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Joint Committee on Finance

Paper #568

Volkswagen Settlement (Miscellaneous Appropriations, Shared Revenue and Tax Relief, Transportation)

[LFB 2017-19 Budget Summary: Page 307, #5, Page 410, #3, and Page 437, #3]

CURRENT LAW

The county and municipal aid program provides unrestricted aid to county and municipal governments. The statutory funding amount for the county and municipal aid program has remained unchanged since 2012 at a level of \$753,075,700. For the 2017-19 biennium, annual funding for the program is estimated to include \$692,175,800 GPR, \$51,900,000 SEG from revenue from the police and fire protection fee, and \$5,000,000 from medical assistance reimbursements for emergency medical transportation services. The total funding level included in AB 64/SB 30 is approximately \$4,000,000 less than the statutory funding level due to 2015 Act 60 (Bucks Arena), which reduces the county and municipal aid distribution to Milwaukee County by \$4,000,000 each year from 2016 through 2035. Payments are made on a calendar year basis, in July and November. Consequently, the 2017 calendar year payments will be made in fiscal year 2017-18, the first year of the 2017-19 biennium.

Annually distribute \$47,023,962 to Milwaukee County under the county and municipal aid program. 2001 Act 60 requires an annual reallocation of \$20,101,300 from the County's payment to the Wisconsin Child Welfare Program. 2015 Act 60 requires an annual reduction of \$4,000,000 to the County's payment, from 2016 through 2035, to offset a portion of the state's contribution to the Wisconsin Center District towards construction of the new sports and entertainment arena in Milwaukee.

GOVERNOR

Provide \$21,000,000 PR annually to a new appropriation from revenue received from the environmental mitigation trust established under a settlement agreement with Volkswagen AG,

Volkswagen Group of America, Inc., Audi AG., and Volkswagen Group of America Chattanooga Operations, LLC, (collectively referred to as Volkswagen). Create a continuing PR appropriation to receive settlement revenue from the trustee for the environmental mitigation trust. Provide that the appropriation may be utilized for the following, in accordance with the settlement guidelines: (a) to replace vehicles in the state fleet; and (b) to distribute funds to a county with a population of 750,000 or more (Milwaukee County) for the payment of all costs incurred by the county to replace vehicles owned by the county. Provide that no more than \$21,000,000 may be expended from the appropriation in 2017-18. In addition, provide that no money may be expended from the appropriation after June 30, 2027. Funding under the bill is allocated as follows: (a) in 2017-18, \$16,000,000 for the replacement of vehicles in the state fleet and \$5,000,000 for distribution to Milwaukee County; and (b) in 2018-19, \$21,000,000 for distribution to Milwaukee County.

Authorize the Department of Administration (DOA) to utilize Volkswagen settlement funds received from the environmental mitigation trust to replace vehicles in the state fleet, in accordance with settlement guidelines, and to distribute funds to Milwaukee County. With regards to the funding for the replacement of vehicles in the state fleet, provide that DOA may not expend more than \$16,000,000 during the 2017-19 biennium for such a purpose. In addition, provide that the use of settlement funds for the replacement of vehicles in the state fleet must take precedence over the use of settlement funds to make distributions to Milwaukee County. Authorize DOA to calculate the general purpose revenue or program revenue savings for a state agency that had a vehicle replaced through the utilization of Volkswagen settlement funds. Authorize DOA to lapse the savings to the state agency calculated by DOA to the general fund. Under the bill, there is no estimated lapse amount associated with this provision. Provide that these provisions do not apply after June 30, 2027.

Require DOA to distribute \$26,000,000 in settlement funds from the environmental mitigation trust to Milwaukee County. Provide that Milwaukee County may utilize Volkswagen settlement funds it receives from DOA for the payment of all costs incurred by the County, in accordance with the settlement guidelines, to replace vehicles owned by the county. Require that any distribution to Milwaukee County is subject to approval from the trustee of the environmental mitigation trust and is subject to receipt of sufficient settlement funds by DOA to make the distribution. Provide that these provisions do not apply after June 30, 2027.

Provide that DOA must reduce county and municipal aid payments to Milwaukee County by \$1,950,000 annually from 2018 through 2027 if Milwaukee County receives a distribution from the Volkswagen settlement funds, except that if in any year between 2018 through 2027 the county and municipal aid payment to Milwaukee County is less than \$1,950,000, DOA must first reduce Milwaukee County's county and municipal aid payments and second the County's public utility distribution so that the total amount of the reduction is \$1,950,000. Provide that these provisions do not apply after December 31, 2027.

DISCUSSION POINTS

Background on the Volkswagen Settlement and the Environmental Mitigation Trust

1. On October 25, 2016, the United States District Court for the Northern District of California issued an order granting the United States' motion to enter a proposed partial consent decree with Volkswagen that would resolve environmental claims concerning certain Volkswagen 2.0-liter turbocharged direct injection (TDI) diesel engine vehicles. According to the Court's order:

"In September 2015, Volkswagen admitted it had secretly manufactured and installed a defeat device in nearly 500,000 2.0 TDI Volkswagen- and Audi-branded diesel engine vehicles ("subject vehicles"). The defeat device renders the subject vehicles' emissions controls inoperable unless the vehicles are undergoing emissions testing. It was only by installing the defeat device that Volkswagen was able to obtain Certificates of Conformity from EPA [the federal Environmental Protection Agency] and Executive Orders from the California Air Resources Board ("CARB"); in reality, these vehicles emit nitrous oxides ("NO_x") at a factor of up to 40 times the EPA-permitted limit."

2. The partial consent decree establishes several forms of injunctive relief in order to partially resolve claims asserted by the United States (and California separately) concerning certain 2.0-liter TDI diesel engine vehicles manufactured by Volkswagen. In summary, the forms of injunctive relief established under the partial consent decree are as follows:

- *Buyback, lease termination, and vehicle modification recall program.* Under the program, Volkswagen must remove from commerce or modify at least 85% (known as the recall rate target) of the subject vehicles registered as of September 17, 2015, across the United States and in California by June 30, 2019. In order to do so, Volkswagen must offer every owner or lessee of a subject vehicle a buyback, lease termination, or an approved emissions modification, if such an emissions modification is approved by EPA and CARB. If Volkswagen fails to meet the recall rate target, it must pay an additional \$85 million for each 1% that the national recall rate is below the recall rate target and \$13.5 million for each 1% that the California recall rate is below the recall rate target. Such monetary penalties would be paid into the environmental mitigation trust (discussed below).

- *ZEV Investments.* Volkswagen is required to make \$2 billion of investments over a period of up to 10 year into actions that will support the increased use of zero emission vehicle (ZEV) technology. Of the \$2 billion, \$1.2 billion must be directed toward national ZEV investments and \$0.8 billion must be directed toward ZEV investments in California.

