

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**Eighty-First Session  
February 24, 2021**

The Committee on Natural Resources was called to order by Chair Howard Watts at 4:01 p.m. on Wednesday, February 24, 2021, Online. 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/81st2021](http://www.leg.state.nv.us/App/NELIS/REL/81st2021).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Howard Watts, Chair  
Assemblywoman Lesley E. Cohen, Vice Chair  
Assemblywoman Natha C. Anderson  
Assemblywoman Annie Black  
Assemblywoman Tracy Brown-May  
Assemblywoman Maggie Carlton  
Assemblyman John Ellison  
Assemblywoman Cecelia González  
Assemblywoman Alexis Hansen  
Assemblywoman Susie Martinez  
Assemblywoman Robin L. Titus  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jann Stinnesbeck, Committee Policy Analyst  
Allan Amburn, Committee Counsel  
Devon Kajatt, Committee Manager  
Nancy Davis, Committee Secretary  
Trinity Thom, Committee Assistant



**OTHERS PRESENT:**

Cynthia Laframboise, Chair, Nevada State Board on Geographic Names, Nevada System of Higher Education; and State Archives Manager, State Archives, Division of State Library, Archives and Public Records, Department of Administration  
Marla McDade Williams, representing the Reno-Sparks Indian Colony  
James R. Lawrence, Deputy Director, State Department of Conservation and Natural Resources  
Kristin Szabo, Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources  
Justin Harrison, Principal Management Analyst, Clark County  
Patrick Donnelly, Nevada State Director, Center for Biological Diversity  
Madelyn Reese, Member, Toiyabe Chapter, Sierra Club  
Richard Karpel, Executive Director, Nevada Press Association; and representing Nevada Open Government Coalition  
Ainslee Archibald, Hub Coordinator, Sunrise Movement Las Vegas  
Kyle Roerink, Executive Director, Great Basin Water Network  
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada  
Stacey Montooth, Executive Director, Nevada Indian Commission, Department of Tourism and Cultural Affairs

**Chair Watts:**

[Roll was called. Committee rules and protocol were reviewed.] I am going to open the hearing on Assembly Bill 72.

**Assembly Bill 72: Revises provisions relating to the Nevada State Board on Geographic Names. (BDR 26-258)**

**Cynthia Laframboise, Chair, Nevada State Board on Geographic Names, Nevada System of Higher Education; and State Archives Manager, State Archives, Division of State Library, Archives and Public Records, Department of Administration:**

I am here today as the Chair of the Nevada State Board on Geographic Names to introduce Assembly Bill 72. The statement of intent for this bill is to add the Nevada Indian Commission, Department of Tourism and Cultural Affairs, to its current 11-member board. The State Board on Geographic Names exists as the official agent for place naming between local, state, and federal agencies. The Board also establishes a procedure for the retention and formal recognition of existing names; standardizes the procedure for naming or renaming geographic features within state borders; avoids or eliminates, whenever possible, the duplication of names and to correct spelling errors; and works to retain and enhance the significance, heritage, and distinctive color of names associated with the history and development of the state. [Written testimony was also provided [Exhibit C](#)].

This is a housekeeping bill to add the Nevada Indian Commission as a voting member of the State Board on Geographic Names. This bill is designed to provide more opportunities for our Native citizens to be able to participate in this important naming process. We have discussed this with the Nevada Indian Commission, which is in support of this bill; the State Archives has worked very closely with the Commission. We want to ensure that we are adding all of the voices that are necessary for submitting names to the State Board on Geographic Names.

**Chair Watts:**

I appreciate your bringing this measure forward. I will open it up for Committee questions.

**Assemblyman Wheeler:**

The Board will be going from 11 voting members to 12 voting members. There will now be a possibility of a 6-6 vote. What happens if the vote is tied? I assume that the vote would fail.

**Cynthia Laframboise:**

We have never had a situation where we had a tie. When someone proposes a name, it is put on the agenda for the next meeting. We discuss it and it goes to a second meeting. Between the two board meetings we do diligent research so that we can find out if the locals do or do not support the name change. Sometimes that can make a difference on how a name is voted on. I have been on the Board for nine years and we have never had a situation in which we had anyone disagree with a name; it has always been unanimous.

**Chair Watts:**

From my understanding, parliamentary rules for all of these bodies are that in the event, whether it is an odd or even number of members, if there is a split vote, the vote fails. That is commonplace across all decision-making bodies.

**Assemblyman Wheeler:**

That is my understanding as well. It is not addressed in this bill, and parliamentary rules are not always kept. There is a difference between *Mason's Manual of Legislative Procedure* and *Robert's Rules of Order*. I would like that cleared up and put on the record. I am assuming a tie fails, but we do not have confirmation of that. Because there has never been a split, it does not mean there never will be a split.

**Chair Watts:**

I will ask our legal counsel and get some clarification for you. I know that the details of voting procedures for each of these bodies is not usually laid out in statute.

**Assemblywoman Titus:**

Section 1, subsection 1, paragraph (h), indicates you are adding Nevada Indian Commission. I agree it is important that they have a seat at the table, but paragraph (l), says Inter-Tribal Council of Nevada, Inc., or its successor organization. Who are they? Do they represent Nevada Natives?

