**Legislative Fiscal Bureau**
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

June, 2019 Joint Committee on Finance Paper #505

# Volkswagen Settlement (Miscellaneous Appropriations, Shared Revenue and Tax Relief -- Direct Aid Payments)

[LFB 2019-21 Budget Summary: Page 290, #1, Page 383, #6]

## CURRENT LAW

Under current law, in accordance with settlement terms requiring that no more than two-thirds of Volkswagen environmental mitigation trust funding be spent in the first two years after the initial deposit, $42 million of Wisconsin's $67.1 million share of the Volkswagen settlement funds were appropriated during the 2017-19 biennium for replacing eligible state vehicles and for awarding grants to transit systems to replace eligible public transit vehicles. The remaining $25.1 million is available to be spent in the 2019-21 biennium. Under the settlement, Wisconsin must expend (or obligate for approved expenditures) at least 80% of its allocation within 10 years of October 2, 2017.

The Department of Administration (DOA) is currently authorized to utilize Volkswagen settlement funds received from the environmental mitigation trust to replace eligible vehicles in the state fleet (1992 to 2009 medium-duty and heavy-duty trucks), in accordance with settlement guidelines, and administer a competitive statewide transit capital assistance grant program. With regards to the funding for the replacement of vehicles in the state fleet, DOA may expend $10 million during the 2017-19 biennium for such a purpose. Under Act 59, DOA may, but is not required 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 and lapse the savings from the relevant state agency appropriations to the general fund.

DOA is required to distribute no more than $32 million from the Volkswagen settlement funds appropriation for the purpose of awarding funding to local transit systems under a newly created statewide transit capital assistance grant program under DOA. DOA is required to solicit and accept applications for transit capital grant funding and to award grants based on a competitive process. Preference must be given to any community or route that is considered a critical route for purposes of connecting employees with employers. An eligible applicant may use settlement funds awarded under the program only for the payment of costs incurred by the applicant to replace public transit vehicles in accordance with the settlement guidelines.

Any county or municipality with an urban mass-transit system that receives a transit capital assistance grant must receive a reduction to its county and municipal aid payment in the following amounts, over a 10 consecutive year period: (a) for a Tier A-1 or Tier A-2 urban mass transit system serving a population exceeding 200,000, 75% of the total amount of grants received; (b) for a Tier B urban mass transit system serving a population of at least 50,000, 20% of the total amount of grants received; and (c) for a Tier C urban mass transit system serving a population of less than 50,000, 10% of the total amount of grants received.

Base funding for the Volkswagen settlement appropriation is $21,000,000 PR annually.

**GOVERNOR**

Reestimate Volkswagen settlement funds by $4,000,000 in 2019-20 and by -$21,000,000 in 2020-21. Under the bill, Volkswagen settlement funds would be budgeted at $25,000,000 in 2019-20 and $0 in 2020-21. Although the provision would modify budgeted settlement expenditures in the biennium, total settlement revenues available to the state are not anticipated to change. Further, DOA would retain the authority to expend all monies received from the settlement trustee for purposes specified by statutes and the settlement.

Expand DOA's authority to use settlement monies to award grants for the replacement of public transit vehicles to also include awarding grants for the installation of charging stations for electric vehicles. Specify that of the $25,000,000 PR appropriated under the Volkswagen settlement funds continuing appropriation in 2019-21, DOA would be required to allocate approximately 60% of the grants for replacement of public transit vehicles, and approximately 40% for installation of charging stations for electric vehicles. Provide that the DOA Secretary may adjust the allocation if necessary. Repeal the restriction that DOA provide no more than $32 million in transit capital assistance grants.

Repeal the current law requirement that use of Volkswagen settlement funds for replacement of state fleet vehicles take precedence over transit capital assistance grants. Further, repeal the provision allowing the Secretary of DOA to lapse to the general fund any GPR or PR amounts saved by state agencies in their replacement of state fleet vehicles. Finally, repeal the restriction that no more than $21 million of Volkswagen settlement funds be expended in 2017-18.

