

**Amendment No. 129**

Senate Amendment to Senate Bill No. 53 (BDR 18-234)

**Proposed by:** Senate Committee on Transportation

**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 53 (§§ 17, 21, 26).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of *green bold underlining* is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) *orange double underlining* is deleted language in the original bill proposed to be retained in this amendment.

MKM/BJF



Date: 4/9/2017

S.B. No. 53—Revises provisions relating to the installation, operation and maintenance of telecommunications facilities. (BDR 18-234)





## SENATE BILL NO. 53—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF THE OFFICE OF SCIENCE, INNOVATION  
AND TECHNOLOGY IN THE OFFICE OF THE GOVERNOR)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Transportation

SUMMARY—Revises provisions relating to the installation, operation and maintenance of telecommunications facilities. (BDR 18-234)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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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 telecommunications facilities; revising the duties of the Director of the Office of Science, Innovation and Technology relating to broadband services, telehealth services, fiber infrastructure and the fiber conduit trade policy; authorizing the Department of Transportation to grant longitudinal access and wireless access to certain rights-of-way owned by the Department to certain telecommunications providers to construct and install telecommunications facilities; requiring certain telecommunications providers to enter into agreements with the Department to fairly compensate the Department for longitudinal access and wireless access to certain rights-of-way; providing for monetary and in-kind compensation to the Department for longitudinal access and wireless access to certain rights-of-way; authorizing the Department to enter into agreements with certain telecommunications providers for the use of spare conduit and related facilities owned by the Department; establishing procedures for the valuation of certain types of in-kind compensation paid by certain telecommunications providers; creating the Telecommunications Advisory Council within the Department; authorizing the Department to adopt regulations relating to the granting of longitudinal access and wireless access to certain rights-of-way to telecommunications providers; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law establishes the Office of Science, Innovation and Technology in the Office
- 2 of the Governor and sets forth the duties of the Director of the Office of Science, Innovation
- 3 and Technology. (NRS 223.600, 223.610) **Section 1** of this bill revises the duties of the
- 4 Director to include, without limitation: (1) developing a strategic plan for the use of

broadband services in this State; (2) applying for state and federal funding to expand broadband services in this State; (3) expanding telehealth services to increase access to health care in this State; (4) expanding fiber infrastructure in this State for the benefit of public safety; and (5) administering the fiber trade policy for fiber optic infrastructure in this State.

Existing law generally provides the Department of Transportation authority to construct, improve and maintain highways in this State. (Chapter 408 of NRS) **Section 17** of this bill authorizes the Department to grant longitudinal access and wireless access to a **Department** right-of-way ~~owned by the Department~~ to a telecommunications provider for the installation, operation and maintenance of a telecommunications facility. **Sections 17 and 23** of this bill require a telecommunications provider seeking longitudinal access or wireless access to such a right-of-way to enter into an agreement with the Department ~~Specifically,~~ **that is approved by the Telecommunications Advisory Council created by section 25 of this bill and obtain a permit from the Department. In addition, section 17** requires that a telecommunications provider fairly compensate the Department for access to the right-of-way, either monetarily or by in-kind compensation.

**Section 22** of this bill sets forth the types of in-kind compensation that may be paid to the Department of Transportation, as well as how the value of each type of in-kind compensation is calculated. **Section 18** of this bill prohibits the Department from granting any longitudinal access or wireless access to a right-of-way if it would compromise the safe use of any roadway in this State. **Section 20** of this bill requires that any monetary compensation collected by the Department be credited to the State Highway Fund. **Section 26** of this bill authorizes the Department to adopt regulations: (1) relating to the installation, operation and maintenance of telecommunications facilities constructed in a right-of-way owned by the Department; (2) establishing policies and procedures for agreements entered into between the Department and telecommunications providers; and (3) establishing rates of compensation for longitudinal access to rights-of-way owned by the Department.

**Section 21** of this bill authorizes the Department of Transportation to grant a telecommunications provider the use of and access to spare conduit **and related facilities** of the Department if the Department: (1) determines that such spare conduit ~~is~~ **and related facilities are** not needed for highway purposes; ~~and~~ (2) is fairly compensated for such use of and access to the spare conduit and related facilities ~~;~~ **; and (3) offers such use and access in a competitively neutral and nondiscriminatory manner to all similarly situated telecommunications providers.** **Section 21** also requires that any compensation paid to the Department for use of its spare conduit and related facilities be detailed in the agreement entered into between the Department and the telecommunications provider.

