

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

**Seventy-Third Session  
April 27, 2005**

The Committee on Judiciary was called to order at 8:08 a.m., on Wednesday, April 27, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mr. Bernie Anderson, Chairman  
Mr. William Horne, Vice Chairman  
Ms. Francis Allen  
Mrs. Sharron Angle  
Mr. John C. Carpenter  
Mr. Marcus Conklin  
Ms. Susan Gerhardt  
Mr. Brooks Holcomb  
Mr. Garn Mabey  
Mr. Mark Manendo  
Mr. Harry Mortenson  
Mr. John Ocegüera  
Ms. Genie Ohrenschall

**COMMITTEE MEMBERS ABSENT:**

Ms. Barbara Buckley (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Allison Combs, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Judy Maddock, Committee Manager

**OTHERS PRESENT:**

Katherine Besser, Chief of Staff, Office of the Treasurer, State of Nevada  
Patrick Foley, Senior Deputy Treasurer, Office of the Treasurer, State of Nevada  
Clay R. Fitch, Chief Executive Officer, Wells Rural Electric Company, and President, Nevada Rural Electric Association  
Vernon Dalton, President, Board of Directors, Wells Rural Electric Company, Wells, Nevada  
Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada (PORAN)  
Charles Lovitt, Supervisor, Financial Crimes Unit, Sergeant, Reno Police Department, Reno, Nevada; and Member, Peace Officers Research Association of Nevada  
Kristin Erickson, Deputy District Attorney, Washoe County District Attorneys Office, representing the Nevada District Attorneys Association

**Chairman Anderson:**

[Meeting called to order. Roll called. Chairman reminded the public and witnesses of the protocol and etiquette involved in this Committee meeting.]

A quorum is present. We will hear S.B. 270 first.

**Senate Bill 270:**      Revises provisions governing unclaimed property.  
(BDR 10-581)

**Kathryn Besser, Chief of Staff, Office of the Treasurer, State of Nevada:**

With me is Pat Foley who is our Senior Deputy and currently helps oversee unclaimed property. I'll let him give you an overview of unclaimed property first, before I go into the bill.

**Patrick Foley, Senior Deputy, Office of the Treasurer, State of Nevada:**

I help oversee the Unclaimed Property Office in Las Vegas. The use of unclaimed property is to help collect dollars that are due to true property

owners, and hold those dollars in perpetuity for the owners to come forward and claim those dollars for their behalf. We currently are receiving dollars from many different types of businesses, from financial institutions to money market funds. From banks we receive safe deposit boxes, and uncashed payroll checks, and vendor checks. Those are the types of transactions where people have either never cashed the checks or never received the checks.

[Patrick Foley, continued.] In the case of banks, checking accounts become dormant after six months; savings accounts become dormant after three years. The bank is required to try and locate the proper owners. If they are unable to do that, they then must file an escheatment report to the state of Nevada. That report would include the account number, the account name, and hopefully, some type of tax ID number identifying the true owner of the property. They will then send us that information on a diskette or some type of electronic media, along with a check for the total amount of unclaimed property. We load all this information into a database and hold those dollars for the owners in perpetuity. We are basically keeping the funds on behalf of the property owners.

We publish the names of these property owners twice a year. We also make an effort with the media to notify people to go to our website, look up their names, and try to locate their specific pieces of property.

When somebody makes a claim online, we issue a claim form to them and ask them to prove who they are. Are they the rightful owners of the dollars? Once they have proved their claim, we will issue them a warrant for their dollars, a check. Last year alone we received about \$30 million, of which we returned around \$5.5 million to \$6 million. The remaining approximately \$22 million was returned to the General Fund.

We anticipate receiving slightly more dollars than that this year, with around \$19 million, hopefully, being returned to the General Fund. There is a larger effort, particularly with the increased use of the Internet. We've been on the *O'Reilly Factor*; we've been on *Dateline*. The State Treasurer has been in the NAUPA [National Association of Unclaimed Property Administrators] group, trying to do a better job of outreach. Every time there is a marketing effort or some type of media blitz, we see a sharp increase in claims received.

Our office also maintains, on the incoming receipts-side, an audit staff that goes out and audits companies to make sure they're adhering to NRS 120A, which are the filing requirements. We have a staff of three auditors in the south. We are looking to increase our staff by adding an auditor in the north, which will enable us to help support the northern business groups. Right now we're flying somebody up on a regular basis to help support and do audits in the north, as

well as out into the state. Having a full-time staff auditor will help us get out and educate the businesses on filing proper reports with the State in adherence to NRS 120A.

**Chairman Anderson:**

What are we really trying to do here, in terms of enhancing the operations of the State Treasurer with S.B. 270? We're dealing with the disposition of unclaimed property that you pick up out of safe deposit boxes, in particular military and historic items, not knowing what their value is?

**Kathryn Besser:**

Senate Bill 270 is our unclaimed property housekeeping bill. It clarifies certain provisions that are already in statute and some of it tightens the statutes up. The first change we're making is under Section 1, number 3. It changes the definition of a "business association" and instead makes that a "financial organization" from which the State can receive cashier's checks or certified checks. Currently, business associations are able to do this, corporations or businesses; but they don't have to verify that they have the funds when they issue the check. By changing the language to "financial organizations," it would only come from a bank or financial organization that can verify there are currently funds in the account. We think that's an important change to make.