**Cynthia Laframboise:**

The Inter-Tribal Council of Nevada, Inc. is a Native group. We wanted to provide more input for our Native citizens. In the past we often experienced problems with finding a member of the Council who was interested in serving on the State Board on Geographic Names. We have not always had the type of representatives that we would like from our Native citizens. This is another opportunity, besides having the Inter-Tribal Council, to add another area for our Native citizens to be able to propose name changes.

We have noticed, in the past year, there is a new member on the Inter-Tribal Council. I have spoken with him and he is quite interested in participating in the Board meetings.

We have not had a meeting since COVID-19, but prior to that we had a representative from the Washoe Tribe, a young anthropology student from the University of Nevada, Reno. She has been very instrumental in helping us with pronouncing Native names in a respectful manner. While we do have the Inter-Tribal Council, we have always had a good relationship with the Nevada Indian Commission as well. We are trying to provide another outlet for our Native citizens.

**Assemblywoman Titus:**

We will have two voting members representing the Native population, is that correct?

**Cynthia Laframboise:**

Yes, that is correct.

**Assemblywoman Titus:**

Can you tell me how many folks are on the Nevada Indian Commission? Is there a better opportunity to have someone who represents the Native citizens? I think I heard you say that you needed to add this additional member because you could not get participation from the Inter-Tribal Council of Nevada.

**Cynthia Laframboise:**

Nevada Indian Commission is a state agency that represents the Tribes of Nevada as well. I do not know how many people work for the Commission. In the past, we have had some issues with ensuring we have participation from our Native citizens due to the fact that they do not always have the kind of technical capabilities to attend our meetings. We tried to have one member in the north and one in the south at different times. This is a way we have for including more participation.

**Assemblywoman Titus:**

I understand that the Nevada Indian Commission would recommend someone. The Inter-Tribal Council would also recommend someone for this position, is that correct?

**Cynthia Laframboise:**

Yes, that is correct. Nevada Indian Commission would appoint a member. We do have a new member with the Inter-Tribal Council as well.

**Chair Watts:**

For clarification, I believe the Inter-Tribal Council of Nevada is an association of all the tribal governments which are partially or fully within the borders of Nevada. It is essentially a tribal government association, whereas the Nevada Indian Commission is a state agency. I believe they have a small but mighty staff and a few board members. The Inter-Tribal Council has representation from every tribal government within the state. Is that your understanding as well?

**Cynthia Laframboise:**

Yes, that is my understanding.

**Chair Watts:**

Section 1, subsection 1, paragraphs (b) and (c) show we have a faculty representative from both the University of Nevada, Reno, and the University of Nevada, Las Vegas. We have two university representatives on the Board, is that correct?

**Cynthia Laframboise:**

Yes, that is correct.

**Chair Watts:**

I appreciate your efforts, especially considering many of these places had names before other communities came in and "officially" renamed them. I appreciate your bringing this measure forward so we can have greater input on naming matters from our indigenous communities. Are there any other questions? Hearing none, I will move on to testimony of those in support of A.B. 72.

**Marla McDade Williams, representing the Reno-Sparks Indian Colony:**

I would like to extend my appreciation to Ms. Laframboise for requesting this bill and recognizing the importance of tribal inclusion on the State Board on Geographic Names. As you know, prior to settling, Nevada was the territory of the Paiute, Shoshone, and Washoe. Many historical names used by the tribal people were replaced by settlers. Having representation on this Board will contribute to enrich Nevada's history with accurate representation.

**Chair Watts:**

I will move on to the next caller in support. Hearing none, is there anyone wishing to testify in opposition to A.B. 72? Hearing none, I will hear those in neutral. Hearing none, I will end testimony. I do have feedback from our legal counsel regarding Assemblyman Wheeler's question. *Mason's Manual* states the majority of votes cast is sufficient to carry a proposal unless otherwise stated; it further states that a tie vote decides nothing, and leaves the situation unchanged. Should there be a tie vote, then a measure fails according to *Mason's Manual*. I have not seen other legislative bodies that explicitly define what parliamentary procedure is being used in statute.

**Assemblyman Wheeler:**

As you know, all the Chair has to do is change the rules.

**Chair Watts:**

Are there any closing remarks?

**Cynthia Laframboise:**

I would like to thank you for this opportunity to testify this afternoon.

**Chair Watts:**

With that I will close the hearing on A. B. 72 and open the hearing on Assembly Bill 71.

**Assembly Bill 71: Revises provisions relating to certain information maintained by the Division of Natural Heritage of the State Department of Conservation and Natural Resources. (BDR 18-313)**

**James R. Lawrence, Deputy Director, State Department of Conservation and Natural Resources:**

I would like to make a few opening comments and have Kristin Szabo, Administrator of the Division of Natural Heritage, State Department of Conservation and Natural Resources, walk you through the bill. The Division of Natural Heritage's primary responsibility is to be the keeper of a database of the state's at-risk, threatened, or protected plants, animals, biotic species, or ecological conditions. It is a small division, one with about nine people. They are not the ones who do the data collection. Our database is highly dependent on the voluntary contribution of the data to the database, whether it be from federal land management agencies, local governments, or private property owners. It is the Division's responsibility to maintain that database so that we have a clear picture where we are with the various species within this state.