- *Establishment of the Environmental Mitigation Trust.* Volkswagen is required to pay \$2.7 billion into an environmental mitigation trust to fund projects to reduce emissions of NO_x of certain vehicles. Except for funds in the trust that are designated for administration costs and tribal allocations, the amounts in the trust are divided among the 50 states, the District of Columbia, and Puerto Rico. Wisconsin's initial share of the funds in the trust total \$63,554,019, or 2.35% of the total amount in the trust.

3. Funding appropriated under the bill is associated with the state's share of funding from

the environmental mitigation trust. The partial consent decree provides that a third-party trustee will be selected to administer the trust, and ensure that the states spend money from the trust in accordance with the terms of the consent decree. [As of this writing, a trustee has not been selected for the trust, and the trust has yet to be established.] Under the terms of the partial consent decree, a beneficiary of the trust (such as Wisconsin) may not request payout of more than one-third of its allocation during the first year after Volkswagen makes the initial deposit into the trust, and may not request payout of more than two-thirds of its allocation during the first two years after Volkswagen makes the initial deposit. In accordance with these terms, the bill appropriates \$42,000,000 of Wisconsin's share of the trust funds during the 2017-19 biennium (66% of \$63,554,019).

4. The terms of the partial consent decree also generally provide that beneficiaries must expend (or obligate for approved expenditures) at least 80% of their trust allocation within 10 years of the effective date of the trust. On the tenth anniversary of the effective date of the trust, the total amount in the trust unspent or unobligated for approved expenditures, less an estimate of funding reasonably needed to cover the remaining trust administration costs, becomes the trust's "remainder balance." On the later date of 180 days after the 10th anniversary of the effective date of the trust and the resolution of any disputes arising from the trustee's accountings or determinations, the remainder balance in the trust is to be divided among the beneficiaries that have reached the 80% expenditure threshold. Beneficiaries that receive a portion of the remainder balance generally have an additional five years to spend their share of the remainder balance.

5. After the trust is established, Wisconsin has 60 days to certify itself to the Court as a beneficiary of the trust. After certifying as a beneficiary, the state has 90 days to submit and make publicly available a "Beneficiary Mitigation Plan" that summarizes how the state plans to use the funds allocated to it under the trust. The plan is not binding on the state, and state may adjust its goals and specific spending plans at its discretion, as long as it provides the trustee with an updated plan.

6. After becoming a beneficiary and establishing a beneficiary mitigation plan, the state may submit requests to the trustee for the release of funding under the trust at any time. Requests to the trustee for the release of funding must include information on the proposed use for the requested funds, such as: how the funding request fits into the state's mitigation plan, the extent to which the use of such funds will benefit the community and air quality as well as reduce NO_x emissions, and a detailed budget for the use of released funds. These funding requests will be made public by the trustee on the Internet. The trustee is required to approve any funding requests that meets the requirements of partial consent decree and furthers the purposes of the trust. Within 60 days after the receipt of a request for the release of funds, the trustee must inform the state and make public its decision to either approve the request, deny the request, request modifications to the request, or request additional information.

7. The consent decree establishes eligible mitigation actions and mitigation action expenditures that the state may make from the trust. In summary, the state could utilize funding from the trust to scrap, and then repower or replace certain eligible vehicles and equipment, including: (a) Class 8 local freight trucks and port drayage trucks; (b) Class 4 through 8 school buses, shuttle buses, or transit buses; (c) freight switchers; (d) ferries and tugs; (e) ocean going

vessels shore power; (f) Class 4 through 7 local freight trucks; (g) airport ground support equipment; (h) forklifts and port cargo handling equipment; and (i) light duty zero emission vehicle supply equipment. In addition, trust funds may be utilized to support the state's voluntary match of funds under the federal diesel emission reduction act (DERA) program. Vehicle classes are based on a vehicle's gross vehicle weight rating. Appendix I provides a more detailed description of the vehicles and equipment that are eligible for repowering and replacement with trust funds, as well as a more detailed description of eligible mitigation actions and expenditures that may be taken with trust funds.

8. As noted above, the partial consent decree ordered on October 25, 2016, addressed environmental claims against Volkswagen related to certain 2.0-liter TDI diesel engine vehicles. In December, 2016, the United States proposed a second partial consent decree that would resolve similar claims against Volkswagen that specifically relate to 3.0-liter TDI diesel engine vehicles. As of this writing, the second partial consent decree has not yet been approved by the Court, and, therefore, is subject to change.

9. However, it should be noted that the proposed terms of the second partial consent decree provide for additional injunctive relief. In part, the proposed terms provide that Volkswagen must deposit an additional \$225 million into the environmental mitigation trust established under the first partial consent decree. Under the proposed terms, Wisconsin's share of the \$225 million would be \$3,523,438, or 1.57% of the total deposit. This \$3,523,438 would be in addition to Wisconsin's trust allocation under the first partial consent decree (totaling \$63,554,019). As a result, Wisconsin' total initial funding under the trust would increase to \$67,077,457. [Although, it should be reiterated that the second partial consent decree regarding 3.0-liter vehicles has yet to be approved by the Court, and, therefore, is subject to change.]

10. Separate from the environmental litigation discussed above, Wisconsin, along with other states, investigated Volkswagen for consumer protection law violations. As a result of this litigation, the Department of Justice received discretionary settlement funding. The receipt of this funding, as well as the Finance Committee's previous actions related to this funding, is discussed in Appendix II.

Governor's Recommendation

11. The bill appropriates \$42,000,000 of the \$63,554,019 that is allocated to the state under the environmental mitigation trust fund. Funding is provided to a new, continuing PR miscellaneous appropriation created for the purpose of receiving and expending the state's share of funds from the environmental mitigation trust. The appropriation would be administered by DOA. Since the appropriation is continuing, monies received in this appropriation may be expended in future biennia, based on available cash balances. The bill provides that no more than \$21,000,000 may be expended from the appropriation in 2017-18, and also provides that monies may not be expended from the appropriation after June 30, 2027.

12. Of the \$42,000,000 appropriated under the bill during the 2017-19 biennium, \$16,000,000 is allocated for the purpose of replacing state vehicles. The remaining \$26,000,000 is allocated for the purpose of distributing settlement funds to Milwaukee County to replace vehicles

owned by the County, in accordance with the terms of the settlement. The bill also provides that Milwaukee County's county and municipal aid payment be reduced by \$1,950,000 each year beginning with the calendar year 2018 payment (the 2018-19 payment) if the County receives a distribution from the state's Volkswagen settlement trust funds. The annual payment reduction to Milwaukee County would end with the calendar year 2027 county and municipal aid payment, which would result in a total reduction of \$19,500,000 over the 10-year period.

