

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Ninth Session  
April 28, 2017**

The Committee on Government Affairs was called to order by Vice Chairwoman Dina Neal at 9:02 a.m. on Friday, April 28, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/79th2017](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Edgar Flores, Chairman  
Assemblywoman Dina Neal, Vice Chairwoman  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblyman Richard Carrillo  
Assemblyman Skip Daly  
Assemblyman John Ellison  
Assemblywoman Amber Joiner  
Assemblyman Al Kramer  
Assemblyman Jim Marchant  
Assemblyman Richard McArthur  
Assemblyman William McCurdy II  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Chris Brooks (excused)  
Assemblywoman Daniele Monroe-Moreno (excused)

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
Isabel Youngs, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Grant A. Hewitt, Chief of Staff, Office of the State Treasurer  
Vincent "Budd" Milazzo, Senior Deputy Treasurer, Office of the State Treasurer  
Barry Smith, Executive Director, Nevada Press Association  
Brian L. Mitchell, Director, Office of Science, Innovation and Technology, Office of the Governor  
Britta Kuhn, Broadband Manager, Office of Science, Innovation and Technology, Office of the Governor  
Reid G. Kaiser, P.E., Assistant Director, Operations, Department of Transportation  
Denise M. Inda, P.E., P.T.O.E., Chief Traffic Operations Engineer, Traffic Operations Division, Department of Transportation  
Misty Grimmer, representing Cox Communications, Inc.  
Kelly Crompton, Government Affairs Officer, Office of Administrative Services, City of Las Vegas

**Vice Chairwoman Neal:**

[Roll was called. Rules and protocol were explained.] First we will start today with Senate Bill 10 (1st Reprint).

**Senate Bill 10 (1st Reprint): Revises provisions governing the publication of information concerning unclaimed and abandoned property. (BDR 10-407)**

**Grant A. Hewitt, Chief of Staff, Office of the State Treasurer:**

Senate Bill 10 (1st Reprint) makes some changes to the state's public notice requirement for unclaimed property. I would like to start by pointing out this is one of the few times you will find a state agency coming not to abolish a public notice requirement, but to enhance it. Let me briefly walk you through what we are suggesting. We have been working in consultation with the Nevada Press Association and the *Las Vegas Review-Journal* to seek their input and guidance in terms of the best ways to market. Making its way around the dais right now is the unclaimed property list advertisement from Clark County [page 1E in the *Las Vegas Review-Journal* from June 25, 2015.] This is issued once per year under current statute. You will find that it is not a very user-friendly method of finding your unclaimed property. One, it has to be done once per year. Two, it just has to list the first name, the last name, and the last known city on record for the individual.

We have discovered that this method causes a large backlog in our office when it comes to processing and receiving claims. Because it only comes out once per year around late June or early July, we find ourselves with 30,000 claims or 75 percent of our entire year's workload coming in 30 days around that advertisement. We are proposing to update and modernize the public records request. We do it in two blocks. One block is for counties with a population of over 700,000. In those counties, rather than issuing a notice listing everyone's name, we would propose listing an advertisement that informs the public about how to search for unclaimed property six times a year. The advertisement would explain that they could come into the office, give us a phone call, search on the website, et cetera. The advertisements would have to be a full page in size. They would be run six different times a year in a county with a population of over 700,000. This would allow us to better control the workflow into the department and provide better customer service.

In counties with populations under 700,000, we would continue to issue the advertisement in the same format we do now. We will list the individual's name and the last known city of that individual. In these counties, the advertisements are much smaller and easier to navigate. Those counties also do not have direct access to our office. Our Unclaimed Property Division in the Office of the State Treasurer is located in Las Vegas. The smaller counties have the ability to get that information from newspapers more easily. We wanted to ensure we still listed the names in those areas.

When we do a public auction of unclaimed property, we are required to make a notice of that auction. We would continue to have that requirement. It is rare to find a state agency asking to add another public notice requirement, but we are suggesting adding a notice to businesses that they are required to file an unclaimed property report. Only 5 percent of Nevada companies are compliant with current law. When you find a company that has not been filing, you discover that they did not know they needed to file. It is not advertised by the Office of the Secretary of State when you get a business license. It is not something the Department of Taxation does. In previous administrations, there was very little communication to businesses that had not previously filed before. We are suggesting that we be required to advertise that to businesses two times a year. The advertisement will clarify that they have a requirement and duty to file unclaimed property.

All of these notices would be required to have our office address and phone number as well as our website and ways to get in contact with us. That is the gist of what we are trying to do with S.B. 10 (R1). We want more flexibility to manage our workload through Clark County by not listing everyone's name once a year, but we will inform people six times a year on how to search for their unclaimed property.

[Assemblyman Flores assumed the Chair.]

**Assemblyman Kramer:**

If I am an employer and I have people who stop working for me, I will try to send them their last paycheck. If that is forwarded back to me, after a period of time, it has to be remitted to the Unclaimed Property Division. This may not be happening because people do not know they are supposed to do that. Is that correct?

**Grant Hewitt:**

That is correct. I think the other common things we find in Unclaimed Property are phone bills. These are obviously being reported. For example, you have a deposit at a phone company—CenturyLink—and you cancel your service and move. There is no forwarding address for your deposit. We see a lot of these things along with payroll. So many companies do not realize this requirement. They may be small businesses. Maybe they are a one-person shop. There is no delineating who is required to file an unclaimed property report. They just do not know they need to.

**Assemblyman Kramer:**

Part of that, to me, includes property owners who collect the deposit when people move. They just keep the deposit. That money does not belong to the property owner. It belongs to that person and should go to Unclaimed Property. The other part of this is that, if I have a bank account with an out-of-state bank but I live in Nevada, if that account goes inactive, the bank will submit the money to their state's unclaimed property division and not Nevada's. Is there a way to make that come to Nevada instead of somewhere else?