This program is mirrored in every state. Every state has this type of database program that is connected through a network in order to ensure there is a database of where the species are located. Similar to other resources, such as natural, cultural, or historic resources, there is a need from time to time to mask certain location data. Most often it is in order to ensure that a sensitive species from that location is protected. It is a very common practice by many divisions in many states. Another reason to mask the information is to protect certain sensitive private property information. It is voluntary information and we need this information in order to make sure we do not have any data gaps in our database.

Lastly, I want to say that this bill puts into statute existing practice. This is a very common practice. We have policies and protocol for protecting confidential and sensitive data. Our intent with this legislation is to become more transparent as opposed to having agency guidelines. We want to make it very clear in statute when data can remain confidential and sensitive. I know there are some questions regarding the bill, and I am thankful that we get to present it. I appreciate the opportunity to have a discussion and clear up any misconceptions on the intent of this bill.

**Kristin Szabo, Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources:**

I am pleased to be here today to present Assembly Bill 71 which, if passed, will keep certain Natural Heritage data confidential.

Before I walk you through the sections of the bill, I would like to give you some background on the Division of Natural Heritage for context. The Division is a nonregulatory agency whose mission is to develop and maintain a cost-effective, centralized information source and inventory of the locations, biology, and conservation status of all imperiled plants and animals in Nevada. The Division is a member of the NatureServe Network, an international network of natural heritage programs in the United States, Canada, Latin America, and the Caribbean that provide the scientific basis for effective conservation action.

The Division manages data for hundreds of native plant and animal species that are listed as threatened or endangered, or designated as candidates for listing as threatened or endangered, under the federal Endangered Species Act of 1973; considered sensitive by the Forest Service, U.S. Department of Agriculture and Bureau of Land Management, U.S. Department of the Interior; protected under state law; or considered rare or at-risk of extinction by the Division of Natural Heritage. The Natural Heritage data are used by a variety of public and private entities early in the planning process to help minimize costly resource conflicts and to streamline federally mandated environmental reviews. The use of our data assists in quick, efficient, and informed land use planning and conservation planning decisions with the intention of striking a balance between economic development and species conservation.

The data maintained by the Division may be considered sensitive for a variety of reasons. In addition to a species itself being considered sensitive because of its listing status and risk of extinction, there are several other reasons why data may be considered sensitive, such as the disclosure of a species location which could result in poaching or collection threats, the data are considered proprietary, the data involve private land and the landowner has requested confidentiality, or the species or its habitat is considered fragile. Locations that fall within one of these categories are marked as "data sensitive" in the Natural Heritage database, and the precise locations are obscured. This is similar to redacting a person's address; we are simply obscuring the precise coordinates to protect the location, but the data are still made available to the requestor. It is also important to note that not all data in the Natural Heritage database are necessarily data-sensitive, only those data that fall within one of the data-sensitive categories previously mentioned.

I would now like to provide a summary of Assembly Bill 71.

Section 1, subsection 2, makes confidential any information related to the location of a rare plant or animal species or ecological community included in the Division's data systems.

Section 1, subsection 3, authorizes the Administrator or designee to release confidential information under certain conditions and for a reasonable fee. Confidential information can be released if it is not otherwise prohibited by law; not restricted by the original provider; is

made for a legitimate activity related to conservation, environmental review, or scientific research; is limited to the amount of information necessary to achieve the purpose of the request; and if the release is unlikely to harm the rare species or ecological community. This is the Division's standard practice even though the confidentiality of the records is not yet formally recognized in statute.

Section 1, subsection 5, defines the term "rare plant or animal species or ecological community." These include the federal, state, and Division of Natural Heritage designations mentioned earlier in my testimony.

Section 2 is a confirming change, that being the inclusion of Natural Heritage data as exempt from public records.

If passed, I do not expect this will change how we currently do business, but it will provide an extra level of protection for those data-sensitive locations. Currently, when the Division receives a data request that results in data sensitive locations, we obscure the data-sensitive locations when providing the data to the client and the client is aware of this data limitation because they have signed the Division's data license agreement. However, the Division may provide precise locations on a case-by-case basis.

Currently a modest fee is charged for staff time to manage data and respond to data requests. The fee is not a condition of releasing the data. Fees are charged on a sliding scale depending on the number of location records provided. If no records occur within the project area, no fee is charged. If 500 records or fewer are provided, the fee is \$2 per record with a \$50 minimum. The next 500 records are \$1 per record, and additional records over 1,000 are \$0.50 per record with a maximum charge of \$5,000. The fee does not cover the entire cost to maintain the database but is intended to offset some of the costs. All data request fees collected by the Division are reverted to our primary funding source, the Department of Transportation, at the end of each fiscal year.

I would also like to point out that through my counterparts at other natural heritage programs across the country—one of the many benefits of being part of the NatureServe Network is the networking opportunities—I have learned that the protection of data-sensitive locations is a common challenge that we all share, and many states have passed similar legislation to protect sensitive data. There are at least 12 states that I am aware of that have implemented similar data protections to varying degrees. A list of these states and links to their statutes can be provided to the Committee if needed.

