

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Eighth Session
May 19, 2015**

The Committee on Transportation was called to order by Chair Jim Wheeler at 3:38 p.m. on Tuesday, May 19, 2015, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jim Wheeler, Chair
Assemblyman Nelson Araujo
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblywoman Michele Fiore
Assemblyman Edgar Flores
Assemblyman Brent A. Jones
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel

COMMITTEE MEMBERS ABSENT:

Assemblywoman Jill Dickman, Vice Chair (excused)
Assemblywoman Marilyn K. Kirkpatrick (excused)
Assemblyman Michael C. Sprinkle (excused)
Assemblywoman Melissa Woodbury (excused)



GUEST LEGISLATORS PRESENT:

Senator Ben Kieckhefer, Senate District No. 16
Senator Pete Goicoechea, Senate District No. 19

STAFF MEMBERS PRESENT:

Michelle L. Van Geel, Committee Policy Analyst
Melissa M. Mundy, Committee Counsel
Henri Stone, Committee Secretary
Cheryl Williams, Committee Assistant
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Terri L. Albertson, C.P.M., Administrator, Division of Management
Services and Programs, Department of Motor Vehicles
Mendy Elliott, Private Citizen, Carson City, Nevada
Kim Guinasso, representing Donor Network West, and Sierra Donor
Services
Kate McCullough, Community Services Supervisor, Nevada Donor
Network
Jacob Tibbitts, Manager, Natural Resources, Eureka County
Dagny Stapleton, Deputy Director, Nevada Association of Counties
Steve Walker, representing Lyon County, Storey County, Douglas County,
and Carson City
Pat Sanderson, Private Citizen, Carson City, Nevada
Charles Donohue, Administrator, Division of State Lands, and State Land
Registrar, State Department of Conservation and Natural Resources

Chair Wheeler:

[Roll was taken. Protocol was explained.] Senator Kieckhefer will present
Senate Bill 206 (2nd Reprint).

Senate Bill 206 (2nd Reprint): Revises provisions relating to organ donation.
(BDR 43-215)

Senator Ben Kieckhefer, Senate District No. 16:

I am here to present Senate Bill 206 (2nd Reprint) to increase the number of
individuals in the state who are designated as organ donors. I think we all

understand that organ donation saves lives and families and gives people a second chance. It is also, to me, one of the greatest gifts that people can give to another person.

This is a bill that is designed in a modest way to increase the number of folks who are eligible for organ donation and to help eliminate some of the long wait times that Nevadans have when they are in need of an organ transplant. Senate Bill 206 (R2) does a couple of things. At this time, when the Department of Motor Vehicles (DMV) issues a driver's license or identification card (ID) or certain driving permits, a person has the opportunity to indicate whether he or she wishes to donate all or part of the body or refuse to make an anatomical gift. Section 1 of this bill revises this language to provide an opportunity to indicate instead that a person at this time does not wish to make an anatomical gift. This is a very modest change, but the effort is to ensure that it leaves open the possibility that someone, between getting a driver's license or ID card and the moment that they may be in a situation where they could be a donor, may have had a change of heart on this subject. A family member may not take that as an affirmative statement and insist that it ultimately is still the family's decision. Section 1 also requires that upon the renewal of a driver's license, the DMV must provide notice to a person who previously had elected to be a donor that unless they indicate a desire to change that election, the election shall not change on the driver's license. Then when you get a license renewed, it would default, and you would not have to reaffirm that you want to be a donor. This keeps you as a donor unless you affirmatively state that you do not want to continue. Section 1 also requires the DMV to place a symbol or other indicator of a medical condition on a driver's license if a program is established to do so.