In Section 1, subsection 4, we just changed the word "from" to "after." It's a slight change, but it will help us a little bit.

Currently, we receive some of the holder reports on disc and some are given to us in paper form. When given to us in paper form, our staff has to spend an inordinate amount of time uploading the information and manually putting it into our computer system. Section 2, subsection 6, would require 15 or more items to be filed electronically. That will save an immeasurable amount of staff time. The administrator does not have to require [the items be filed electronically], as the language says "may" require. There are still certain businesses in the State that may have more than 15 items but don't have the means to submit electronically. We don't want to put a burden on them by requiring it.

Currently under NRS 120A, once items are given to the State Treasurer's Office, typically from safe deposit boxes, we have one year to look for the owners after we've received them, and then one year to sell them. In Section 3, subsection 1, we are asking to increase that to two years. This will allow us to use electronic media, such as eBay auctions and the Internet. We have more opportunity to find the owners, and then we can use eBay to sell the items. Typically with live auctions we will have 300 lots. It's not possible to do that on the Internet with the eight staff members we have on unclaimed property who

have other job responsibilities as well. So, we're asking the one year to be extended to two years. Then instead of having the highest bidder for public sale in whatever city in the State affords this, we're changing that language to "manner" to allow for eBay auction or some other Internet auction facility.

[Kathryn Besser, continued.] Currently, only genealogical libraries may request in writing to have items that the Nevada State Museum or Nevada Historical Society does not want. The change we're requesting in Section 3, subsection 4 of S.B. 270 would allow a veterans' or military museum to have that ability as well. A lot of times we get military medals, funeral notices, or paraphernalia such as clothing, hats, or guns they might want.

We require a bond in certain instances if a claim is over \$500. What we would like to do, which is outlined in Section 4, subsection 3, is increase that bond to \$1,000 because this will lower the cost for claimants. There's a minimum amount set by insurance companies and a lot of states now are actually increasing it to \$10,000. We're not quite willing to do that yet, but we still want to protect the State.

The last Section of S.B. 270 allows the administrator to waive the payment of all or part of the interest that's due for holders that aren't reporting in a timely fashion. Due to the large number of mergers and acquisitions occurring, we would like to be able to give companies that want to do the right thing, once they merge, the leniency to do the right thing and not worry about what the penalty may be for stepping forward in case they've never filed.

**Chairman Anderson:**

The ultimate person who's going to lose money from these mergers would be the person who comes in and claims any unclaimed property, right? Do they benefit from the interest payment or do they only get their actual investment, not the interest that was earned during the time period that it was sitting in the financial institution?

**Patrick Foley:**

The interest is not paid. The interest is a penalty to the company for a non-reporting period. It has not been directed back to the actual owner of the property itself.

**Chairman Anderson:**

So that's the hammer you hold over their head to act in a responsible manner and in a timely fashion.

**Patrick Foley:**

Precisely. A lot of companies, in their due diligence during a purchase or merger with another company, are finding that the company they are acquiring never really filed, or did not properly file, unclaimed property with the Treasurer's Office. As a result, they want to file a new report, come clean with everything they had been filing, and, in many instances, ask us for a waiver. We try to educate them so they can do a continual filing with our office. This allows us to do a waiver of partial interest instead of having to waive all the interest.

**Chairman Anderson:**

And that usually happens when a larger, more responsible company, purchases a smaller business. Usually the smaller business hasn't been doing this because it didn't have staff or didn't know the law.

**Patrick Foley:**

That is correct.

**Assemblyman Carpenter:**

How do you make a determination of whether to require a bond or not?

**Patrick Foley:**

That is based upon the type of transaction that it is. If there is a cashier's check and/or money order outstanding from a financial institution, and/or a stock certificate that was over \$500, or if they had a stock account, those items can be used as collateral on loans, and such, and are really redeemable as cash transactions. [Under those circumstances] we have been requiring a bond so that if those stocks ever came through, were cleared through the account, and came back to the Treasurer's Office, we would be protected at all times for those items being negotiated. The cost of getting a bond from the insurance companies has gone up. What we're trying to do in S.B. 270 is require a bond if it's over \$1,000, instead of \$500. It is truly to help protect the State. If a certificate is negotiated as it's being used as collateral for a note, we want to have the insurance to be able to go back and collect.

**Assemblyman Mortenson:**

Let's say a gentleman named Mr. Smith dies. He has no heirs in a will and he has a considerable estate. In a couple of years you eliminate his estate and that money goes into the General Fund?

**Patrick Foley:**

No, we do not. At the end of each fiscal year the funds we have not paid out, the excess funds, are transferred over to the General Fund. However, we keep his account in perpetuity, and we track those dollars in-house.

**Assemblyman Mortenson:**

An heir ten years later determines you're holding this money in perpetuity for him. If this is a considerable amount of money, wouldn't that make a large dent, particularly if it were approaching a billion dollars, pulling that out of the General Fund to reimburse him?