Lastly, I would like to mention two amendments that were submitted to the Committee. The first is a minor amendment submitted by the Division of Natural Heritage to add federal candidate species to the definition of rare species in section 1, subsection 5, paragraph (a) [[Exhibit D](#)]. The Fish and Wildlife Service, U.S. Department of the Interior, often determines that species are warranted for listing but precluded based on higher priorities and those species become candidates for listing. Therefore, we would like to treat candidate species similarly to threatened and endangered species.



The second amendment is a friendly amendment submitted by Clark County to include the need for a written agreement between the requestor and the Division [[Exhibit E](#)]. We agree with this amendment as it is current standard practice for the Division to have requestors sign our data license agreement annually, or in the case of some public agencies, enter into a longer-term agreement agreed upon by both parties.

I am also aware of and agree with the amendment submitted by the Committee to clarify language related to reasonable fees [[Exhibit F](#)].

That concludes my testimony. Thank you for the opportunity to present A.B. 71 to keep certain natural heritage data confidential. I would be happy to answer any questions.

**Assemblyman Ellison:**

There is a letter written by several people who asked to reject the bill based on transparency [[Exhibit G](#)]. In part, the letter states that "maintaining transparency will allow the public important access to information. For example, access to such records has proven an important component of conservationists . . . ." I can understand that someone would want to make sure that they are protected, but the problem is, if the information is released, people can go there and do damage or harm to animals. I see both sides of this, but it is masking this information. Can someone put something on an endangered species list, like a plant or an animal, without the public knowing it is going to be listed?

**Kristin Szabo:**

I do not know of any way something could be listed as an endangered species without the public knowing. There is a process the federal government goes through so put something on the endangered species list.

**Assemblyman Ellison:**

Could someone think something was listed, but it was not? I see fear with this bill. I can understand what the people in this letter wrote [[Exhibit G](#)], which was signed by several different people. Have you seen the letter?

**Kristin Szabo:**

No, I do not have a copy of the letter.

**Assemblyman Ellison:**

It has seven signatures on it; seven businesses or organizations. What concerns me is, if there was an endangered species—for example, the cutthroat trout in Jarbidge—and if the federal government listed that trout as endangered, would it stay private, yet still be on the endangered species list?

**Kristin Szabo:**

There are two different issues here: The list of endangered species is a list that the U.S. Fish and Wildlife Service maintains, and there is also data that we maintain in our database which includes listed species, but also includes sensitive species. If a species were removed from

the endangered species list, that would be a public process that people would be informed of. That does not necessarily mean it is not listed as sensitive within the state, and we would maintain that as a sensitive species database of the Division of Natural Heritage based on both the criteria that we use to rank species and their conservation status. The species could still remain on our list and we would maintain data on that species, and particular locations—depending on species—might be marked as data-sensitive. If someone were to request that data, we would obscure the location. The requester would still receive a list or files that say this particular species occurred in a private area, but he may not get the exact coordinates to avoid any harassment or disturbance to that location.

**James Lawrence:**

I want to make it clear that the Division of Natural Heritage is entirely nonregulatory; it maintains the database for information purposes. The Division does not make decisions on whether something is to be listed on the federal listing. That is an entirely different process. The Division just maintains the database for the purpose of someone wanting to know the lay of the land. If something were to become unlisted, then it would most likely not fall under these criteria that we are proposing. We do need to protect certain location data. As an example, there might be a threatened or endangered raptor; we would release the data that yes, there is a raptor present, but not necessarily release the specific tree, and exactly where the nest is. This is to make sure there is not harassment at that specific location. That is the need for the masking of certain data.

**Assemblyman Ellison:**

I am not sure if everyone received this letter, it is signed by the Center for Biological Diversity, Nevada Press Association, Progressive Leadership Alliance of Nevada, Great Basin Water Network, Nevada Open Government Coalition, American Civil Liberties Union of Nevada, and Sunrise Movement Las Vegas.

**Chair Watts:**

The letter you reference is an exhibit in the Nevada Electronic Legislative Information System and is available to everyone [[Exhibit G](#)]. In addition, I believe you were asking some clarifying questions about how this statute would work. I will remind members that if you are referencing a letter from an opponent of the bill, or are asking questions that are aimed at the opponent of the bill, you reserve those questions for testimony in opposition.

While many of the questions were focused on federal action, there are still within section 1, subsection 5, paragraphs (c) and (d), classification from the state, including the Board of Wildlife Commissioners within the Department of Wildlife and others that are designations by the state. It would be possible for a federal designation to be changed at some point but for a state designation to remain. I believe the Administrator spoke to the specific data fields that may be modified over time as sensitive or not. I want to ensure that the clarification was put on the record.

**Assemblywoman Anderson:**

Section 1, subsection 3, paragraph (c), subparagraph (1), refers to "legitimate activity." You stated during your presentation that those items are not stated in the law. I will tell you where my concern comes from. Although you are not the individuals who are collecting data—and you do not make those judgment calls, which you made very clear in your presentation—this is a judgment call. What happens if there is a politically motivated group coming and any future administrators may not agree with the term "legitimate activity"? I am very concerned with the term "legitimate activity" without it being defined further. Can you possibly define it better, or mention other possible ideas as to how we can make that clearer?

