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AN ACT relating to communications; requiring a county-owned telephone system to participate in the fund to maintain the availability of telephone service administered by the Public Utilities Commission of Nevada; authorizing a board of county commissioners that controls and manages a county-owned telephone system to create a separate corporation to provide certain communication services; requiring a county-owned telephone system that provides certain communication services outside county boundaries to comply with the same federal, state and local requirements that would apply to a privately held company providing the same communication services; prohibiting a county-owned telephone system from engaging in certain transactions; revising the provisions governing the sale or lease of a county-owned telephone system; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Public Utilities Commission of Nevada to levy and collect an assessment from certain public utilities for the purpose of establishing a fund to maintain the availability of telephone service. (NRS 704.040) This fund is known as the Fund for Universal Service. (NAC 704.6804-704.68056) Under existing law, a county may own and operate a telephone system within the boundaries of the county. (NRS 710.010-710.159) However, because a county telephone system is generally exempt from regulation by the Commission, a county telephone system is not subject to levy and collection of the assessment by the Commission and is not entitled to receive payments from the Fund for Universal Service. (NRS 710.140)

This bill makes a county telephone system subject to levy and collection of the assessment by the Commission under the same terms and conditions as a public utility regulated by the Commission. This bill also entitles a county telephone system to receive payments from the Fund for Universal Service under those same terms and conditions.

Under existing law, the board of county commissioners exercises control and management of a county telephone system. (NRS 710.140) The board may authorize the county telephone system to provide, outside county boundaries, communication services that do not fall within the scope of activities regulated under Chapter 704 of NRS. Under certain circumstances, the board may also authorize the county telephone system to provide, outside county boundaries, certain communication services that come within the scope of its regulated activities. (NRS 710.145)

This bill authorizes the board to create a separate corporation to provide certain communication services outside county boundaries. If either the county telephone system or the separate corporation provides communication services outside county boundaries, this bill requires those public entities to comply with the same requirements that would apply to a privately held company providing the same communication services. In addition, they are prohibited from using money from the county general fund to provide certain communication services outside county boundaries and are prohibited from engaging in certain preferential transactions with affiliated entities.

Under existing law, the voters of the county must authorize the board of county commissioners to sell or lease the county telephone system. (NRS 710.151-710.159) Upon authorization from the voters, three disinterested persons must be appointed by the district judge of the county to appraise the value of the county telephone system. After the appraisal, the board may sell or lease the county telephone system only through a process that uses sealed bids. (NRS 710.159)

This bill requires the appraisal to be completed by a reputable and qualified expert in rural telecommunications selected by the board. This bill makes the appraisal confidential and prohibits its disclosure before the completion of the sale or lease of the county telephone system. This bill also eliminates the existing process using sealed bids and allows the board to negotiate for the sale or lease of the county telephone system.

Existing law requires each local government to provide for an annual audit of all its financial statements. The audit must include certain additional reports relating to the operations of the local government. (NRS 354.624)

This bill requires the annual audit to include an additional report which shows that the county is in compliance with the provisions of this bill with regard to the facilities and property it maintains and the communication services it provides outside county boundaries.

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

Section 1. NRS 710.140 is hereby amended to read as follows:

710.140 1. The control, management and conduct of any telephone line or system ~~is~~ purchased, acquired or constructed by any county ~~shall~~ **must** be exercised by the board of county commissioners of such county.

2. The board of county commissioners ~~shall have~~ **has** the right to employ such persons as may be necessary to carry on the business of ~~the same and as may be required~~ **the county telephone line or system.**

3. The board of county commissioners shall comply with chapter 332 of NRS in letting contracts for the use and benefit of the county telephone line or system.

4. ***If the Public Utilities Commission of Nevada has provided for the levy and collection of an assessment pursuant to subsection 7 of NRS 704.040 for a fund to maintain the availability of telephone service, the county telephone line or system is subject to the levy and collection of the assessment and is entitled to receive money from the fund under the same terms and conditions as a public utility that is subject to subsection 7 of NRS 704.040.***

5. ***In carrying on the business of the county telephone line or system, the board of county commissioners may create a separate corporation to provide communication services that are not within the scope of activities regulated pursuant to chapter 704 of NRS. The control and management of the separate corporation must be exercised by the board of county commissioners, and the separate***

corporation is subject to all applicable provisions of NRS 710.010 to 710.159, inclusive, to the same extent as the county telephone line or system.

6. If, after October 1, 2006, the county telephone line or system provides, outside the territorial boundaries of the county, any communication services that are not within the scope of activities regulated pursuant to chapter 704 of NRS, the county telephone line or system:

(a) With regard to the facilities and property it maintains outside the territorial boundaries of the county, shall comply with the same federal, state and local requirements that would apply to a privately held company providing the same communication services; and

(b) With regard to the provision of such services outside the territorial boundaries of the county:

(1) Shall comply with any regulations and rules of the Public Utilities Commission of Nevada that would apply to a privately held company providing the same communication services;

(2) Shall not use any money from the county general fund for the provision of such services; and

(3) Shall not engage in any transaction with an affiliated entity at prices and terms that are lower than or more favorable than the prices and terms that the county telephone line or system or the affiliated entity would offer to or charge an unaffiliated third party for such a transaction.