**Section 28** of this bill requires the Director of the Department of Transportation to coordinate with telecommunications providers for the efficient installation and maintenance of telecommunications facilities in rights-of-way owned by the Department based on the type of highway on which the right-of-way exists.

**Section 25** of this bill creates the Telecommunications Advisory Council within the Department of Transportation. **Section 25** also establishes the membership of the Council, as well as its duties within the Department relating to telecommunications services in this State.

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

**Section 1.** NRS 223.610 is hereby amended to read as follows:  
223.610 The Director of the Office of Science, Innovation and Technology shall:

1. Advise the Governor and the Executive Director of the Office of Economic Development on matters relating to science, innovation and technology.

2. Work in coordination with the Office of Economic Development to establish criteria and goals for economic development and diversification in this State in the areas of science, innovation and technology.

3. As directed by the Governor, identify, recommend and carry out policies related to science, innovation and technology.

4. Report periodically to the Executive Director of the Office of Economic Development concerning the administration of the policies and programs of the Office of Science, Innovation and Technology.

5. Coordinate activities in this State relating to the planning, mapping and procurement of broadband service ~~+~~ in a competitively neutral and nondiscriminatory manner, which must include, without limitation:

(a) *Development of a strategic plan to improve the delivery of broadband services in this State to schools, libraries, providers of health care, transportation facilities, prisons and other community facilities;*

(b) *Applying for state and federal grants on behalf of eligible entities and managing state matching money that has been appropriated by the Legislature;*

(c) *Coordinating and processing applications for state and federal money relating to broadband services;*

(d) *Prioritizing construction projects which affect or involve the expansion or deployment of broadband services in this State;*

(e) *In consultation with providers of health care from various health care settings, the expansion of telehealth services to reduce health care costs and increase health care quality and access in this State, especially in rural, unserved and underserved areas of this State;*

(f) *Expansion of the fiber optic infrastructure in this State for the benefit of the public safety radio and communications systems in this State;*

(g) *Collection and storage of data relating to agreements and contracts entered into by the State for the provision of fiber optic assets in this State; and*

(h) *Administration of the trade policy for fiber optic infrastructure in this State.*

6. Provide support to the Advisory Council on Science, Technology, Engineering and Mathematics and direct the implementation in this State of plans developed by the Council concerning, without limitation, workforce development, college preparedness and economic development.

7. In carrying out his or her duties pursuant to this section, consult with the Executive Director of the Office of Economic Development and cooperate with the Executive Director in implementing the State Plan for Economic Development developed by the Executive Director pursuant to subsection 2 of NRS 231.053.

8. Administer such grants as are provided by legislative appropriation.

**Sec. 2.** NRS 239C.060 is hereby amended to read as follows:

239C.060 "Information system" means any ~~computer~~ equipment, facility, structure, tower, cable, line, fiber, wire, computer hardware or software, procedures or technology used to transmit, receive, produce, collect, process, distribute or store information that is related to the protection of homeland security.

**Sec. 3.** NRS 239C.210 is hereby amended to read as follows:

239C.210 1. A document, record or other item of information described in subsection 2 that is prepared and maintained for the purpose of preventing or responding to an act of terrorism is confidential, not subject to subpoena or discovery, not subject to inspection by the general public and may only be inspected by or released to:

(a) Public safety and public health personnel; and

(b) Except as otherwise provided in this subsection, the Legislative Auditor conducting a postaudit pursuant to NRS 218G.010 to 218G.555, inclusive,

➤ if the Governor determines, by executive order, that the disclosure or release of the document, record or other item of information would thereby create a substantial likelihood of compromising, jeopardizing or otherwise threatening the public health, safety or welfare. Any information that is inspected by or released to the Legislative Auditor pursuant to this subsection is not subject to the exception

1 from confidentiality set forth in NRS 218G.130. The Legislative Auditor may  
2 confirm that vulnerability assessments have been submitted to or are in the  
3 possession of a state agency that is the subject of a postaudit, but the assessments  
4 must not be inspected by or released to the Legislative Auditor. An employee of the  
5 Audit Division of the Legislative Counsel Bureau who is conducting a postaudit  
6 that includes access to documents or information subject to the provisions of this  
7 section must be properly cleared through federal criteria or state or local  
8 background investigation and instructed, trained or certified, as applicable,  
9 regarding the security sensitivity of the documents or information.