**Kristin Szabo:**

I am not quite sure how to define "legitimate activity" more than it is already defined as conservation activity, environmental review, and scientific research. Those are the primary reasons we are contacted, and people request data for those types of things. I cannot think of a reason why we would turn away a customer.

**Assemblywoman Anderson:**

I respect that answer. I disagree with it, and at this time I am very concerned about the request. If you could send us those other 12 states and their laws if they use similar language, and if possible, the clarification to reflect a little more consistency as well for members of the public who are interested in this information.

**Kristin Szabo:**

We can get that information for you.

**Chair Watts:**

Please send follow-up information to our Committee staff and we will ensure it is distributed to all the members.

**Assemblywoman González:**

Section 1, subsection 3, says, "The Administrator or his or her designee may release information declared confidential . . . ." Does this mean that it is up to the Administrator if she wants to release this information?

**James Lawrence:**

Section 1, subsection 3, may be confusing. It makes it clear that the Administrator or his or her designee, which is typical government bureaucratic language that means the Administrator can delegate someone, such as the Deputy Administrator if the Administrator is not around. This sets forth the condition. Again, this is to make it more transparent to the existing process that we have been doing and that other folks do. Basically, the intent here is confidential information can be released by the Division Administrator or designee under these certain conditions. We felt that by putting this into statute makes it very clear to the public what the conditions are that need to be met for confidential information to be released.

**Assemblywoman González:**

Are you saying that the only way an Administrator would release the information is if the request fell under one of the categories that are listed?

**Kristin Szabo:**

That is correct.

**James Lawrence:**

This is regarding confidential information. There is a lot of information in our database that does not meet the criteria of confidential information that can be released.

**Assemblywoman Cohen:**

My questions follow along with Assemblywoman Anderson's comment. In section 1, subsection 3, if the Administrator is making decisions, is that appealable?

**James Lawrence:**

This might be a better question for your legal counsel. Our understanding is that this would be an administrative decision, just like other administrative decisions in statute. There is a process for challenging administrative decisions. I am probably not the best one to articulate that and I would defer to the legal counsel on the mechanics of appealing an administrative decision.

**Assemblywoman Cohen:**

I know our legal counsel is occupied; we can follow up with him after the hearing.

**Chair Watts:**

I will follow up with the Committee when legal counsel answers that question. I have some clarifying statements on section 1, subsection 3. Essentially there are a few terms in this section that impart discretion on the agency to decide whether they can grant the request. It looks like the first one is the use of the word "may" in the start of subsection 3. Even if all of the conditions listed are met, the agency is not required to release the information. The other is the word "legitimate," within section 1, subsection 3, paragraph (c), subparagraph (1). Some determination must be made that not only is the activity related to conservation, environmental review, or scientific research, but that it is legitimate. Those impart discretion onto the agency to make these decisions whether the information can be released to a party. Is that your intent with this legislation?

**James Lawrence:**

I would say in section 1, subsection 3, "may" is permissive language. When we drafted the language, we wanted to set forth the conditions in which confidential information could be released or may be released. I do not know if there was a lot of thought in "may" versus "shall." It was to give the authority to release confidential information under certain conditions. Regarding the term "legitimate activity," a good question was raised by Assemblywoman Anderson. Our intent is to only provide this information for legitimate reasons. I understand the question of who decides legitimacy and that it is subjective.

We really did try to narrow it to certain activities that I think for folks like us who live in this world every day, it becomes very apparent; but maybe not so much for folks who do not live in this world every day. Obviously, the intent here is to ensure that the data is used for legitimate purposes and not to be giving it out to tour groups that are going into sensitive locations and trampling ecological locations, or most recently, someone who is interested in knowing where certain plants species are so he can go collect them. Clearly our intent was to ensure that the request was for legitimate purposes. I think these are good questions, and I think that it is beholden on us—a lot of this was taken from other states' legislation—but perhaps we can revise and better define that for the Committee. That is certainly our intent. I hope that answers your question.

**Chair Watts:**

Thank you. Sometimes it is important to clarify for the record the intent of those bringing forward the legislation. This may be an issue where additional work is needed to ensure that this statute aligns with the intent.

Section 1, subsection 2, states, "information related to the location of a rare plant or animal species . . . ." Within your testimony, you specifically talked about the locational data itself. It was even mentioned the redacting of that locational data. I would like some clarity for the record: If there are other public records that are requested that fall within our state's public records law but happen to include some form of data points related to the location of one of the species, is it your intent that the location would be redacted but the document would be provided, or would the entire document be withheld if it contains any sensitive locational information?

**Kristin Szabo:**

We would provide the data with the obscured location if it was something that was deemed data-sensitive.

**Chair Watts:**

Regarding the reasonable fee that was discussed for the record, can you provide any information on what the fee currently is for public records requests within the Division? Could you also speak to the Committee's amendment that was submitted to clarify language so that it could not be interpreted that the determining factor for a document deemed unclassified was the payment of a fee? Will you clarify that you currently have a public record process that has a fee and provide information on what that fee is?

