

**CONCURRENT RESOLUTION REGARDING THE  
VOLKSWAGEN SETTLEMENT**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Timothy D. Hawkes**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This concurrent resolution highlights provisions of the Volkswagen Partial Consent Decree and outlines the state of Utah's participation as a beneficiary of Volkswagen Environmental Mitigation Trust funds.

**Highlighted Provisions:**

This resolution:

- ▶ highlights provisions of the Volkswagen Partial Consent Decree; and
- ▶ outlines the state of Utah's participation as a beneficiary of Volkswagen

Environmental Mitigation Trust funds.

**Special Clauses:**

None

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*Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

WHEREAS, as used in this resolution:

(1) "Beneficiary" means the state of Utah as the governmental entity, identified in the Volkswagen Partial Consent Decree, that may seek environmental mitigation funds to mitigate excess nitrogen oxides emitted by noncompliant Volkswagen and Audi vehicles, and potentially by Porsche vehicles;

(2) "Beneficiary mitigation plan" means a plan prepared by the state of Utah as the



28 beneficiary that describes the beneficiary's goals for using mitigation trust funds, including  
29 identifying specific eligible mitigation actions, describing expected emission benefits,  
30 estimating the beneficial impacts on air quality in areas that bear a disproportionate share of the  
31 air pollution burden, and describing how the beneficiary will seek and consider public input;

32 (3) "Eligible mitigation actions" means any of the specific vehicle replacements or  
33 engine repowers identified in the Volkswagen Partial Consent Decree, Appendix D-2;

34 (4) "Mitigation trust" or "Volkswagen Environmental Mitigation Trust" means the trust  
35 established under the Volkswagen Partial Consent Decree to hold and disburse environmental  
36 mitigation trust funds paid by Volkswagen and potentially Porsche to mitigate the excess  
37 nitrogen oxides emitted from noncompliant Volkswagen, Audi, and potentially Porsche  
38 vehicles;

39 (5) "Mitigation trustee" or "trustee" means the trustee appointed by the U.S. District  
40 Court to administer the mitigation trust in accordance with the Volkswagen Partial Consent  
41 Decree; and

42 (6) "Volkswagen Partial Consent Decree" means the partial consent decree settling  
43 portions of Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability  
44 Litigation, Case No: Multi-District Litigation No. 2672 CRB (JSC), approved October 25,  
45 2016;

46 WHEREAS, on October 25, 2016, the U.S. District Court for the District of Northern  
47 California approved the Volkswagen Partial Consent Decree between the United States  
48 Environmental Protection Agency (EPA), the state of California, and defendants: Volkswagen  
49 AG; Audi AG; Volkswagen Group of America, Inc.; and Volkswagen Group of America  
50 Chattanooga Operations, LLC (collectively, Volkswagen) to settle a complaint alleging  
51 violations of the federal Clean Air Act from the operation of certain noncompliant Volkswagen  
52 and Audi 2.0-liter diesel vehicles;

53 WHEREAS, Volkswagen admitted that software in certain 2.0-liter and 3.0-liter diesel  
54 Volkswagen, Audi, and Porsche vehicles enables the vehicles' emission control module to  
55 operate emission control systems when undergoing emission testing but to render the emission  
56 control systems inoperative when not undergoing emission testing, resulting in emissions that  
57 exceed EPA-compliant levels for nitrogen oxides (NOx) when the vehicles are driven on the  
58 road;

59 WHEREAS, to fully mitigate the total lifetime excess NOx emissions from certain  
60 noncompliant 2.0-liter diesel Volkswagen and Audi vehicles, Volkswagen agreed to pay into  
61 the Volkswagen Environmental Mitigation Trust to fund eligible mitigation actions within the  
62 United States or its territories;

63 WHEREAS, 5,983 noncompliant 2.0-liter and 3.0-liter Volkswagen and Audi diesel  
64 vehicles and 1,030 noncompliant 3.0-liter Volkswagen, Audi, and Porsche diesel vehicles are  
65 registered in the state of Utah;

66 WHEREAS, seven counties in the state of Utah have been designated "nonattainment"  
67 for the federal National Ambient Air Quality Standards for pollutants that are formed by NOx;

68 WHEREAS, the State Implementation Plan imposes certain requirements and  
69 restrictions on the public so the air quality may reach attainment for those pollutants in the  
70 seven counties;

71 WHEREAS, in accordance with the terms of the Volkswagen Partial Consent Decree,  
72 the Governor of the state of Utah may seek a portion of the Volkswagen Environmental  
73 Mitigation Trust to fund specific eligible mitigation actions authorized by the U.S. District  
74 Court-appointed trustee to mitigate the lifetime excess NOx emissions in the state of Utah from  
75 the noncompliant Volkswagen and Audi 2.0-liter diesel vehicles;

76 WHEREAS, it is the intention of the Governor to elect to become a Volkswagen  
77 Environmental Mitigation Trust fund beneficiary by timely filing, with the U.S. District Court,  
78 the necessary certifications, including certifying that the state will agree to be bound by the  
79 terms of the Environmental Trust Agreement, only for purposes of requesting, obtaining, and  
80 expending funds from the Volkswagen Environmental Mitigation Trust;

81 WHEREAS, the Governor intends to designate the Utah Department of Environmental  
82 Quality to act on behalf of and legally bind the state regarding requests and expenditures from  
83 the Volkswagen Environmental Mitigation Trust;

84 WHEREAS, upon the trustee confirming the state of Utah as a beneficiary under the  
85 Volkswagen Partial Consent Decree, the Department of Environmental Quality and its Division  
86 of Air Quality, on behalf of the state, shall prepare and submit to the trustee the required  
87 Beneficiary Mitigation Plan;

88 WHEREAS, following submittal of the state's Beneficiary Mitigation Plan, the  
89 Department of Environmental Quality and its Division of Air Quality, on behalf of the state,

90 shall request funds from the trustee for specific eligible mitigation actions;

91 WHEREAS, on or about December 19, 2016, the EPA, the state of California,  
92 Volkswagen, and additional defendants: Dr. Ing, h.c. F.; Porsche AG; and Porsche Cars North  
93 America, Inc. (collectively, Porsche) agreed to a second partial consent decree to settle a  
94 complaint alleging violations of the federal Clean Air Act from the operation of certain  
95 noncompliant Volkswagen, Audi, and Porsche 3.0-liter diesel vehicles that are also equipped  
96 with software that results in emissions that exceed EPA-compliant levels for NOx when the  
97 vehicles are driven on the road;

98 WHEREAS, the settlement of federal Clean Air Act violations for noncompliant  
99 Volkswagen, Audi, and Porsche 3.0-liter diesel vehicles in the second partial consent decree  
100 will offer funds to the state to mitigate the lifetime excess NOx emissions pursuant to the  
101 procedures provided in the Volkswagen Partial Consent Decree regarding 2.0-liter diesel  
102 vehicles; and

103 WHEREAS, it is the intention of the Governor to also seek funds to implement actions  
104 to mitigate the lifetime excess NOx emissions from noncompliant Volkswagen, Audi, and  
105 Porsche 3.0-liter diesel vehicles:

106 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the  
107 Governor concurring therein, believes that it is beneficial to the public at large and for the air  
108 quality of the state to implement eligible mitigation actions funded by the Volkswagen  
109 Environmental Mitigation Trust to mitigate the lifetime NOx emissions from noncompliant  
110 Volkswagen, Audi, and Porsche 2.0-liter and 3.0-liter diesel vehicles.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**