

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eighty-first Session
April 30, 2021**

The Senate Committee on Government Affairs was called to order by Chair Marilyn Dondero Loop at 3:32 p.m. on Friday, April 30, 2021, Online and in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Marilyn Dondero Loop, Chair
Senator James Ohrenschall, Vice Chair
Senator Dina Neal
Senator Pete Goicoechea

COMMITTEE MEMBERS ABSENT:

Senator Ira Hansen (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Heidi Chlarson, Counsel
Janae Johnson, Committee Secretary

OTHERS PRESENT:

Tim Farkas
Christi Cabrera, Nevada Conservation League
David Dazlich, Vegas Chamber
Mandi Davis, Deputy Administrator, Administrative Services, Division of Child and Family Services, Department of Health and Human Services
Erika Pond, Supervisor, Victims Service Program, Division of Child and Family Services, Department of Health and Human Services

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Joanna Jacob, Clark County
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Dave Dawley, Nevada Assessors' Association
Kevin Doty, Administrator, Purchasing Division, Department of Administration
Jim Lawrence, Deputy Director, State Department of Conservation and Natural Resources
Kristin Szabo, Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources

CHAIR DONDERO LOOP:

We will open the hearing on Assembly Bill (A.B.) 153.

ASSEMBLY BILL 153 (1st Reprint): Revises provisions governing performance contracts. (BDR 27-708)

ASSEMBLYWOMAN SHANNON BILBRAY-AXELROD (Assembly District No. 34):
Assembly Bill 153 proposes a meaningful policy reform that will encourage State and local agencies to maximize the benefit of energy savings performance contracts, which is a key component from Governor Steve Sisolak's Climate Action Initiative. This calls for the expansion of Energy Saving Performance Contracts for federal agencies to support greenhouse gas emission reductions, achieve sustainability goals and promote energy efficient measures. Performance contracting is an alternative funding source to make operating cost-saving improvements without tapping into capital budgets.

The resulting cost savings pays for itself over time. The agency will get new equipment and expertise from energy service professionals with ongoing maintenance and the ability to accomplish many projects. An agency enters into an agreement with the energy service company (ESCO). The ESCO will identify and evaluate savings opportunities, then recommend a package of improvements to be paid for through the utility and operation savings. Many types of building improvements can be funded through existing budgets including new lighting technologies, boilers, chillers, energy management controls, landscaping irrigation systems and trash compaction.

Performance contracts allow agencies to make facility upgrades with no upfront capital and pay for them over time through utility and operational savings. While contract payments occur during useful life of the asset, if the savings are not available to make the payments over time, then the benefit of the performance

contract is reduced. The ongoing benefits of the project do not charge the company performing the work and is not hurt by the agency, but the agency is not getting the full benefit.

Assembly Bill 153 allows the savings to be put back into the payment of the cost savings project. There are three sections of A.B. 153. Section 1 clarifies that local government may use savings realized from a performance contract to make any payment required under the performance contract including finance charges. In section 2, the Legislature hereby declares that it is the policy of this State to encourage, to the extent practicable, a using agency to implement efficient measures to reduce energy on costs and related expenses. Section 3 authorizes the State agency as part of the biennium budget preparation process to request the reinvestment of savings realized under the performance contract.

We have requested a minor technical change to A.B. 153 with a conceptual amendment concerning the statement "related labor costs" ([Exhibit B](#)). The technical change to A.B. 153 explicitly articulates State policy encouraging the utilization of performance contracts to implement energy efficiency and cost saving measures. The change will provide clear statutory guidance to State agencies regarding the State's commitment to provide contracting and encourage the utilization of this important budget-neutral efficiency tool. It also clarifies permissible usage of savings realized under performance contracts. It allows local governments to use such savings to make payments toward the finance cost of the performance contract. This change will further promote performance contracting in energy-efficient implementation among local governments.