**Patrick Foley:**

Yes, the possibility is always there. We have a claim right now for a little more than \$1.5 million on some stock certificates that were reported back in the early 1990s. They are waiting to proof up the claims.

**Assemblyman Mortenson:**

You haven't had any really big ...?

**Patrick Foley:**

That would be our largest at this time.

**Chairman Anderson:**

I'm sure that most are smaller transactions, abandoned or forgotten bank accounts that the banks are holding. And now the bank, wishing to close the account, moves it over to you. It is not necessarily people who are deceased.

I am a little concerned about when you close out these bank safe deposit boxes and you pick up the medals and other documents, if you determine that the cost to sell them will be greater than the actual value of the documents, and there is no historical group that wishes to take possession of them, are you entitled to destroy them?

**Patrick Foley:**

That is correct.

**Chairman Anderson:**

Now we are going to extend that from one year to two years, so you're not going to destroy them the day you open the box.

**Patrick Foley:**

We will hold the items as long as possible and do our best to try to notify the true owners of the property itself.

**Assemblyman Carpenter:**

How long do you hold these bonds that you're requiring?

**Patrick Foley:**

We hold the bonds out for as long as possible; usually a minimum of three years. Depending upon the size of the transaction, they'll go out in perpetuity. We have insurance companies calling our office, asking if the bonds can be released. Based upon the size and type of instrument, we try to extend it each year.

**Chairman Anderson:**

Close the hearing on S.B. 270. We could probably move with it. Mr. Carpenter, is it your intention for this to be included in the Consent Calendar?

**Assemblyman Carpenter:**

Yes, Mr. Chairman, if you agree with that.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS  
SENATE BILL 270 AND PLACE IT ON THE CONSENT CALENDAR.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

**Chairman Anderson:**

I'm going to open the hearing on S.B. 209.

**Senate Bill 209 (1st Reprint): Provides that unclaimed capital credit of certain nonprofit cooperative corporations is not subject to provisions of Uniform Disposition of Unclaimed Property Act under certain circumstances. (BDR 7-839)**

**Clay Fitch, Chief Executive Officer, Wells Rural Electric Company; and President, Nevada Rural Electric Association:**

We are in a rural part of Nevada, Wells. We serve most of northeastern Nevada. Two things should have been handed out to you. One is this pamphlet ([Exhibit B](#)). It talks about the Nevada Rural Electric Association. The other is a letter from an attorney ([Exhibit C](#)).

We are a rural electric cooperative; we're also an electric utility. We serve about 50 percent of the state of Nevada. There are a number of us. We are member-owned companies. That means in order to take power from us you



must join as a member. We have no stockholders. We also have a responsibility to serve all of our service territories. We are also nonprofit.

[Clay Fitch, continued.] We are governed by a democratically elected board of directors. All the board members must live in our service territory and must be a member. You have to run for the board; you are elected by the other members. As a director you set policy, set rates, and govern everything that's out there. It's local control.

**Vernon Dalton, President, Board of Directors, Wells Rural Electric Company:**

The rural electric companies were formed in the 1930s, and later, mainly because investor-owned utilities would not serve the rural areas which were too sparsely populated. The rural areas formed cooperatives. The cooperatives existed solely for that purpose; the service of their members. The cooperatives are very close to their members. We know our members and are elected by them. We serve them very diligently.

As a Board, we are responsible for the financial condition of that cooperative; we're responsible for the actions that it takes. We're responsible for hiring the people who serve the people in our area. The members know that and we keep that in mind all the time.

We want you to know the difference between an electrical cooperative and an investor-owned.

**Clay Fitch:**

Talking about some of our directors, I think you would find it interesting that all of my Board members' phone numbers are in the phone book and they're on the back side of any documents we send out. If you want to get hold of the Board president, he's easy to contact. You could probably drive down the street and visit with him.

I live in Wells, a very small rural area where about 1,000 people live. I could be standing in line at the grocery store and if someone has a problem with the rates we charge, they have no problem letting me know exactly how they feel about it, or about any disconnect policy, line extension, or anything else. There is a lot of access for our members, which makes us very responsive to their needs.

The letter ([Exhibit C](#)) describes our position. The paragraph on page 2, beginning "We believe...." All we're trying to do in that paragraph is make it clear and more precise that this corrective measure would force abandoned property. We

feel as though this isn't an issue, but as there have continued to be changes in the Code, we are more and more concerned.

[Clay Fitch, continued.] In the middle of the last paragraph about seven sentences down, it begins, "The reason the cooperatives provide electric service at a reasonable cost is that they do not operate for a profit. Revenue received over and above the costs of service provides funds for operation, expansion, system improvements and support of charities and other civic improvements. They are assigned to the members as capital credits and later paid to the members. There is a delay in retiring them to the members, as the capital credits are used to help finance the cooperatives...." Another way of saying that is we take all of our revenues, subtract all of our costs, and we end up with a net margin. We then allocate that margin back to our members based upon how much electricity they took.