Modify the current law percentage reduction in county and municipal aid payments, from 75% to 20%, that is required for each county or municipality that receives a Volkswagen transit capital assistance grant for an urban mass transit system serving a population exceeding 200,000 (Milwaukee County and Madison). The 20% reduction is the same amount required for urban mass transit systems serving populations between 50,000 and 200,000.

## DISCUSSION POINTS

### Background

1. On October 25, 2016, and May 17, 2017, judicial settlements were reached resolving consumer protection claims raised against Volkswagen by a multistate coalition of state attorneys general, as well as actions brought by the US Environmental Protection Agency, the US Department of Justice, the Federal Trade Commission, California, and car owners in private class action suits. Generally, the actions alleged that Volkswagen sold 2.0- and 3.0- liter diesel vehicles in the United States equipped with "defeat device" software intended to circumvent applicable emissions standards for certain air pollutants, and concealed the existence of the defeat devise from regulators and the public.

2. The settlements established an environmental mitigation trust fund administered by a court appointed third party trustee (Wilmington Trust, N.A.) and require Volkswagen to pay more than $2.9 billion into the trust. Wisconsin, as a certified trust beneficiary, will receive $67.1 million ($63.6 million for 2.0-liter engines and $3.5 million for 3.0-liter engines) over a period of 10 years to offset the excess nitrogen oxides (NOx) pollution emitted by affected Volkswagen vehicles in Wisconsin.

3. The purpose of the trust is to achieve reductions in NOx emissions in the United States. Settlement terms establish eligible 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 (electric or hydrogen vehicle charging stations). 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. The Appendix 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.

### Use of Funds for Transit Capital

4. 2017 Wisconsin Act 59 established the transit capital assistance grant program, administered by DOA, to competitively award up to $32 million to eligible applicants to replace eligible public transit vehicles, giving preference to communities or routes that DOA determines are critical for connecting employees with employers. The program awards funding for the replacement of 1992-2009 engine model year class 4-8 transit buses with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the eligible bus replacement occurs or one engine model year prior. In addition, the program funds the scrapping of any replaced bus within 90 days of accepting delivery of the new bus.

5. The transit capital assistance grant program, as administered by DOA, has four primary

objectives: (a) replace and scrap eligible public transit vehicles in accordance with the settlement guidelines and applicable state law; (b) replace eligible public transit vehicles in communities or on routes that are critical for connecting employees with employers; (c) improve air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction; and (d) fund projects that can be implemented efficiently and effectively (cost and time). The evaluation criteria currently used by DOA scores applicants based on the following weighted criteria: current use of transit buses (20%), future use of transit buses (25%), transportation to employment (30%), NOx reduction (15%), and project timeline (10%).

6. In response to DOA's transit capital grant announcement released on August 23, 2018, local government applicants submitted requests to replace 96 eligible busses for a total replacement cost of $52.8 million. On March 8, 2019, DOA issued intent to award letters to 10 applicants for $32 million in transit capital assistance grants to replace a total of 58 buses. According to DOA, award amounts constitute an intent to issue grant awards and are contingent upon successful negotiations between DOA and the applicant. Additional discussion on the number of bus replacements and total funding awarded to each local government awardee is provided later.

7. State transit systems receive some federal funds for the purposes of replacing transit vehicles. Currently, the state's larger transit systems (population over 200,000) directly receive federal formula funding for capital purchases. 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. According to DOT, based on capital requests submitted to the Department for the 2019 funding cycle, statewide transit capital needs for equipment and facility projects are approximately $60.2 million. Looking beyond a single application cycle, DOT estimates that the total transit capital funding shortfall over the three-year period between 2019 and 2021 to be $94.6 million. Although this figure includes facility projects which are not eligible for funding under Volkswagen settlement guidelines, the magnitude of the projected overall capital funding shortfall indicates that additional transit capital funding is needed by local governments.