**Grant Hewitt:**

The bank is supposed to send the money to the last known mailing address or state for the specific individual. We do have working relationships with almost all 50 other states. If a bank account went dormant in Iowa and the bank sends the unclaimed property to Iowa but the last known address was Nevada, Iowa will send us that information. Yes, we do have ways that we work with other states to ensure that happens, but the bank is supposed to send it to the last known address. Even if the bank is in Iowa, it should send it to Nevada.

**Assemblyman McCurdy:**

This is interesting. I wanted to know how much money goes unclaimed each year. What is the figure we are talking about?

**Grant Hewitt:**

Let me start with how much we have in perpetuity. We hold this property in perpetuity. We have about \$900 million in unclaimed property in Nevada. Every year property that is not claimed or paid out that year transfers to the State General Fund as an IOU in case that money does get claimed in the future. We bring in somewhere between \$35 million and \$50 million a year in unclaimed property.

**Assemblyman Ellison:**

Once the money has been sitting there for many years, it goes back into the General Fund. Is that correct?

**Grant Hewitt:**

It is every year. If we bring in \$45 million this year and pay out \$10 million, we would transfer the remaining \$35 million at the end of the year to the General Fund. We maintain records and a database for every dollar of unclaimed property, and if at any time we do not bring in more than we pay out, we would come to the Interim Finance Committee and request the money back from the General Fund.

**Assemblyman Ellison:**

The advertisement in the newspaper must cost quite a bit of money. Where does that money come from?

**Grant Hewitt:**

We use the funds we have brought in to do that advertisement within the state's budget accounts. It is about \$120,000 a year that we spend doing the advertising under current statute. While the proposed changes in S.B. 10 (R1) may see some cost savings, it was not the intent of the bill. It was the intent of the bill to gather more flexibility and allow us to better spread the workload and provide better customer service.

**Vincent "Budd" Milazzo, Senior Deputy Treasurer, Office of the State Treasurer:**

We bring in approximately \$65 million to \$70 million a year in unclaimed property. There is about \$2 million a year that funds the expenses for Unclaimed Property, including the salaries, payroll, notaries, et cetera. We return to claimants approximately 40 percent per year, and we turn over the rest to the General Fund. That is approximately \$30 million to \$35 million a year.

**Assemblyman Marchant:**

Are you allowed to make interest on that?

**Budd Milazzo:**

Yes. It goes into the General Fund portfolio, so it does collect interest.

**Assemblyman Carrillo:**

Is there a reason it goes into the General Fund and not another fund like a rainy day fund? This is unclaimed. If it never is claimed, it is free money.

**Grant Hewitt:**

I do not know when it was first transferred to the General Fund. There is a statutory requirement that \$7.5 million be transferred every year out of Unclaimed Property to the Millennium Scholarship Trust Fund [*Nevada Revised Statutes* NRS 120A.620]. Some states set up trust funds for unclaimed property, and they use the interest off the trust funds to fund other things. It sits in its own bucket. Nevada has it go into the General Fund. I do not know the legislative history on that.

**Assemblyman Carrillo:**

To me, this is when, after your relatives come over, you check the couch to find money.

**Assemblyman McCurdy:**

You said \$7.5 million has to go towards the Millennium Scholarship Trust Fund. Once it goes into the General Fund, do we get to determine how we spend the money? How is it spent?

**Budd Milazzo:**

I am not sure how it is spent. It is just an annual transfer from Unclaimed Property to the General Fund. It is part of the *Executive Budget*. They know how much money is coming every year, but it is just a transfer. It is not designated to anything specific. It is just like when taxes are collected. We have no control or idea where it goes.

**Assemblyman Daly:**

I have a question about section 1, subsection 1, paragraph (a), subparagraph (1), where you change the language about which newspaper you will use. You will send it to the paper with the largest circulation. That brings up a few questions. Annually you will have to figure out which newspaper has the largest circulation. That may go back and forth. It also creates a single source. If they have the largest circulation, and they know you have to get your ad with them, they might charge you more. You have no leverage there.

In section 2, subsection 2, you left in "general circulation." You did not change it to the largest circulation. That would give you options, and you could shop. I am not sure if you have thought about that. You might want to make them consistent and make them both "general circulation." If you want to be on the hook, you can make both sections require advertisement in the newspaper with the largest circulation.

**Grant Hewitt:**

I will tread lightly here. We worked very hard with our partners at the Nevada Press Association and the *Las Vegas Review-Journal* to come up with a compromise amendment to our original bill. This was an item that was important to them in getting it through this far. I would prefer general circulation long-term, but I also respect our partners in the press.

We would like to see this change get through. We feel the benefits we will receive by spreading out our workload will provide better customer service. We also believe the benefits of advertising to businesses to tell them to be compliant will bring in more revenue. That is our hope. This was a compromise we felt we could make. If it is the Committee's desire to go back to "general circulation," we would not oppose you.

**Assemblyman Daly:**

I appreciate that. We can talk with the press representatives as well. There are other provisions and laws that say the State of Nevada is not to engage into a single-source contracting situation. It is never good for the state or the taxpayers. We need to get the best deal that we can get. "General circulation" would be my preference.

**Grant Hewitt:**

If that is the feeling of the Committee, we will be open to that amendment. We would be happy to draft language that the Committee can consider in a work session. We believe that piece does not change what we are trying to get out of the bill. We are happy to make that consistent. I will take it back to work with the Nevada Press Association and the *Las Vegas Review-Journal*. We will see if we can come to another agreement.

**Assemblyman Daly:**

Any amendment would be to the Chairman, but I would be supportive of such a measure.

**Chairman Flores:**

Are there any other questions from the Committee? [There were none.] Is there anyone wishing to testify in favor of the bill? [There was no one.] Is there anyone wishing to testify in opposition to the bill? [There was no one.] Is there anyone wishing to testify as neutral to the bill?