13. In accordance with the terms of the partial consent decree, the bill appropriates approximately two-thirds of the \$63,554,019 that is initially allocated to Wisconsin from the environmental mitigation trust during the 2017-19 biennium. The remaining funding, totaling at least approximately \$21.5 million, would be available for the state's use in future biennia. As noted above, states generally must spend at least 80% of its trust allocation within 10 years of the effective date of the trust.

14. The remaining sections of this paper provide information and alternatives for the Committee's consideration, as follows: (a) Section A discusses the use of trust funds for the purpose of replacing state vehicles; (b) Section B discusses the use of trust funds for local government transit capital; (c) Section C discusses the county and municipal aid reduction to Milwaukee County; and (d) Section D discusses a technical issue with the statutory language in the bill. In considering the alternatives identified in Sections A and B, note that the total funding appropriated from the environmental mitigation trust should not exceed \$21,000,000 in 2017-18, and should not exceed \$42,000,000 during the 2017-19 biennium.

A. Use of Environmental Mitigation Trust Funds to Replace State Vehicles

15. The bill provides that DOA may not spend more than \$16,000,000 of any environmental mitigation trust funds received during the 2017-19 biennium for the purpose of replacing vehicles in the state fleet, in accordance with the terms of the Volkswagen settlement. Further, the bill states that the use of settlement funds for the purpose of replacing state vehicles would take precedence over any distribution made to Milwaukee County. Funding for state vehicle replacement is appropriated in 2017-18. Notwithstanding, since the appropriation is continuing, funding appropriated for this purpose would be available for DOA's use in future fiscal years.

16. According to the 2016 Comprehensive Annual Financial Report, the state had 6,493 vehicles in its fleet in 2016. The Department of Administration has identified 139 state vehicles that would be eligible for replacement with the use of environmental mitigation trust funds. Table 1 identifies these 139 vehicles, by state agency, as well as DOA's estimated cost to replace these vehicles. Table 2 identifies these vehicles by model year. The vehicles identified for replacement are primarily large trucks (such as dump trucks, fire trucks, or fish trucks utilized by DNR) as well as prisoner transport buses utilized by the Department of Corrections. The Department estimates the cost to replace these 139 vehicles at approximately \$15,794,000, which was rounded up to \$16,000,000 for the purposes of allocating funding under the bill.

TABLE 1**State Fleet Vehicles Eligible for Replacement with the Use of Volkswagen Settlement Trust Funds**

<u>State Agency</u>	<u>Number of Vehicles</u>	<u>Total Estimated Cost to Replace Vehicles</u>
Natural Resources	110	\$11,139,000
UW-Madison	18	2,390,000
Corrections	7	1,760,000
Transportation	<u>4</u>	<u>505,000</u>
Total	139	\$15,794,000

TABLE 2**State Vehicles Eligible for Replacement, by Vehicle Model Year**

<u>Model Year</u>	<u>Number of Vehicles</u>	<u>Model Year</u>	<u>Number of Vehicles</u>
1993	4	2002	16
1994	2	2003	9
1995	16	2004	11
1996	3	2005	11
1997	9	2007	2
1998	2	2008	10
1999	12	2009	<u>2</u>
2000	17		
2001	13	Total	139

17. The administration indicates that it would not replace all 139 state vehicles immediately after funding is approved for release by the trustee, nor would it replace all 139 vehicles at the same time. Rather, DOA would seek to replace the vehicles in accordance with the state vehicle replacement cycles established by DOA in order to prevent a large number of vehicles from needing replacement at the same time in future years. Table 3 identifies the current vehicle replacement cycle criteria established by DOA. The vehicles identified for replacement with funds from the trust include diesel engine vehicles that are Class 4 or higher, with the majority of the vehicles representing Class 8 vehicles.

TABLE 3

State Vehicle Replacement Cycles

<u>Vehicle Class</u>	<u>Gross Vehicle Weight</u>	<u>Replacement Cycle</u>
Sedans and small SUVs		
Class 1	6,000 lbs. or less	-- 4-cylinder vehicle: 110,000 miles or eight years -- Hybrid vehicle: 110,000 miles or 10 years -- 6- and 8-cylinder vehicle: 110,000 miles or 10 years -- Police pursuit vehicles (sedans/utility): 100,000 miles or 10 years
Half ton pickup trucks and large SUVs		
Class 2	Between 6,001 lbs. and 10,000 lbs.	-- Gas vehicles: 120,000 miles or 10 years -- Diesel vehicles: 140,000 miles or 10 years
One ton and larger pickup trucks and vans		
Class 3	Between 10,001 lbs. and 14,000 lbs.	-- Gas vehicles: 120,000 miles or 10 years
Class 4	Between 14,001 lbs. and 16,000 lbs.	-- Diesel vehicles: 140,000 miles or 12 years
Class 5	Between 16,001 lbs. and 19,500 lbs.	
Class 6	Between 19,501 lbs. and 26,000 lbs.	
Semi-trailer trucks and dump trucks		
Class 7	Between 26,001 lbs. and 33,000 lbs.	-- 200,000 miles or 12 years
Class 8	Greater than 33,000 lbs.	-- 200,000 miles or 12 years

18. The bill provides that if DOA utilizes funding from the trust to replace a state agency's vehicle, the Secretary of DOA may calculate the GPR or PR savings for the state agency resulting from the use of trust funds to make such expenditures. The Secretary may then lapse any calculated savings from the agency to the general fund. The bill does not include a general fund revenue increase associated with this provision because the extent and timing with which the Secretary of DOA may lapse monies to the general fund is unknown. The state vehicles identified for replacement will be replaced over several fiscal years, in keeping with the vehicles' replacement cycles. Further, in certain instances, the use of trust funds to replace state vehicles may not result in savings within an agency's existing budget, since the agency's budget may not have funding allocated for vehicle replacement. Rather, the use of trust funds could limit the need for the agency to make a future one-time budget request to support the cost of vehicle replacement. Notwithstanding, the use of trust funds to replace state vehicles will result in savings to the state, regardless of whether amounts are lapsed to the general fund.

19. In recognition of the potential future savings to the state, and the fact that the state owns vehicles that could be replaced with the use of trust funds, the Committee could approve the Governor's recommendation and appropriate \$16,000,000 PR in 2017-18 for the purpose replacing state vehicles [Alternative A1]. Program revenue would be supported by the state's allocation from the trust. Under this alternative, \$26,000,000 from the trust would be available for appropriation during the 2017-19 biennium for other purposes, such as for local government transit capital.