**Kristin Szabo:**

Our current process is we have a data request form and a data license agreement on our website. If someone wants to request data he can go to our website, click on request data, and there are forms that he can download, fill out, and submit. The request form goes to our data manager where the request is fulfilled. If there are no records returned within the project area that he submitted, then there is no fee. We provide a letter stating we did research and no records were returned within this particular area, and we do not follow up with an invoice. If we do the search and data and specific location records are returned,

which could be one species but several different locations in the project area, or it could be multiple species in one location. We invoice according to the number of records that were returned. That amount is based on a sliding scale. For the first 500 records, the fee is \$2 a record, with the \$50 minimum. The next 500 records, up to 1,000, the fee is \$1 a record. After 1,000 records, it is \$.50 a record with a \$5,000 maximum.

**James Lawrence:**

I would like to add a few comments. Ms. Szabo described our current fee structure which has never been a problem or challenged. We are trying to make this clear in statute. One of your questions was requiring payment as a condition for the release of information. Payment is not a condition; our intention is not to be heavy-handed. I know this is not a budget committee, but for your information, this is a very small division, it is state funded, entirely paid through the State Highway Fund. The reason for that is the Department of Transportation (NDOT) is one of our biggest customers. Imagine if NDOT were contemplating a road extension or a new road, they would need to know where the species are. We get funding from NDOT. We have a small fee in place, like other states, for public data sharing. We do not keep the fees; this is not to build an empire. Whatever we collect, gets diverted back to offset the Highway Fund. Hopefully that gives you a little information on the intent of the fees.

**Chair Watts:**

Thank you, I appreciate your providing that clarification. For the record, our legal counsel let us know that normally *Nevada Revised Statutes* Chapter 233B would apply when it comes to appeals. It is a little fuzzy, and an argument can be made that it does not apply since this is not a contested case or an administrative proceeding per se. If we wanted to make it clear that such a decision could be appealed, we would likely want to explicitly include that language within this statute.

**Assemblywoman González:**

I think many of us are confused with the word "may" in section 1, subsection 3. Could there be an event where a person who files a request, and falls in one of the paragraphs (a), (b), or (c), but the Administrator has determined to not release the records? Also, for folks who do receive denial, is there an explanation as to why the request was denied?

**Kristin Szabo:**

I cannot think of an example when we have not provided data in the past, and I cannot foresee any reason why we would not. We are trying to protect those sensitive locations, which is why we have the practice of obscuring the location. An applicant will receive the data, he just will not receive the exact location of where something data sensitive occurs. Will you repeat your other question?

**Assemblywoman González:**

In section 1, subsection 3, it says the Administrator may release information, then lists reasons why they would release it in paragraphs (a), (b), and (c). If I qualify under one of these paragraphs, is there a reason for which I could still be denied? I think I am hung up on

the "may" because it does say the Administrator may or may not release the information. If qualify under one of these conditions, would your office still be able to deny my request? If the request is denied, am I given a written reason for denial?

**Kristin Szabo:**

If you fall under one of the listed conditions, I cannot foresee any reason why we would not provide data. The purpose of providing the data is to inform land-use decisions and planning decisions, so it is a benefit for you to know what is out there so that you can plan your project accordingly. It is also our responsibility to protect those sensitive locations, but I cannot foresee a reason why we will deny release of information if you meet the criteria.

**James Lawrence:**

If a request were denied, we would provide a reason for the denial. Yes, we would. That is a common practice with all of our divisions within the Department: to document the reason why. I think it is a hard question for us to answer because if a person who has asked for a record and meets the criteria, we have never had a denial, so that is a situation that has not come up. Again, the answer is yes, of course we would give them a reason for denial.

**Chair Watts:**

Are there any other questions? Hearing none, I will now hear testimony for those in support of A.B. 71.

**Justin Harrison, Principal Management Analyst, Clark County:**

I am here in support of A.B. 71. I would like to thank Administrator Szabo as well as Deputy Director Lawrence for their willingness to work with Clark County on the proposed amendment language that has been submitted [[Exhibit E](#)]. I hope the Committee members have had a chance to review the proposed amendment language.

The Clark County Department of Environment and Sustainability regularly works with the Division of Natural Heritage to request and share data related to managing wildlife habitat as well as conducting research and conservation work to benefit those species. We appreciate that working relationship we have with the Division. I would be happy to review the amendment if necessary.

**Chair Watts:**

I will remind the Committee that the Division did note that this is a friendly amendment. Are there any questions? Hearing none, thank you for your testimony. I will move on to the next caller in support. Hearing none, I will now hear those in opposition to A.B. 71.

**Patrick Donnelly, Nevada State Director, Center for Biological Diversity:**

I am speaking today in opposition to A.B. 71. This bill would unduly restrict public access to important information and undermine open government and transparency laws.

The State Department of Conservation and Natural Resources (DCNR) has come under scrutiny recently due to public records requests by my organization pertaining to the rare

plant Tiehm's buckwheat which we allege is threatened with extinction by an open pit mine. Now this bill has come out to ostensibly protect species, but in reality, a side effect would be it will harm the ability of nonprofit organizations like mine to advocate for the protection of species and hold government agencies accountable for following the law and protecting our environment.