TIM FARKAS:

This is a financing tool, and it was brought to our attention several months ago. The statute pertaining to State agencies did not have language explaining what can be done with the utility and operational savings of the work done. Without this language, it was not clear if they could keep the savings to make associated payments for the project, which is the premise of the whole statute and work that is done in our industry. The language in *Nevada Revised Statutes* (NRS) 332 for local governments will be clear. This is a legislative change for clarification adding language that should have been there from the beginning. It is great program, and many local governments have utilized NRS 332 for the work that we do. There are fewer State agencies under NRS 332A.

SENATOR NEAL:

What are the expectations for the entities to do the performance base for the labor costs? I am not clear on what you want them to do to reduce wages and limit hours. What are we doing?

ASSEMBLYWOMAN BILBRAY-AXELROD:

The conceptual amendment, [Exhibit B](#), removes that term altogether. This was the intent and language used throughout NRS. We do not want this in the bill.

SENATOR GOICOECHEA:

The term "related labor costs" will be amended out?

ASSEMBLYWOMAN BILBRAY-AXELROD:

That is correct.

CHAIR DONDERO LOOP:

Section 2 says reduce costs related to energy, water or the disposal of waste. Can you give me an example?

ASSEMBLYWOMAN BILBRAY-AXELROD:

The City of Henderson used a performance contract for a solar lighting path. We are able to use the realization of power savings for lighting with performance contracts.

MR. FARKAS:

The City of Henderson had a successful project about ten years ago that included street lights, air conditioning equipment and utility savings used to pay for the cost of the improvements. This is the premise, take the existing utility budget and reduce it. The new equipment is more efficient, and it pays for the cost of installing the new equipment. Henderson had a successful project and is happy with a 15-year agreement. This project stands out as it was a citywide effort and won an award from the Association of Energy Engineers for the streetlight part of the project.

SENATOR NEAL:

On the disposal of the waste, what if one of the cities has a 500-year contract on disposal. Would they have to go back and rethink their disposal waste contract?

MR. FARKAS:

No. The scope is determined by the municipal entity. The type of waste management reduction we might do is something simple like trash compaction and having the trash company come out when the trash is full. We do not get involved with the actual amount of waste that gets sent to the landfill. This is beyond our scope, but we may help with recycling.

CHRISTI CABRERA (Nevada Conservation League):

We support A.B. 153. Performance contracting is an opportunity for governments to make energy-efficient upgrades that reduce energy costs and associated pollution. This bill will make it easier for governments to engage in these type of contracts. Energy efficiency is the cheapest and fastest way to meet our billing energy demand and reduce pollution that drives climate change and harms our health. The cheapest energy source is the one you do not have to produce in the first place. Energy efficiency is critical for meeting our State's climate goals.

DAVID DAZLICH (Vegas Chamber):

We support A.B. 153. We believe this is a good, efficient budgetary measure for local governments to use.

ASSEMBLYWOMAN BILBRAY-AXELROD:

It is a good thing to help the earth.

CHAIR DONDERO LOOP:

I will close the hearing on A.B. 153 and open the hearing on A.B. 21.

ASSEMBLY BILL 21 (1st Reprint): Revises provisions governing the confidentiality of personal information of certain persons. (BDR 20-304)

MANDI DAVIS (Deputy Administrator, Administrative Services, Division of Child and Family Services, Department of Health and Human Services):

Assembly Bill 21 will change the requirements for members of our Nevada Confidential Address Program to request their information remain confidential through certain governmental entities.

ERIKA POND (Supervisor, Victims Service Program, Division of Child and Family Services, Department of Health and Human Services):

I oversee the federal and State victim service grants that are administrated by Division of Child Family Services (DCFS), Victims of Crimes Compensation Program and the Nevada Confidential Address Program (CAP). The Nevada Confidential Address Program functions to assist victims of domestic violence, sexual assault, human trafficking and stalking from being located by a perpetrator through public records. Once an applicant from CAP is approved, the participant along with any family member who reside with the participant are provided a fictitious address and a confidential forwarding address. The DCFS and CAP staff receive and forward mail to CAP participants. There are 1,467 participants in the Program. Since 2017, the Program size has increased from 200 to 400 participants per year. On average, 26 new applications are processed monthly and upwards of 18,000 pieces of mail are processed annually with around 1,500 pieces of mail processed monthly.

