

SENATE BILL NO. 457—COMMITTEE ON FINANCE

MAY 24, 2021

Referred to Committee on Finance

SUMMARY—Revises provisions governing the State Highway Fund. (BDR S-1163)

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 State Highway Fund; reenacting and extending an increase in the maximum amount of certain proceeds deposited in the State Highway Fund that may be used for the costs of administering the collection of those proceeds; providing for ratification of certain actions and retroactive application; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, all the proceeds from the imposition of any license or  
2 registration fee and other charges regarding the operation of a motor vehicle on any  
3 public highway, road or street in Nevada, except for the costs of administering the  
4 collection of those proceeds, are required to be deposited in the State Highway  
5 Fund and used exclusively for the construction, maintenance and repair of the  
6 State’s public highways. (Nev. Const. Art. 9, § 5; NRS 408.235) In 2015, section 5  
7 of Senate Bill No. 502 (S.B. 502) amended NRS 408.235 and increased the  
8 maximum amount of those proceeds that may be used for the costs of  
9 administration from 22 percent to 27 percent. (Chapter 394, Statutes of Nevada  
10 2015, at page 2212) In addition, section 7 of S.B. 502 included a sunset provision  
11 which provided that the amendment to NRS 408.235 expired on June 30, 2020.  
12 (Chapter 394, Statutes of Nevada 2015, at page 2213) However, in 2019, section 1  
13 of Senate Bill No. 542 (S.B. 542) extended the existing sunset provision for the  
14 amendment to NRS 408.235 from June 30, 2020, until June 30, 2022. (Chapter 400,  
15 Statutes of Nevada 2019, at page 2502)

16 On May 13, 2021, the Nevada Supreme Court invalidated S.B. 542 because the  
17 bill also extended the existing sunset provision from June 30, 2020, until June 30,  
18 2022, for the collection of a technology fee imposed by the Department of Motor  
19 Vehicles under NRS 481.064. The Nevada Supreme Court determined that by  
20 extending the existing sunset provision for the collection of the technology fee, S.B.  
21 542 created, generated or increased public revenue and, therefore, was not passed in  
22 compliance with Article 4, Section 18 of the Nevada Constitution, which requires a



23 two-thirds majority vote of the members of each House of the Legislature to pass a  
24 bill which “creates, generates, or increases any public revenue in any form.” (Nev.  
25 Const. Art. 4, § 18; *Legislature v. Settelmeyer*, 137 Nev. Adv. Op. 21, --- P.3d ---  
26 (2021))

27 As a general rule, the Legislature may cure constitutional defects in a prior  
28 legislative act by reenacting or amending its provisions in a subsequent legislative  
29 act in a manner that remedies the constitutional defects. (*McCormick v. Sixth Jud.*  
30 *Dist. Ct.*, 69 Nev. 214, 221 (1952) (citing *State v. Silver Bow Ref. Co.*, 252 P. 301,  
31 304 (Mont. 1926)); *County of Clark v. City of Las Vegas*, 97 Nev. 260, 263 (1981))  
32 In addition, the Legislature may, by a subsequent legislative act, ratify actions taken  
33 by the executive branch or a local governmental entity under a prior legislative act  
34 declared to be invalid and thereby give such actions retroactive validity. (*Swayne &*  
35 *Hoyt, Ltd. v. United States*, 300 U.S. 297, 299-303 (1937); *Hodges v. Snyder*, 261  
36 U.S. 600, 601-04 (1923); *Charlotte Harbor & N. Ry. v. Welles*, 260 U.S. 8, 9-12  
37 (1922); *Rafferty v. Smith, Bell & Co.*, 257 U.S. 226, 231-32 (1921); *United States v.*  
38 *Heinszen*, 206 U.S. 370, 382-91 (1907))

39 **Sections 1-3** of this bill reenact and extend until June 30, 2026, the provisions  
40 relating to the increase in the maximum amount of the proceeds that may be used  
41 for the costs of administration from 22 percent to 27 percent. **Section 4** of this bill  
42 provides for the ratification of any actions taken by the Department of Motor  
43 Vehicles or any other agency, officer or employee of the State of Nevada from and  
44 after June 30, 2020, to carry out the provisions relating to the increase in the  
45 maximum amount of the proceeds that may be used for the costs of administration  
46 from 22 percent to 27 percent, and **section 4** also provides that such ratification  
47 applies retroactively from and after June 30, 2020. Finally, **section 5** of this bill  
48 provides that this bill becomes effective upon passage and approval and applies  
49 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:

1 **Section 1.** Chapter 394, Statutes of Nevada 2015, at page  
2 2211, is hereby amended by adding thereto a new section to be  
3 designated as section 7.7, immediately following section 7, to read  
4 as follows:

5 *Sec. 7.7. 1. This section becomes effective and*  
6 *applies retroactively from and after June 30, 2020.*

7 *2. Section 5 of this act is hereby reenacted and applies*  
8 *retroactively from and after June 30, 2020, and expires by*  
9 *limitation on June 30, 2026.*

10 **Sec. 2.** Section 5 of chapter 394, Statutes of Nevada 2015, at  
11 page 2212, is hereby reenacted to read as follows:

12 Sec. 5. NRS 408.235 is hereby amended to read as  
13 follows:

14 408.235 1. There is hereby created the State Highway  
15 Fund.