We use it as equity in the Corporation to help us with financing, keeping our financing costs down so we don't have to borrow for system improvements. During a rotation cycle, which for a lot of us is a 15-year rotation cycle, we return that back to our members. We give them back that capital credit. A capital credit is not a dividend, it's not a stock, it is not earned interest. It is equity in the Corporation, which is different in that we are not really a holder, as were some companies talked about earlier in S.B. 270. If we can find you, we like to give back that capital credit. Sometimes members leave and do not give us an address. We'll look for them by sending a notice to their last address. Being from a small town, we also notify all of our members that we're looking for certain people. A lot of times someone will be related or a friend of the missing individual and we'll be able to send the credit to them that way.

If we can't find them, the bylaws at Wells Rural Electric state, as does the signed membership card, that after three years, if we can't find you, we assign those capital credits back to Wells Rural Electric. It is never a property that is being held. The equity is used for the system to continue expansion, keep rates down, and help out with operating costs. It helps the members and also goes to some charitable purposes.

In the last page of the letter, third paragraph from the bottom, [you can see that] we're trying to make S.B. 209 a very narrow bill. We are not trying to amend Chapter [120A]. That's a uniform code, a number of states have it, and it is very difficult to amend. This bill is to amend NRS 81.540 by the addition of the following:

"Corporations formed pursuant to NRS 81.410 to 81.540 are exempt from all the provisions of Chapter 120A.180 in relation to capital credits and patronage capital credits."

[Clay Fitch, continued.] That doesn't mean we won't have any abandoned property for the State. Capital credits are not abandoned property because they are assigned. We would have some abandoned property to return and those could be deposits. If someone comes in and we require a deposit for the account, they give us \$100 for the deposit. Obviously, those are not our funds; they are that person's property. There are people who leave and don't stay to pick up their deposits. We follow the normal procedures the State has provided; we report those and send them back.

This amendment is very narrow. All the corporations formed between NRS 81.410 and NRS 81.540 are here in this room. We have Wells Rural Electric, Mt. Wheeler Power, and Valley Electric in Pahrump.

**Assemblyman Horne:**

I don't understand the need for S.B. 209 if you already have a contract, an assignment, saying you get the credits. Why do you need to put it in statute?

**Clay Fitch:**

What we're looking for is a clarification because the statute changes all the time and it could slowly, over time, pick us up. We're worried about that. Also, Valley Electric Association's by-laws and membership do not provide for that contract at this time. We would like to provide that protection for them.

**Assemblyman Horne:**

If you were picked up by changes of statute that would interfere with your contract? I don't understand the policy and why, if it would be deemed as unclaimed property, the co-op should be entitled to it as opposed to the General Fund with all other unclaimed properties. That's generally the practice; unclaimed property goes to the General Fund. Are you saying that because you are nonprofit, you should get it?

**Clay Fitch:**

Yes. Part of it is actually the operation of the corporation. It's equity inside the corporation. If we were to abandon it and escheat it to the State, then we would have to collect that from other members that are living in our area as part of our operations. We look at the fact that it's been generated locally and all the members benefit. None of our directors get paid. It is used to the benefit of the corporation and for the members that it serves. Being nonprofit, we are

interested in keeping the price of electricity at cost. If we can keep our costs as low as possible, then that's a benefit to the entire membership.

**Assemblyman Horne:**

But if the family or the member took the property, you have to do that anyway?

**Clay Fitch:**

That would be correct. We would retire it to them.

**Assemblyman Horne:**

So you're putting yourself in the chain of priority but you want to be put in that chain above the State?

**Clay Fitch:**

Our bylaws and our membership already put us in that position, but we would like to have it by statute that we are.

**Chairman Anderson:**

The city of Wells is a smaller community, yet I notice in Lincoln County, served by the LCPD [Lincoln County Power District], and some of the other communities are rapidly growing because of the growth in Clark County. I'm sure Valley Electric Association is probably going to experience some changes also. Does this place the NREA [Nevada Rural Electric Association] in a different kind of position because of its cooperative structure than the traditional power companies and what is its future going to hold? Are we creating a special place for them so unique in this system that there will only be you left in Wells, and those people who aren't within 200 miles of Las Vegas?

**Clay Fitch:**

If you look at NREA, we are an association of rural electric cooperatives and also of public utility districts. Lincoln County is a public utility district; Overton Power is a public utility district. They are different from us in that they don't have capital credits. They would still try to operate at cost, but they are an extension of county government. NREA represents public power in the state of Nevada. We are the voice of public power, which includes rural electric cooperatives and power districts. In the case of some of the PUDs [public utility districts] they would never have capital credits. That's why they wouldn't be part of this exemption.

To answer the question concerning what would happen as growth goes along, I think if we brought in a number of our members from Wells Rural, from Valley, and from Overton, which is a PUD, I think you would find that most people would just as soon take their electricity from an entity like us. Most people like

the fact that we're local; they like the fact that they can vote for people on the board who represent them. They like the fact that they can come down to our office, knock on the door, get on the agenda, and talk to our Board if they don't like something. As growth goes along, I think you'll probably find more people willing to jump to public power and fewer toward the investor-owned utility, given the choice.

**Assemblyman Carpenter:**

Could you explain what you do with these capital credits when you are unable to find the members they should go back to? If you're giving it to various entities within the community, who makes the decision and how is that done?