The Program was established by the Legislature in 1997 and began accepting participants in 1998. The Program originally operated out of the Office of the Secretary of State followed by the Office of the Attorney General before it was transferred to DCFS in 2017. Potential CAP applicants must apply through a certified advocate who is staffed at a domestic violence agency, which can be a nonprofit or a local government organization. A complete list of certified advocates across Nevada is available on the DCFS under the Confidential Address Program website, and there is a link for each county. An applicant can view the agencies in their area to apply. The applicant must have specific evidence to indicate they are a victim of domestic violence, sexual assault, human trafficking or stalking. An example would be a copy of a police report, a record of conviction, a temporary restraining order or some other protective order. Once this information is verified by the certified advocate, the application is submitted to DCFS for review. The Confidential Address Program participants have protective voter registration records and are exempted from jury duty. Participants also have a confidential address for public school zoning, utilities services and the Department of Motor Vehicles (DMV).

SENATOR NEAL:

Dave Dawley submitted an opposition letter in the Assembly; is he still in opposition?

Ms. DAVIS:

We amended this bill in the Assembly to include extra checks and balances as requested by Mr. Dawley. A participant would have to submit additional recommendations to verify they are a participant in the Program. There is an opportunity where the county assessor or county recorder can contract us directly to verify. No one would have the opportunity to submit a fraudulent application to have information kept confidential.

SENATOR NEAL:

What is the number of individuals who are going to use this fictitious address? The bill crosses over to voting, the DMV and several other categories. How many is this going to affect?

Ms. DAVIS:

We have 1,467 participants in the Program, and not all of them would apply for changes proposed in A.B. 21. Section 1 would allow a participant of CAP to submit a sworn affidavit to the county recorder's office to request his or her home address remain confidential. Only those participants purchasing a home or purchasing property with a physical address would be made available on the county assessor's or county recorder's website. Sections 1 through 4 would be the ones that apply. The number of actual individuals who purchase a home in this Program is small. Less than ten people tried to use the provisions in this bill to keep their information confidential. We estimate less than 20 and up to 50 in the next several years. The actual number of individuals who are homeowners or seek to purchase a home while they are enrolled in this Program is minimal.

SENATOR NEAL:

There are few people who want to purchase a home. What kinds of conflicts or issues do they run into because of the fictitious address? There seems to be a lot of things associated with this—like proving your identity. How does this affect their social security? How long do they stay within this Program?

Ms. DAVIS:

Section 1 would allow a participant in the Program to request a county recorder maintain their information as confidential. This would allow the individual to submit a sworn affidavit rather than a court order to request information remains confidential. The amendments approved in the Assembly require they submit a verification in the form of a letter issued by our office and an enrollment card is issued by DCFS. This will prove they are a participant of the

Program and the county recorder's office can contact us to verify the sworn affidavit was received from a participant of the Program. Section 2 adds participants to CAP and a list of persons who are allowed to make these types of requests to the county recorder's office. Sections 3 and 4 would include the same changes for county assessor's offices throughout the State. These sections are identical and apply to the county assessors' offices.

Section 5 adds the Secretary of State and a county or city clerk to the entities that shall not make a participant's confidential or fictitious address, telephone or email address available for inspection. This includes a copy in any list that is made available for public inspection, unless they are directed to do so by a court order. Section 6 adds participants of CAP to the list of people who may request the DMV disclaim an alternative address on their driver's license, commercial license or identification card. The program allows participants to provide a generic fictitious address to use as their standard mailing address.

Our Division picks up the fictitious address mail. The mail is forwarded to their actual physical address and we keep their actual confidential physical address here. We act as a mail-forwarding service. It does not impact their social security numbers or benefits. This bill would just allow those participants to be able to request their physical address remain confidential for county assessors and county recorders offices when they choose to purchase property or are property owners.