**Barry Smith, Executive Director, Nevada Press Association:**

I am speaking in neutral because we compromised with the Office of the State Treasurer on this language. This has been a very successful program over the years for the State Treasurer and Nevadans. These funds have been distributed back to the taxpayers and the people this property belongs to. We were persuaded by the workload argument that by doing this once a year they get swamped with requests. They were looking to spread out the work. They can be more responsive and fulfill those requests sooner. That made sense to us, so the Nevada Press Association and the *Las Vegas Review-Journal* worked out some compromises and arrived at this to give them some flexibility on how they notice these unclaimed properties.

**Assemblyman Ellison:**

Every year we see people trying to move to more electronic platforms. This goes to show how important advertising in papers is to some of these people who do not have computers. Is that correct?

**Barry Smith:**

That is why it is consistent with my message when I come up here. The more notice, the better. This has been a very successful program over the years, so that is very true.

**Grant Hewitt:**

In closing, I want to put the number of claims we receive every year in perspective. As the Nevada Press Association and Assemblyman Ellison mentioned, finding new and innovative ways is important. It drives more people to learn about the program and what they can do. In fiscal year 2016, we received 34,221 claims for property in Nevada. We have started doing some off-the-cuff Facebook posts, working with press partners to have KOLO-TV in Reno put things on their Facebook page, and doing innovative advertising with technology. In fiscal year 2017 to date, we have already surpassed fiscal year 2016. We have had 59,876 claims initiated just this fiscal year, with about 60 days to go.

The point of S.B. 10 (R1) is not to change advertising requirements for fellow Nevadans. We just want to spread that workload out better. We only have a staff of 1.5 full-time equivalents who are responsible for processing those claims. We really feel that allowing us the flexibility to ebb and flow will provide a better service to the customer. When the State Treasurer took office, we had a 120-day processing time. Today we process claims between 25 and 30 days because we put a huge emphasis on contact back to Nevadans. This will allow us to bring that down to closer to 15-day processing, or in some cases same-day processing. We appreciate your hearing the bill, and we hope to work with the Chairman on any proposed amendments to make this bill work.

**Chairman Flores:**

At this time, I would like to close the hearing on S.B. 10 (R1). Next on the agenda is Senate Bill 53 (1st Reprint).

**Senate Bill 53 (1st Reprint): Revises provisions relating to the installation, operation and maintenance of telecommunications facilities. (BDR 18-234)**

**Brian L. Mitchell, Director, Office of Science, Innovation and Technology, Office of the Governor:**

In the 2016 Nevada *Strategic Planning Framework*, Governor Sandoval created three goals with respect to broadband development. The first is to increase the percent of cities, libraries, and schools connected with broadband. The second is to increase the percent of Nevadans that have access to broadband at speeds that meet national benchmarks. The last goal is to connect all rural hospitals, health clinics, and state correctional facilities to a broadband connection sufficient to provide telehealth services by 2025.

The Office of Science, Innovation and Technology (OSIT) in the Office of the Governor is charged in *Nevada Revised Statutes* (NRS) Chapter 223 with coordinating the State of Nevada's broadband strategy. Since our office was restructured by the 2015 Legislature [Assembly Bill 485 of the 78th Session], we have spent the last 18 months examining the best practices among other states and the nation and engaging stakeholders in Nevada. Our office organized and staffed the Nevada Broadband Task Force, which is made up of representatives from industry and state government. This task force made a number of recommendations to the Governor.

This bill would implement policies from those recommendations that will support and incentivize investment in the state's fiber infrastructure essential to providing broadband services throughout the state. Given that Nevada is mostly federal land, telecommunications providers often use the State of Nevada's highway right-of-way to connect cities to broadband. However, there is a high cost to deploy new fiber, which includes digging up roads and new trenching. This high cost results in limited access in many areas in both urban and rural Nevada and limited broadband capacity.



This bill implements "dig once" and fiber trading policies to develop and expand fiber throughout the state. The "dig once" policy requires the State of Nevada to add excess conduit into any road construction project, something that is not currently permitted. The bill changes the definition of "transportation facility" to include conduit or other infrastructure for conveying telecommunications. This reflects how current and future technology will become an integral part of transportation in the twenty-first-century, such as autonomous vehicles and smart traffic systems.

Second, fiber trading is a way to allow telecommunications providers to access the excess conduit added as a result of "dig once" policies. Providers would access this extra fiber in exchange for helping the State of Nevada expand fiber elsewhere in the state. This is a win-win, allowing both parties to expand their networks without the costs of permitting and digging trenches. Utah has had a fiber trading policy since 2001 and has added over 1,500 conduit miles at a value of over \$50 million dollars. From 2011 to 2015 alone, Utah entered into 18 trades, adding 812 miles to the state's network, at a value of nearly \$29 million.

The need and the appetite for broadband in Nevada are great. The policies in this bill would directly benefit the state's transportation and fiber infrastructure, increase transportation safety, and facilitate innovations in machine-to-machine communication. More broadly and equally important, these policies will also assist our office in its mission to expand broadband access to schools, libraries, hospitals, clinics, prisons, businesses, and homes that currently lack adequate connections.

I would like to take a moment to thank the many stakeholders, especially those from the telecommunications provider community, for lending their time and expertise to help us improve this bill. I will briefly summarize a couple of the improvements we made as a result of their feedback.

First, we clarified that everything in this bill is voluntary and that the existing process for accessing the right-of-way still exists and does not change. This is simply another tool in the toolbox. Second, we added language to make it very explicit that this new process would be carried out in a way that is competitively neutral and ensures a level playing field for anyone seeking to participate. This was always our intent, but we strengthened the bill's language to reinforce this idea.

Third, we also clarified that all existing statutes and rules governing the right-of-way, including relocation costs, would remain the same. This bill makes no changes to how the right-of-way is governed.

Finally, I want to make you aware that this bill requires a two-thirds vote because sections 17 and 21 of the bill require the Department of Transportation (NDOT) to establish a value for the trades to ensure fairness. Providers will have the option of either doing a trade or paying the monetary value for the access to the right-of-way. If they choose to pay with cash, any compensation received would be deposited into the State Highway Fund.