**Clay Fitch:**

Go back to the last paragraph on page 2 of the letter ([Exhibit C](#)). You can see that these are used for operations expansion, system improvements, support of charities, and other civic improvements. For Wells Rural Electric, a lot of the dollars go toward keeping costs down for members. A part of it goes toward what we call the "Next Dollar Foundation," which is a charitable foundation. We ask the members to round up their bills; for instance, if your power bill was \$47.13, we ask our members to round it up to \$48. We take the additional 87 cents and it goes to a charitable foundation that serves the members of Wells Rural Electric. We take some of the capital credits and they also go to fund some of those charitable purposes.

On page 3, is a list of a number of different types of activities that are done by these foundations. They give out scholarships to kids who live in our service territory; they provide funding to cemeteries, to the senior citizens center, to all kinds of things, even [small requests such as when] somebody says, "I just need \$200 in order to clean this up. Is there some way I can do that?" The decisions made on who they go to are not made by anyone in the company or by our Board of Directors. It has its own separate board members who are volunteers, usually community leaders from across the service area. Their decision concerning what to do with the credits is not responsive to the company. Another major use of the credits is to help low income folks in our territory who don't meet the poverty level, but who might have had problems, and just need a little help.

**Assemblyman Mortenson:**

I realize that costs of electricity are going to vary wildly all over the state, depending on density of population and all that, but do you have a rough idea what your average cost per kilowatt hour is to a customer?

**Clay Fitch:**

Wells Rural Electric costs about 8 cents per kilowatt hour. We purchase all our power from the Bonneville Power Administration. About five years ago our Board of Directors took a business risk. At the time everyone else thought all power producers were going to jump into the market, Enron was going to save the world, and power costs were going to drop. In spite of all that evidence, our Board decided to sign a cost-based contract with Bonneville. That meant we were willing to pay for electricity at cost and we did not want to get out into the market where all the opportunities were. Now we know that was a very good decision, but it was a very risky decision for the Directors to take at that time. It has allowed us to go through the last five years without ever having a rate increase.

**Assemblyman Mortenson:**

That's a mighty nice rate. Good work.

**Chairman Anderson:**

Anyone else wishing to speak on S.B. 209? [No response.] The State Treasurer's Office sees no problem? [No response.] I'll close the hearing on S.B. 209. I think this is a pretty straight-forward bill; however, if even one of the Committee members has a problem with it, we will hold it for our work session.

**Assemblyman Conklin:**

I would like to do some personal research on the issue. Nothing against the bill, but I just want to make sure I have a decent grasp of it and am okay with it.

**Chairman Anderson:**

I see at least three members who want to hold the bill, so we will add it to the work session document. Please also indicate that it would be a good candidate for the Consent Calendar.

Let's turn to S.B. 449.

**Senate Bill 449:** Revises provisions governing crime of burglary. (BDR 15-1357)

**Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada (PORAN):**

With your support, S.B. 449 is going to add another tool to law enforcement's tool chest. It deals with "boosting" which will be described in a minute. This bill has been brought forward because it has been discovered that career criminals

have been using this as a tool to rip off companies, businesses, and people throughout the state of Nevada.

[Ron Dreher, continued.] Bob Roshak with the Las Vegas Metropolitan Police Department and a representative of the Sheriffs' and Chiefs' Association; along with Frank Adams, Executive Director of the Sheriffs' and Chiefs' Association, have asked me to put on the record that they, too, support this bill and urge your support of S.B. 449.

**Charles Lovitt, Supervisor, Financial Crimes Unit, Sergeant, Reno Police Department, Reno, Nevada; and Member, Peace Officers Research Association of Nevada:**

I am asking you to support S.B. 449. Senate Bill 449 would close a well-exploited loophole in the current burglary statute, which is NRS 205.060. Unfortunately, the criminal is benefiting from this loophole more and more and career criminals are becoming aware of this means of profitable criminal activity with low risk.

The activity I'm referring to is known in criminal jargon as "boosting." Boosting is where a suspect enters a store, takes items from the shelves, and takes them to the returns counter requesting a full refund. These are items they never purchased. Oftentimes we've seen offenders out in shopping center parking lots combing through discarded receipts customers have left behind. We've observed them take the receipts, go right back into the stores, pick items off the shelves that were on the receipts. They then take the receipt to the returns counter with the items and request a full refund.

Under Nevada law, a person who enters any house, vehicle, store, shop, and other listed vessels and buildings, with the intent to commit larceny, assault, battery, or any other felony therein is guilty of a burglary. As such, an offender who enters a store with the intent to steal and leaves the store with the items, without paying, is guilty of burglary. But by entering a store with the intent to deprive the owner of the same property, and simply returning it to the refund counter, the criminal is likely to simply be charged with obtaining money under false pretenses. If the loss is under \$250 they would be charged with a misdemeanor.

I thought a scenario might best illustrate the need for the change we're requesting in S.B. 449: Under scenario number 1, an offender enters a store with the intent to steal and takes a \$220 set of tools from the shelf without paying. The offender takes the tools to the refund counter and fraudulently obtains a full refund for the item and leaves the store with \$220 in cash. The offender is guilty of only a misdemeanor—obtaining money under false

pretenses—due to the fact that the amount of money involved is under \$250. However, the store is out the full retail price of the tools, which is \$220.