10 2. The types of documents, records or other items of information subject to  
11 executive order pursuant to subsection 1 are as follows:

12 (a) Assessments, plans or records that evaluate or reveal the susceptibility of  
13 fire stations, police stations and other law enforcement stations to acts of terrorism  
14 or other related emergencies.

15 (b) Drawings, maps, plans or records that reveal the critical infrastructure of  
16 primary buildings, facilities and other structures used for storing, transporting or  
17 transmitting water or electricity, natural gas or other forms of energy ~~+~~, *fiber optic*  
18 *cables, microwave towers or other vertical assets used for the transmission or*  
19 *receipt of data or communications used by response agencies and public safety*  
20 *and public health personnel.*

21 (c) Documents, records or other items of information which may reveal the  
22 details of a specific emergency response plan or other tactical operations by a  
23 response agency and any training relating to such emergency response plans or  
24 tactical operations.

25 (d) Handbooks, manuals or other forms of information detailing procedures to  
26 be followed by response agencies in the event of an act of terrorism or other related  
27 emergency.

28 (e) Documents, records or other items of information that reveal information  
29 pertaining to specialized equipment used for covert, emergency or tactical  
30 operations of a response agency, other than records relating to expenditures for  
31 such equipment.

32 (f) Documents, records or other items of information regarding *critical*  
33 *telecommunications facilities and* the infrastructure and security of *radio*  
34 frequencies for ~~radio~~ transmissions used by response agencies, including, without  
35 limitation:

36 (1) Access codes, passwords or programs used to ensure the security of  
37 *radio* frequencies for ~~radio~~ transmissions used by response agencies;

38 (2) Procedures and processes used to ensure the security of *radio*  
39 frequencies for ~~radio~~ transmissions used by response agencies; and

40 (3) Plans used to re-establish security and service with respect to *radio*  
41 frequencies for ~~radio~~ transmissions used by response agencies after security has  
42 been breached or service has been interrupted.

43 (g) Vulnerability assessments and emergency response plans of utilities, public  
44 entities and private businesses in this State. As used in this paragraph, "public  
45 entities" means departments, agencies or instrumentalities of the State, any of its  
46 political subdivisions or tribal governments. The term includes general  
47 improvement districts.

48 3. If a person knowingly and unlawfully discloses a document, record or other  
49 item of information subject to an executive order issued pursuant to subsection 1 or  
50 assists, solicits or conspires with another person to disclose such a document,  
51 record or other item of information, the person is guilty of:

52 (a) A gross misdemeanor; or

(b) A category C felony and shall be punished as provided in NRS 193.130 if the person acted with the intent to:

(1) Commit, cause, aid, further or conceal, or attempt to commit, cause, aid, further or conceal, any unlawful act involving terrorism or sabotage; or

(2) Assist, solicit or conspire with another person to commit, cause, aid, further or conceal any unlawful act involving terrorism or sabotage.

4. The Governor shall review the documents, records and other items of information determined by executive order pursuant to subsection 1 to be confidential every 10 years to assess the continued need for the documents, records and other items of information to remain confidential.

5. As used in this section, "public safety and public health personnel" includes:

(a) State, county, city and tribal emergency managers;

(b) Members and staff of terrorism early warning centers or fusion intelligence centers in this State;

(c) Employees of fire-fighting or law enforcement agencies, if the head of the agency has designated the employee as having an operational need to know of information that is prepared or maintained for the purpose of preventing or responding to an act of terrorism; and

(d) Employees of a public health agency, if the agency is one that would respond to a disaster and if the head of the agency has designated the employee as having an operational need to know of information that is prepared or maintained for the purpose of preventing or responding to an act of terrorism. As used in this paragraph, "disaster" has the meaning ascribed to it in NRS 414.0335.