Therefore, by virtue of this provision, the bill could result in funding coming to the State of Nevada. Any time a bill may generate funding, it requires a two-thirds vote. However, I will stress that in Utah, all parties prefer to enter into trade agreements because it works better for telecommunications companies and for the Utah Department of Transportation. In the 20 years they have been implementing this program, 99 percent of Utah's agreements with telecommunications companies have involved trades rather than payment of funds. I expect the same would be true here in Nevada.

**Britta Kuhn, Broadband Manager, Office of Science, Innovation and Technology,  
Office of the Governor:**

This bill basically has three components to it. The bill expands the responsibilities assigned to OSIT. The second part of the bill addresses public records requests and how those are handled with regard to broadband fiber assets or telecommunications assets. The third part of the bill seeks to implement a "dig once" policy and a fiber trading policy. At this time, I would like to go through the sections of the bill to highlight key provisions. Then I can answer any questions for you. As indicated, section 1 expands on the legislation enacted in 2015 that expanded OSIT. This section will require our office to produce a state strategic broadband plan to manage state matching funds in order to help our state draw down more federal E-rate funding. This section will also require our office to work with NDOT on the implementation of this fiber trading agreement.

Sections 2 through 4 address data maps, information, and records concerning telecommunications and fiber infrastructure, which may be subject to public records requests. Currently, certain records involving the state's critical infrastructure may be held to a higher level of review by the Legislative Counsel Bureau's Audit Division or the Office of the Governor. They have the ability to declare the information confidential. Things such as drawings, maps, plans, or records that reveal the critical infrastructure of primary buildings or facilities used for the delivery of gas, water, and electrical services may be deemed confidential because they can impact public welfare, safety, or homeland security. Nowhere in that section does it provide for telecommunications facilities or fiber optic infrastructure. This would amend that section to include that. As we all know, in an emergency or disaster, your telecommunications are key. The diagrams and maps that pertain to that fiber asset infrastructure equipment may be deemed confidential.

Sections 4 through 29 of the bill would authorize NDOT to implement a "dig once" policy as well as a fiber trading program. This program would help to develop and expand fiber infrastructure throughout the state by allowing NDOT to install additional conduit in certain highway projects and offer the conduit in exchange for something of equal or greater value to telecommunications providers. It should be noted that the Federal Highway Administration, U.S. Department of Transportation, has been supportive of this practice. It has urged states not only to adopt their own "dig once" policy but to also promote the innovative use of private resources in support of the intelligent transportation system development. In this regard, the Federal Highway Administration has cited the successes seen in Utah's own fiber trade program through their Department of Transportation as a best practice for other state transportation departments to follow.

"Dig once" policies can vary, but the gist is to minimize excavations. In our state, we have not been able to implement such a program because the current definition of "transportation facility" as set forth in NRS does not include additional conduit, fiber, or wire used for telecommunications. As a result, NDOT cannot use highway funds to pay for this installation of additional conduit. By changing the definition of "transportation facility" in NRS Chapter 408 and NRS Chapter 338, NDOT would be able to pay for and include additional conduit in its highway construction projects.

When considering this bill, two things should be noted. Conduit is relatively inexpensive and does not add much to the overall cost, but for a telecommunications provider, digging and trenching is the main cost of what it takes to construct fiber optic lines. If you already have conduit in the ground, it greatly reduces their overall investment. In addition, this bill will grant NDOT the authority to engage in these public-private partnerships with telecommunications providers for the purposes of entering into trade agreements.

This is an example of what a fiber trade agreement would look like [page 2, ([Exhibit C](#))]. This is just a hypothetical. Suppose NDOT wanted to expand their intelligent transportation system north along the road out to Mesquite. The intelligent transportation system is basically a system that runs AMBER Alerts, electronic signs that say how many minutes there are until the next exit, and closed-circuit cameras for monitoring traffic. The Department of Transportation already has this intelligent transportation system, but the idea is to expand it. While you are expanding that, you have the opportunity to expand the fiber infrastructure in the state.

Assuming NDOT was constructing roads north to Mesquite, they would install excess conduit while doing that work, assuming a telecommunications company has an interest in using that conduit. The Department of Transportation would place a value on the conduit and the cost of the trenching. They would come up with a value for the assets put in the ground. They would then say that if companies wanted access to the conduit, they would be required to give NDOT something of equal or greater value. What that something is can vary.

For instance, if they wanted in on that fiber line to Mesquite, NDOT could say that they want access to dark fiber along U.S. Route 95 and lateral access into the High Desert State Prison [page 3, ([Exhibit C](#))]. Then the telecommunications company would place a value on that. That is how the trade would work. Here is another idea [page 4, ([Exhibit C](#))]. This is going down Interstate 15 (I-15). If NDOT was placing line from Sloan down to Primm and someone wanted access to that because I-15 is a huge fiber highway, they could give NDOT something else in return. Suppose this telecommunications provider had towers or tower access in an area like Elko, NDOT could give them access to fiber on I-15 and ask for towers in Elko in return [page 5, ([Exhibit C](#))]. That is how the trade would work.

It is not just conduit for conduit or fiber for fiber. It can be for any number of telecommunications facilities, which is defined in the bill. This policy, as noted, has been implemented in Utah for over 20 years.

**Assemblywoman Neal:**

I do not know if fiber is equally valued by each provider. Let us say there are three companies that want to go into the trench. How is this conversation around the value of what they have discussed?

**Britta Kuhn:**

In Utah, they do a trade on a foot-by-foot or strand-by-strand basis. If you are getting a bundle, which is 12 strands, in one place, you can trade that for 12 strands in another place. Alternatively, the value could be determined by the cost of the fiber. Cost of fiber is but one component. The electronics used to light up the fiber is where the other big cost is. Those are hard numbers that can be easily valued. You know what you pay for your fiber line. Fiber lines can be 72-line count or 144-line count. That costs a certain amount per foot. That is easily ascertainable. The electronics you use to light up the fiber are also easily identifiable. It would be the hard cost.