8. Currently, Wisconsin does not have a transit capital assistance program with a dedicated source of state funding. However, under a separate recommendation the Governor would provide $10,000,000 SEG in 2020-21 to fund a newly created transit capital assistance grant program administered by DOT. This would establish a base funding level going forward that would fund $20.0 million in transit capital grants each biennium. Under the bill, DOT's transit capital assistance grant program would use the same definition of "public transit vehicle" as currently in use by DOA for the administration of the Volkswagen transit capital assistance grant program. However, given that the current law transportation fund revenues available for above-base transportation programming are limited, and given that there is an existing transit capital grant program funded from VW settlement proceeds, the Committee may want to focus bus replacement efforts within existing VW settlement resources at this time. The Committee could choose to approve the Governor's recommendation to authorize DOA to spend an additional $15,000,000 of the Volkswagen settlement funds for the purposes of making grants to local governments to replace eligible public transit vehicles. [Alternative A1]

9. According to DOA, local governments requested $52.8 million in settlement funds to

replace 96 eligible busses under the Department's transit capital grant program. Of that request, the maximum allowable allocation of $32 million was awarded, resulting in $22.8 million in eligible replacement vehicle costs that could not be funded due to the $32 million limit. Given that the demand for funding under the existing program exceed available funds by $22.8 million, the Committee could consider authorizing DOA to spend $20,000,000 of the Volkswagen settlement funds for the purposes of making grants to local governments to replace eligible public transit vehicles. The selection of this alternative would result in a lower amount of settlement funding available for electric charging stations (addressed in the following section). [Alternative A2]

10. The state is under no obligation to authorize additional expenditures of Volkswagen settlement funds in the 2019-21 biennium. Therefore, the Committee could decide to take no action on the Governor's budget recommendation, thereby maintaining the current law restriction that DOA provide no more than $32 million in transit capital assistance grants. Under this alternative, future Legislatures could again consider expanding the transit capital program or use settlement funds for other eligible mitigation activities such as replacing diesel-powered school buses. [Alternative A3] The Committee could still provide funding for transit capital by approving the Governor's other recommendation to provide $10,000,000 SEG in 2020-21 to fund a newly created transit capital assistance grant program administered by DOT. [See Paper #711, "Mass Transit Operating Assistance and Transit Capital Assistance Grants"]

**Use of Funds for Electric Charging Stations**

11. The bill would expand the authorized use of funds under DOA's transit capital assistance grant program for the replacement of public transit vehicles to also include the installation of charging stations for electric vehicles. The administration indicates that use of Volkswagen settlement funds for electric charging stations is part of advancing clean and renewable energy initiatives.

12. Under the Wisconsin Beneficiary Mitigation Plan, Wisconsin may use up to fifteen percent (15%) of its allocation on the acquisition, installation, operation, and maintenance of new light duty zero emission vehicle supply equipment. The settlement funds may not be used to purchase or rent real estate, other capital costs (for example construction of buildings or parking facilities), or general maintenance. Light duty electric vehicle supply equipment includes Level 1 (110-120 volt), Level 2 (220-240 volt), or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling. Funding may not be used for electric charging stations at a private single family home.

13. Subject to the 15% limitation above, funds may be drawn 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 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 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.

14. The amount allocated to electronic charging stations in the bill, 40% of available funding or about $10 million, is the maximum amount that can be allocated to electronic charging stations under the settlement. In addition, under the bill, the Secretary of DOA is allowed to decrease the amount allocated to electronic charging stations and increase funds for the Transit Capital Grant. Given that the administration has not provide further detail on the administration of the electric charging station grant program, DOA may provide up to the match specified in the Wisconsin Beneficiary Mitigation Plan discussed above.