CHAIR DONDERO LOOP:

Apartments all have the same address minus the unit number. Would their mail still go somewhere else?

Ms. DAVIS:

Most of the participants of the Program are renters by the nature of the crime and trying to get away from their abuser or stalker. They tend to move around a lot, and their physical address where they are living changes. It would remain confidential and not allow anyone to have access to it. The mailing address they give to their utility companies displayed on their driver's license is a generic fictitious address. We pick up from this address and forward the mail to the physical address. It keeps their physical location unavailable to their abuser or stalker, so they cannot find them.

CHAIR DONDERO LOOP:

How does someone who needs this protection find out about this Program?
What means of communication is out there?

MS. POND:

If someone needs CAP, it is on the DCFS website, and we have a list of certified advocates available across Nevada in the respective agency and county. The potential applicant would find the advocate online by a link. They would contact the agency and say they would like to participate in the CAP. The advocate would have them complete an application and assist them if needed. The verification that the applicant is a victim of domestic violence, sexual assault, human trafficking or stalking would be performed by the certified advocate. The advocate would submit the application to DCFS on the applicant's behalf. We utilize the advocates to verify the applicant's status as a victim. We process the application and provide the applicant with a verification card and approval letter in the mail with the fictitious mailing address.

SENATOR GOICOECHEA:

This only applies if you have been issued a fictitious address under NRS 217. This bill only extends out to certain agencies like a recorder or assessor. You would have gone through all the hoops and have been granted a fictitious address already, before this bill kicks in, right?

MS. POND:

The fictitious address is issued to the participant for receiving his or her mail. This bill is to limit the public records search for information if they become a homeowner. He or she may have a fictitious address, but as soon as they buy a house, that parcel information with their name on the title is publicly searchable on the assessors' and recorders' websites. Participation in CAP is not useful if his or her abuser can search the recorder's site to find their name or parcel through a Google search. We are trying to keep their information confidential when they want to buy a home.

SENATOR GOICOECHEA:

Again, would you have a fictitious address already in place to qualify for this Program? The bill expands it to who has to comply with the fictitious address for these circumstances. If you buy a home, you could go to an assessor with an affidavit and show you have a fictitious address; therefore, my records must be kept confidential. Would this bill authorize that?

Ms. DAVIS:

That is correct. This bill has nothing to do with eligibility requirements or the process to apply for the Program. The bill will allow those participants who chose to purchase a home to request their information remain confidential.

JOANNA JACOB (Clark County):

Clark County supports A.B. 21. We have worked with Ms. Davis on the technical amendments.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):

After a victim-survivor has the courage to leave an abusive relationship, they are still not promised safety. After a victim has left, it is the most dangerous time for victim-survivors. A majority of domestic violence homicides occur after the victim has left and ended the relationship. Many victim-survivors enroll in CAP to create safety for their families, knowing their address is not public information for their abuser to find—CAP provides victim-survivors with safety and comfort. Applying for the Program can be a daunting process and require some time. Victims have to get a court order to maintain their privacy for public records with the county recorder or assessor's office. This is time consuming and is a burden for many victim-survivors. We support A.B. 21. Allowing victim-survivors to sign an affidavit rather than petitioning the courts to remove private information from public records is a step in the right direction for increasing survivor safety without putting a further burden on survivors themselves.

DAVE DAWLEY (Nevada Assessors' Association):

We are neutral to A.B. 21. The Assessors' Association seeks transparency in government and believes anytime names are removed from the tax roll, it causes a big problem. There was an amendment to the bill for a time period; the particular language for the Program was good for a four-year time period. We would like this to be addressed and not in the bill. The way A.B. 21 is written, it is going to be confidential forever. After the four-year time period, you can get an extension for another four years.

CHAIR DONDERO LOOP:

We will close the hearing on A.B. 21 and open the hearing on A.B. 28.

