

EMISSIONS SETTLEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

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

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

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

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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

35

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) if permissible under the terms of the contribution, interest earnings on cash
138 balances.

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

142 (4) If funds are deposited as part of a consent decree, settlement agreement, stipulated
143 agreement, or court order, the source of the funding may specify terms and conditions in which
144 the funds may be used, in accordance with the consent decree, settlement agreement, stipulated
145 agreement, or court order.

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

150 (6) The fund may account for assets held by the state as trustee or agent for:

151 (a) an individual;

152 (b) a private or public entity;

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

154 (d) a state agency; or

155 (e) a Native American tribe.

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

157 **19-1-604. Environmental mitigation.**

158 (1) The director shall administer the fund created in Section 19-1-603.

159 (2) The director may:

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

164 (b) expend funds to implement certain environmental mitigation actions in accordance
165 with any terms and conditions associated with the funding source, as provided in Subsection
166 19-1-603(4);

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

170 (d) expend funds to cover actual administrative expenditures in accordance with any
171 terms and conditions associated with the funds as provided in Subsection 19-1-603(4); and

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

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

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

181 (5) Following the completion of an environmental mitigation and response action, any
182 excess funds not returned to the funding source as provided in Subsection 19-1-603(4) shall be

183 transferred to the Hazardous Substances Mitigation Fund, in accordance with Section
184 19-6-307.

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

186 **41-6a-1642. Emissions inspection -- County program.**

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

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

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

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

198 (b) compliance with this section for a motor vehicle registered or principally operated
199 in the county and owned by or being used by a department, division, instrumentality, agency, or
200 employee of:

201 (i) the federal government;

202 (ii) the state and any of its agencies; or

203 (iii) a political subdivision of the state, including school districts.

204 (2) A motor vehicle emissions inspection and maintenance program described in
205 Subsection (1) may not deny vehicle registration based solely on the presence of a defeat
206 device covered in a partial consent decree or an Environmental Protection Agency-approved
207 modification, including in the following vehicles:

208 (a) a 2.0-liter diesel engine motor vehicle in which its life time 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.

Legislative Review Note
Office of Legislative Research and General Counsel