**Assemblywoman Neal:**

We always hear about how one telecommunications provider clearly moves information faster than another provider. They have greater connectivity. They have already put a cash value but is there an additional value for their service? In this tradeoff, what if they have extra value that is not necessarily cash? It might be nonmonetary. They think what they want to put in is more valuable than what Verizon wants to put in, for example, because of the different speeds.

**Britta Kuhn:**

In that particular instance, you are referring to commercial broadband services. Commercial broadband services are a bit different from the wholesale market or in this case the hard cost of the asset. I believe what you are talking about is data plans. One data plan will give you 60 megabytes and another will give you 10 megabytes. That is not what the values are in this particular realm. In this realm, you look at the cost of the fiber cable, circuits, electronics, communication huts, splice boxes, and poles. You would look at the hard costs, not the commercialized costs.

This is basically the world of Utah [page 6, ([Exhibit C](#))]. It is kind of hard to see, but the squiggly lines represent Utah's existing fiber lines in 2006. Between 2006 and 2015, this is how they were able to expand their fiber lines [page 7, ([Exhibit C](#))]. If Utah's Department of Transportation is installing an intelligent transportation system along 20 miles, the telecommunications provider can pay the cost to extend the remaining 20 miles to get into a more rural or remote location such as Scipo or Moab. Those are pretty rural communities. By doing this fiber trading, you can leverage what you have and make it more affordable for providers to get into rural communities. One of the things that dictates where they can go and their willingness to go into rural communities is the return on investment. Making it more cost-effective incentivizes them.

This slide shows the expansion of the infrastructure [page 8, ([Exhibit C](#))]. In 2006, Utah only constructed 330 miles to expand their intelligent transportation system. By 2015, they had received over 900 miles and traded fiber, conduit, and circuits. From 2001 to 2004, they received nothing. They were putting in additional conduits, but they did not have anything to trade, so there was no trading going on. The trading starts once you have the conduit in the ground and have something to offer. Once you have it in, you can see how that ramped up.

The last slide shows the value of those additional fiber lines, conduits, and circuits and what Utah received in return [page 9, ([Exhibit C](#))]. They had trade miles of 812 added to their system. That trade value came out to almost \$29 million. Sections 17 through 25 of the bill explain how the policy will work, the ground rules for working with telecommunications providers, and that the process must be open, fair, transparent, and competitively neutral. The goal is to treat telecommunications providers in a competitively neutral, nondiscriminatory manner, so you do not give one any benefit over another.

In addition, in order to ensure the trade values are fair and reasonable, any agreement must be approved by the Telecommunications Advisory Council, which will be created under this legislation. Again, this is modeled after Utah. They wanted an extra set of eyes on these trade values to ensure they were not too far out of balance. They provide additional oversight over these trades. In addition to the creation of the Telecommunications Advisory Council to oversee these trade values, NDOT will also be responsible for promulgating the regulations necessary to implement this program.

In conclusion, this bill will help minimize future excavations, save the state money in the long run, and it will facilitate future fiber and broadband investment by reducing broadband deployment time and costs. In addition, other collateral benefits realized by Utah have included the expansion of fiber infrastructure into underserved areas of the state.

**Chairman Flores:**

It is my understanding that NDOT did not come to you. Where did this idea spark? What stakeholders worked on this language? What was the moment when you realized we have to do this now? I am curious to see what the process of getting here was.

**Brian Mitchell:**

The genesis for this was a lot of the research that Britta did in her role as the Broadband Manager for the State of Nevada. The Nevada Broadband Task Force, which was created on July 15, 2009, by executive order and reestablished in 2015, also by executive order [Executive Order #2015-23 Order Re-Establishing the Nevada Broadband Task Force], is made up of stakeholders from the telecommunications provider community, Nevada's counties, hospitals, NDOT, the Division of Enterprise Information Technology Services (EITS) within the Department of Administration, the Department of Education, and others. That task force looked up best practices in other states as delineated by the federal government and other transportation think tanks. We came across this policy in Utah and thought it made a lot of sense for Nevada. We wish we would have been doing this a long time ago, but now is a good time to start doing it.

**Assemblywoman Bilbray-Axelrod:**

I think this fantastic. I want to say that when I worked in Congresswoman Titus's office, this was a big issue for some of the more rural areas like Laughlin. They could not get information out there. I am looking at the number of projects NDOT has going on right now. It is covering the entire state, which is very exciting. At what point is it too late? We have Project NEON going on in Las Vegas. They are digging it up now. If this law is enacted, it starts on July 1, 2017. Do we lose out on that whole corridor because it is too far down the road, or is this something that can be added at a later time? I am not sure I understand at what level the wires are laid exactly.

**Reid G. Kaiser, P.E., Assistant Director, Operations, Department of Transportation:**

This issue came up after we had already advertised the USA Parkway project here in northern Nevada. We are having conduit installed on that project by change order. It is not too late to get conduit in the ground on an active project.

**Assemblyman Ellison:**

It is good to see the charts here. We have been putting conduits in for years along Interstate 80 (I-80). I know there is a lot of conduit going towards Elko. High-speed fiber is probably the newest and greatest thing out there at the moment. You have been working on this for several years along I-80, is that not correct?

**Brian Mitchell:**

Currently NDOT has the authority to install conduit for their own purposes, but they are only able to install just enough for themselves to run their intelligent transportation system. This bill would give them the authority to install excess conduit that could be used in a trade with a telecommunications provider. Right now there is not enough in there to trade. In the future when they are doing work around Elko, they could put in additional fiber, which would have a value to telecommunications providers.

**Assemblyman Ellison:**

We were working on the loop system around Elko that would tie in City Hall, the airport, and other agencies that were hoping to come off that fiber line. We have them in Ely. I think this is a great deal. I am glad we are focusing on this now. Technology is growing so fast that we need these conduits in the ground.