ASSEMBLY BILL 28: Imposes an inverse preference on certain bidders for state purchasing contracts. (BDR 27-238)

KEVIN DOTY (Administrator, Purchasing Division, Department of Administration): I am here to present A.B. 28. Restoring Nevada's inverse preference law was recommended by the Executive Branch Audit Committee February 2020 meeting. The idea is to award more State contracts to Nevada-based businesses. It is in line with the Nevada preference that was enacted by the Nevada Legislature in 2017. I say restore Nevada's inverse preference law because this was previously in law from 2003 to 2009. It was dropped from the law at the same time preference for a business owned by a disabled veteran was added to the law. In legislative history it is not entirely clear why the inverse preference law was dropped. There may have been confusion as to what would happen if you awarded a positive preference, taking points away from out-of-state vendors. The way an inverse preference works is it penalizes out-of-state businesses if they are located in a state where they receive a preference.

For example, consider a request for proposal (RFP) for some type of service the State needs and there are four RFPs in response. One is from an Oregon-based company that gets a 10 percent preference from Oregon; another is from a Colorado-based company where Colorado gives a 5 percent preference to home businesses; one is from a Texas-based company that provides no preference; and the final RFP is a Nevada-based company with benefits from 5 percent. The RFP scores are tallied by the Nevada Evaluation Committee and the Committee decides to whom to award the contract. We would penalize the Oregon vendor by 10 percent because they receive 10 percent in their own state, penalize the Colorado vendor by 5 percent as their own state has 5 percent preference, but there would be no change on the score to the Texas-based vendor. The Nevada based vendor would receive the 5 percent preference which is in State law.

Theoretically, applying this inverse preference should result in more contracts being awarded to Nevada-based businesses. It is impossible to tell how many contracts and agencies will be affected. This is why there is no fiscal note attached to A.B. 28. It is likely the application of inverse preference will result in the State paying more for a Nevada-based vendor.

SENATOR NEAL:

This only applies when all things are equal?

MR. DOTY:

Yes. We only penalize a business located in a state that gives its companies a preference. Nevada-based companies receive a 5 percent preference. There are about 35 states that have an inverse preference law. When Nevada-based companies go to California or other states with an inverse preference law, the Nevada-based businesses are getting penalized 5 percent. Restoring Nevada's inverse preference law would level the playing field.

SENATOR NEAL:

Why have these not been challenged to violate privileges and immunities? You are creating the inverse preference, but what is your public policy purpose for discrimination? Except you favor your own, and there are inherent inequalities issues. Have there been any cases that have challenged this issue?

MR. DOTY:

The only case I know of is in Camden, New Jersey, ruled in the U.S. Supreme Court in 1984. Camden enacted a municipal ordinance which required any winner of a construction contract to hire at least 40 percent of Camden residents to work on the contract. This was struck down by the U.S. Supreme Court as a violation of the privileges and immunity clause in Article IV of the U.S. Constitution with an 8-to-1 decision. I can see the basis for your concern. I am not aware of any inverse preference laws or existing preference laws being challenged in that way. It may be because we are only talking about 5 percent to 10 percent, and vendors may not have thought to challenge them. They do not change the result in the contract. The privileges and immunity are there and have been made in a different context.

SENATOR NEAL:

Let us say the business wants to apply and has a preference, but the preference is no longer applicable. How is the business viewed when they want to come into Nevada? What documents would you request from a business? Are they penalized because the State had it prior?

MR. DOTY:

It is based upon what the State's law is and where the principal place of business is. This is the terminology used in Nevada's preference law, and we interpret it in line with the Supreme Court decision in *Hertz Corp v. Friend*, 559 U.S. 77 (2010) which has to do with jurisdiction over corporation. A business only has one principal place of business. A business whose principal

place of business is in Texas would be penalized if there was a preference for a Texas businesses on the books at the time the contract is awarded. If Texas has repealed the law, then we would no longer impose the inverse preference. It does impose the burden on the State Purchasing Division to keep abreast of other states' procurement laws and preferences. If the bill is enacted, we would make changes to our e-procurement system and try to keep all of this in there to streamline it. This is how it would work.