15. The administration recommends using Volkswagen settlement funds to install electronic charging stations as part of the administration's commitment "to clean and renewable energy initiatives." It could be argued that funding electric charging stations could also provide infrastructure that would be of assistance to both transportation and tourism. For these reasons, the Committee could allocate 40% of the remaining $25.1 million ($10,000,000) in Volkswagen settlement funds to electric charging stations. [Alternative A1]

16. The allocation of the maximum allowable amount is not tied to any specific project or projects. In fact, the bill would allow the DOA Secretary to allocate less than $10 million to electronic charging stations in order to increase Transit Capital Grants. While still providing some electric charging infrastructure, the Committee may wish to allocate a lower amount such as half the recommended amount, which would be 20% of the remaining $25.1 million ($5 million) in Volkswagen settlement funds to electric charging stations. [Alternative A2]

17. On the other hand, since Volkswagen settlement funds are allowed to be spent in ways other than on electric charging stations as described in the Wisconsin Beneficiary Mitigation Plan, the Committee may wish to take no action at this time. [Alternative A3]

**Allow DOA Secretary to Adjust Allocation of Funding Between Grant Programs**

18. The bill recommends that the DOA Secretary may adjust the allocation of funds between the capital grant and electronic charging station programs if necessary. Given that 40% of the remaining funds is the maximum that can be used for charging stations under the mitigation plan, the ability of the DOA Secretary to reallocate funds between the programs would effectively be the ability to reduce funding to charging stations and increase funding to the capitol grant program if necessary.

19. Allowing the DOA Secretary to have the flexibility to reallocate funding as described above would allow the administration to assess interest in the electric charging station program and reallocate funding if interest in the program lagged without requiring separate legislation. [Alternative B1]

20. On the other hand, the Committee could decide that if a reallocation of funding is needed, it can be addressed in future legislation. [Alternative B2]

**State Fleet Lapse Option**

21. Under state statute, DOA is designated as the state's primary purchasing authority for all necessary materials, supplies, equipment, permanent personal property, miscellaneous capital, and contractual services. Additionally, statute specifies that all aircraft, trucks, and automobiles must be purchased through DOA. Therefore, DOA manages the vehicle procurement process for all agencies. A vehicle purchase is initiated at the request of an agency, and purchases must be approved by DOA and the Governor. A vehicle purchase may either add to the agency's fleet or replace an existing fleet vehicle. To replace a vehicle already in its fleet, an agency must demonstrate that the vehicle is no longer operable (for example, because it has been damaged beyond repair in an accident) or that the vehicle has reached the required age or will have been driven a sufficient number of miles to be replaced. In 2014, replacement criteria were revised and vary depending on the weight and type of vehicle (between 100,000 and 200,000 miles or between eight and 12 years).

22. The prior biennial budget allocated $10 million for the replacement of state fleet vehicles. As of April, 2019, the administration has not spent or obligated these funds. The administration is in the process of identifying vehicles eligible for replacement under the settlement. The administration indicates that of 368 mid-and heavy-duty trucks from all agencies, 149 vehicles are not eligible for replacement under the Volkswagen settlement agreement, 184 have yet to be evaluated, and 35 are eligible.

23. The administration recommends the repeal of the provision allowing the Secretary of DOA to lapse to the general fund any GPR or PR amounts saved by state agencies in their replacement of state fleet vehicles. As previously discussed, the language allowing the lapse is permissive rather than mandatory. The administration indicates that "only a limited number of state vehicles are likely to be purchased with Volkswagen settlement funds that would have been otherwise purchased through GPR or PR appropriations." Thus, the administration indicates that savings to the state would be relatively small if this language were retained.

24. Given that any savings from the lapse of agency funds under this provision maybe small, the Committee may choose to delete the DOA Secretary's ability to ask an agency to lapse funding after using Volkswagen settlement funding to replace an eligible vehicle. [Alternative C1] As a result, agencies could use Volkswagen settlement funds to replace eligible fleet vehicles without having to perhaps lapse agency funds.

25. On the other hand, since the current language is permissive, the Committee may choose to keep the language in statute. [Alternative C2] As a result, after agencies use settlement funds to replace eligible vehicles, the DOA Secretary may require the agency to lapse any savings associated with the use of settlement funds.