**Sec. 4.** NRS 338.161 is hereby amended to read as follows:

338.161 As used in NRS 338.161 to 338.168, inclusive, unless the context otherwise requires, "transportation facility" means a road, railroad, bridge, tunnel, overpass, *conduit or other infrastructure for conveying telecommunications cable, line, fiber or wire*, airport, mass transit facility, parking facility for vehicles or similar commercial facility used for the support of or the transportation of persons, *information* or goods, including, without limitation, any other property that is needed to operate the facility. The term does not include a toll bridge or toll road.

**Sec. 5.** NRS 338.168 is hereby amended to read as follows:

338.168 The public body may take any action necessary to obtain federal, state or local assistance for a transportation facility that it approves and may enter into any contracts required to receive such assistance. The public body shall, by resolution, determine if it serves the public purpose for all or a portion of the costs of the transportation facility to be paid, directly or indirectly, *through an approved trade or other consideration or* from the proceeds of a grant or loan made by the local, state or Federal Government or any agency or instrumentality thereof.

**Sec. 6.** Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 26, inclusive, of this act.

**Sec. 7.** *As used in sections 7 to 26, inclusive, of this act, the words and terms defined in sections 8 to 16, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 8.** *"Council" means the Telecommunications Advisory Council created by section 25 of this act.*

**Sec. 9.** *"Longitudinal access" means access to or the use of any part of a right-of-way that extends generally parallel to the right-of-way, ~~for not more than 30 linear meters.~~*

1       Sec. 10. "Permit" means an encroachment permit issued by the Director  
2 pursuant to NRS 408.423 that specifies the requirements and conditions for  
3 performing work in a right-of-way.

4       Sec. 11. "Right-of-way" means land, property or any interest therein  
5 acquired or controlled by the Department for transportation facilities or other  
6 transportation purposes.

7       Sec. 12. "Statewide telecommunications purposes" means the development  
8 of the statewide network that meets the telecommunications needs of state  
9 agencies or serves another public purpose.

10       Sec. 13. "Telecommunications facility" means any cable, line, fiber, wire,  
11 conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box,  
12 transmitting equipment, receiving equipment, power equipment or other  
13 equipment, system or device that is used to transmit, receive, produce or distribute  
14 a signal for telecommunications purposes via wireless, wireline, electronic or  
15 optical means.

16       Sec. 14. "Telecommunications provider" means a telecommunications  
17 provider:

18       1. As defined in NRS 704.027;

19       2. That meets Federal Communications Commission and industry carrier  
20 class service guidelines; or

21       3. That is a political subdivision that has statutory authority to provide  
22 telecommunications services.

23       Sec. 15. "Utility facility" has the meaning ascribed to it in 23 C.F.R. §  
24 645.207.

25       Sec. 16. "Wireless access" means access to and use of ~~any part of~~ a right-  
26 of-way ~~owned by the Department~~ for the purpose of constructing, installing,  
27 maintaining, using or operating telecommunications facilities for wireless  
28 telecommunications.

29       Sec. 17. 1. Except as otherwise provided in section 18 of this act, in  
30 addition to granting access to a right-of-way pursuant to NRS 408.423, the  
31 Department may grant to a telecommunications provider longitudinal access or  
32 wireless access to a right-of-way for the installation, operation and maintenance  
33 of a telecommunications facility.

34       2. Before granting longitudinal access or wireless access to a right-of-way  
35 pursuant to subsection 1, the Department must first enter into an agreement with  
36 a telecommunications provider that is competitively neutral and  
37 nondiscriminatory as to other telecommunications providers and issue a permit  
38 granting such access ~~for~~ under this section. Such an agreement must ~~for~~ be  
39 approved by the Council pursuant to section 25 of this act, and, without  
40 limitation:

41       (a) Specify the terms and conditions for renegotiation of the agreement;

42       (b) Set forth the maintenance requirements for each telecommunications  
43 facility;

44       (c) Be nonexclusive; and

45       (d) Be for a term of not more than 30 years.

46       3. Unless specifically provided for in an agreement entered into pursuant to  
47 subsection 2, the Department may not grant a property interest in a right-of-way  
48 pursuant to sections 7 to 26, inclusive, of this act.