[Charles Lovitt, continued.] Under scenario number 2, if an offender enters a store with the intent to steal and takes the \$220 set of tools from the shelf and simply leaves the business without paying, the offender is guilty of a felony burglary. The store is out the wholesale cost of the item which is, on average, \$110.

As you can see, under the first scenario, the criminal profits from a lesser charge yet the store is out more money. I request your support for this legislation and passage of S.B. 449.

**Assemblyman Horne:**

Is there a receipt involved here? If I were a business owner and someone came to me with tools but no receipt, why would I give him money?

**Charles Lovitt:**

At times there are receipts, but there are businesses that accept returns without receipts. They are few and far between, but they are out there. When we ask why they do that, they say it's for customer service.

What we are seeing now are career criminals, who we are targeting with this legislation, combing parking lots for receipts. If they come across a receipt in a parking lot they go through it. We have seen them discard receipts that don't meet their qualifications. They take the receipts, go inside the store, select items off the receipt, and return those items that they never even purchased.

**Chairman Anderson:**

So, we're going to move this from a misdemeanor up to a B or C felony depending on the value of the property. A "B" felony is 1 to 6 years [in jail]. That's a little way up the scale and a great cost to the State. Why are we moving it so high up on the list since we're talking about a property crime of \$250?

**Charles Lovitt:**

With S.B. 449 we are targeting the career criminal. That's how those folks make their money. They are repeatedly victimizing the businesses in our community by doing this. Just as petty larceny was certainly never meant for a child going and stealing a piece of bubble gum; this legislation is certainly not meant for those types of instances like I'm sure you have in mind. We actually see this happening. We see these career criminals using this loophole. Rather than take the property out of the store and take that risk, they'd rather return



the items and get the cash. They don't even have to fence the property; they have cash in hand and they're walking out the door with the possibility of only facing a misdemeanor [if they are caught]. Those are the people we would be targeting with this legislation.

**Chairman Anderson:**

We're going to probably see this bill go to the [Assembly] Ways and Means Committee.

**Ron Dreher:**

Sergeant Dave Della, who asked us to bring this bill forward, runs the Repeat Offenders Unit of the Reno Police Department. They track career criminals for years. Sometimes when criminals are let out on parole or probation, if they don't wish to return to a life [behind bars] they use this as a way to make more money for themselves. They are tracked, and that's what Sergeant Chuck Lovitt was talking about. They actually watch these career criminals go into stores and take advantage of our property and our businesses, and causing security rates to rise.

We testified in the Senate on this same bill. This would be a tool law enforcement could use to take care of those bad people who don't ever learn. Petty larceny is used as a tool by the district attorneys to take advantage of people who do not learn. That's the whole point of S.B. 449. It's not to take on people who steal a loaf of bread; that is not the intent. It is intended to change the misdemeanor elements of burglary and include obtaining money under false pretense. A crook knows when he takes that receipt that, if it's under \$250, all he's going to get is a slap on the hand or, at max, a fine. This is a crime that is committed all over the state and that's why we're asking for your support.

**Assemblyman Manendo:**

I want to mention that S.B. 449 did not go to Senate Finance. I just pulled up the fiscal note and it was concluded that the impact of this proposed legislation could not be determined.

**Chairman Anderson:**

I have a former student who is a police officer and has been asking about this for several sessions. It is frustrating for the officers. They must tell the store owners that there is nothing they can charge the person with except for a misdemeanor crime. There is a real problem.

**Assemblyman Ocegueda:**

I understand the common law definition of burglary, which usually means almost any structure, and we've listed them. I still don't understand why they

can't be charged with burglary, not just larceny, if they entered the premises with the intent to do what they were doing.

**Charles Lovitt:**

Currently we have a statute relating to obtaining money under false pretences by itself; a misdemeanor and a felony. Because that particular element doesn't fall under burglary, assault, battery, or larceny, we are unable to charge burglary for an "obtaining" case. That is the loophole. The person could go in, steal \$250 worth of tools from Home Depot, and walk out the door. If we could prove the intent to steal those tools when they entered the business, we could charge them with burglary. But if they went in with a receipt they found on the ground outside, stole the same \$250 worth of tools, but went to the returns counter instead of leaving, and received that money in cash and walked out the door, we would only have a misdemeanor.

**Assemblyman Oceguera:**

I understand your example, but it seems as though they still have the same intent. They have still met the elements of burglary, at least in common law. They took the receipt; they had the intent to go into the store. I'm fine with it, but I'm not sure why you have to do this. If we just had one case argued using common law, you would be able to use it every time.

**Chairman Anderson:**

How about a scenario where someone goes into a store and legitimately purchases a set of tools. The person has the receipt, turns around, goes back into the store, picks up a box of tools, walks up to the return counter, and turns those tools in as a returned item, and thus gets a cash refund?

**Charles Lovitt:**

Yes, that would qualify.

**Chairman Anderson:**

Under this new [legislation] that would qualify as burglary.

**Charles Lovitt:**

Yes.