20. Alternatively, the Committee could reduce the funding that is appropriated from the trust to replace vehicles in the state fleet. Such a reduction could make more money available for transit capital. For example, the Committee could reduce the funding appropriated for state vehicle replacement to \$12,000,000 (a 25% reduction), \$8,000,000 (a 50% reduction), or \$4,000,000 (a 75% reduction) [Alternatives A2a, A2b, and A2c]. Under these alternatives, funding for state vehicle replacement would be appropriated in 2017-18. Further, the statutory language under the bill would be amended to reflect the adjustment in the amount allocated for state vehicle replacement.

21. On the other hand, the Committee may not wish to appropriate any funding from the trust for the purpose of replacing vehicles in the state's fleet [Alternative A3]. The Committee could determine that this funding would be of greater benefit to local units of government than it would to the state. If the Committee does not appropriate any amount of trust funding for state vehicle replacement, \$42,000,000 could be appropriated during the 2017-19 biennium for transit capital, as discussed in Section B of this paper, below.

B. Use of Funds for Transit Capital

22. AB 64/SB 30 provides that Milwaukee County may utilize \$26.0 million of Volkswagen settlement funds for the payment of all costs incurred by the County, in accordance with the settlement guidelines, to replace vehicles owned by the County. Under the bill, Milwaukee County would receive \$5.0 million in 2017-18 and \$21.0 million in 2018-19. Under the bill, there would be a \$19.5 million total reduction to Milwaukee County's county and municipal aid payment over 10 years (see Section C: Milwaukee County Aid Reduction).

23. In a memorandum to the Milwaukee County Board of Supervisors, the Director of the Milwaukee County Department of Administrative Services indicated that the \$26.0 million distribution would be used to replace eligible diesel transit busses currently in service by the Milwaukee County Transit System (MCTS). According to the memorandum, DOA partnered with Milwaukee County to develop an agreement to submit an eligible mitigation action proposal to the environmental mitigation trust that focuses on replacing eligible MCTS vehicles powered by diesel engines in accordance with the requirements of the partial consent decree (see Appendix I).

24. Milwaukee County would not likely have sufficient funds to carry out this size of capital investment in buses in the biennium without the proposed use of the VW settlement funds. Milwaukee County has determined that 96 transit buses, of 400 buses currently in MCTS service, are eligible for replacement based on the terms of the settlement agreement. The eligible buses are all within two years of their expected life, and therefore ready to be replaced through the County's ongoing bus replacement program. At a cost of \$480,000 per transit bus, the County estimates that the \$26.0 million would allow MCTS to replace 56 or more buses depending on the federal match (58% of buses in need of replacement). The buses would be replaced with clean diesel engines in the current model year or one model year prior as stipulated in the partial consent decree. Given its capital investment need and the number of buses eligible for replacement under the terms of the VW settlement agreement, the Committee could choose to approve the Governor's recommendation to provide the County \$26.0 million in Volkswagen settlement funds for the replacement of qualifying MCTS transit buses. [Alternative B.1]

25. State transit systems receive some federal funds for the purposes of replacing transit vehicles and transit facilities. Currently, the state's larger transit systems (population over 200,000) directly receive federal formula funding for capital purchases and operating expenses. Smaller transit systems in the state (population of 50,000 to 199,999) receive federal funds for capital projects that are distributed based on a priority system determined by DOT. Federal discretionary funding is also available for transit capital purchases. In 2016, DOT applied for \$15.0 million in capital grants and individual transit systems requested another \$8.0 million - but the Federal Transit Administration awarded Wisconsin only \$26,400.

26. According to DOT, based on capital requests submitted to the Department for the 2017 funding cycle, statewide transit capital needs for equipment and facility projects are approximately \$49.3 million. Looking beyond a single application cycle, the Wisconsin Public Transportation Association used DOT data to estimate the average transit capital funding shortfall to be \$23.9 million annually statewide between 2016 and 2019, or a \$96.6 million total over four years, after accounting for the receipt of federal monies.

27. Currently, Wisconsin does not fund a transit capital assistance program. The state Transportation Finance and Policy Commission, established by 2011 Wisconsin Act 32, recommended the creation of a state transit capital assistance program in their final report. The Commission found that an adequate and consistent funding source is needed to regularly replace buses and bus facilities and allow for some system expansion. The Commission's recommendation for the creation of a transit capital program at a funding level of \$15.0 million annually was included in DOT's 2015-17 agency budget request. In order to promote the purchase and use of alternative fuel and hybrid propulsion system vehicles, the Department proposed to fund up to 80% of the cost of the bus purchase and up to 100 percent of the cost difference between the purchase cost of an alternative fuel or hybrid vehicle and an equivalent diesel powered vehicle.

28. If the Committee believes that the VW settlement revenues should fund the replacement of transit vehicles statewide, the Committee could choose to reduce the funding that is appropriated from the trust to replace vehicles in the state fleet (A2a, A2b, A2c, or A3). Some amount of these funds could then be used instead to replace transit vehicles under a new statewide transit capital assistance program, similar to the program included in the Department's 2015-17 agency budget request [Alternatives B2a, B2b, B2c or B2d].

29. Alternatively, the Committee could choose to expand the statewide capital assistance program further by eliminating the \$26.0 million allocation to Milwaukee County [Alternative B3] and, instead, allocate \$26.0 million to the statewide transit capital assistance program [Alternative B3a]. Under any of the alternatives to the Governor's recommendations, all funding for a state transit capital assistance program could be appropriated in 2017-18 from a new DOT continuing PR appropriation, permitting DOT to award funding to transit systems over a period of time, not to exceed four years from the effective date of the budget bill. The continuing appropriation would allow the Department to allocate awards over a longer period of time so as to allow local governments enough time to budget for the required the local match. The four-year limit would ensure that VW settlement funds were awarded by DOT in a timely fashion.

C. Milwaukee County Aid Reduction

30. AB 64/SB 30 provides that Milwaukee County may utilize \$26 million of Volkswagen settlement funds for the payment of all costs incurred by the County, in accordance with the settlement guidelines, to replace vehicles owned by the County. DOA would be required to reduce county and municipal aid payments to Milwaukee County by \$1.95 million annually for 10 years once Milwaukee County receives a settlement distribution. Under the bill, it appears that the County could receive the full reduction to its county and municipal aid payment upon receipt of settlement distribution funds regardless of the timing and actual amount of a distribution to the County. On April 1, 2017, DOA submitted an errata to modify the bill to clarify that the reduction to Milwaukee County's county and municipal aid payment would only occur once settlement funds are distributed to the County. The errata would also clarify that Milwaukee County's county and municipal aid payment would be reduced before its utility aid payment would be reduced in order to maintain a total annual reduction of \$1.95 million [Alternative C1].

31. Under the bill, Milwaukee County would receive a total of \$26 million of settlement funds in the 2017-19 biennium. When accounting for the \$1.95 million reduction to the County's county and municipal aid payment over 10 years (a total reduction of \$19.5 million), Milwaukee County would receive net state funding of \$6.5 million from the proposed agreement.