49       4. A telecommunications provider must compensate the Department for use  
50 of spare conduit or related facilities of the Department as part of any longitudinal  
51 access or wireless access granted to a right-of-way pursuant to this section. Such  
52 compensation must be, without limitation:

53       (a) Fair and reasonable;



- (b) *Competitively neutral;*  
(c) *Nondiscriminatory;*  
(d) *Open to public inspection;*  
(e) *Measured to promote access by multiple telecommunications providers;*  
(f) *Calculated based on the geographic region of this State, taking into account the population ~~and the number of telecommunications subscribers~~ and the impact on private right-of-way users in the region;*  
(g) *Set at an amount that encourages the deployment of digital infrastructure within this State;*  
(h) *Paid in cash or with in-kind compensation, or a combination of cash and in-kind compensation; and*  
(i) *Paid in a lump-sum payment or in annual installments, as decided by the telecommunications provider.*

5. *For the purpose of determining the amount of compensation a telecommunications provider must pay the Department for the use of spare conduit or excess conduit or related facilities of the Department as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the Department shall:*

(a) *Conduct an analysis once every 5 years, in accordance with the regulations of the Department, to determine the fair and reasonable value of a right-of-way to which access has been granted pursuant to this section; and*

(b) *If compensation is paid in-kind, in consultation with the Council, determine the value of any such in-kind compensation based on the incremental costs to the Department for the installation of conduit and related facilities, or the costs to the telecommunications provider for the installation of conduit and related facilities, as applicable.*

↳ *The value of in-kind compensation or a combination of money and in-kind compensation must be equal to or greater than the amount of monetary compensation that the Department would charge if the compensation were paid solely with money.*

6. *Before obtaining a permit for the construction or installation of a telecommunications facility in a right-of-way, a telecommunications provider must enter into an agreement with the Department pursuant to this section.*

Sec. 18. 1. *The Department shall not grant any longitudinal access or wireless access pursuant to section 17 of this act if such access would compromise the safe, efficient and convenient use of any road, route, highway or interstate in this State for the traveling public.*

2. *Notwithstanding any other provision of law, any longitudinal access or wireless access to a right-of-way granted by the Department ~~shall not pay any costs for the relocation of a telecommunications facility owned by a telecommunications provider which has been granted longitudinal access or wireless access to a right of way~~ pursuant to section 17 of this act ~~it~~ does not abrogate, limit, supersede or otherwise affect such access granted or authorized pursuant to chapter 711 of NRS.*

Sec. 19. 1. *The Department shall provide for the proportionate sharing of costs between the Department and a telecommunications provider for joint trenching or trench sharing based on the amount of conduit innerduct space or excess conduit that is authorized in the agreement entered into pursuant to section 17 of this act.*

2. *If two or more telecommunications providers are required to share a single trench, each provider in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral and nondiscriminatory manner.*

1        **Sec. 20. 1. All monetary compensation collected by the Department**  
2 **pursuant to sections 17 and 21 of this act must be deposited in the State Highway**  
3 **Fund.**

4        **2. Any in-kind compensation received by the Department pursuant to**  
5 **sections 17 and 21 of this act must be used exclusively for statewide**  
6 **telecommunications purposes and may not be sold or leased in competition with**  
7 **telecommunications providers or Internet service providers. Fair and reasonable**  
8 **valuation of facilities owned by either the Department or a telecommunications**  
9 **provider offered as part of in-kind compensation must be determined by the**  
10 **Department and approved by the Council.**

11        **Sec. 21. 1. The Department may offer a telecommunications provider use**  
12 **of and access to its spare conduit and related facilities if the Department:**

13        **(a) Determines the spare conduit ~~that~~ and related facilities are not and will**  
14 **not be needed for highway purposes; ~~and~~**

15        **(b) Receives fair compensation for the use of and access to the spare conduit**  
16 **~~that~~ and related facilities; and**

17        **(c) Offers such use and access in a competitively neutral and**  
18 **nondiscriminatory manner as to all similarly situated telecommunications**  
19 **providers.**

20        **2. The Department shall establish rates of compensation for the use of and**  
21 **access to its spare conduit to ensure that the Department receives fair**  
22 **compensation for the value of its underground installations of conduit and**  
23 **related facilities. The compensation must be fair and reasonable to both the**  
24 **Department and the telecommunications provider, and charged in a competitively**  
25 **neutral and nondiscriminatory manner to all similarly situated**  
26 **telecommunications providers.**