**Assemblyman Marchant:**

I think this is a great idea. We should have been doing this a long time ago. My background is technology, and we were doing things like this in Florida a while ago. It is a good idea, and I fully support it. I will help in any way I can.

**Assemblywoman Neal:**

I will work backwards. I am on section 25, which sets up the Telecommunications Advisory Council. It has the power to approve or deny an agreement. I was looking at the makeup of the council, and to me they will be reviewing contracts. I know the Department of Transportation will see it, and it goes to the council for approval or denial. I am confused

about the council's ability to review these types of contracts. You give the members of this council a lot of duties, including ensuring they are providing information and advice and valuing the in-kind compensation with the assistance of NDOT. I did not see the expertise that I thought needed to be there. They are the stakeholders who probably have an interest in where the conduit goes, but not necessarily the contracts.

**Brian Mitchell:**

We put a lot of thought into the membership of this council. You are right. Some of the individuals on the advisory council are stakeholders. For example, the Department of Education is a stakeholder. They have a desire to increase fiber optic access to schools. However, OSIT, NDOT, the Nevada System of Higher Education (NSHE), and EITS have significant fiber assets throughout the state and have individuals who work for them with the necessary expertise for this. In particular, I think NSHE uses their fiber infrastructure not just to connect the campuses but also to connect to 30 percent of the schools in the state, and EITS connects most of the state agencies located throughout the state as well as many local government institutions.

We believe each of these agencies has individuals who understand how to do contracts and have expertise, even within departments like the Department of Public Safety and the Department of Education. They have experts in their departments who deal with telecommunications and broadband. The Department of Public Safety has their own broadband network.

**Assemblywoman Neal:**

Section 25, subsection 7 says, ". . . within the limits of money available to the Council." They will not be paid, but they will be reimbursed for travel and all other expenses actually and necessarily incurred by them. However, this bill does not have a fiscal note. Does OSIT have the budget already to cover this additional expense? There is money that will be paid, but there is no fiscal note saying what the cost is. I am assuming it will be absorbed under OSIT, but it is not clear what that is.

**Brian Mitchell:**

The last clause in section 25, subsection 7 is ". . . within the limits of money available to the Council." There is no money in the OSIT budget to facilitate travel, and it is our intention to use the videoconferencing capabilities in the north and the south for these meetings so that there would be no cost for the travel. We do not intend to fly individuals from Las Vegas to Carson City for the meetings or vice versa.

**Assemblywoman Neal:**

That is your "just in case" language. Now I have a question about section 17, subsection 4, paragraph (h). It says, "Paid in cash or with in-kind compensation, or a combination of cash and in-kind compensation." There is also some language in section 17, subsection 5, paragraph (b) that says, "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 . . . ." I wanted a little more conversation around that. Can you help flesh that

out a bit? You have clauses in here that say the in-kind compensation must be equal or greater than the amount of the monetary compensation. How does that work? We will create an in-kind compensation agreement between providers. It may be in-kind compensation or cash. What terms in that agreement would deal with in-kind relationships and the values? That is when you are getting into the contractual or bartering side of this fiber.

**Brian Mitchell:**

If I understand correctly, you are asking how the value of in-kind compensation is determined. Section 22, subsection 2 of the bill describes how NDOT determines the value for in-kind compensation. That would be determined up front. Based on that, if there is a provider who wants to enter into a trade agreement, NDOT would determine the value of what the provider wants and thereby the necessary return trade that NDOT would need to receive in order to make that value equal to or greater than the value of their right-of-way.

**Assemblywoman Neal:**

I get that. Section 17, subsection 2, paragraph (a) talks about the ability to renegotiate the terms of the condition of the agreement. It made me curious about how we renegotiate what was an in-kind transaction to begin with. How do we classify those terms? Technically you are asking for consideration for other consideration. I give you something of value; you give me something of value back. How do we renegotiate that?

**Brian Mitchell:**

In section 17, subsection 5, paragraph (a), NDOT conducts an analysis once every five years in accordance with their regulations to determine the fair and reasonable value of the right-of-way. Every five years they would determine whether any of the previous valuations had changed. That is how they would continually determine the value of the right-of-way.

**Assemblywoman Neal:**

That means we are probably not going to have a term of 30 years on a contract. We will have an intermittent check-in every five years. Section 17, subsection 2 says, "(b) Set forth the maintenance requirements for each telecommunications facility; (c) Be nonexclusive; and (d) Be for a term of not more than 30 years." This was also under the discussion of the agreement. So we will have periodic moments where we step in and revisit what is happening. We are not going to have a 30-year term.

**Britta Kuhn:**

With regards to this particular provision, Utah provides discounted rates for entering into 30-year agreements. The terms and conditions of those agreements are set forth in a contract. You enter into this agreement before an occupancy permit would be granted. In contracts, there will be grounds for whether it would need to be renegotiated or not. I think Utah does this as a failsafe for when they have a situation that is unforeseen that they need to address or if they had their own Project NEON. It gives them the ability to do it. It does not mean these agreements would be renegotiated every five years. It also depends on what the agreement is. If you are talking about access to the conduit, they ask for long-term agreements. They give a discount for entering into a 30-year agreement.



**Brian Mitchell:**

We do not anticipate that NDOT would be entering into short-term agreements on these, nor would there be a situation where NDOT would come back to a provider a few years later because the price went up and demand more money. These are supposed to be long-term agreements. They are based on the present-day value of that fiber. The Department of Transportation will continually reevaluate for the purpose of entering into new agreements what the value of that conduit is, but if there is an existing agreement, NDOT would not demand that a provider renegotiate the agreement to stay in the right-of-way.

**Assemblywoman Neal:**

We talked about the constitutional provision around donation of money and providing gifts, loans, or credit to private companies. I know this bill has the in-kind compensation and the monetary compensation, but for the record, is bartering how you got around the provision of providing something of value? It could be cash, in-kind compensation, et cetera.