**County and Municipal Aid Payment Reductions**

26. Under the Governor's recommendation, if an urban mass transit system serving a population exceeding 200,000 (Milwaukee County or City of Madison) receives a transit capital assistance grant payment using Volkswagen settlement funds, the amount of the county and municipal aid reduction incurred by that municipality over the succeeding 10 years would be reduced from 75%

under current law to 20% under the bill. As modified by the administration's errata, the Governor's intent would be clarified to specify that the change in the aid reduction factor from 75% to 20% would not affect the 75% aid reduction requirement for transit capital grant awards announced in a notice of intent to award letter distributed to grant awardees prior to the effective date of the bill. Under this provision as modified, the amount of GPR that would be required to lapse from the county and municipal aid appropriation to the general fund associated with future grant awards to these two transit systems would be reduced over 10 years, as compared to current law.

27. The table below shows the applicants that DOA intends to award grants along with the number of buses to be replaced and the total grant amount to be awarded for those replacements. The award amounts indicated in the table constitute an intent to issue grant awards only and are contingent upon successful negotiations between DOA and the applicant. Therefore, the final grant award amounts could differ from those amounts indicated in the table. The last two columns of the table show the current law county and municipal aid reduction factors and an estimate of the cumulative reduction in county and municipal aid that would occur over 10 years.

**Transit Capital Grant Awards and Estimated Aid Reduction Amounts**

| Applicant | Bus Replacements | Estimated Grant Award | Shared Revenue Reduction Factor | Estimated Cumulative Shared Revenue Reduction Over 10 Years |
|---|---|---|---|---|
| City of Appleton | 15 | $7,688,850 | 20% | $1,537,770 |
| City of Eau Claire | 3 | 1,970,700 | 20 | 394,140 |
| City of Green Bay | 4 | 1,846,000 | 20 | 369,200 |
| City of Janesville | 3 | 1,504,500 | 20 | 300,900 |
| City of La Crosse | 1 | 421,500 | 20 | 84,300 |
| City of Madison | 10 | 4,798,800 | 75 | 3,599,100 |
| Milwaukee County | 11 | 5,461,500 | 75 | 4,096,125 |
| City of Racine | 6 | 6,237,658 | 20 | 1,247,532 |
| City of Sheboygan | 1 | 451,500 | 20 | 90,300 |
| City of Wausau | 4 | 1,618,992 | 20 | 323,798 |
| Total | 58 | $32,000,000 | | $12,043,165 |

28. As shown in the above table, based on transit capital grant awards intended to be awarded as of March, 2019, the estimated cumulative reduction in shared revenue payments over 10 years would be $3.6 million (approximately $360,000 annually) for the City of Madison and $4.1 million for Milwaukee County (approximately $410,000 annually). The required shared revenue reductions over 10 years represent an estimated 7.6% decrease in county and municipal aid payments to the City of Madison and an estimated 0.9% decrease in county and municipal aid payments to Milwaukee County.

29. Under current law, county and municipal aid payments are made on the fourth Monday in July (15% of total) and the third Monday in November (85% of total). According to DOA, county and municipal aid reductions for those local governments that receive a transit capital grant award

will commence in the state fiscal year following the fiscal year that the first grant payment is made to a local government. For example, if a municipality receives a grant payment in 2019-20, the first annual reduction to occur would be to 2020-21 aid payments made for calendar year 2020 (July, 2020 and November, 2020 aid payments).

30. According to DOA, grant payments will be issued after grantees take delivery of eligible buses, scrap replaced buses and the Department receives and approves completed reimbursement documents. Actual grant payments may vary based on order dates, manufacturing period, delivery dates and other factors. Based on these factors, DOA estimates the following grant payment amounts to be made in each of the next four fiscal years: 0$ in 2018-19; $22.0 million in 2019-20; $7.9 million in 2020-21; and $2.1 million in 2021-22. Contractual agreements between the state and transit agency awardees are currently being negotiated. As a result, no estimated lapse amounts associated with the required reductions in county and municipal aid payments to grant awardees are included in the bill. However, given DOA's estimates of the amount of grants to be awarded in 2019-20, it is estimated that $800,000 would lapse to the general fund in 2020-21.

31. 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. Since the conversion from the shared revenue program to the county and municipal aid program, three reductions to the state funding level have occurred (2004, 2010 and 2012). As a result, county and municipal aid is 20.7% lower in 2019, than the amount provided in 2003. In prior action, the Committees maintained base funding in county and municipal aid for the 2019-21 biennium.