SENATOR NEAL:

Because of the pandemic and what has happened across borders, businesses are losing opportunities and trying to go across jurisdictions to revive themselves. There might be a challenge because the environment is where we are discriminating against out-of-state businesses. They have a legitimate reason for wanting to find work across state borders.

MR. DOTY:

It is possible that a business could challenge the inverse preference law, just like it is possible a business could challenge the existing Nevada preference law. The existing Nevada preference law is a 5 percent bonus to Nevada companies when they bid on a State contract. It is always possible for a court challenge to be filed. I am not aware of any case or any preference laws or inverse preference laws that have been held unconstitutional.

CHAIR DONDERO LOOP:

Under section 1, subsection 1, paragraph (b) where it says "That other state, with respect to similar contracts awarded by that other state or agencies of that other state," I see other state three times. Are we just talking about contracts in between?

MR. DOTY:

The language in section 1, subsection 1 is basically how the law was written before 2003 to 2009. This text was modified in NRS 333.3366. It is written in a weird way because not all preferences are alike. Some states will award preference only to instate printing businesses. For example, Idaho is only awarding a 5 percent preference to a company that does printing work. We are going to impose an inverse or receptacle preference on companies for printing work and not for all Idaho businesses in proportion to whatever preference they are receiving in their home state. Having one preference affect one industry

does not mean every business located in that state is subject to inverse preference.

CHAIR DONDERO LOOP:

How would one know what businesses? If no printing contracts are awarded, how would the businesses know that? How would businesses know if they are awarded printing contracts?

MR. DOTY:

All of these preferences we are talking about are part of state laws. It is our responsibility to check the laws of other states. Nevada is a member of the National Association of State Procurement Officials, which tries to collect all of these to keep track of the different preference laws as they change over time. It would be a requirement, and we would keep up with the changes. Vendors are savvy enough to make sure we would not impose an inverse preference that was not suited. They would be willing to fight to make sure we did not dock their score 5 percent if it was not a legitimate use of the inverse preference law.

SENATOR NEAL:

In section 1, subsection 2, paragraph (a) the federal money provision, it says "Uses federal money unless such a preference is authorized by federal law." Why do we get into federal law? Federal law may not have a preference, inverse preference or a prohibition. If prohibition is in play, you cannot use federal money as part of the award. What are we getting at with the federal money piece?

MR. DOTY:

This language comes directly from the Nevada preference law enacted in 2017. You are correct. It is there to make sure we recognize the prohibition exists in federal law pursuant to 2 CFR, section 200.319, subsection (b). No geographical preference can be used when a contract is to spend federal funds unless the federal government says you can use the geographical preference or preferences in this particular instance. This was written into the Nevada preference law in 2017, and this language is copied to ensure we do not make a mistake on a contract involving federal money. Years later, federal auditors can show up and demand to have that money back.

SENATOR NEAL:

There are a couple of bills in particular which are creating the Division of Supplier Diversity for procurement. This inverse preference bill would trigger a different relationship to those businesses. The bill is focused on diverse and minority businesses. How are businesses affected if A.B. 28 passes? A local business could be put in a pot with inverse bidder functioning. This is about getting a foot in the door without an extra 25 percent.

MR. DOTY:

There are two issues that come up. One is a policy determination for the Legislature to decide whether they want to be given big preference in any given contract. Because we are already helping Nevada businesses out with the 5 percent, we are docking out-of-state business 5 percent or 10 percent. This would be 15 percent, which could result in the State paying 15 percent more on the contract. It is possible the inverse preference could discriminate against minority-owned businesses located in other states. For example, California has various preferences for minority-owned businesses and for small businesses. Under inverse preference law, those out-of-state businesses would be penalized in the same extent that they receive a benefit in their home state. This is something to consider from a policy prospective, it could happen if the inverse preference law is enacted. However, no Nevada-based business would ever be hurt by this inverse preference, it would hurt the scores of out-of-state businesses.