They are giving you something, but you are also giving them something as well when you dig the trench. You are taking on one part of the cost. They benefit from that, but you also receive a benefit. I want to know how you got around that legal provision so that there is no violation of the constitution. You are not giving money to a private company. You are not giving a loan or credit. Is that how you worked that out?

**Brian Mitchell:**

The Department of Transportation grants access to its right-of-way. This is simply another means for providers to have access to the right-of-way. There is no gift or loan involved in granting access to the right-of-way. This is simply another means of getting in there. With regard to whether providers could pay in cash or do a trade, I think there may be a rare circumstance where a provider may prefer to do cash rather than a trade. As I stated in my testimony, I think that would almost never be the preference.

**Assemblywoman Neal:**

I am back in section 1, subsection 5, paragraph (e). I did not get it. I was not sure if it was a typo. It said, "In consultation with providers of health care from various health care settings, the expansion of telehealth services . . . ." Now I get it. I know there is telehealth, but are they running fiber? Let us use Renown Health as an example. Are they running fiber for their telehealth?

**Britta Kuhn:**

Yes. Many of the hospitals do run fiber and have fiber cable to transmit data. In most hospitals you have either transmission of medical records, which can be very data-intensive, or transmission of X-rays and CAT scans. Those are also very data-intensive. Renown is a bit different from the hospitals in the rural communities. Those also have fiber optic connectivity to run their telemedicine programs and for transmitting medical data records.

**Assemblyman Daly:**

I am trying to get information on how this will work. Maybe NDOT will answer some of the questions on how this works. I have similar questions about the makeup of the panel and what discretion they may have. I know there are parameters in the bill that say they have to consider certain things. Things are in regulation that we have not seen yet. Typically you are making changes in NRS Chapter 408 regarding "transportation facilities." You are adding pieces to that definition. There are rules and laws already established for transportation facilities. They seem to be different from what you would be doing in sections 7 through 28. Is that going to be a new section within NRS Chapter 408, or will it be within the "transportation facility" definition? How will those two connect?

**Brian Mitchell:**

I do not know exactly how it will end up getting written into the statute, but it will be in NRS Chapter 408. Section 17, subsection 1 says it will be added to NRS 408.423. This will be another way for providers to have access to the right-of-way, but everything else in NRS Chapter 408 governs that right-of-way. In some cases, NRS Chapter 711 talks about different right-of-ways. Those provisions would still apply to this. This is not a completely separate carve-out from everything that has to do with the right-of-way in the rest of NRS, but all those other rules would still apply.

**Assemblyman Daly:**

We understand transportation facilities and how they are currently done. This is adding a new explanation in. That type of transportation facility will not be done within that section of NRS, so there is a disconnect there to me. How do people access the right-of-way now? You do not have this, and they want to put in fiber optics. They have to apply, get permission, dig their own trench, put in their own conduit, run their own fiber optics, et cetera. They are a private company doing their bid. Is that the way they get access right now?

**Britta Kuhn:**

How they currently access the right-of-way is through a right-of-way occupancy permit. There is a whole process for doing that. If they want access to the right-of-way, there is a permitting process they have to go through. If they are installing anything in the right-of-way, they have to submit plans and it has to be reviewed and approved by NDOT before they can come into the right-of-way. There is also a cost incurred for that. In fact, they have a book on occupancy permits in the right-of-way, and there is a whole section on telecommunications facilities.

**Denise M. Inda, P.E., P.T.O.E., Chief Traffic Operations Engineer, Traffic Operations Division, Department of Transportation:**

What Britta described is accurate. There is a permitting process to allow telecommunications companies, utility companies, and a variety of other people to access the right-of-way and install telecommunications and utility equipment. It is fairly restrictive. That is why we see this legislation as opening up opportunities for telecommunications providers that are not there. The ability to have longitudinal installations within the control of access on the

Interstates is a pretty big deal. That is pretty restricted right now. We have one long-haul along I-80 as Assemblyman Ellison was referring to. That was installed a number of years ago with very limited access. This would provide other opportunities to the telecommunications companies on the Interstates and on our other state highways.

**Assemblyman Daly:**

What I understand we are trying to do here is that NDOT is in a section of road doing maintenance, upgrades, and construction throughout the state. You have a 26-mile stretch on U.S. Route 93, or whatever. In conjunction with that, if you were maybe going to be putting in conduit—or if we were not because we did not need any—you would go ahead and add extra into the NDOT contract. Your NDOT contractor will put it in. You may or may not have an agreement already. Let us say you put in a duct bank and a bank of 16, four-inch conduits. You only needed one. How will you value that? Who will put the fibers in? Will they be on the right-of-way at the same time? Are you only going to put the conduit in if you already have an agreement with someone? What happens if someone else comes in? How will you value the next agreement?

So the first company has to pay their fair share of opening the trench and paying for the conduit that NDOT did not need. How do you handle the next agreement with the next company? You have already opened the trench, and they just need an access point to pull the cable through. Will you charge that company on a margin? Or will you tell them that they have to pay the same amount the first company had to pay? If it is just on the margin, I will be the second company and pay less. If we all remember economic cost, the first prototype you build costs more than building one more. That is the margin. How will you do that?

**Denise Inda:**

As I understand it, we will be modeling our process after Utah's Department of Transportation. They have an extensive and successful history with this. We will be looking to model what we are doing after that and adapting it to what will fit best for Nevada. They create value at the beginning so that any company that would like to come in will know what the value of the trade is worth. They can evaluate if it is cost-effective for them or not. That value would be pre-set. The first person to come in will not be paying for the entire trench and all of the conduits. The value will be identified for what they are using. If they are using multiple conduits or one of the conduits, that is what they will be basing the trade off of. When another firm comes in, the value will be placed on what they are looking to do. We will not be double-charging people. We will be charging them for the incremental portion of the infrastructure they are looking to access.