32. The state's shared revenue formula has not been in effect since 2001. As a result, municipalities and counties have received the same aid amount as the prior year, except in years when funding levels changed with legislation. Shared revenue was converted to the current county and municipal aid program in 2004. Statutory county and municipal aid amounts distributed to Milwaukee County since 2004 are provided in Table 4.

TABLE 4

Milwaukee County Statutory County and Municipal Aid Amounts

<u>Year</u>	<u>Statutory Amount*</u>
2004 thru 2009	\$56,341,506
2010 thru 2011	55,343,365
2012 thru 2017	47,023,962

*Provides the gross amounts prior to statutorily required reductions. 2001 Act 16 requires a reallocation of \$20,101,300 from Milwaukee County's shared revenue allocation to the Wisconsin Child Welfare Program. Beginning in 2016, payments are further reduced by \$4 million annually due to 2015 Act 60 (Bucks Arena).

33. County and municipal aid provides unrestricted aid to counties and municipalities, which means the aid can be used for any purposes or activities approved by the local governing bodies. Typically, the aid is commingled with local governments' other revenues and is not directly tied to any specific function. As such, it supplants other types of revenues that would otherwise be raised to fund local governments' functions.

34. Generally, counties and municipalities use county and municipal aid to fund operations. As indicated in its adopted budget publications, Milwaukee County has applied its entire net county and municipal aid payment (\$22.9 million, excluding the County's utility aid payment) to fund ongoing operations in recent years. However, under the proposed agreement, the state would provide settlement revenues to fund the replacement of a capital expenditure (Milwaukee County's buses), which is generally financed by the County through borrowing if available considering the County's annual bonding limit and other capital needs. The capital funds would be provided in exchange for a 10-year, \$1.95 million annual reduction in the County's operating budget (via a county and municipal aid reduction). Therefore, the agreement would cause a funding shift from the County's operational budget to its capital budget, which could affect County funds used for operational purposes over the 10 years in which its county and municipal aid payment would be reduced.

35. Requiring a reduction to Milwaukee County's county and municipal aid payment in order to receive the settlement funds is essentially a means for the state to use the settlement funds to save \$19.5 million GPR over the 10-year period. Such a use of the funds could be seen to conflict with the spirit of the settlement agreement's aim of improving air quality. According to the administration, the Governor identifies Milwaukee County as an area with a history of compliance issues with air quality standards related to its designation as a "nonattainment" area for specific pollutants in 2004. The administration asserts that the proposed agreement between the state and Milwaukee County is in the spirit of the settlement agreement, as the purpose of allocating funds to Milwaukee County is to improve air quality through emissions reductions achieved by vehicle replacements. Nonetheless, it would be up to the settlement mitigation trust, when established, to make the determination as to whether the proposed aid reduction component of the agreement complies with the spirit of the settlement.

36. The Milwaukee County Executive is in support of the proposed agreement between the state and Milwaukee County. In a memorandum to the Milwaukee County Board of Supervisors, the County Executive described the proposed agreement as a positive provision in the state budget due to the additional revenue that the County will realize as a result of the agreement. In a memorandum to the Chairman of the Milwaukee County Board of Supervisors, the Milwaukee County Director of Department of Administrative Services described the net distribution of \$6.5 million as a grant from the state to the County, while the \$19.5 million reduction to the county and municipal aid payment over the 10-year period is characterized as a zero percent loan from the state to the County. An analysis conducted by the Milwaukee County Office of the Comptroller indicates the estimated net present value to the County of the proposed agreement is \$8.9 million.

37. The Milwaukee County Board of Supervisors has adopted a resolution opposing the proposed agreement between the state and Milwaukee County. The Board's opposition is primarily due to the predetermination that receiving the settlement funds in exchange of the reduction to the County's county and municipal aid payment is the best financing method for County bus replacements.

38. If the Committee agrees with the Governor that a portion of the settlement funds should be distributed to Milwaukee County due to its history of air quality compliance issues, it

could approve distribution of \$26 million of settlement funds to Milwaukee County. However, if the Committee is concerned with the impact reducing Milwaukee County's county and municipal aid payment will have on maintaining County operations funding, the Governor's recommendation to reduce Milwaukee County's county and municipal aid payment over a 10-year period could be deleted. This alternative would essentially provide the County a \$26 million grant to replace a portion of its buses [Alternative C2].

D. Technical Modification to the Bill

39. The statutory language created under the bill may not authorize DOA to utilize the miscellaneous appropriation to receive and expend funds from the environmental mitigation trust that are allocated to Wisconsin pursuant to the second partial consent decree that was proposed by the United States in December, 2016, concerning 3.0 liter TDI diesel engine vehicles. Rather, the statutory language created under the bill is specific to the funds allocated to Wisconsin under the first partial consent decree entered into by the United States and Volkswagen, concerning 2.0 liter TDI diesel engine vehicles. As discussed above, while the second partial consent decree has yet to be approved by the Court, under the proposed terms, Wisconsin would be allocated an additional \$3,523,438. Therefore, the Committee could amend the bill to more clearly provide that the miscellaneous appropriation created under the bill may be utilized to receive and expend all monies allocated to Wisconsin from the environmental mitigation trust resulting from the proposed second partial consent decree, as well as any future litigation that would result in additional funds being allocated to Wisconsin from the trust [Alternative D1].

ALTERNATIVES

The following alternatives have been categorized to correspond to the different subsections of discussion points, above. One alternative should be chosen from each category of alternatives. Sections A and B of the alternatives specifically relate to the expenditure of funds allocated to Wisconsin as a result of the environmental mitigation trust. The total amount appropriated by the Committee from the trust should not exceed \$21,000,000 in 2017-18, and should not exceed \$42,000,000 over the 2017-19 biennium, in accordance with the terms of the Volkswagen settlement.

A. Use of Trust Funds to Replace State Vehicles

1. Approve the Governor's recommendation and appropriate \$16,000,000 PR in 2017-18 from funds allocated to Wisconsin in the environmental mitigation trust for state vehicle replacement.

ALT A1	Change to	
	Base	Bill
PR	\$16,000,000	\$0

2. Reduce funding appropriated in 2017-18 from funds allocated to Wisconsin in the

environmental mitigation trust for state vehicle replacement in one of the following manners. Under Alternatives A2a, A2b, and A2c, the statutory language under the bill would be amended to reflect the adjustment in the amount allocated for state vehicle replacement:

a. Appropriate \$12,000,000 PR in 2017-18 for state vehicle replacement (75% of the funding recommended by the Governor).

ALT A2a	Change to	
	Base	Bill
PR	\$12,000,000	- \$4,000,000

b. Appropriate \$8,000,000 PR in 2017-18 for state vehicle replacement (50% of the funding recommended by the Governor).