Section 2 makes the same changes to organ donation elections on identification cards as they do on driver's license cards that are outlined in section 1. In addition, this version of the bill reflects an amendment which we adopted yesterday in the Senate Committee on Finance that effectively eliminated the fiscal note. Rather than requiring the DMV to comply with these changes by January 1, 2016, sections 4.5 and 5 require the DMV to notify the Governor and the Legislative Counsel Bureau as soon as sufficient resources are available to carry out the provisions of this bill. This is particularly relevant now because the DMV is in the process of doing a significant technology overhaul that should allow them to incorporate these changes. That is the bill. It is a modest effort to try to help people in their most vulnerable times.

Chair Wheeler:

I just want to make sure this is on the record. Your amendment removes the \$250,900 fiscal note, is that correct?

Senator Kieckhefer:

Yes. We cleared that and passed it out of the Senate Committee on Finance.

Terri L. Albertson, C.P.M., Administrator, Division of Management Services and Programs, Department of Motor Vehicles:

You are correct. There is no fiscal impact to the Department of Motor Vehicles for Senate Bill 206 (R2).

Chair Wheeler:

I have always wondered why, when we stretch the effective date out a little further on all of these bills, their huge fiscal notes just go away. You still have to do the programming. What is the deal?

Terri Albertson:

It is because of our system modernization effort and that we do not have to apply immediate resources, which are very scarce, to implement these projects. In this case, it would have been over 2,000 programming hours to implement but now that we are able to incorporate it into our system modernization effort, those pieces of work can be done incrementally, and we do not have a mandated date to accomplish this. We would have to bring in Master Services Agreement consultant programmers to complete that effort by the mandated implementation date.

Chair Wheeler:

Thank you.

Assemblywoman Spiegel:

Senator Kieckhefer, thank you for bringing this bill forward. It is great to do whatever we can to encourage organ donations. I say that as an organ donor on my license. I have a question for Ms. Albertson. In section 1, subsection 7, paragraph (b), subparagraph (4) of the bill, it says, "If the Department has established a program for imprinting a symbol or other indicator of a medical condition on a driver's license pursuant to NRS 483.3485, the opportunity to have a symbol or other indicator of a medical condition imprinted on his or her driver's license." There is a similar provision related to identification cards in section 2, subsection 5, paragraph (a), subparagraph (3). Do we have programs like this in place, or is this hypothetical?

Terri Albertson:

Yes, we currently do have those programs in place. As an organ donor, there is a heart symbol on the front of your driver's license. There is also a provision within statute where I believe there are nine or ten codes of medical conditions

that the driver's license applicant can choose to have printed on the back of his or her driver's license. I am not sure why that is in the bill, but those two programs are in existence today.

Assemblyman Araujo:

Would this also apply to folks who obtain a driver authorization card?

Terri Albertson:

That is correct. People who apply for a driver authorization card are also eligible to be organ donors.

Assemblyman O'Neill:

I am an organ donor as well. Why is it that a family member can override my desires? If I understand correctly, they can come in after my death and override my desires and not allow donations.

Senator Kieckhefer:

I would defer to legal counsel on that.

Melissa M. Mundy, Committee Counsel:

There is a uniform law in statute. It is called the Revised Uniform Anatomical Gift Act. Under those sections, it sets forth the rights of certain people who can modify your selection or revoke whether you want to be an organ donor before and after death. Therefore, the bill is pursuant to statutes.

Chair Wheeler:

Does that answer your question, Assemblyman O'Neill?

Assemblyman O'Neill:

Yes. Unfortunately, I do not like the answer, but I will live with it for now.

Assemblywoman Dooling:

When you said "certain people," who are those certain people? Does it state who they are? Family? Friends?

Melissa Mundy:

Depending on whether it is before death or after death, there are two different sections. Before the death of the donor, the manner of making an anatomical gift is set forth in *Nevada Revised Statutes* (NRS) 451.558. You could also include this in your will. After death, it is set forth in NRS 451.566, which pertains to persons authorized to make an anatomical gift of a body part of a decedent. The statute sets an order of priority, which basically starts off with

the agent of the decedent, then down through the spouse and then the adult children. If you have expressly refused to make an anatomical gift, then your agent or any of these people cannot say they are going to make you an organ donor.

