribe.

155 Section 5. Section **19-1-604** is enacted to read:

156 **19-1-604. Environmental mitigation.**

157 (1) The director shall administer the fund created in Section [19-1-603](#).

158 (2) The director may:

159 (a) disburse funds to an authorized individual or public, private, or governmental  
160 entity, or Native American tribe to implement a specified environmental mitigation action in  
161 accordance with any terms and conditions associated with the funding source, as provided in  
162 Subsection [19-1-603](#)(4);

163 (b) expend funds to implement certain environmental mitigation actions in accordance  
164 with any terms and conditions associated with the funding source, as provided in Subsection  
165 [19-1-603](#)(4);

166 (c) expend funds to implement an environmental response action or site closure, in  
167 accordance with any terms and conditions associated with the funding source, as provided in  
168 Subsection [19-1-603](#)(4);

169 (d) expend funds to cover actual administrative expenditures in accordance with any

170 terms and conditions associated with the funds as provided in Subsection 19-1-603(4); and

171 (e) return unused funds to the funding source, if required under the terms and  
172 conditions as provided in Subsection 19-1-603(4).

173 (3) For an environmental response action conducted pursuant to Subsection  
174 19-1-604(2)(c), the director shall comply with applicable environmental cleanup standards  
175 described in this title.

176 (4) If the director disburses funds to another state agency in accordance with  
177 Subsection (2)(a), that agency may expend the funds in accordance with any terms and  
178 conditions associated with the fund contributions as provided in Subsection 19-1-603(4),  
179 including returning any unused funds to the department.

180 (5) Following the completion of an environmental mitigation and response action, any  
181 excess funds not returned to the funding source as provided in Subsection 19-1-603(4) shall be  
182 transferred to the Hazardous Substances Mitigation Fund, in accordance with Section  
183 19-6-307.

184 Section 6. Section **41-6a-1642** is amended to read:

185 **41-6a-1642. Emissions inspection -- County program.**

186 (1) The legislative body of each county required under federal law to utilize a motor  
187 vehicle emissions inspection and maintenance program or in which an emissions inspection  
188 and maintenance program is necessary to attain or maintain any national ambient air quality  
189 standard shall require:

190 (a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle  
191 is exempt from emissions inspection and maintenance program requirements be presented:

192 (i) as a condition of registration or renewal of registration; and

193 (ii) at other times as the county legislative body may require to enforce inspection  
194 requirements for individual motor vehicles, except that the county legislative body may not  
195 routinely require a certificate of emission inspection, or waiver of the certificate, more often  
196 than required under Subsection [~~(6)~~] (7); and

197 (b) compliance with this section for a motor vehicle registered or principally operated

198 in the county and owned by or being used by a department, division, instrumentality, agency, or  
199 employee of:

- 200 (i) the federal government;
- 201 (ii) the state and any of its agencies; or
- 202 (iii) a political subdivision of the state, including school districts.

203 (2) A vehicle owner subject to Subsection (1) shall obtain a motor vehicle emissions  
204 inspection and maintenance program certificate of emissions inspection as described in  
205 Subsection (1), but the program may not deny vehicle registration based solely on the presence  
206 of a defeat device covered in the Volkswagen partial consent decrees or a United States  
207 Environmental Protection Agency-approved vehicle modification in the following vehicles:

208 (a) a 2.0-liter diesel engine motor vehicle in which its lifetime nitrogen oxide  
209 emissions are mitigated in the state pursuant to a partial consent decree, including:

- 210 (i) Volkswagen Jetta, model years 2009, 2010, 2011, 2012, 2013, 2014, and 2015;
- 211 (ii) Volkswagen Jetta Sportwagen, model years 2009, 2010, 2011, 2012, 2013, and  
212 2014;
- 213 (iii) Volkswagen Golf, model years 2010, 2011, 2012, 2013, 2014, and 2015;
- 214 (iv) Volkswagen Golf Sportwagen, model year 2015;
- 215 (v) Volkswagen Passat, model years 2012, 2013, 2014, and 2015;
- 216 (vi) Volkswagen Beetle, model years 2013, 2014, and 2015;
- 217 (vii) Volkswagen Beetle Convertible, model years 2013, 2014, and 2015; and
- 218 (viii) Audi A3, model years 2010, 2011, 2012, 2013, and 2015; and