7. Nothing in this section requires a county telephone line or system to offer any services to or engage in any transaction with an affiliated entity or an unaffiliated third party.

8. Except as otherwise provided in subsections 4 and 6, nothing in this section vests jurisdiction over a county telephone line or system in the Public Utilities Commission of Nevada.

9. It is expressly provided that no general or other statute shall limit or restrict the conduct and carrying on of ~~[such]~~ the business of a county telephone line or system by the board of county commissioners except as specifically set forth in this section ~~[.]~~ and NRS 710.145.

10. As used in this section, "affiliated entity" means any entity that is owned, operated or controlled by the same county that owns, operates or controls the county telephone line or system.

Sec. 2. NRS 710.145 is hereby amended to read as follows:

710.145 1. Notwithstanding the provisions of any other statute, a county telephone line or system ~~[which is under the control and management of a county]~~ may extend its ~~[operation]~~

~~across-county~~ communication services outside the territorial boundaries of the county if:

(a) The ~~proposed-operations~~ services are not within the scope of activities regulated pursuant to chapter 704 of NRS ~~[-]~~ and the county telephone line or system complies with the provisions of subsection 6 of NRS 710.140;

(b) The Public Utilities Commission of Nevada has, pursuant to subsection 3 of NRS 704.040, determined that the ~~extended~~ services are competitive or discretionary and that regulation thereof is unnecessary; or

(c) The Public Utilities Commission of Nevada has, in an action commenced under NRS 704.330 and after 20 days' notice to all telephone utilities providing service in the county into which the ~~operation~~ extension is to be ~~extended,~~ made, determined that no other telephone service can reasonably serve the area into which the extension is to be made and approves the extension of the system. No such extension may be permitted for a distance of more than 10 miles.

2. *If, after October 1, 2005, a county telephone line or system provides any communication services pursuant to paragraph (b) or (c) of subsection 1 outside the territorial boundaries of the county, the county telephone line or system shall:*

(a) *With regard to the facilities and property it maintains outside the territorial boundaries of the county, comply with the same federal, state and local requirements that would apply to a privately held company providing the same communication services; and*

(b) *With regard to the provision of such services outside the territorial boundaries of the county, comply with any regulations and rules of the Public Utilities Commission of Nevada that would apply to a privately held company providing the same communication services.*

3. *If a county telephone line or system and an affiliated entity engage in any transaction to provide communication services outside the territorial boundaries of the county, the Public Utilities Commission of Nevada has jurisdiction over such a transaction to the extent necessary to enforce this section and NRS 710.140.*

4. *Nothing in this section requires a county telephone line or system to offer any services to or engage in any transaction with an affiliated entity or an unaffiliated third party.*

5. Except as otherwise provided in ~~subsection 1,~~ subsections 1, 2 and 3, nothing in this section vests jurisdiction over a county telephone line or system in the Public Utilities Commission of Nevada.

6. *As used in this section, "affiliated entity" has the meaning ascribed to it in NRS 710.140.*

Sec. 3. NRS 710.159 is hereby amended to read as follows:

710.159 1. If , at the primary, general or special election , it is shown that a majority of the ballots cast favors the sale or lease of the telephone system, ~~[three disinterested persons must be appointed by the district judge of the county to make a correct appraisal of the gross]~~ *the board of county commissioners shall contract with a reputable and qualified expert in rural telecommunications to appraise the value of the telephone system. The appraisal is confidential and must not be disclosed before the completion of the sale or lease of the telephone system.*

2. Upon the return of the ~~[appraisement,]~~ *appraisal*, the board of county commissioners shall advertise the sale or lease, for a term of years agreed upon by the board, of the telephone system by notice published at least once a week for 5 consecutive weeks by five weekly insertions a week apart in a newspaper published within the county and having a general circulation therein. ~~[The notice must require sealed bids, to be accompanied by a certified check for at least 5 percent of the sum bid, to be deposited with the county clerk of the county on or before the date stated in the notice.]~~ *After publication of the first such notice, the board or its authorized representatives may enter into negotiations for the sale or lease of the telephone system.* If the notice is for the sale of the telephone system, ~~[no bids may be accepted by]~~ the board ~~[of county commissioners for]~~ *shall not accept* a sum less than the amount of the ~~[appraisement]~~ *appraisal* of the telephone system. If the notice is for the lease of the telephone system, ~~[no bids may be accepted by]~~ the board ~~[of county commissioners for]~~ *shall not accept* a sum less than an amount to realize not less than 7 percent per annum upon the value of the telephone system as so appraised. If the telephone system is leased, the board shall safeguard the county's interest by demanding a bond for the faithful performance of the covenants contained in the lease. The board may reject any and all ~~[bids]~~ *offers* made for such a sale or lease.