Assemblyman Carrillo:

My question is regarding the Anatomical Gift Account. Is that protected to make sure it is not being used for anything other than the intended purpose?

Senator Kieckhefer:

I believe the Anatomical Gift Account is protected. It does not have diversionary language as far as I understand. Any funds deposited into that account stay in that account.

Chair Wheeler:

Are there any further questions? [There were none.] We will take testimony in support of S.B. 206 (R2).

Mendy Elliott, Private Citizen, Carson City, Nevada:

I would like to thank Senator Kieckhefer for bringing forward S.B. 206 (R2). I have a little story to tell you. In December of 1966, my father, William Karraker, was admitted to the hospital and diagnosed as having a heart attack. After several years of endless events, my father was referred to Stanford Medical Center, where it was determined he would undergo an experimental procedure known as heart bypass surgery. During the surgery, it was determined that he had not suffered a heart attack but was diagnosed with cardiomyopathy. On November 22, 1968, my father became the eighty-sixth heart transplant recipient in the world and the eighth recipient at Stanford Medical Center. On October 24, 1969 he was featured in *Life* magazine, in an article entitled, "A Brotherhood of Borrowed Time."

My father was not only a great man; he was a highly decorated Air Force navigator in World War II and the Korean War. After World War II, he was awarded the Distinguished Flying Cross and three Air Medals for his over 55 missions into Germany. My father always faced challenges and opportunities head on and without fear.

As a 12 year-old girl, I watched as my father's health deteriorated almost daily as he waited for a donor with the same rare blood type and sadly, he had to wait until a young man was killed in a motorcycle accident. After the transplant, he was able to be an advocate for research dollars and expanded education. He lobbied legislators and volunteered to educate loved ones about

the need for potential donors. He was honored to be elected the first president of the world heart transplant club. My father passed away 11 months after his transplant on August 31, 1969.

My father was one of the bravest people I know, and to this day, each member of my family is a transplant donor volunteer. My father gave his life so others might live. Senate Bill 206 (R2) will ensure that if something unfortunate does happen, other individuals will be able to join "the brotherhood of borrowed time." I strongly urge your support for S.B. 206 (R2).

Kim Guinasso, representing Donor Network West, and Sierra Donor Services:

Donor Network West is the third-largest organ procurement organization in the country and the federally designated organ procurement organization for northern Nevada. Sierra Donor Services provides donor services for tissue and eye donations in northern Nevada and additional organ donation services specifically in Reno. We are happy to be here to support the bill.

Kate McCullough, Community Services Supervisor, Nevada Donor Network:

I will be reading testimony ([Exhibit C](#)) today on behalf of Joe Ferreira, our chief executive officer, who was unable to attend today. On behalf of Nevada Donor Network, the federally designated organ procurement organization serving 80 percent of the state of Nevada, thank you for the opportunity to testify in support of S.B. 206 (R2). There are currently more than 123,000 people in the United States who are awaiting life-saving organ transplants. More than 590 of them are Nevada citizens. Every ten minutes, a new name is added to the waiting list, and 21 people die every day in this country because there are simply not enough organs to meet the demand. In addition, thousands of others are in need of healing tissue and corneal transplants at any given time.

We have experienced a dramatic rise in the number of organ, eye, and tissue donors in the state of Nevada over the last three years thanks to our renewed partnerships with Nevada hospitals and community partners like the great team at the Department of Motor Vehicles. However, we are still lagging behind the rest of the country in terms of the number of residents in our state who are registered donors. The state of Nevada currently ranks 40th out of the 52 donor registries in the United States due to the relatively low number of registered donors compared to the eligible population. [Continued to read from [Exhibit C](#).]

Chair Wheeler:

Are there any questions? Seeing none, is there more testimony in favor of S.B. 206 (R2)? [There was none.] Is there anyone in opposition? [There was no one.] Ms. Mundy wishes to clarify something from her earlier statement.