The records requests we have done have revealed that DCNR is making attempts to avoid the public records scrutiny. As you have seen in the letter we sent around as evidence [[Exhibit G](#)], the DCNR staff have been instructed not to use the words "Tiehm's buckwheat" in emails in order to avoid public records requests. A recent records request I just got back had over thirty documents and email chains declared privileged and exempt, something that DCNR has not previously done with our requests.

This legislation would also allow DCNR to have unfettered discretion over who they deem has a "legitimate activity" with a species. This could lend itself to First Amendment concerns if certain parties, such as my organization, are not in political favor with the Department.

The Department has not put forward any examples where public records requests have resulted in harm to species. There is one infamous recent example of damage to an endangered species, Tiehm's buckwheat, but DCNR blamed that on squirrels. Perhaps the squirrels did a public records request.

In short, this legislation appears geared at stymying public access to information held by DCNR. There needs to be reforms in DCNR's adherence to the public records laws, not a further ratcheting back of our right to government transparency.

We submitted a letter to you signed by a number of environmental groups, open government advocates, and social justice organizations opposing this bill [[Exhibit G](#)].

**Chair Watts:**

I will hear the next caller in opposition.

**Madelyn Reese, Member, Toiyabe Chapter, Sierra Club:**

I am speaking today representing more than 7,000 members and 30,000 supporters in Nevada in urging you to oppose A.B. 71.

Sierra Club appreciates and supports the mission and staff of the Nevada Division of Natural Heritage. Division officials are stewards, tasked with helping the public understand the status of threatened, endangered, rare, and at-risk plant and animal species in the state. The data the Division acquires and catalogues are used to navigate the complexities between conservation and development of natural resources. That is not an easy task.

However, we believe that exempting such a broad swath of records as proposed in A.B. 71 will not be in the public's best interest. Specifically, we do not agree with section 1,



subsection 2, and section 1, subsection 3, paragraph (c), subparagraphs (1), (2), and (3). These provisions give officials broad, sweeping discretion to conceal data and limit who can access public records and when. We cannot rule out the potential for political misuse of A.B. 71. We must also consider the broad range of documents that could now be omitted from public oversight, such as emails, text messages, reports, and other correspondence by the mere mention of a certain species. In conversations the Sierra Club had with the Division, we were offered no examples of state data leading to harm. Therefore, we are unsure of the imminent need for this project.

Suggestions for the Division to help solve its purported problem include: Fuzzing the datasets to protect species' locations; creating a public education program with nongovernmental organization partners, such as Sierra Club or other organizations; and identifying all datasets that can be delivered to the public without approval and in quick time.

In closing, the Sierra Club believes access to public records is key to a healthy democracy. In the balancing test of disclosure versus censorship, open access must always outweigh the repression of information. The public must have access to open information in order to ensure the fair and transparent access to information. [Written testimony was also provided, [Exhibit H](#)].

**Chair Watts:**

I will hear the next caller in opposition.

**Richard Karpel, Executive Director, Nevada Press Association; and representing Nevada Open Government Coalition:**

We share the concerns about A.B. 71 that have been articulated by others in opposition to the bill.

**Chair Watts:**

I will go on to the next caller in opposition.

**Ainslee Archibald, Hub Coordinator, Sunrise Movement Las Vegas:**

We are speaking today in opposition of A.B. 71. We support transparency and believe the information this bill would make exempt to public records requests should continue to be accessible to the public. I trust the conservationists when they say they need this information to support campaigns to save sensitive species from threats and extinction.

As a proud member of Team Buckwheat to save Tiehm's buckwheat, we are concerned this bill would exist not to protect such species, but to promote a culture of secrecy and shield the Division of Natural Heritage from scrutiny and criticism. We were happy to sign the coalition letter [[Exhibit G](#)] and fully support the concerns raised in it. We oppose A.B. 71. [Written testimony was also provided, [Exhibit I](#)].

**Chair Watts:**

I will go on to the next caller in opposition.

**Kyle Roerink, Executive Director, Great Basin Water Network:**

We oppose A.B. 71. The Great Basin Water Network represents diverse cohorts of water users and conservation interests throughout the state and has had many partnerships with government entities and quasi-governmental entities over decades. We have participated in complex litigation and regulatory matters that have required us to file public records requests. Public access to government documents is an important accountability mechanism that we have for ensuring our public servants are working for the public good. It is also a way to better understand the goings on in state or local government.

Any proposal to exempt records from public view is potentially setting up a situation in which we, the public, will be left in the dark as it relates to the official business of an agency or division. We cannot discount the fact that A.B. 71 could be used one day to conceal information from the public eye without proper justification or consequence.

We must also consider the broad range of documents that could be wrapped up in this bill. The scope is large: reports, memos, emails, text messages, and other correspondence. The bill does not imply that any documents containing locations would be released if the locations were redacted. The language is much more sweeping and broader. There are times when concealment of records is allowable, but aside from very narrow exceptions, we must be inclined to shine a light on the works of our public stewards. This bill is not narrow. It is important to note that proponents have not given one example of an open public data leading to the harm to species. Specifically, the language in section 1, subsection 2, undermines the foundations of our current public records law and sets a dangerous precedence. Next, section 1, subsection 3, paragraph (c), subparagraphs (1), (2), and (3), give officials the ability to pick and choose who gets what documents and when—another dangerous precedence. Giving the Administrator the ability to determine what is or is not a legitimate activity is very dangerous and should give us pause. Right now, lawmakers are being asked to weigh the effect of concealing information or maintaining free and open access to documents. We believe the scales of justice must always tip toward unfettered disclosure to ensure the health and well-being of our democracy and our republic. We have to ask how much power we want to hand to unelected officials for the sake of open access.