32. 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. Generally, counties and municipalities use county and municipal aid to fund operations. Transit capital grant funding will assist both Milwaukee County and the City of Madison in purchasing additional busses at a lower cost than without the Volkswagen settlement grant funding. However, capital purchases such as busses are typically financed by local governments through borrowing, which is outside local levy limit requirements. Conversely, the county and municipal aid reductions required under the program have the effect of reducing available revenues in each community's operating budget, which cannot be replaced with property tax levy under levy limits.

33. Under the Governor's recommendation, the City of Madison and Milwaukee County would receive a 20% reduction to county and municipal aid payments for transit capital grant payment issued after the effective date of the bill. This 20% reduction would be the same amount required for urban mass transit systems serving populations between 50,000 and 200,000. If the Committee agrees that each local government with a population of a least 50,000 should receive equal treatment in receiving a transit capital grant, the Committee could choose to approve the Governor's recommendation. Incorporating the administration's errata would ensure that existing grant awards made prior to the effective date of the bill would still require a 75% revenue county and municipal aid reduction for the City of Madison and Milwaukee County. [Alternative D1]

34. The purpose of the Trust is to support environmental programs throughout the country that will reduce NOx in the atmosphere by an amount equal to or greater than the combined NOx pollution caused by the cars that are the subject of this lawsuit. Requiring a reduction in county and municipal aid payments in order to receive the settlement funds is essentially a means for the state to use settlement proceeds to save 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. The Committee could eliminate the shared revenue reduction component from the program for all prior and future transit capital grant awards. Although the selection of this alternative would result in no GPR lapsing to the general fund from the awardee's county and municipal aid payment, no changes to the bill are required because estimated lapse amounts associated with the required reductions in county and municipal aid payments to grant awardees were not estimated in the bill. [Alternative D2]

35. The 2017-19 recommended budget specified that Milwaukee County may utilize $26 million of Volkswagen settlement funds to replace eligible vehicles (busses) owned by the County. The bill also provided that Milwaukee County's county and municipal aid payment be reduced by a total of $19,500,000 over the 10-year period, resulting in a 75% reduction factor. At the time of the budget deliberations, although the Milwaukee County Board of Supervisors adopted a resolution opposing the proposed agreement between the state and Milwaukee County, the Milwaukee County Executive was in support of the proposed 75% shared revenue reduction agreement between the state and Milwaukee County. Given prior endorsements of the 75% shared revenue reduction factor from the Milwaukee County Executive and the Committee during the 2017-19 budget deliberations, the Committee could decide to only apply the Governor's recommendation to reduce the aid reduction factor from 75% to 20% for the City of Madison [Alternative D3] or take no action on this provision thereby retaining the 75% aid reduction factor for both the City of Madison and Milwaukee County [Alternative D4].

## ALTERNATIVES

### A. Transit Capital Assistance Grant Program and Electric Charging Stations

1. Approve the Governor's recommendation to specify that DOA allocate 60% of available Volkswagen settlement funding ($15 million) for replacement of public transit vehicles and a maximum of 40% of available Volkswagen settlement funding ($10 million) to electric charging stations. Provide that the DOA Secretary may adjust the allocation if necessary. Repeal the restriction that DOA provide no more than $32 million in transit capital assistance grants. Reestimate Volkswagen settlement funds by $4,000,000 in 2018-20 and by -$21,000,000 in 2019-20. Under this alternative, Volkswagen settlement funds would be budgeted at $25,000,000 in 2019-20 and $0 in 2020-21.

| ALT A1 | Change to Base | Change to Bill |
|---|---|---|
| PR | - $17,000,000 | $0 |

2. Modify the Governor's recommendation to specify that DOA allocate 80% of available

Volkswagen settlement funding ($20 million) for replacement of public transit vehicles and a maximum of 20% of available Volkswagen settlement funding ($5 million) to electric charging stations. Repeal the restriction that DOA provide no more than $32 million in transit capital assistance grants. Reestimate Volkswagen settlement funds by $4,000,000 in 2018-20 and by -$21,000,000 in 2019-20. Under this alternative, Volkswagen settlement funds would be budgeted at $25,000,000 in 2019-20 and $0 in 2020-21.