27        **3. Any compensation charged pursuant to this section must be set forth in**  
28 **an agreement entered into between the Department and the telecommunications**  
29 **provider.**

30        **4. The Department shall:**

31        **(a) Determine the annual compensation to be paid by each**  
32 **telecommunications provider for use of its conduit and related facilities based on**  
33 **the present value of the estimated, reasonable cost to the Department of trenching**  
34 **to place conduit, fiber and other related facilities; and**

35        **(b) Conduct an analysis every 5 years to determine if there are any changes**  
36 **in the value of its spare conduit and related facilities. If the Department**  
37 **determines that the value of its spare conduit or related facilities has changed, the**  
38 **Department must apply the new values to each agreement executed thereafter.**

39        **5. The Department may accept in-kind compensation for the use of and**  
40 **access to its spare conduit and related facilities in accordance with the valuation**  
41 **procedures set forth in subsection 2 of section 22 of this act.**

42        **Sec. 22. 1. In-kind compensation paid to the Department under an**  
43 **agreement entered into pursuant to section 17 or 21 of this act may include,**  
44 **without limitation:**

45        **(a) Conduit or excess conduit;**

46        **(b) Innerduct;**

47        **(c) Dark fiber;**

48        **(d) Access points;**

49        **(e) Telecommunications equipment or services;**

50        **(f) Bandwidth; and**

51        **(g) Other telecommunications facilities.**

52        **2. The Department shall value any in-kind compensation as follows:**

1       (a) *Electronic equipment, conduit, fiber and other telecommunications*  
2 *hardware and software must be valued on a present value basis at the estimated,*  
3 *reasonable cost to the telecommunications provider for procuring and installing*  
4 *such hardware and software.*

5       (b) *Excess conduit, fiber and other related facilities must be valued on a*  
6 *present value basis of the estimated, reasonable cost to the Department for*  
7 *procuring and installing such facilities.*

8       (c) *The present value of the estimated, reasonable cost to the*  
9 *telecommunications provider of joint trenching for placing conduit, excess*  
10 *conduit, fiber and other related facilities for the provider and the Department*  
11 *must be proportionately allocated to the Department as a component of the*  
12 *present value of the trenching. The proportion allocated to the Department*  
13 *pursuant to this paragraph must equal the total estimated, reasonable cost of the*  
14 *trenching work multiplied by a fraction. The numerator of the fraction must*  
15 *equal the amount of conduit, excess conduit or innerduct space contributed to the*  
16 *Department under the agreement entered into pursuant to section 17 or 21 of this*  
17 *act. The denominator of the fraction must equal the total amount of conduit*  
18 *space that the telecommunications provider is authorized to install under the*  
19 *agreement entered into pursuant to section 17 or 21 of this act. In measuring*  
20 *conduit space, single-duct conduit must be measured using the planned diameter*  
21 *of the conduit, and multi-duct conduit must be measured by adding the planned*  
22 *diameters of each innerduct in the conduit.*

23       (d) *The present value of the estimated, reasonable cost to a*  
24 *telecommunications provider for providing any other telecommunications facility*  
25 *which is shared jointly by the provider and the Department must be*  
26 *proportionately allocated to the Department as a component of the present value*  
27 *of the in-kind compensation. The Department shall determine the proportion to*  
28 *be allocated to the Department pursuant to this paragraph based on the*  
29 *percentage of use or benefit to which each party is entitled under the agreement*  
30 *entered into pursuant to section 17 or 21 of this act.*

31       (e) *The Department shall determine the present value of warranties of*  
32 *equipment, conduit, fiber or other components and software, maintenance*  
33 *covenants and operating covenants, based on the reasonable, estimated cost of*  
34 *purchasing such warranties and covenants from manufacturers or other third*  
35 *parties.*

36       (f) *The total present value of the in-kind compensation is the sum of the*  
37 *present values determined in paragraphs (a) to (e), inclusive.*

38       3. *In determining the value of any in-kind compensation, the Department*  
39 *shall consider any valuation or cost information provided by the*  
40 *telecommunications provider.*