16 2. Except as otherwise provided by a specific statute, the  
17 proceeds from the imposition of any:



1 (a) License or registration fee and other charges with  
2 respect to the operation of any motor vehicle upon any public  
3 highway, city, town or county road, street, alley or highway  
4 in this State; and

5 (b) Excise tax on gasoline or other motor vehicle fuel,  
6 ↪ must be deposited in the State Highway Fund and must,  
7 except for costs of administering the collection thereof, be  
8 used exclusively for the administration, construction,  
9 reconstruction, improvement and maintenance of highways as  
10 provided for in this chapter.

11 3. The interest and income earned on the money in the  
12 State Highway Fund, after deducting any applicable charges,  
13 must be credited to the Fund.

14 4. Costs of administration for the collection of the  
15 proceeds for any license or registration fees and other charges  
16 with respect to the operation of any motor vehicle must be  
17 limited to a sum not to exceed ~~22~~ 27 percent of the total  
18 proceeds so collected.

19 5. Costs of administration for the collection of any  
20 excise tax on gasoline or other motor vehicle fuel must be  
21 limited to a sum not to exceed 1 percent of the total proceeds  
22 so collected.

23 6. All bills and charges against the State Highway Fund  
24 for administration, construction, reconstruction, improvement  
25 and maintenance of highways under the provisions of this  
26 chapter must be certified by the Director and must be  
27 presented to and examined by the State Board of Examiners.  
28 When allowed by the State Board of Examiners and upon  
29 being audited by the State Controller, the State Controller  
30 shall draw his or her warrant therefor upon the State  
31 Treasurer.

32 7. The money deposited in the State Highway Fund  
33 pursuant to NRS 244A.637 and 354.59815 must be  
34 maintained in a separate account for the county from which  
35 the money was received. The interest and income on the  
36 money in the account, after deducting any applicable charges,  
37 must be credited to the account. Any money remaining in the  
38 account at the end of each fiscal year does not revert to the  
39 State Highway Fund but must be carried over into the next  
40 fiscal year. The money in the account:

41 (a) Must be used exclusively for the construction,  
42 reconstruction, improvement and maintenance of highways in  
43 that county as provided for in this chapter;

44 (b) Must not be used to reduce or supplant the amount or  
45 percentage of any money which would otherwise be made



1 available from the State Highway Fund for projects in that  
2 county; and

3 (c) Must not be used for any costs of administration or to  
4 purchase any equipment.

5 8. The money deposited in the State Highway Fund  
6 pursuant to NRS 482.313 must be maintained in a separate  
7 account. The interest and income on the money in the  
8 account, after deducting any applicable charges, must be  
9 credited to the account. Any money remaining in the account  
10 at the end of each fiscal year does not revert to the State  
11 Highway Fund but must be carried over into the next fiscal  
12 year. The money in the account:

13 (a) Must be used exclusively for the construction,  
14 reconstruction, improvement and maintenance of highways as  
15 provided for in this chapter; and

16 (b) Must not be used for any costs of administration or to  
17 purchase any equipment.

18 **Sec. 3.** Section 7 of chapter 394, Statutes of Nevada 2015, at  
19 page 2213, is hereby amended to read as follows:

20 Sec. 7. ~~[This]~~ *Except as otherwise provided in section*  
21 *7.7 of this act or any other specific statute, this* act becomes  
22 effective on July 1, 2015, and expires by limitation on  
23 June 30, 2020.

24 **Sec. 4.** Any actions taken by the Department of Motor  
25 Vehicles or any other agency, officer or employee of the State of  
26 Nevada from and after June 30, 2020, to carry out the provisions of  
27 section 5 of chapter 394, Statutes of Nevada 2015, at page 2212,  
28 including, without limitation, any actions relating to the costs of  
29 administration for the collection of the proceeds deposited in the  
30 State Highway Fund pursuant to that section, are hereby authorized,  
31 validated and ratified, and such authorization, validation and  
32 ratification applies retroactively from and after June 30, 2020.

33 **Sec. 5.** This act becomes effective upon passage and approval  
34 and applies retroactively from and after June 30, 2020.