| ALT A2 | Change to Base | Change to Bill |
|---|---|---|
| PR | - $17,000,000 | $0 |

3. Take no action. Under this alternative, DOA is limited to providing no more than $32 million in transit capital assistance grants. Statutes allowing allocations for electric charging stations would not be adopted.

| ALT A3 | Change to Base | Change to Bill |
|---|---|---|
| PR | $0 | - $17,000,000 |

**B. Allow DOA Secretary to Reallocate Funding**

1. Approve the Governor's recommendation to allow the DOA Secretary to adjust the allocation of funds between the capital grant and electronic charging station programs if necessary

2. Take no action.

**C. State Fleet**

1. Approve the Governor's recommendation to delete the DOA Secretary's ability to lapse to the general fund any GPR or PR amounts saved by state agencies in their replacement of state fleet vehicles using Volkswagen settlement funding.

2. Take no action.

**D. Shared Revenue Reduction for Milwaukee County**

1. Approve the Governor's recommendation to modify the current law percentage reduction in county and municipal aid payments, from 75% to 20%, that is required for each local government that receives a Volkswagen transit capital grant for an urban mass transit system serving a population exceeding 200,000 (Milwaukee County and Madison). Incorporate the administration's errata, as intended, to limit the application of the 20% aid reduction provision to grant awards indicated in a notice of intent to award after the effective date of the bill. Lapse an estimated $800,000 to the general fund in 2020-21 associated with required reductions in county and municipal aid payments from awardees of transit capital grants paid in 2019-20.

| ALT D1 | Change to Base | Bill |
|---|---|---|
| GPR-Lapse | $800,000 | $800,000 |

2. Eliminate the requirement for county and municipal aid payment reductions for the receipt of transit capital grants. The selection of this alternative would apply to all prior and future awards. No estimate of GPR lapse amounts were included in the bill.

3. Approve the Governor's recommendation, as modified to only apply the required 20% reduction in county and municipal aid payments for the receipt of a Volkswagen transit capital grant for Tier A-2 urban mass transit system (City of Madison). Incorporate the administration's errata, as intended, to limit the application of the 20% aid reduction provision to grant awards indicated in a notice of intent to award after the effective date of the bill. Under this alternative, the 75% aid reduction factor would continue to apply to Milwaukee County. Lapse an estimated $800,000 to the general fund in 2020-21 associated with required reductions in county and municipal aid payments from awardees for transit capital grants paid in 2019-20.

| ALT D3 | Change to Base | Bill |
|---|---|---|
| GPR-Lapse | $800,000 | $800,000 |

4. Take no action. The required 75% reduction factor in county and municipal aid payments for the City of Madison and Milwaukee County would continue to apply. Lapse an estimated $800,000 to the general fund in 2020-21 associated with required reductions in county and municipal aid payments from awardees for transit capital grants paid in 2019-20.

| ALT D4 | Change to Base | Bill |
|---|---|---|
| GPR-Lapse | $800,000 | $800,000 |

Prepared by: Sarah Wynn and Ryan Horton
Appendix

# APPENDIX

## 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.<br><br>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] |
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| 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] | 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] |
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| **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 | |

<table>
<tr><th>Description of Eligible Vehicle or Equipment [1]</th><th>Scrapping of Vehicle or Equipment [2]</th><th>Eligible Use of Funds [3]</th><th>Extent To Which Funds May Be Utilized for Non-Government Owned Eligible Vehicle or Equipment [3]</th><th>Extent To Which Funds May Be Utilized for Government Owned Eligible Vehicle or Equipment [3]</th></tr>
<tr><td>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.]<br><br>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.</td><td></td><td>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.</td><td colspan="2">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.</td></tr>
<tr><td colspan="5">Diesel Emission Reduction Act option</td></tr>
<tr><td colspan="5">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.</td></tr>
</table>

[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.