ALT A2b	Change to	
	Base	Bill
PR	\$8,000,000	- \$8,000,000

c. Appropriate \$4,000,000 PR in 2017-18 for state vehicle replacement (25% of the funding recommended by the Governor).

ALT A2c	Change to	
	Base	Bill
PR	\$4,000,000	- \$12,000,000

3. Eliminate funding appropriated in 2017-18 from funds allocated to Wisconsin in the environmental mitigation trust for state vehicle replacement.

ALT A3	Change to	
	Base	Bill
PR	\$0	- \$16,000,000

B. Use of Trust Funds for Transit Capital

1. Approve the Governor's recommendation and appropriate \$5,000,000 in 2017-18 and \$21,000,000 in 2018-19 in settlement funds to Milwaukee County for the replacement of vehicles owned by the county.

ALT B1	Change to	
	Base	Bill
PR	\$26,000,000	\$0

2. Modify the Governor's recommendation and, in conjunction with the selection of the corresponding alternatives under A2a, A2b, A2c, or A3, create a statewide transit capital funding program, funded from a new DOT continuing PR appropriation in one of the following amounts. Specify that the transit capital assistance program would fund up to 80 percent of project costs, and up to 100 percent of the cost difference between the purchase cost of an alternative fuel or hybrid vehicle and an equivalent diesel powered vehicle. Eligible applicants for the transit capital assistance program would be those systems currently eligible for DOT's urban mass transit operating assistance program.

a. In addition to Alternative A2a, provide \$4,000,000 PR in 2017-18 for a statewide transit capital assistance program.

ALT B2a	Change to	
	Base	Bill
PR	\$4,000,000	\$4,000,000

b. In addition to Alternative A2b, provide \$8,000,000 PR in 2017-18 for a statewide transit capital assistance program.

ALT B2b	Change to	
	Base	Bill
PR	\$8,000,000	\$8,000,000

c. In addition to Alternative A2c, provide \$12,000,000 PR in 2017-18 for a statewide transit capital assistance program.

ALT B2c	Change to	
	Base	Bill
PR	\$12,000,000	\$12,000,000

d. In addition to Alternative A3, provide \$16,000,000 PR in 2017-18 for a statewide transit capital assistance program.

ALT B2d	Change to	
	Base	Bill
PR	\$16,000,000	\$16,000,000

3. Delete the Governor's recommendation and, in addition to Alternative C2, allocate the \$26,000,000 in settlement funds to a newly-created statewide transit capital assistance program (described under Alternative B2). This alternative would delete the \$26.0 million in funding for Milwaukee County and use the funds for a statewide transit capital program.

ALT B3	Change to	
	Base	Bill
PR	\$26,000,000	\$26,000,000

C. Milwaukee County's County and Municipal Aid Reduction

1. Approve the Governor's recommendation to require that DOA distribute a total of \$26,000,000 of Volkswagen settlement funds to Milwaukee County for the payment of all costs incurred by the County to replace county-owned vehicles. Consistent with the DOA errata, once settlement funds are distributed to the County, authorize the DOA Secretary to reduce Milwaukee County's county and municipal aid payment by \$1,950,000 each year beginning with the calendar year 2018 payment (the 2018-19 payment). Specify that the annual payment reduction would end with the calendar 2027 county and municipal aid payment, which would result in a total reduction of \$19,500,000 over the 10-year period. Specify that in any year in which the amount of its county and municipal aid payment is less than \$1,950,000, DOA would first reduce the County's county and municipal aid payment and second reduce its public utility aid payment so that the total amount of the annual reduction is maintained at \$1,950,000.

ALT C1	Change to	
	Base	Bill
GPR	- \$1,950,000	\$0

2. Delete the Governor's recommendation to reduce Milwaukee County's county and municipal aid payment by \$1,950,000 upon disbursement of Volkswagen settlement funds to the County for replacement of buses. Instead, distribute the \$26 million of settlement revenues to Milwaukee County and maintain the County's county and municipal aid payment at the level designated under current law.

ALT C2	Change to	
	Base	Bill
GPR	\$0	\$1,950,000

D. Technical Modification to the Bill

1. Modify the bill to specifically authorize DOA to utilize the miscellaneous appropriation to receive and expend funds placed into the trust as a result of the United States' proposed second partial consent decree with Volkswagen, as well as any future litigation that would

result in additional funds being allocated to Wisconsin from the trust.

2. Take no action.

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Appendix

APPENDIX I

Eligible Mitigation Actions and Eligible Mitigation Expenditures Under the Partial Consent Decree

Description of Eligible Vehicle or Equipment ¹	Scrapping of Vehicle or Equipment ²	Eligible Use of Funds ³	Extent To Which Funds May Be Utilized for Non-Government Owned Eligible Vehicle or Equipment ³	Extent To Which Funds May Be Utilized for Government Owned Eligible Vehicle or Equipment ³
Class 8 (+ 33,000 lbs.) local freight trucks and port drayage trucks (eligible large trucks)				
1992 thru 2009 engine model year Class 8 local freight or drayage. For beneficiaries that have state regulations that already require upgrades to 1992 thru 2009 engine model year trucks at the time of the proposed mitigation action, eligible large trucks also include 2010 thru 2012 engine model year Class 8 local freight or drayage.	Eligible large trucks must be scrapped.	Eligible large trucks may be repowered with any new diesel or alternative fueled engine, or all-electric engine. Eligible large trucks may also be replaced with any new diesel, alternate fueled, or all-electric vehicle, with an engine model year that corresponds to the year in which the mitigation action occurs or with one engine model year prior.	For non-government owned eligible Class 8 local freight trucks, the state may only draw funds from the trust in the amount of: (a) up to 40% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 25% of the cost of a new diesel or alternate fueled vehicle; (c) up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle. For non-government owned eligible drayage trucks, the state may only draw funds from the trust in the amount of: (a) up to 40% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 50% of the cost of a new diesel or alternate fueled vehicle; (c) up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.	For government owned eligible Class 8 large trucks, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 100% of the cost of a new diesel or alternate fueled vehicle; (c) up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
Class 4 thru 8 (14,001 lbs. to 16,000 lbs.) school buses, shuttle buses, or transit buses (eligible buses)				
2009 engine model year or older Class 4 thru 8 school buses, shuttle buses, or transit buses. For beneficiaries that have state regulations that already require upgrades to 1992 thru 2009 engine model year buses at the time of the proposed mitigation action, eligible buses also includes 2010 thru 2012 engine model year Class 4 thru 8	Eligible buses must be scrapped.	Eligible buses may be repowered with any new diesel, alternate fuel, or all-electric engine. Eligible buses may also be replaced with any new diesel, alternate fueled, or all-electric vehicle, with an engine model year that corresponds to the year in which the mitigation action occurs or with one engine model year prior.	For non-government owned eligible buses, the state may draw funds from the trust in the amount of: (a) up to 40% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 25% of the cost of a new diesel or alternate fueled vehicle; (c) up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine.	For government owned eligible buses and privately owned school buses under contract with a public school district, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 100% of the cost of a new diesel or alternate fueled vehicle; (c) up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 100% of the