Melissa Mundy:

For the record, I want to clarify that persons authorized to make an anatomical gift before the death of a donor per NRS 451.556 are the donor if the donor is an adult, a minor who is emancipated or authorized under state law to apply for a driver's license, an agent of the donor unless the power of attorney for health care or another record prohibits the agent from making such an anatomical gift, a parent of the donor if the donor is an unemancipated minor, or the donor's guardian.

CHAIR WHEELER MOVED TO SUSPEND RULE NO. 57 OF ASSEMBLY RESOLUTION 1.

ASSEMBLYMAN JONES SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DICKMAN, KIRKPATRICK, SPRINKLE, AND WOODBURY WERE ABSENT FOR THE VOTE.)

Chair Wheeler:

I will accept a motion to do pass S.B. 206 (R2).

ASSEMBLYMAN JONES MADE A MOTION TO DO PASS SENATE BILL 206 (2ND REPRINT).

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DICKMAN, KIRKPATRICK, SPRINKLE, AND WOODBURY WERE ABSENT FOR THE VOTE.)

Chair Wheeler:

We will close the hearing on S.B. 206 (R2) and open the hearing on Senate Bill 456 after a one-minute break.

[The Committee recessed at 4:01 p.m. and reconvened at 4:02 p.m.]

Senate Bill 456: Revises certain provisions concerning the control and preservation of certain accessory roads. (BDR 35-1089)

Senator Pete Goicoechea, Senate District No. 19:

This is a fairly simple bill. In the state of Nevada, over the last 150 years that we have been a state and before, there were a number of roads established as public access roads. They were accessing either mining claims or private properties, and because the state of Nevada is 87 percent public lands, in a number of cases those roads cross public lands. Before the Federal Land Policy and Management Act of 1976 (FLPMA), there was what were called "Revised Statute 2477 roads" and rights-of-way that were acquired. Revised Statute 2477 (RS 2477) is the federal code that relates to them. If you had a road crossing public lands that was established either through use or through construction, even though it went across public lands that was pre-FLPMA, in many cases there was no right-of-way for that road. These became established in many cases as county or state roads with no true right-of-way because they had been established through use over the last 150 years.

Since the adoption of FLPMA, we have started to have conflicts in some areas with federal agencies saying roads are not pre-1970s RS 2477 rights-of-way. A generation ago, when I was working for the Eureka County Road Department, we did, in fact, file a pre-1976 county road map that named every road in the county as a county road. Therefore, we are fairly fortunate in avoiding a lot of these conflicts with FLPMA that have come forward since 1976.

A number of you on the Committee are familiar with the Jarbidge Road and the Shovel Brigade. There have been conflicts on a number of these roads, especially as federal agencies attempt to close them. I represent a lot of rural Clark County as well. Whether you are at Mormon Mesa or Gold Butte, those issues are occurring almost daily. There are conflicts over public access roads that many of us have been traveling for years. You will be on it, and one day it is posted as closed. In many cases, they will even push a berm of dirt up there, and the federal agency will declare it closed to public access. Technically, if it has been open for over a year, it has been established as a public road. It becomes a public thoroughfare.

The intent of Senate Bill 456 is to say that the Attorney General may pursue and assist the counties and the state in acquiring and quieting title to some of these disputed roads. We are trying to formalize and quiet the title established through use or construction on these roads.

I have a question for the Chair. This bill came through the Senate Committee on Finance. The Attorney General has removed the fiscal note. Could you check with your policy people and see if it does have to go to the Assembly Committee on Ways and Means? They said that they did not see any fiscal impact right now.

Chair Wheeler:

There was a big fiscal note on this for future biennia. I do not see anything for this year. It was about half a million dollars for fiscal year 2015-2016, and 2016-2017 was similar. Future biennia are a little under a million dollars. We need to get confirmation on that from the Office of the Attorney General.