41       **Sec. 23.** *1. If the Department enters into an agreement with two or more*  
42 *telecommunications providers, a consortium or other entity whose members,*  
43 *partners or other participants are two or more telecommunications providers, or,*  
44 *if the Department requires two or more telecommunications providers to share a*  
45 *single trench, the agreements entered into pursuant to section 17 or 21 of this act*  
46 *must require that the telecommunications providers share the obligation of*  
47 *compensating the Department on a fair, reasonable and equitable basis, taking*  
48 *into consideration the proportionate uses and benefits to be derived by each*  
49 *telecommunications provider from the trench, conduits and other*  
50 *telecommunications facilities installed under the agreements.*

51       2. *The provisions of subsection 1 do not prevent the Department from*  
52 *requiring every participating telecommunications provider from bearing joint and*  
53 *several liability for the obligations owed to the Department under the agreements.*

3. Any agreement requiring two or more telecommunications providers to share the obligation of compensating the Department must provide the Department the right to review and audit the records and contracts of and among the participating providers to ensure compliance with subsection 1.

Sec. 24. 1. The requirements set forth in sections 7 to 26, inclusive, of this act do not alter existing policies and procedures relating to other utility facilities within a right-of-way or for accommodating utility facilities or other facilities under the control of the Department.

2. The Department may consider the financial and technical qualifications of a telecommunications provider when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.

3. If the Department authorizes longitudinal access, wireless access or the use of and access to conduit or related facilities of the Department for construction and installation of a telecommunications facility, the Department may require an approved telecommunications provider to install the telecommunications facility in the same general location as similar facilities already in place, coordinate their planning and work with other contractors performing work in the same geographic area, install in a joint trench when two or more telecommunications providers are performing installations at the same time and equitably share costs between such providers.

4. The placement, installation, maintenance, repair, use, operation, replacement and removal of telecommunications facilities with longitudinal access or wireless access to a right-of-way or that use or access conduit or related facilities of the Department must be accommodated only when in compliance with NRS 408.423 and any regulations adopted pursuant to this chapter.

5. Access to a right-of-way must be administered in compliance with the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56-161, as amended.

Sec. 25. 1. The Telecommunications Advisory Council is hereby created.

2. The Council consists of ~~the Governor, or his or her designee, and six~~ seven members appointed by the Governor. The Governor shall appoint to the Council:

(a) One member from the Office of Science, Innovation and Technology in the Office of the Governor;

(b) One member from the Department of Transportation;

(c) One member from the Department of Education;

(d) One member from the Nevada Office of Rural Health;

(e) One member from the Department of Public Safety;

(f) One member from the Nevada System of Higher Education; and

~~(g) One member from the Division of Enterprise Information Technology Services of the Department of Administration.~~

3. ~~The Governor or his or her designee~~ member appointed from the Office of Science, Innovation and Technology in the Office of the Governor shall serve as the Chair of the Council.

4. The Council shall meet as necessary at the call of the Chair.

5. The Director of the Office of Science, Innovation and Technology in the Office of the Governor shall provide staff support to the Council.

6. A majority of the members of the Council constitutes a quorum for the transaction of business.

7. The members of the Council receive no compensation for their services, but are entitled to be reimbursed for all travel and other expenses actually and

necessarily incurred by them in the performance of their duties, within the limits of money available to the Council.

8. The members of the Council may request assistance from technical advisors as the Council deems necessary.

9. The Council shall:

(a) Provide information, advice, strategic plans, priorities and recommendations to assist the Department in administering access to rights-of-way to telecommunications providers for statewide telecommunications purposes;

(b) Assist the Department in valuing in-kind compensation pursuant to sections 7 to 26, inclusive, of this act, and approve or deny any valuation thereof;

(c) Seek input from telecommunications providers and the public relating to broadband access;

(d) Coordinate and exchange information with other entities of this State and its political subdivisions relating to technology and telecommunications;

(e) Approve or deny any agreement between the Department and a telecommunications provider proposed pursuant to section 17 of this act, if the Council finds that the agreement is competitively neutral and nondiscriminatory; and

~~(f)~~ (f) Provide other assistance as requested by the Department.