Sec. 4. NRS 354.624 is hereby amended to read as follows:

354.624 1. Each local government shall provide for an annual audit of all of its financial statements. A local government may provide for more frequent audits as it deems necessary. Except as otherwise provided in subsection 2, each annual audit must be concluded and the report of the audit submitted to the governing body as provided in subsection 6 not later than 5 months after the close of the fiscal year for which the audit is conducted. An extension of this time may be granted by the Department of Taxation to any local government that submits an application for an extension to the Department. If the local government fails to provide for an audit in accordance with the provisions of this section, the Department of Taxation shall cause the audit to be made at the

expense of the local government. All audits must be conducted by a certified public accountant or by a partnership or professional corporation that is registered pursuant to chapter 628 of NRS.

2. The annual audit of a school district must:

(a) Be concluded and the report submitted to the board of trustees as provided in subsection 6 not later than 4 months after the close of the fiscal year for which the audit is conducted.

(b) If the school district has more than 150,000 pupils enrolled, include an audit of the expenditure by the school district of public money used:

(1) To design, construct or purchase new buildings for schools or related facilities;

(2) To enlarge, remodel or renovate existing buildings for schools or related facilities; and

(3) To acquire sites for building schools or related facilities, or other real property for purposes related to schools.

3. The governing body may, without requiring competitive bids, designate the auditor or firm annually. The auditor or firm must be designated, and notification of the auditor or firm designated must be sent to the Department of Taxation not later than 3 months before the close of the fiscal year for which the audit is to be made.

4. Each annual audit must cover the business of the local government during the full fiscal year. It must be a financial audit conducted in accordance with generally accepted auditing standards in the United States, including findings on compliance with statutes and regulations and an expression of opinion on the financial statements. The Department of Taxation shall prescribe the form of the financial statements, and the chart of accounts must be as nearly as possible the same as the chart that is used in the preparation and publication of the annual budget. The report of the audit must include:

(a) A schedule of all fees imposed by the local government which were subject to the provisions of NRS 354.5989;

(b) A comparison of the operations of the local government with the approved budget, including a statement from the auditor that indicates whether the governing body has taken action on the audit report for the prior year; ~~and~~

(c) If the local government is subject to the provisions of NRS 244.186, a report showing that the local government is in compliance with the provisions of paragraphs (a) and (b) of subsection 1 of NRS 244.186 ~~and~~; *and*

(d) If the local government is subject to the provisions of NRS 710.140 or 710.145, a report showing that the local government is in compliance with the provisions of those sections with regard to

the facilities and property it maintains and the services it provides outside its territorial boundaries.

5. Each local government shall provide to its auditor:

(a) A statement indicating whether each of the following funds established by the local government is being used expressly for the purposes for which it was created, in the form required by NRS 354.6241:

- (1) An enterprise fund.
- (2) An internal service fund.
- (3) A fiduciary fund.
- (4) A self-insurance fund.
- (5) A fund whose balance is required by law to be:

(I) Used only for a specific purpose other than the payment of compensation to a bargaining unit, as defined in NRS 288.028; or

(II) Carried forward to the succeeding fiscal year in any designated amount.

(b) A list and description of any property conveyed to a nonprofit organization pursuant to NRS 244.287 or 268.058.

(c) If the local government is subject to the provisions of NRS 244.186, a declaration indicating that the local government is in compliance with the provisions of paragraph (c) of subsection 1 of NRS 244.186.

(d) If the local government is subject to the provisions of NRS 710.140 or 710.145, a declaration indicating that the local government is in compliance with the provisions of those sections with regard to the facilities and property it maintains and the services it provides outside its territorial boundaries.

6. The opinion and findings of the auditor contained in the report of the audit must be presented at a meeting of the governing body held not more than 30 days after the report is submitted to it. Immediately thereafter, the entire report, together with the management letter required by generally accepted auditing standards in the United States or by regulations adopted pursuant to NRS 354.594, must be filed as a public record with:

- (a) The clerk or secretary of the governing body;
- (b) The county clerk;
- (c) The Department of Taxation; and
- (d) In the case of a school district, the Department of Education.

7. If an auditor finds evidence of fraud or dishonesty in the financial statements of a local government, the auditor shall report such evidence to the appropriate level of management in the local government.

8. The governing body shall act upon the recommendations of the report of the audit within 3 months after receipt of the report, unless prompter action is required concerning violations of law or

regulation, by setting forth in its minutes its intention to adopt the recommendations, to adopt them with modifications or to reject them for reasons shown in the minutes.

Sec. 5. This act becomes effective on July 1, 2005.