Senator Goicoechea:

In the Senate Committee on Finance, the Attorney General's Office withdrew those fiscal notes. I will close my comments. I have Jake Tibbitts here who is more familiar with the laws and regulations than I am.

Assemblyman Jones:

Would this actually save us money because we are putting the burden on the federal government, or is this only to make them leave the roads open?

Senator Goicoechea:

It really does not put a burden on anyone at this point. It would only be if there was an action brought forth against the county or the state by a federal agency. This bill would allow the Attorney General to assist the state and the counties. This bill does not do anything more than that. The burden would be in the event that there was a pleading on a public road or a challenge on a right-of-way. Then there would be litigation, and we are asking that the Attorney General then help the district attorneys.

Assemblyman Jones:

Say they decide that a road should be open that was open, but they tried to close it. If we brought an action and won, would the federal government have to maintain that road as well? Would that actually reduce the costs for us?

Senator Goicoechea:

It depends on what the court would rule. I do not see the court ruling that the maintenance would be up to the federal agency. I think, in most cases, that all the counties want is a clarification that it is public access.

Assemblywoman Spiegel:

Who pays for the upkeep of these roads now? Is it the counties and the state, or is it the federal government? Would it change after a quiet title went through?

Senator Goicoechea:

I am not sure what you are asking.

Assemblywoman Spiegel:

Who pays for the upkeep of the roads that are currently owned by the federal government that we do not have title to?

Senator Goicoechea:

I am not really aware, unless you were in a state park or a national park like Lake Mead. I think those are the only areas that have federal roads with federal maintenance. The roads in question are public access roads. In many cases, they are held by the state and the county. In some cases, they are just roads that have been established through traffic. What happens is that a federal agency will come in and determine that road is not a public access road. The local jurisdiction or the state will say, yes, it is a public access road; it has been established. There is a hearing process that we typically go through. Sometimes it requires litigation. In the end, if it is determined to be a county or a state road and the county was claiming it, clearly it would fall under the jurisdiction of the county to maintain that road and that right-of-way.

Assemblyman Carrillo:

What happened that has caused us to need this bill now and to get the Attorney General involved? Why now?

Senator Pete Goicoechea:

This has been an issue clear back to the 1970s when I was working for the Eureka County Road Department. Mr. Tibbitts can address what has been driving this for the last decade.

Jacob Tibbitts, Manager, Natural Resources, Eureka County:

Currently, *Nevada Revised Statutes* Chapter 405 already authorizes the Attorney General to take an action on behalf of the counties. We are proposing to insert language based on some case law that has come out in the last five or ten years. Specifically, if you look in section 1, subsection 6, of the bill you see that the bold italic language is all that we are adding. However, you can see that the Attorney General already has that authority to bring and maintain an action in any court. That is already in statute.

To answer the question, "Why now?" there has been a tremendous amount of case law that has come primarily out of the U.S. Court of Appeals for the Tenth Circuit and out of Utah regarding these RS 2477 or pre-1976 FLPMA rights-of-way. It has been determined through that process that the federal agencies managing the land that these roads run across are precluded from recognizing a county's or a state's right-of-way on that road until it is adjudicated in federal court. The Tenth Circuit Court has said that the Bureau of Land Management (BLM), of the U.S. Department of the Interior, specifically is not authorized to recognize a right-of-way. It is not within their power to do that because FLPMA did not grant that to them. It has to go through federal court. It has also been determined through that process that the proper mechanism to do that is the federal Quiet Title Act [*United States Code*, Title 28, Section 2409a]. That is the proper mechanism to clarify the ownership and title to these roads. There has been a tremendous amount of information that has come out.

In 1993, the Legislature voiced its finding about the importance of preserving these accessory roads and these public roads. We are simply adding to that to clarify where we are today with the additional case law. The statutes now in NRS Chapter 405 separate the difference between accessory roads and public roads. Both are roads that existed before 1976, but in 1993, when the bulk of this statute was put into place, we did not have all of this case law clarifying where we are. The 1866 Mining Act put RS 2477 into place with one short sentence, where it says that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." There has been a lot of case law clarifying what that means. In 1993, when the statute was put in place, it was thought that if the road existed in 1976, the right-of-way was granted. Now there has been a lot of controversy created, and it has been determined that you have to go through a federal adjudication to take care of that.