SENATOR GOICOECHEA:

The bottom line is the out-of-state companies do not pay taxes in Nevada. You have to weight this against the reverse preference. Especially in northern and eastern Nevada, a lot of Utah companies come in which imposes a hardship on locals. It might cost the bidding entity a bit more and does provide more tax security for the State and the entities. I see where Senator Neal is coming from.

CHAIR DONDERO LOOP:

I always want Nevada companies and citizens to get a bid. I will close the hearing on A.B. 28 and the open the hearing on A.B. 71.

ASSEMBLY BILL 71 (1st Reprint): 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)

JIM LAWRENCE (Deputy Director, State Department of Conservation and Natural Resources):

A primary responsibility of the Division of Natural Heritage is to maintain the State's database regarding rare and threatened species. This is critical information for planning purposes, educational purposes and scientific research. It has been the practice of the Heritage Division when releasing this data to redact or hide the specific location of where the rare plant or animal is located. This is for the purposes of protecting the species and the site. This bill basically puts this practice in statute. This bill is only about the specific location of these rare plants and animals. This is not about public records requests regarding emails, documentation and correspondence. The Assembly had some concerns because of the way A.B. 71 is drafted. We did clean up the language with the Assembly and worked with the Legal Division at the Legislative Counsel Bureau (LCB). The bill had a two-thirds vote requirement because there was language for paying a reasonable fee. We worked with LCB legal staff to remove this language as it was not necessary.

KRISTIN SZABO (Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources):

Assembly Bill 71 clarifies the specific location data associated with rare plant or animal species or ecological communities is confidential but can be released under certain circumstances. The Division of Natural Heritage is a nonregulatory agency whose mission is to develop and maintain a cost-effective centralized information source for inventory on the biology and conservation status of all plants and animals in Nevada. The Division is a member of the Nature Service Network and the international network of natural heritage programs in the U.S., Canada, Latin America and the Caribbean which provide scientific bases for collective conservation action.

The Division manages hundreds of data for native plant and animal species. These species are listed as threatened, endangered or designated as candidates for the threatened or endangered lists under the federal Endangered Species Act. This is considered sensitive by the U.S. Forest Service and the Bureau of Land Management. Data is used by a variety of public and private entities. The planning process is to help minimize costly resource conflicts and to streamline federally mandated environmental reviews. The use of our data is quick, efficient and informs planning and conservation decisions. The intent is a balance between economic development and species conversation.

The Division provides two levels of data to its users, a standard level of data and data-sensitive data. Examples of data-sensitive data include location data that if released, could result in poaching or collection threats. Proprietary data is data that involves private land or a land owner who has requested confidentiality or location of a specie's habitat is considered fragile. Data-sensitive data are provided to the requestor; however, the precise locations are obscured similar to redacting a person's address to protect privacy. Standard data are provided to the consumer without obscuring the location.

Section 1, subsection 2 makes confidential a specific location of a rare plant or animal species or ecological community included in the Division's data systems. Through the amendment process, the type of confidential data included was narrowed to apply only to specific information location. This confidentiality does not apply to other public records such as email, documents or similar items typically associated with public record requests.

Section 1, subsection 3 authorizes the administrator or designee to release confidential location data to the public under certain circumstances and to private landowners without limitation. Confidential location data can be released if it is not otherwise forbidden by law or not restricted by the original provider. The activity related to conservation, environmental review, education, land management, scientific research or a similar purpose is limited. This amount of information is necessary to achieve the purpose of the request and if released, 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 formally recognized in statute.

Section 1, subsection 4 requires a written agreement between the Division and the requester. It requires the requester to maintain confidentiality of the location data to protect the resource and is standard practice within the Division. Section 1, subsection 5 references the provisions of NRS 239, which apply to the release of any information. Section 1, subsection 7 defines the terms for plant or animal species or ecological community. These are the federal and Division of Natural Heritage designations. Section 2 is a conforming change being the inclusion of NRS 232.1369 in the list of public records exemptions under NRS 239.010.