**Chairman Anderson:**

He gets the set of tools he purchased and he gets a refund for the set of tools that, in reality, he stole because he utilized the cash receipt he had in his possession from the product he purchased. Currently, the businessman does not have a redress available for that particular scenario.

**Charles Lovitt:**

When it falls under that \$250 limit, you are correct. There is a redress; the redress is a misdemeanor. It is well known by criminals that the risk is a misdemeanor rather than a felony burglary.

**Chairman Anderson:**

My particular scenario is not going to work very well for the career criminal. He's only going to do that one time.

**Assemblywoman Allen:**

I'm wondering if the current market place and the businesses haven't already solved this problem. When you make a purchase at any major department store these days they put a sticker with a bar code on the back of the tag. When you return the item you don't even need a receipt. They scan the bar code and know you purchased it on a certain day, for a certain amount. With that taking place, scenario number 1 couldn't happen. If someone did find a receipt, went into the store, pulled shirt number 00114 off the shelf and tried to return it, it wouldn't have the bar code on the back. Granted, not every store does this, but do you see this crime much any more?

**Charles Lovitt:**

Yes, we do see it a lot. We don't see it by your everyday, run-of-the-mill criminal, but by the career criminals that the Repeat Offender Program targets. You are right; there are some sophisticated systems out there. However, we're talking about low-level employees, store clerks just there to do a job and make the returns. They don't always do the best job questioning whether a return might be legitimate or not. I think you would be surprised at how many businesses do take returns without receipts, simply for customer service. I don't think those businesses ought to be penalized for that.

**Assemblyman Conklin:**

My wife has worked in retail for many years. Is it you, the police force, that is recognizing this as a problem, or is it retail establishments that are recognizing the problem? Most of them have sophisticated security. They have cameras all over their stores, but this is not something they're going to catch up front. It's something they're going to catch later. Somebody picks up an item. Security finds it on tape, and sees the individual had never walked out with that item.

Are retail establishments bringing this to you? I can't imagine that you have police officers standing in every store watching out for this kind of thing. Where do you catch the criminal doing this? Part of the problem I have is that this is so obscure. How are you ever going to catch somebody?

**Charles Lovitt:**

It is brought by both. Occasionally we will get loss prevention officers who are on their toes. In addition there are incredible loss prevention systems in stores these days. They will pick out somebody and watch them do the whole scam. They will call us while the person is at the counter and, hopefully, we'll be able to catch them before they walk out the door.

We see it first hand more times through the Repeat Offender Program which targets career criminals who are victimizing our community. They have been in prison once or several times and we know they are out again. We know they're active again so there is a team of individuals following them to see if they're committing crimes. That's when we see this happening first hand. Yes, we do get calls from retail businesses and we do get calls after the crime has already been committed; after they have walked out the door; and it is on the store's video. The retail businesses are being hit by this and it is being addressed through us.

**Ron Dreher:**

There are very, very extensive security systems put into place to catch this, but businesses bring this problem to the police constantly. I don't have the statistics for how many "obtaining money under false pretense" cases go to burglary at the Reno Police Department's Crimes Property section, but I'm sure it hasn't changed too much since I was involved. There are an extensive number of cases occurring that are not investigated because they are misdemeanors.

The larger stores like Macy's are very good at attempting to stop this really good process that, again, is a con. The people who run this type of con are very good at what they do. They will argue with the store clerk. Then the security people become involved. They question further and demand ID. Some stores now say, "Well, you don't have a receipt so we'll issue you a voucher. We'll send you a check in the mail once we have determined whether or not this is a valid return." However, the really good, career criminals can overcome that. They do it by conning these people. They don't have a conscience. This is their income. The stores with elaborate security systems are stopping it using bar coding.

I would like to address Assemblyman Ocegueda's question. Over the years everything we do has to be specified and an element of the crime in order take it to the next step. That is why we're asking to add the "obtaining money under false pretense" element to burglary.

**Chairman Anderson:**

The current law as it relates to habitual criminals includes the element of two misdemeanor petty larcenies. You become a B criminal. If you are looking for the career felon, the career shoplifter, didn't we already give you a tool to get to that particular group of people? What you're doing with S.B. 449 is you're getting them on the first offense.

**Charles Lovitt:**

That is correct. We are looking at the first-time offense for this career criminal who is out of prison, has completed his parole, and is starting to boost again.

**Chairman Anderson:**

You maintain S.B. 449 is aimed at hitting career criminals?

**Charles Lovitt:**

Yes.

**Chairman Anderson:**

If you have caught the same guy twice, the third time you already make him a B felon, right? It seems to me what you're doing with S.B. 449 is saying, "If we catch you doing it; we consider this to be the same as house burglary."

**Ron Dreher:**

Your scenario is accurate. As you know, in the prison system there is a very elaborate communication process concerning how to make money and how to do cons. Our crooks are very well educated in the system. When they get out of prison you have to get them convicted the first time with a misdemeanor. Then you have to get them convicted the second time, or more, with a misdemeanor. And, while the law is specific, in reality the habitual criminal statutes for misdemeanor are not used a great deal. What we're trying to do is target the career criminals who don't have the elements or the previous convictions you're discussing, that's what this is used for. You're absolutely right. Those two elements, the habitual criminal statutes, are great tools for law enforcement but they are put in context in the court systems. You can't get there unless you've got a previous conviction. You can't get there unless you've got two [convictions].