Section 2 is trying to merge accessory roads and public roads based on the background I just gave because they will have more of a common meaning. In section 3, there is a legislative declaration formalizing and finalizing title for these roads as important to the state for various reasons. I would like to note that it has been about 160 years since the law was passed to authorize this. The Federal Land Policy and Management Act was nearly 40 years ago, and here we are still haggling about who has ownership. We are trying to lay an action that clarifies that once and for all, so we do not have these continued Jarbidge-type issues moving forward. We actually see this as a way to avoid lengthy litigation matters. A lot of section 3 is conforming language to clarify that all of these declarations by this Legislature pull in public roads as well as accessory roads.

Section 3, subsection 2 is where the Legislature urges the Attorney General to take a leadership role in helping to formalize and finalize this title. That is where the original fiscal note came in. Again, this is not a mandate on the Attorney General; it simply authorizes the Attorney General to do that, understanding that at some point in time we would like the Attorney General to step in and help. There are other reasons why that is very important. The federal Quiet Title Act has a different statute of limitations depending on whether a county or a state brings an action for quiet title. A lot of clarity has come about because of the Tenth Circuit Court's decisions. It is important that the state has some way to pair with the counties when that is finally pursued.

Section 3, subsection 3 is current language where the Legislature has already directed that the Attorney General can participate in declaratory action. This now adds language that the Attorney General can continue to do that as the current statute allows, but that the Attorney General also has the authority to join with the entities in the list below, including the counties, for a quiet title action. That is the mechanism that Congress has given to be able to clarify these issues on public lands.

Section 3, subsection 3, paragraph (b) directs the Land Use Planning Advisory Council, the Attorney General, and the Nevada Association of Counties to work together to develop legal protocol on how this can be done. This is very important, because right now, there is no direction provided to any county that wants to put this to rest. Nye County has taken a big lead and spent a lot of money and time. They had a bill in front of this body a couple of sessions ago to help address some of their issues. Each county is left on their own to pick and choose the process. This bill will give us a common process to finally put this to rest.

I am the chairman of the Land Use Planning Advisory Council. The Land Use Planning Advisory Council met in Elko, and this is a priority. We did vote to support taking that role in this process. I know that the Nevada Association of Counties (NACO) is here. In conclusion, I want to emphasize that the Attorney General is already authorized to participate. We are just clarifying how that participation will take place moving forward.

Assemblyman Araujo:

I am curious as to why the Attorney General would take on local jurisdiction cases involving roads.

Jake Tibbitts:

We are not asking that the Attorney General take on the case for the counties. We are asking that the Attorney General, as you see in section 3, subsection 3, be able to bring that action on behalf of, or in cooperation with, the counties. Since these are county roads, we envision the counties will take the lead on that. We need the state, through the Attorney General, to participate because of the statute of limitations issues involved.

Assemblyman Araujo:

I believe even with your explanation, it is still open for the Attorney General to do so. Who will pay for those court proceedings that the Attorney General takes on?

Jake Tibbitts:

When the Attorney General withdrew the fiscal note in the Senate Committee on Finance last week, representatives of the Office of the Attorney General said that if they were to take this role, there would be a fiscal impact, and it would be taken care of in the Governor's proposed budgets. This is enabling. It still will be up to the Attorney General whether to do that or not. That will have to be settled in front of this body when there is a budgeting process. That language is currently in the statute. Even today if there were a closure of a public or accessory road, the Attorney General is already authorized to do that. Even under the current statute, there would be a financial burden.