Sec. 26. The Department shall adopt:

1. Regulations that:

(a) Govern the installation, operation and maintenance of a telecommunications facility by a telecommunications provider which has been granted longitudinal access or wireless access to a right-of-way pursuant to section 17 of this act;

(b) Specify the procedures for the Department to enter into an agreement with a telecommunications provider to be granted longitudinal access or wireless access to a right-of-way;

(c) Establish a methodology for valuing a right-of-way, excess conduit or related transportation facilities;

(d) Provide for the relocation or removal of a telecommunications facility if:

(1) The Department needs to make any necessary changes to any road, route, highway or interstate;

(2) An agreement between the Department and a telecommunications provider expires; or

(3) A telecommunications provider breaches its agreement with the Department;

(e) Provide a process for a telecommunications provider to apply for longitudinal access or wireless access within open right-of-way segments; and

(f) Establish a schedule of rates of compensation for longitudinal access or wireless access granted pursuant to section 17 of this act; and

2. Any other regulations deemed necessary to carry out the provisions of sections 7 to 26, inclusive, of this act.

Sec. 27. NRS 408.070 is hereby amended to read as follows:

408.070 "Highway" means roads, bridges, structures, culverts, curbs, drains, conduit infrastructure for conveying telecommunications cable, line, fiber and wire, and all buildings, communication facilities, services and works incidental to highway construction, improvements and maintenance required, laid out, constructed, improved or maintained as such pursuant to constitutional or legislative authorization.

Sec. 28. NRS 408.200 is hereby amended to read as follows:

408.200 1. The Director shall investigate and determine the methods of highway construction best adapted to the various sections of the State, and shall

1 establish standards and specifications for the construction and maintenance of the  
2 highways, giving due regard to the topography, natural conditions, character and  
3 availability of road-building materials.

4 2. *The Director shall coordinate with telecommunications providers, as*  
5 *defined in section 14 of this act, for the reasonable, efficient and cost effective*  
6 *installation, maintenance, operation, relocation and upgrade of*  
7 *telecommunications facilities within rights-of-way for state highways as follows:*

8 (a) *For rights-of-way not on an interstate, the Department may place*  
9 *additional conduit and related facilities within such rights-of-way for use by*  
10 *telecommunications providers based on the potential use by such providers, as*  
11 *determined by the Department. The Department may grant use of such conduit*  
12 *and related facilities by telecommunications providers in exchange for a trade*  
13 *value, as determined by the Department, for such use from such providers. A*  
14 *telecommunications provider is not entitled to compensation for its expenses to*  
15 *relocate from the conduit infrastructure of the Department unless such provider*  
16 *has a right of occupancy in its current location because it holds a compensable*  
17 *real property interest.*

18 (b) *For rights-of-way on an interstate, the Department may grant*  
19 *longitudinal access to such rights-of-way in accordance with sections 7 to 26,*  
20 *inclusive, of this act.*

21 3. The Director may construct, reconstruct, operate and maintain materials  
22 testing and research laboratory facilities as may be necessary to establish and  
23 maintain such standards and specifications.

24 ~~3.4~~ 4. The Director may be consulted by county officials, including members  
25 of regional transportation commissions, having authority over streets and highways  
26 within their respective counties relative to any question involving such streets and  
27 highways; and the Director may, in like manner, obtain from such county officials  
28 all such information or assistance as they may render in the performance of the  
29 Director's duties with their county, and such county officials shall supply such  
30 information when requested by the Director.

31 **Sec. 29.** NRS 408.5471 is hereby amended to read as follows:

32 408.5471 As used in NRS 408.5471 to 408.549, inclusive, unless the context  
33 otherwise requires, "transportation facility" ~~means a road, railroad, bridge, tunnel,~~  
34 ~~overpass, conduit infrastructure for conveying telecommunications cable, line,~~  
35 ~~fiber or wire, airport, mass transit facility, parking facility for vehicles or similar~~  
36 ~~commercial facility used for the support of or the transportation of persons or~~  
37 ~~goods, including, without limitation, any other property that is needed to operate~~  
38 ~~the facility. The term does not include a toll bridge or toll road.~~ has the meaning  
39 ascribed to it in NRS 338.161.

40 **Sec. 30.** This act becomes effective:

41 1. Upon passage and approval for the purpose of appointing members of the  
42 Telecommunications Advisory Council created by section 25 of this act, adopting  
43 any regulations and performing any other preparatory administrative tasks that are  
44 necessary to carry out the provisions of this act; and

45 2. On July 1, 2017, for all other purposes.