Description of Eligible Vehicle or Equipment ¹	Scrapping of Vehicle or Equipment ²	Eligible Use of Funds ³	Extent To Which Funds May Be Utilized for Non-Government Owned Eligible Vehicle or Equipment ³	Extent To Which Funds May Be Utilized for Government Owned Eligible Vehicle or Equipment ³
school buses, shuttle buses, or transit buses.				cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
Freight switchers				
Pre-Tier 4 switcher locomotives that operate 1,000 or more hours per year.	Eligible freight switchers must be scrapped.	Eligible freight switchers may be repowered with any new diesel, alternate fueled, or all-electric engine (including generator sets). Eligible freight switchers may also be replaced with any new diesel, alternate fueled, or all-electric freight switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent state standards) as published in the Code of Federal Regulations for the engine model year in which the mitigation action occurs.	For non-government owned freight switchers, the state may draw funds from the trust in the amount of: (a) up to 40% of the cost of a repower with a new diesel or alternate fueled engine or generator set, including the costs of installation of such engine; (b) up to 25% of the cost of a new diesel or alternate fueled freight switcher; (c) up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 75% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher.	For government owned eligible freight switchers, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new diesel or alternate fueled engine or generate set, including the costs of installation of such engine; (b) up to 100% of the cost of a new diesel or alternate fueled freight switcher; (c) up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 100% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher.
Ferries and tugs				
Unregulated, Tier 1, or Tier 2 marine engines	Eligible ferries and tugs that are replaced must be scrapped.	Eligible ferries and tugs may be repowered with any new Tier 3 or Tier 4 diesel or alternate fueled engines, or with all-electric engines. Eligible ferries and tugs may also be upgraded with an EPA certified remanufacture system or an EPA verified engine upgrade.	For non-government owned eligible ferries and tugs, the state may only draw funds from the trust in the amount of: (a) up to 40% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; and (b) up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine.	For government owned eligible ferries and tugs, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; and (b) up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine.
Ocean going vessels shore power (marine shorepower)				
Systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth.	Not applicable.	The reimbursement of components of marine shorepower systems. Marine shore power systems must comply with international shore power design standards and should be supplied with power sourced from the local utility grid. Eligible marine shore power includes equipment for vessels that operate within the Great Lakes.	For non-government owned marine shore power, the state may only draw funds from the trust in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.	For government owned marine shore power, the state may draw funds from the trust in the amount of 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

Description of Eligible Vehicle or Equipment ¹	Scraping of Vehicle or Equipment ²	Eligible Use of Funds ³	Extent To Which Funds May Be Utilized for Non-Government Owned Eligible Vehicle or Equipment ³	Extent To Which Funds May Be Utilized for Government Owned Eligible Vehicle or Equipment ⁵
Class 4 thru 7 (26,001 lbs. to 33,000 lbs.) local freight trucks (eligible medium trucks)				
1992 thru 2009 engine model year Class 4 thru 7 local freight trucks. For beneficiaries that have state regulations that already require upgrades to 1992 thru 2009 engine model year trucks at the time of the proposed mitigation action, eligible medium trucks also includes 2010 thru 2012 model year Class 4 thru 7 local freight trucks.	Eligible medium trucks must be scrapped.	Eligible medium trucks may be repowered with any new diesel, alternate fueled, or all-electric engine. Eligible medium trucks may be replaced with any new diesel, alternate fueled, or all-electric vehicle, with an engine model year that corresponds to the year in which the mitigation action occurs or with one engine model year prior.	For non-government owned eligible medium trucks, the state may draw funds from the trust in the amount of: (a) up to 40% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 25% of the cost of a new diesel or alternate fueled vehicle; (c) up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.	For government-owned eligible medium trucks, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new diesel or alternate fueled engine, including the costs of installation of such engine; (b) up to 100% of the cost of a new diesel or alternate fueled vehicle; (c) up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (d) up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
Airport ground support equipment				
Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment. In addition, spark ignition engine powered airport ground support equipment that is uncertified, or certified to three grams per brake horsepower-hour or higher emissions.	Eligible airport ground support equipment must be scrapped.	Eligible airport ground support equipment may be repowered with an all-electric engine. Eligible airport ground support equipment may also be replaced with the same airport ground support equipment in electric form.	For non-government owned eligible airport ground support equipment, the state may only draw funds from the trust in the amount of: (a) up to 75% of the cost of a repower with a new all-electric engine, including the costs of the installation of such engine and charging infrastructure associated with the new all-electric engine; and (b) up to 75% of the cost of new all-electric airport ground support equipment, including charging infrastructure associated with such new equipment.	For government owned eligible airport ground support equipment, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new all-electric engine, including the costs of the installation of such engine and charging infrastructure associated with the new all-electric engine; and (b) up to 100% of the cost of new all-electric airport ground support equipment, including charging infrastructure associated with such new equipment.
Forklifts and port cargo handling equipment				
Forklifts with greater than 8,000 pounds of lift capacity.	Eligible forklifts and port cargo handling equipment must be scrapped.	Eligible forklifts and port cargo handling equipment may be repowered with an all-electric engine. Eligible forklifts and port cargo handling equipment may also be replaced with the same equipment in an all-electric form.	For non-government owned eligible forklifts and port handling equipment, the state may draw funds from the trust in the amount of: (a) up to 75% of the cost of a repower with a new all-electric engine, including costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (b) up to 75% of the cost of new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with the new equipment.	For government owned eligible forklifts and port handling equipment, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost of a repower with a new all-electric engine, including costs of installation of such engine and charging infrastructure associated with the new all-electric engine; and (b) up to 100% of the cost of new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with the new equipment.
Light duty zero emission vehicle supply equipment				
Light duty electric vehicle supply equipment includes Level 1, Level 2, or fast charging equipment (or	Not applicable.	The state may use up to 15% of its allocation from the trust to support costs necessary for, and directly connected to, the	Subject to the 15% limitation, the state may draw funds from the trust in the amount of: (a) up to 100% of the cost to purchase, install, and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a government owned property; (b) up to 80% of the cost to purchase, install, and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a	