Senator Goicoechea:

I would like to address that briefly. Many of these roads are not county roads. If they are county roads, they are blacktopped with a 200-foot right-of-way. Many of these are the roads that, when you go out into the rural areas to go hunting, are maintained once a year. The bottom line is that they are public access roads. It becomes a hardship on the county if they have to defend every one of them, even in Clark County. As you get farther into the northeastern part of the state, there are thousands of miles of these roads that are public access roads. In many of these counties, they have not been adopted into the county road map. Those are the roads that, if the federal agencies determined to close them, the public—both my constituents and yours—would say they do not want to see closed. At that point, we would have to go to the Attorney General and ask for assistance.

Assemblyman Jones:

Do you know who pays for the graders and the bulldozers on those remote roads now? If we do get a right-of-way, is the U.S. Forest Service required to maintain it?

Jake Tibbitts:

Over the past 40 years, it has been established through case law that pre-FLPMA roads are actively maintained by the counties. They put a blade on them, they are graveled, and in many cases there is pavement on them. It has also been recognized that there are these preprescriptive rights-of-way that are maintained by use. The public is using these roads. If I am out recreating on one of these public roads and there is a boulder in the road, I have the authority as a public user to get my crowbar out of my pickup truck and move it out of the way. If a tree has fallen into the roadway, by using that road, I could pull out my chainsaw and move it out of the way. It is maintained by the users themselves through use. They are still recognized as being these public roads that existed pre-1976. There is a whole spectrum of various types of maintenance.

Senator Goicoechea:

Historically, there was a lot more road maintenance by federal agencies than there is today. Since FLPMA, there has been a lot less. I do not know why that is. It is very noticeable as you travel in the rural counties.

Assemblywoman Spiegel:

I have two totally separate questions. The first question relates to title and taking title to the road if you do not own the land under it. How would that work and would the title come with an easement?

Jake Tibbitts:

The question is how you have title to a road if you do not own the land over which the road runs. On our public lands, there is a whole host of various rights and titles that already existed, from mineral claims to water rights to infrastructure, that are actually on public lands. Having the title to the road is the title for which the road is there. It does not mean the underlying land is acquired by the county or the state. The Quiet Title Act clarifies what the act is to be used for. It is for when you have multiple rights or the split estate or various things that take place. It is not a new concept. There are rights and title and ownership that do exist outside of the federal government on public lands today.

Assemblywoman Spiegel:

I read an article in the *Las Vegas Review-Journal* about an amicus brief that the Attorney General filed where they sided with Elko County in a court case over the ownership of some public roads. This was South Canyon Road near Jarbidge just south of the Nevada-Idaho line. I was wondering if you could

speaking to that matter in relation to this bill. If this bill had been passed, what impact would it have had on that particular case or any future cases that might come up? It seems to be related.

Jake Tibbitts:

In the hallways, I have heard the conversation that this is the Jarbidge Bill. In reality, we are trying to take a proactive approach to try to avoid that kind of situation. We would like to avoid the adverse, argumentative situation that has been going on for well over a decade up there. We are trying to take a proactive approach and go through the Quiet Title Act process that has been established by Congress. We want to ask the court to please adjudicate our claims. On the back end of that process, you will know which roads the judge has said that we have ownership to. I think it would streamline that process. The Attorney General's authority for the amicus brief was under this statute. The Attorney General brought that action under what is already authorized by statute.

Senator Goicoechea:

The Jarbidge Shovel Brigade was highly controversial. There was one semi that brought 7,000 shovels down there to work on that. They had the people to use them. It was very controversial. That is what this is all about.

The other point I would like to make is that there are truly a lot of easements and rights-of-way across land that none of us own. You can have an easement or a right-of-way. That is all we are seeking here.

Assemblyman Carrillo:

Would this prevent the BLM from just closing down a public road at will?

