

ASSEMBLY BILL NO. 488—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE OFFICE OF FINANCE  
IN THE OFFICE OF THE GOVERNOR)

MAY 24, 2021

Referred to Committee on Ways and Means

SUMMARY—Revises provisions governing the Department of Motor Vehicles. (BDR 43-1096)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Executive Budget.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the Department of Motor Vehicles; reenacting and extending the imposition of a technology fee on certain transactions by the Department; providing for ratification of certain actions and retroactive application; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

In 2015, section 3 of Senate Bill No. 502 (S.B. 502) enacted NRS 481.064 which required the Department of Motor Vehicles to: (1) impose a nonrefundable technology fee of \$1 to the existing fee for any transaction performed by the Department for which a fee is charged; and (2) use the technology fee to pay the expenses associated with implementing, upgrading and maintaining the platform of information technology used by the Department. (Chapter 394, Statutes of Nevada 2015, at page 2211) In addition, section 7 of S.B. 502 included a sunset provision which provided that the collection of the technology fee expired on June 30, 2020. (Chapter 394, Statutes of Nevada 2015, at page 2213) However, in 2019, section 1 of Senate Bill No. 542 (S.B. 542) extended the existing sunset provision for the collection of the technology fee from June 30, 2020, until June 30, 2022. (Chapter 400, Statutes of Nevada 2019, at page 2502)

On May 13, 2021, the Nevada Supreme Court invalidated S.B. 542 because the bill extended the existing sunset provision from June 30, 2020, until June 30, 2022, for the collection of the technology fee imposed by the Department under NRS 481.064. The Nevada Supreme Court determined that by extending the existing sunset provision for the collection of the technology fee, S.B. 542 created, generated or increased public revenue and, therefore, was not passed in compliance with Article 4, Section 18 of the Nevada Constitution, which requires a two-thirds majority vote of the members of each House of the Legislature to pass a bill which



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“creates, generates, or increases any public revenue in any form.” (Nev. Const. Art. 4, § 18; *Legislature v. Settelmeier*, 137 Nev. Adv. Op. 21, --- P.3d --- (2021))

As a general rule, the Legislature may cure constitutional defects in a prior legislative act by reenacting or amending its provisions in a subsequent legislative act in a manner that remedies the constitutional defects. (*McCormick v. Sixth Jud. Dist. Ct.*, 69 Nev. 214, 221 (1952) (citing *State v. Silver Bow Ref. Co.*, 252 P. 301, 304 (Mont. 1926)); *County of Clark v. City of Las Vegas*, 97 Nev. 260, 263 (1981)) In addition, the Legislature may, by a subsequent legislative act, ratify actions taken by the executive branch or a local governmental entity under a prior legislative act declared to be invalid and thereby give such actions retroactive validity. (*Swayne & Hoyt, Ltd. v. United States*, 300 U.S. 297, 299-303 (1937); *Hodges v. Snyder*, 261 U.S. 600, 601-04 (1923); *Charlotte Harbor & N. Ry. v. Welles*, 260 U.S. 8, 9-12 (1922); *Rafferty v. Smith, Bell & Co.*, 257 U.S. 226, 231-32 (1921); *United States v. Heinszen*, 206 U.S. 370, 382-91 (1907)) For example, if the executive branch or a local governmental entity collects a tax or fee under a prior legislative act declared to be invalid, the Legislature may, by a subsequent legislative act, ratify the collection of the tax or fee and thereby give such collection retroactive validity. (*Rafferty v. Smith, Bell & Co.*, 257 U.S. 226, 231-32 (1921); *United States v. Heinszen*, 206 U.S. 370, 382-91 (1907); *Chicago, Rock Is. & Pac. Ry. v. Streepy*, 236 N.W. 24, 25-28 (Iowa 1931); *N. Wasco County People's Util. Dist. v. Wasco County*, 305 P.2d 766, 772-73 (Or. 1957); *State ex rel. Van Emmerik v. Janklow*, 304 N.W.2d 700, 701-06 (S.D. 1981), *appeal dismissed*, 454 U.S. 1131 (1982); *Whitlock v. Hawkins*, 53 S.E. 401, 403-09 (Va. 1906))

**Sections 1-5** of this bill reenact and extend until June 30, 2026, the provisions relating to the collection and use of the technology fee imposed by the Department. **Section 6** of this bill provides for the ratification of any actions taken by the Department or any other agency, officer or employee of the State of Nevada from and after June 30, 2020, to carry out the provisions relating to the collection and use of the technology fee imposed by the Department, and **section 6** also provides that such ratification applies retroactively from and after June 30, 2020. Finally, **section 7** of this bill provides that this bill becomes effective upon passage and approval and applies retroactively from and after June 30, 2020.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 394, Statutes of Nevada 2015, at page 2211, is hereby amended by adding thereto a new section to be designated as section 7.3, immediately following section 7, to read as follows:

*Sec. 7.3. 1. This section becomes effective and applies retroactively from and after June 30, 2020.*

*2. Sections 1, 3 and 4 of this act are hereby reenacted and apply retroactively from and after June 30, 2020, and expire by limitation on June 30, 2026.*

**Sec. 2.** Section 1 of chapter 394, Statutes of Nevada 2015, at page 2211, is hereby reenacted to read as follows:



Section 1. Chapter 481 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 3.** Section 3 of chapter 394, Statutes of Nevada 2015, at page 2211, is hereby reenacted to read as follows:

Sec. 3. *The Department shall add a nonrefundable technology fee of \$1 to the existing fee for any transaction performed by the Department for which a fee is charged. The technology fee must be used to pay the expenses associated with implementing, upgrading and maintaining the platform of information technology used by the Department.*

**Sec. 4.** Section 4 of chapter 394, Statutes of Nevada 2015, at page 2211, is hereby reenacted to read as follows:

Sec. 4. NRS 481.079 is hereby amended to read as follows:

481.079 1. Except as otherwise provided by *section 3 of this act or any other* specific statute, all taxes, license fees and money collected by the Department must be deposited with the State Treasurer to the credit of the Motor Vehicle Fund.

2. If a check or any other method of payment accepted by the Department in payment of such fees is returned to the Department or otherwise dishonored upon presentation for payment:

(a) The drawer or any other person responsible for payment of the fee is subject to a fee in the amount established by the State Controller pursuant to NRS 353C.115 in addition to any other penalties provided by law; and

(b) The Department may require that future payments from the person be made by cashier's check, money order, traveler's check or cash.

3. The Department may adjust the amount of a deposit made with the State Treasurer to the credit of the Motor Vehicle Fund for any cash shortage or overage resulting from the collection of fees.

**Sec. 5.** Section 7 of chapter 394, Statutes of Nevada 2015, at page 2213, is hereby amended to read as follows:

Sec. 7. ~~[This]~~ *Except as otherwise provided in section 7.3 of this act or any other specific statute, this* act becomes effective on July 1, 2015, and expires by limitation on June 30, 2020.

**Sec. 6.** Any actions taken by the Department of Motor Vehicles or any other agency, officer or employee of the State of Nevada from and after June 30, 2020, to carry out the provisions of



1 sections 1, 3 and 4 of chapter 394, Statutes of Nevada 2015, at page  
2 2211, including, without limitation, any actions relating to the  
3 collection and use of the nonrefundable technology fee pursuant to  
4 those sections, are hereby authorized, validated and ratified, and  
5 such authorization, validation and ratification applies retroactively  
6 from and after June 30, 2020.

7 **Sec. 7.** This act becomes effective upon passage and approval  
8 and applies retroactively from and after June 30, 2020.