Description of Eligible Vehicle or Equipment ¹	Scrapping of Vehicle or Equipment ²	Eligible Use of Funds ³	Extent To Which Funds May Be Utilized for Non-Government Owned Eligible Vehicle or Equipment ³	Extent To Which Funds May Be Utilized for Government Owned Eligible Vehicle or Equipment ³
<p>analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling, and is not consumer light duty electric vehicle supply equipment (meaning that the equipment is not located at a private residential dwelling that is not a multi-unit dwelling). [Electrical vehicle charging stations have various levels of charging speed, such as Level 1 or Level 2. Level 2 charging equipment charges vehicles at a greater speed.]</p> <p>Light duty hydrogen fuel cell vehicle supply equipment including hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (or analogous successor technologies) that is located in a public place.</p>		<p>acquisition, installation, operation, and maintenance of new light duty zero emission vehicle supply equipment for specific projects. Trust funds may not be made available or used to purchase or rent real estate, other capital costs (such as building construction), or general maintenance.</p>	<p>non-government owned property; (c) up to 60% of the cost to purchase, install, and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public; (d) up to 60% of the cost to purchase, install, and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public; (e) up to 33% of the cost to purchase, install, and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kilograms per day that will be available to the public; and (f) up to 25% of the cost to purchase, install, and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kilograms per day that will be available to the public.</p>	
<p>Diesel Emission Reduction Act option</p>				
<p>The state may also use trust funds for their non-federal voluntary match of the DERA program, thereby allowing the state to use such trust funds for actions not specifically enumerated above, but which are otherwise eligible under the federal DERA program, pursuant to all federal DERA guidelines. Trust funds may not be used to meet the non-federal mandatory cost share requirements under the DERA program.</p>				

¹ Tier 0, 1, 2, 3, and 4 vehicles refers to corresponding EPA engine emission classifications for non-road, locomotive and marine engines. Tier 4 standards require the fewest emissions.

² Under the settlement, scrapping means to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any eligible vehicle will be replaced as part of an eligible project, scrapping also includes the disabling of the chassis by cutting by cutting the vehicle's frame rails completely in half.

³ Under the settlement, repowering means to replace an existing engine with a newer, cleaner engine or power source that is certified by the EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repowering includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source, diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s), diesel engine upgrades in ferries and tugs with an EPA certified remanufacture system, or diesel engine upgrades in ferries and tugs with an EPA verified engine upgrade. All-electric and fuel cell repowers do not require EPA or CARB certification.

APPENDIX II

Attorney General Discretionary Settlement Funding

Separate from the environmental litigation, Wisconsin, along with other states, investigated Volkswagen for consumer protection law violations. The investigation of these consumer protection violations was resolved through a multistate settlement, which was initially set forth in a settlement agreement negotiated and signed by multistate leadership. Each participating state then resolved its claims against Volkswagen with the specific litigation process that was appropriate in that state. Wisconsin's consumer protection claims against Volkswagen were set forth in a civil complaint filed in the Dane County Circuit Court on October 27, 2016, and were resolved through the entry of an agreed upon consent judgement, which was approved by the Court on November 4, 2016. According to DOJ, the terms of the Wisconsin consent judgement were consistent with those entered in other states.

Under Wisconsin's consent judgement with Volkswagen, the Attorney General of Wisconsin received \$11,428,800 in unrestricted discretionary settlement monies. Attorney General discretionary settlement revenues are settlement funds that, as a result of certain litigation (most commonly cases involving consumer protection laws), are received by DOJ and may be utilized at the discretion of the Attorney General. In certain circumstances, the terms of the court's ruling or the state's settlement agreement requires that discretionary settlement funds be utilized for specific purposes, such as consumer protection purposes. In other instances, these funds may be expended for any purpose permitted by state law, at the discretion of the Attorney General. Discretionary settlement funds received by DOJ under the Volkswagen settlement are unrestricted, and, therefore, may be expended for any purpose permitted by state law, at the discretion of the Attorney General.

Of the \$11,428,800 received by DOJ, \$2,000,000 was transferred the Department of Financial Institutions to support the demolition, deconstruction, and rehabilitation of foreclosed and blighted properties in the City of Milwaukee. The remaining \$9,428,800 was retained by DOJ to be utilized as discretionary settlement funds. Of this amount, DOJ indicates that it intends to utilize approximately \$5.5 million to support ongoing IT modernization projects and improvements for its IT infrastructure and the law enforcement databases that DOJ manages. In addition, DOJ intends to utilize approximately \$4 million to support the operations of the Division of Criminal Investigation (DCI), including costs for special agent and criminal analyst overtime, maintenance and replacement of protective and investigative equipment, and other investigative services. Further, in his testimony before the Finance Committee, the Attorney General stated, "For this budget, we [DOJ] requested a budget which was less burdensome on the taxpayers of our state by agreeing with Governor Walker to use existing settlement funds to fill our structural budget gaps."

The Department of Justice receives discretionary settlement revenue in its administrative services gifts, grants, and proceeds continuing PR appropriation. The Department also utilizes this appropriation to receive and expend revenue related to services, conferences, and sales of publications and promotional materials prepared by DOJ. The table below identifies the condition of DOJ's Attorney General discretionary funding for 2015-16 and 2016-17 (through March 13, 2017). Amounts in the table include revenues and expenditures associated with unrestricted Attorney

General discretionary settlement funding, as well as miscellaneous services administered by DOJ (miscellaneous services account for between \$200,000 and \$400,000 of the revenues and expenditures). The table does not include discretionary settlement funding received by DOJ that must be utilized for consumer protection purposes. Unrestricted discretionary settlement funds received by DOJ as part of its litigation with Volkswagen are included in the amounts for 2016-17.

**Condition of Attorney General Discretionary Funds, 2015-16 and 2016-17
(Thru March 13, 2017)**

	<u>2015-16</u>	<u>2016-17</u>
Opening Balance	\$3,995,200	\$1,990,500
Revenue	2,822,800	11,743,600
Expenditures and Encumbrances	4,827,500	3,268,400
Other 2016-17 Commitments	<u>0</u>	<u>2,046,300</u>
Ending Balance	\$1,990,500	\$8,419,400

In separate actions taken to date by the Joint Committee on Finance, by unanimous votes, the Committee obligated \$3,360,000 from Attorney General discretionary funds. Obligated amounts were associated with funding for the treatment alternatives and diversion (TAD) grant program (\$500,000), beat patrol overtime grants (\$2,000,000), DOJ drug law enforcement (\$500,000), grants to the Wisconsin Court Appointed Special Advocate Association (\$160,000), and community institution security cost reimbursement grants (\$200,000). [Note that obligations for TAD, beat patrol overtime grants, and Wi CASA represent lapses to the general fund to offset GPR spending for these purposes. With regards to drug law enforcement, the Committee directed DOJ to spend \$500,000 of discretionary funding for this purpose. Finally, for community institution grants, the Committee authorized DOJ to utilize discretionary funding to award up to \$200,000 for these grants.]