Jake Tibbitts:

This would not prevent the BLM from closing roads. The BLM has precluded themselves from impacting valid existing rights. This process is to determine what the valid existing rights are. As we sit here in limbo without knowing who has the ownership of these roads, if the BLM were to close a road, it could create a situation like the one in Jarbidge. You would have people very upset, with folks out there trying to reopen it themselves. This is the rule of law, the process established to try to finalize title to these. So moving forward with this, if there are any travel management plans or road closures in the future, the BLM would know up front what claims the counties and the state have and whether or not those are valid.

Chair Wheeler:

We will now take testimony in favor of S.B. 456.

Dagny Stapleton, Deputy Director, Nevada Association of Counties:

We are in support of S.B. 456. We believe that this creates a protocol for helping to adjudicate and clarify the status of these roads. Though the issue of the RS 2477 roads affects counties across the state, due to the high percentage of public lands in Nevada, this issue does disproportionately affect Nevada's rural counties. For example, Nye County has spent thousands of hours creating an inventory of the RS 2477 roads in their county. This bill would create a more streamlined and consistent process for counties to address these issues, and it also would help support some of the rural economic activities that depend on the use of these roads and, in turn, the economies of our rural counties.

Steve Walker, representing Lyon County, Storey County, Douglas County, and Carson City:

We are in favor of this bill. I grew up in Jarbidge and I used the South Canyon Road several times both as an employee of Wells Livestock Company and as a U.S. Forest Service employee. This bill can stop animosity and concerns. If we could establish the roads that were pre-Forest Reserve Act of 1891 and say these are the public roads through a legal titled process, then we would relieve some of the basic fights that are going on in rural Nevada concerning public land management and rural citizens. That is the real positive aspect of this bill.

I have herded sheep up the South Canyon Road where the Shovel Brigade was, but I have also driven a Forest Service rock rake and maintained that road. A lot of times, these public roads that were pre-Forest Reserve are still part of the Forest Service road system, and the Forest Service does maintenance on those roads.

Pat Sanderson, Private Citizen, Carson City, Nevada:

I am the son of a hard-rock miner who staked claims all over the state of Nevada, and I have been out on these roads all of my life. These roads were built by the miners, ranchers, covered wagon trains, a power line, pipeline, or railroads. You can get on these roads in any part of the state and go on a dirt road all the way to the other end of the state. Even though these roads were not always county roads or state roads, most of the time, in the old days, 70 percent of the roads were dirt roads. They were maintained by the counties.

I think that this is a great bill. It is something to help protect our past and allow our kids and grandkids to trace the same steps that we did. I hope that you look on this favorably and move it forward.

Chair Wheeler:

Are there any questions from the Committee? Seeing none, we will take testimony in opposition. Seeing none, we will take testimony in neutral.

Charles Donohue, Administrator, Division of State Lands, and State Land Registrar, State Department of Conservation and Natural Resources:

As you heard in the review of the bill, one of the focuses is to establish legal protocol to address the public and accessory roads over public lands through bringing the Attorney General's Office, NACO, and the state Land Use Planning Advisory Council (SLUPAC) together. My staff and I serve as staff to SLUPAC. I work very closely with Jake Tibbitts.

I want to mention that during the last legislative session, NACO was added as an ex officio member of SLUPAC. My agency regularly works with NACO on land management issues. I currently feel that the needed authority to work on issues such as this is vested within my office, and I would take directions from SLUPAC members, the chair, and my staff to work on these issues.

Chair Wheeler:

Does anyone have any questions for Mr. Donahue? Seeing none and no one in Las Vegas, we will take an informal poll. This is not a motion. Does anybody not want to vote this out? Mr. Araujo has some questions and does not want to do this today. Okay. I will close the hearing on S.B. 456. Is there any public comment? Seeing none, the meeting is adjourned [at 4:38 p.m.].

RESPECTFULLY SUBMITTED:

Henri Stone
Committee Secretary

APPROVED BY:

Assemblyman Jim Wheeler, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Transportation

Date: May 19, 2015

Time of Meeting: 3:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 206 (R2)	C	Kate McCullough / Nevada Donor Network	Testimony of Joe Ferreira, Nevada Donor Network