219 (b) a 3.0-liter diesel engine motor vehicle in which its lifetime nitrogen oxide  
220 emissions are mitigated in the state to a settlement, including:

- 221 (i) Volkswagen Touareg, model years 2009, 2010, 2011, 2012, 2013, 2014, 2015, and  
222 2016;
- 223 (ii) Audi Q7, model years 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016;
- 224 (iii) Audi A6 Quattro, model years 2014, 2015, and 2016;
- 225 (iv) Audi A7 Quattro, model years 2014, 2015, and 2016;



226           (v) Audi A8, model years 2014, 2015, and 2016;  
227           (vi) Audi A8L, model years 2014, 2015, and 2016;  
228           (vii) Audi Q5, model years 2014, 2015, and 2016; and  
229           (viii) Porsche Cayenne Diesel, model years 2013, 2014, 2015, and 2016.  
230           ~~[(2)]~~ (3) (a) The legislative body of a county identified in Subsection (1), in  
231 consultation with the Air Quality Board created under Section 19-1-106, shall make regulations  
232 or ordinances regarding:  
233           (i) emissions standards;  
234           (ii) test procedures;  
235           (iii) inspections stations;  
236           (iv) repair requirements and dollar limits for correction of deficiencies; and  
237           (v) certificates of emissions inspections.  
238           (b) The regulations or ordinances shall:  
239           (i) be made to attain or maintain ambient air quality standards in the county, consistent  
240 with the state implementation plan and federal requirements;  
241           (ii) may allow for a phase-in of the program by geographical area; and  
242           (iii) be compliant with the analyzer design and certification requirements contained in  
243 the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.  
244           (c) The county legislative body and the Air Quality Board shall give preference to an  
245 inspection and maintenance program that is:  
246           (i) decentralized, to the extent the decentralized program will attain and maintain  
247 ambient air quality standards and meet federal requirements;  
248           (ii) the most cost effective means to achieve and maintain the maximum benefit with  
249 regard to ambient air quality standards and to meet federal air quality requirements as related to  
250 vehicle emissions; and  
251           (iii) providing a reasonable phase-out period for replacement of air pollution emission  
252 testing equipment made obsolete by the program.  
253           (d) The provisions of Subsection ~~[(2)]~~ (3)(c)(iii) apply only to the extent the phase-out:

254 (i) may be accomplished in accordance with applicable federal requirements; and  
255 (ii) does not otherwise interfere with the attainment and maintenance of ambient air  
256 quality standards.

257 ~~[(3)]~~ (4) The following vehicles are exempt from the provisions of this section:

258 (a) an implement of husbandry;

259 (b) a motor vehicle that:

260 (i) meets the definition of a farm truck under Section 41-1a-102; and

261 (ii) has a gross vehicle weight rating of 12,001 pounds or more;

262 (c) a vintage vehicle as defined in Section 41-21-1;

263 (d) a custom vehicle as defined in Section 41-6a-1507; and

264 (e) to the extent allowed under the current federally approved state implementation  
265 plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401, et seq., a motor  
266 vehicle that is less than two years old on January 1 based on the age of the vehicle as  
267 determined by the model year identified by the manufacturer.

268 ~~[(4)]~~ (5) (a) The legislative body of a county identified in Subsection (1) shall exempt a  
269 pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or  
270 less from the emission inspection requirements of this section, if the registered owner of the  
271 pickup truck provides a signed statement to the legislative body stating the truck is used:

272 (i) by the owner or operator of a farm located on property that qualifies as land in  
273 agricultural use under Sections 59-2-502 and 59-2-503; and

274 (ii) exclusively for the following purposes in operating the farm:

275 (A) for the transportation of farm products, including livestock and its products,  
276 poultry and its products, floricultural and horticultural products; and

277 (B) in the transportation of farm supplies, including tile, fence, and every other thing or  
278 commodity used in agricultural, floricultural, horticultural, livestock, and poultry production  
279 and maintenance.

280 (b) The county shall provide to the registered owner who signs and submits a signed  
281 statement under this section a certificate of exemption from emission inspection requirements

282 for purposes of registering the exempt vehicle.