**Chair Watts:**

I will move on to the next caller in opposition.

**Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:**

I would like to echo the sentiments of those who spoke before me and add our opposition to A.B. 71 for the record.

**Chair Watts:**

I will move on to the next caller in opposition. Hearing none, I will move on to those neutral to A.B. 71. Hearing none, does the presenter have any closing remarks?

**James Lawrence:**

I appreciate the opportunity to present the bill and have it on record our intentions with this bill. I appreciate the questions and comments from the Committee members. One of the things that we will do is go back and take a look at section 1, subsection 3, regarding the "may" and the "shall" and better define "legitimate activity."

I also appreciate hearing the comments from opposition as well. Obviously, we disagree with some of the comments on our intentions. Our intentions are to make it very clear in the interest of releasing confidential information. We want to get the information out to the appropriate parties, and not release the confidential information for reasons of protection and stewardship. There are instances in which we want to make sure sensitive data is not given to a situation—perhaps if I retire and I want to do tours to see the last peregrine falcon nest, I want to go exactly there and take loads of people there. If you work in the environmental and ecological fields, you know that type of disturbance can be very damaging to our endangered species. We are coming from the place of protecting these species and making sure the data is used for appropriate purposes.

There was a comment regarding my Department about Thiem's buckwheat. I want to point out that Thiem's buckwheat is not classified as confidential information, and so, in that case the information would be released. Again, this is a case of looking at sensitive, confidential information data that has been given to us voluntarily, sometimes with sensitive private property information, and we need to redact some of that specific information to protect private property rights or to protect the resource as well. Here again, the intent is to make our practice transparent. This is a very common practice by other heritage programs. We have already been doing this process, it is also very common in the historic and cultural resources fields. It breaks my heart when I read newspaper articles of someone who has damaged or taken home a petroglyph, for instance. It is very important to basically protect the specific sensitive locations. That is our intent—to make it more transparent by putting our practices in statute, as opposed to an internal policy or procedure. We are trying to be clear in statute when we can release confidential information.

**Chair Watts:**

I look forward to receiving some of your reference materials that were mentioned regarding other state's regulations and statutes. I will close the hearing on Assembly Bill 71. I will open up for public comment.

**Stacey Montooth, Executive Director, Nevada Indian Commission, Department of Tourism and Cultural Affairs:**

I am a citizen of the Walker River Paiute Nation. I want to extend my appreciation to the Division of State and Library Archives and Public Records for seeking to add a representative from the Nevada Indian Commission to the State Board on Geographic Names. The Nevada Indian Commission was established by statute in 1965 with the charge of improving the lives of our 27 tribal nations, bands, and colonies, plus the 50,000 Native Americans who are indigenous to other lands outside of the state but chose to make Nevada their home. The Nevada Indian Commission, with our staff of four and five volunteers

appointed by the Governor to serve on our advisory body, would be honored to have the role outlined in Assembly Bill 72.

**Chair Watts:**

Thank you for your testimony. I understand there was a glitch with your testifying during the A. B. 72 hearing. I will reclassify this public comment as support for Assembly Bill 72.

I will move on to the next caller for public comment. Hearing none, I will close public comment. Our next meeting will be on Monday, March 1, at 4 p.m. This meeting is adjourned [at 5:32 p.m.].

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Committee Secretary

APPROVED BY:

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Assemblyman Howard Watts, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is written testimony submitted and presented by Cynthia Laframboise, Chair, Nevada State Board on Geographic Names, Nevada System of Higher Education; and State Archives Manager, State Archives, Division of State Library, Archives and Public Records, Department of Administration, regarding Assembly Bill 72.

[Exhibit D](#) is a proposed amendment to Assembly Bill 71, dated February 24, 2021, presented and submitted by Kristin Szabo, Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources.

[Exhibit E](#) is a proposed amendment to Assembly Bill 71, dated February 22, 2021, submitted by Justin Harrison, Principal Management Analyst, Clark County.

[Exhibit F](#) is a proposed amendment to Assembly Bill 71, dated February 23, 2021, submitted by Chair Howard Watts in behalf of the Assembly Committee on Natural Resources.

[Exhibit G](#) is a letter to the Assembly Committee on Natural Resources in opposition to Assembly Bill 71, dated February 23, 2020, submitted by Patrick Donnelly, Nevada State Director, Center for Biological Diversity, et al.

[Exhibit H](#) is a letter to Assemblyman Howard Watts III, Chairman, Committee on Natural Resources, in opposition to Assembly Bill 71, dated February 23, 2021, submitted by Madelyn Reese, Member, Toiyabe Chapter, Sierra Club.

[Exhibit I](#) is written testimony, dated February 24, 2021, in opposition to Assembly Bill 71, submitted by Ainslee Archibald, Hub Coordinator, Sunrise Movement Las Vegas.