**Assemblyman Daly:**

I am not sure we are communicating. I do not want to have to read Utah's history and what they have done. You should be able to tell us that information. The way I read the language in the bill, you are going to tell companies to pay their fair share of opening the trench. The Department of Transportation will put it in. Before, they had to pay for this as a private company with no partnership. They would have to open their own trench and incur those costs. We are trying to save them costs here.

I heard you say we will only charge them for what they use. Are we going to say that we were going to open the trench anyway, so there is no cost for that? I would say that would not be correct. I want to make sure we are telling them to pay their part for opening the trench, increasing the size of the pipe, the extra conduits that go in, et cetera. Whatever the next company is that comes in should have to pay the same share. I am not hearing you say that. Is that going to be left up to this Telecommunications Advisory Council, and we will not know how they are going to analyze all this stuff? How will they do that so that we know the taxpayers in Nevada are getting their fair share?

**Denise Inda:**

Yes. That is the case. Each interested party coming into a trench will be asked to pay their fair share of that entire infrastructure, which includes the establishment of the conduit itself.

**Assemblyman Daly:**

So the public and private partnering should benefit both. If each of us digs our ditch, we each pay our own costs for our own ditch. If we are only digging one ditch, they both need to share in that. Yes, we will get a cost savings to us, and they will get a cost savings as well. We will kill two birds with one stone. Are they ever going to be on the right-of-way at the same time? Is the conduit going to be put in by NDOT and the companies will just be given access points to pull wire? Or will they do it at the same time? Is there a separation between what a public work is and what is not?

**Denise Inda:**

Yes, there would be separation of the efforts. For example, on the USA Parkway project, Reid Kaiser explained that we did a change order to add in conduit along the new stretch of roadway. That infrastructure will be put in by the contractor on behalf of NDOT. Then, if any telecommunications providers want access to that conduit, they will work through the process similar to the encroachment permit process that already exists.

The value will be assessed, the agreement will be put in place, and they will come in through the proper process to add their fiber through that infrastructure. There will be the appropriate access points where they will have the infrastructure necessary for connecting to the fiber and getting it connected to the rest of their system.

**Reid Kaiser:**

Denise is correct. Our contractor will go out there and install all the conduit, the pull boxes, et cetera, and get the infrastructure in the ground. At that time, if a service provider wanted to install fiber into that conduit, they would be working on their agreements with NDOT. Until those agreements are signed, approved, and run through NDOT's deputy attorney general, the service providers will not be given permission to go out there. We definitely would not be delaying our contractor putting the conduit into the ground just so someone can pull fiber.

**Assemblyman Daly:**

I am trying to get comfortable and understand how that will work. I think I got it. I know the Office of the Governor is listening, and they are here. I do not want to blur the lines between public works projects and projects that are not public works. You know why. I want to make sure that does not happen. I think I got the answer.

**Chairman Flores:**

Is there anyone wishing to testify in favor of the bill?

**Misty Grimmer, representing Cox Communications, Inc.:**

We are in support of this bill. A lot of the questions you asked were the same questions we had of OSIT. They were very agreeable to work with. Ms. Kuhn came to our office several times, and we had several conversations. We came to an agreement that this is good policy.

**Kelly Crompton, Government Affairs Officer, Office of Administrative Services, City of Las Vegas:**

We, too, are in support of the bill. We feel that this will hopefully reduce unnecessary road construction. We hear from a lot of constituents that people are frustrated with roads being dug up once, twice, and three times.

**Chairman Flores:**

Is there anyone wishing to testify in opposition to the bill? [There was no one.] Is there anyone wishing to testify as neutral to the bill?

**Reid Kaiser:**

Denise Inda's Traffic Operations Division will be administering this program for NDOT. I appreciate the support she has given to Britta and us. Technology today is not only important for private industry, but for state, county, and city governments. Many of the signalized intersections, message boards, ramp meters, and freeway cameras throughout our state use fiber technology to transmit information to a central hub like the Freeway and Arterial System of Transportation in Las Vegas and NDOT's road operation centers at each NDOT district headquarters.

An example of this technology in use is in Las Vegas, where travel times are measured and then transmitted to message boards for viewing by drivers. Another example is cameras placed on our rural highways use fiber technology to send images of present roadway conditions to a central location that is then placed on NDOT's website. These images are also placed on the 511 Nevada website, which can be viewed on NDOT's website and smartphone applications. This bill would allow NDOT to expand our coverage in areas where there currently is no coverage.

The Department of Transportation also has weather stations that monitor atmospheric conditions, roadway temperatures, and other items that allow our maintenance staff to efficiently monitor and apply road sand and salt. This system would allow NDOT to expand coverage to more locations.

Another use is in the shared radio system used by many emergency first responders statewide and the Nevada Highway Patrol, Department of Public Safety. Fiber is also shared between NDOT, NSHE, and EITS, resulting in high-speed communications for the university system and multitudes of other state agencies.

The Department of Transportation has sufficient right-of-way along our freeways to allow conduit to be placed underground and for facilities to concert long-haul fiber to local fiber services. Facilities will not be installed at any location that would reduce public safety. When a telecommunications company proposes to install their fiber in NDOT conduit, NDOT will enter in a cost-sharing agreement that will be a benefit for each party. If NDOT cannot receive in-kind compensation, the revenue from leasing the conduit will be deposited into the State Highway Fund.

**Chairman Flores:**

We will close the hearing on Senate Bill 53 (1st Reprint). Is there any public comment? [There was none.] This meeting is adjourned [at 10:32 a.m.].

RESPECTFULLY SUBMITTED:

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Isabel Youngs  
Committee Secretary

APPROVED BY:

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Assemblyman Edgar Flores, Chairman

DATE: \_\_\_\_\_

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Governor's Office of Science, Innovation & Technology," presented and submitted by Britta Kuhn, Broadband Manager, Office of Science, Innovation and Technology, Office of the Governor, regarding Senate Bill 53 (1st Reprint).