This concludes the summary of A.B. 71 in its first reprint. If the bill is passed, I do not expect this will change how we do business, but it will provide an extra level of protection for the data-sensitive locations. The Division receives a data request that results in data-sensitive locations. The data-sensitive locations are obscured when providing the data to the client. The client is aware of this data limitation because they signed the Division's data license agreement. However, the Division may provide precise locations on a case-by-case basis. I have learned from other counterparts and heritage programs that protection of data sensitive locations is a common challenge. Many states have passed similar legislation to protect sensitive data. There are at least 23 states that implemented similar data protections. A list of these states and links can be provided to the Committee if needed.

SENATOR GOICOECHEA:

One thing that concerns me — an event with a rare plant or animal species or ecological community on private property. The private property owner should be notified before you release the information to anybody else. I hope the owner would get the information before you had other people in the community out there. This would only be in the circumstance where it was private property and owned. The way the bill reads you could release this information to the environmental community and the person who owns the property would never know. If there is private property involved, then they should be notified first.

Ms. SZABO:

When we do have data on private land, that data are obscured. When the data are released, the specific location is not released. We do not have a practice of notifying a private landowner each time that information comes up in a request. We do about 300 or more a year; we would have to figure out the best way to amend the bill for the notification process.

SENATOR GOICOECHEA:

The bill says, "The administrator may adopt regulations necessary to carry out the provision of this section." At least put it in regulation before you release any information that is going to impact a private landowner. They should be notified before it is released to the environmental community or anyone else. It becomes a trespassing issue. If you say this is the location, maybe the person who owns it does not even know they are there.

Ms. SZABO:

Yes, thank you for the comments. We will take these into account for the bill.

SENATOR OHRENSCHALL:

In the ten years prior to losing former Assemblyman Harry Mortenson, he and his wife worked hard to get the Tule Springs Fossil Bed National Monument dedicated and the Ice Age Fossils State Park. If they had not worked so hard to make this happen, people who like to collect fossils for their private collections or to show off to their friends might have raided these treasures. I think a bill like this could help, especially for areas that are sensitive and working toward protection. There is a long road for getting protection, just like it was for Harry and Helen Mortenson. This bill could help prevent raiders who want to get artifacts for their collections.

SENATOR NEAL:

What are the rare animals that you have come across for keeping confidential?

Ms. SZABO:

It is very long list. It could be a particular species that we consider sensitive or is listed as endangered. We would obscure the location of the endangered species to protect it, as it is listed on the Endangered Species Act. We obscure data for particular habitat types—for example, the nests of eagles, hawks or falcons. Another example is where bats hibernate in caves and mines. This will help keep people from entering those locations looking for bats. Bats are sensitive to disturbances. Certain species of plants and animals are specifically targeted for poaching and collection.

SENATOR NEAL:

Lake Las Vegas has ecological habitat for coyotes. They built out the habitat and you can hear them howl. There is strip where they sit by the water. How are the coyotes being protected in this environment? Humans keep encroaching as we build, which takes over their habitats. Red Rock Canyon National Recreation Area has mountain lions coming into the community, and people are worried about their pets being eaten. There is another issue for encroaching in the animal's habitat, and they do not have anywhere else to go. How does A.B. 71 affect that?

Ms. SZABO:

Coyotes are in southern Nevada. Coyotes and mountain lions are not considered rare or at risk according to National Heritage. We do not collect data on these animals or keep this data in the database. This would be a question for the Department of Wildlife.

MR. LAWRENCE:

In the case of coyotes, those are not rare or on the endangered lists. We would release the data without obscuring any evidence. The importance of the Heritage Program is we do have many species of plants and animals that are rare. Their habitat might be on the premises of where urban areas are looking to grow. It is important to have this information and data to release for sensitive or specific locations to the local governments for planning work. We can avoid those locations and protect those species.

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CHAIR DONDERO LOOP:

Seeing no further business, I will adjourn this meeting at 4:57 p.m.

RESPECTFULLY SUBMITTED:

Janae Johnson,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
A.B. 153	B	1	Assemblywoman Shannon Bilbray-Axelrod	Conceptual Amendment