283           ~~[(5)]~~ (6) (a) Subject to Subsection ~~[(5)]~~ (6)(c), the legislative body of each county  
284 required under federal law to utilize a motor vehicle emissions inspection and maintenance  
285 program or in which an emissions inspection and maintenance program is necessary to attain or  
286 maintain any national ambient air quality standard may require each college or university  
287 located in a county subject to this section to require its students and employees who park a  
288 motor vehicle not registered in a county subject to this section to provide proof of compliance  
289 with an emissions inspection accepted by the county legislative body if the motor vehicle is  
290 parked on the college or university campus or property.

291           (b) College or university parking areas that are metered or for which payment is  
292 required per use are not subject to the requirements of this Subsection ~~[(5)]~~ (6).

293           (c) The legislative body of a county shall make the reasons for implementing the  
294 provisions of this Subsection ~~[(5)]~~ (6) part of the record at the time that the county legislative  
295 body takes its official action to implement the provisions of this Subsection ~~[(5)]~~ (6).

296           ~~[(6)]~~ (7) (a) An emissions inspection station shall issue a certificate of emissions  
297 inspection for each motor vehicle that meets the inspection and maintenance program  
298 requirements established in rules made under Subsection ~~[(2)]~~ (3).

299           (b) The frequency of the emissions inspection shall be determined based on the age of  
300 the vehicle as determined by model year and shall be required annually subject to the  
301 provisions of Subsection ~~[(6)]~~ (7)(c).

302           (c) (i) To the extent allowed under the current federally approved state implementation  
303 plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the legislative  
304 body of a county identified in Subsection (1) shall only require the emissions inspection every  
305 two years for each vehicle.

306           (ii) The provisions of Subsection ~~[(6)]~~ (7)(c)(i) apply only to a vehicle that is less than  
307 six years old on January 1.

308           (iii) For a county required to implement a new vehicle emissions inspection and  
309 maintenance program on or after December 1, 2012, under Subsection (1), but for which no

310 current federally approved state implementation plan exists, a vehicle shall be tested at a  
311 frequency determined by the county legislative body, in consultation with the Air Quality  
312 Board created under Section 19-1-106, that is necessary to comply with federal law or attain or  
313 maintain any national ambient air quality standard.

314 (iv) If a county legislative body establishes or changes the frequency of a vehicle  
315 emissions inspection and maintenance program under Subsection ~~[(6)]~~ (7)(c)(iii), the  
316 establishment or change shall take effect on January 1 if the State Tax Commission receives  
317 notice meeting the requirements of Subsection ~~[(6)]~~ (7)(c)(v) from the county prior to October  
318 1.

319 (v) The notice described in Subsection ~~[(6)]~~ (7)(c)(iv) shall:

320 (A) state that the county will establish or change the frequency of the vehicle emissions  
321 inspection and maintenance program under this section;

322 (B) include a copy of the ordinance establishing or changing the frequency; and

323 (C) if the county establishes or changes the frequency under this section, state how  
324 frequently the emissions testing will be required.

325 (d) If an emissions inspection is only required every two years for a vehicle under  
326 Subsection ~~[(6)]~~ (7)(c), the inspection shall be required for the vehicle in:

327 (i) odd-numbered years for vehicles with odd-numbered model years; or

328 (ii) in even-numbered years for vehicles with even-numbered model years.

329 ~~[(7)]~~ (8) The emissions inspection shall be required within the same time limit  
330 applicable to a safety inspection under Section 41-1a-205.

331 ~~[(8)]~~ (9) (a) A county identified in Subsection (1) shall collect information about and  
332 monitor the program.

333 (b) A county identified in Subsection (1) shall supply this information to an appropriate  
334 legislative committee, as designated by the Legislative Management Committee, at times  
335 determined by the designated committee to identify program needs, including funding needs.

336 ~~[(9)]~~ (10) If approved by the county legislative body, a county that had an established  
337 emissions inspection fee as of January 1, 2002, may increase the established fee that an

338 emissions inspection station may charge by \$2.50 for each year that is exempted from  
339 emissions inspections under Subsection [~~(6)~~] (7)(c) up to a \$7.50 increase.

340 [~~(10)~~] (11) (a) A county identified in Subsection (1) may impose a local emissions  
341 compliance fee on each motor vehicle registration within the county in accordance with the  
342 procedures and requirements of Section [41-1a-1223](#).

343 (b) A county that imposes a local emissions compliance fee shall use revenues  
344 generated from the fee for the establishment and enforcement of an emissions inspection and  
345 maintenance program in accordance with the requirements of this section.