**Chairman Anderson:**

There is a tool available if the district attorney's office chooses to use it and if law enforcement chooses to follow through. Misdemeanors are not something district attorneys particularly like to spend a lot of time with. They prefer to prosecute felons, and, quite frankly, we would prefer they prosecute felons

first, too. That is the greater threat to society. I just wanted to point out that there is something else in statute, even if you aren't using it.

[Chairman Anderson, continued.] Senate Bill 449 is also supported by the Nevada Sheriffs' and Chiefs' Association and the Las Vegas Metropolitan Police Department.

**Kristin Erickson, Deputy District Attorney, Washoe County District Attorneys Office, representing the Nevada District Attorneys' Association:**

Me too.

**Chairman Anderson:**

Assemblyman Ocegüera had some concerns earlier in this hearing. Did you want to answer those?

**Kristin Erickson:**

The crux of burglary is entering a place with the intent to steal. When you're dealing with boosting you're entering, but not with the intent to steal. You're entering with the intent to obtain money by false pretenses, which is basically a more sophisticated form of stealing. It is not stealing because you are not entering with the intent to permanently deprive. The item is taken immediately to the return counter and given back. Therefore it is not stealing; you're obtaining money by false pretenses. You're basically lying, saying, "I bought this. I'm giving it back to you, returning it, in exchange for money." That's why we need the language "obtaining money or property by false pretenses" in addition to larceny.

**Chairman Anderson:**

If my intent is to obtain \$205 and I walked in, held a gun on you, and took \$205; I've stolen \$205 from you. If I go in, boost something, and take it up to the counter, I have the same intent. I'm going to walk out the door with \$205 one way or the other, whether I hold a gun on you or go through this charade. The net outcome is that I come away with \$205. Why does the District Attorneys Association encourage misdemeanor filings for these habitual criminals?

**Kristin Erickson:**

With regards to prosecuting these cases and using misdemeanors for the habitual criminal, we are extremely choosy with regards to that filing primarily because you have to prove the underlying charge. But then a judge must decide. The judge might say, "Yes, the prior convictions are there; however, this guy's a petty thief." If all he has are misdemeanor convictions, the prosecutors aren't going to bring that forth in front of the judge. In my opinion, I don't think a

judge would ever find someone habitual unless they had a lengthy felony criminal history.

**Chairman Anderson:**

Is this going to provide the District Attorneys Association with another hammer to hold over someone's head to plead guilty to a lesser charge?

**Kristin Erickson:**

Certainly, burglary could be charged and, yes, it very well could end up in a plea bargain, saying, "If you'll plead guilty to the petty larceny, we won't file a burglary charge; we won't file habitual criminal charges." Filing a burglary charge in this instance is difficult enough as it is because most people think of burglary as breaking into someone's house and stealing. Burglarizing a commercial establishment is very difficult to prove because we have to prove that at the time they entered the building they had the intent to steal. What will oftentimes happen is they will enter, look around the store, and, let's say they see a leather coat. They'll say they just came in to window shop, saw the leather coat, and couldn't resist. It is at that time they formed the intent to steal, in which case it would not be burglary because they did not enter with the intent to steal. Burglary is an extremely difficult crime to prove and to communicate to a jury because a jury will say, "Why isn't this just petty larceny?" We have to have very good evidence in order to prove a commercial burglary.

**Assemblyman Horne:**

I heard you say that you have been unsuccessful. You have taken boosting cases to trial and been shot down because you were not able to successfully articulate that it is still stealing.

**Kristin Erickson:**

The argument has been made that obtaining property or money by false pretenses is actually a form of larceny, which is included in the burglary statute. The end result has been, "No. Obtaining money by false pretenses is not larceny." It is its own separate crime. It has its own separate NRS and, although it's a form of stealing, it is not larceny.

**Assemblyman Horne:**

Who made that end result determination?

**Kristin Erickson:**

It would be the judge.

**Assemblyman Horne:**

I understand what Mr. Oceguela was saying, too. Since law school burglary has expanded to a point where no structure will be needed ....

**Chairman Anderson:**

Are you aware of any other state that does this?

**Kristin Erickson:**

I have not done the legal research as far as other states are concerned, so I do not have an answer.

**Charles Lovitt:**

I have no answer either.

**Ron Dreher:**

I will check with Sergeant Della and see if he can come up with that information for you. I do not have that knowledge.

**Chairman Anderson:**

Let me close the hearing on S.B. 449. I would ask our Research staff to see whether there is any state in the United States that has similar legislation. I have difficulty believing we're the only ones facing this problem of boosting. We are adjourned [at 9:48 a.m.].

RESPECTFULLY SUBMITTED:

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Judy Maddock  
Recording Attaché

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Terry Horgan  
Transcribing Attaché

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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



**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** April 27, 2005

**Time of Meeting:** 8:08 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
N/A	A		Agenda
S.B. 209	B	Clay Fitch, Wells Rural Electric Company; Nevada Rural Electric Association	Nevada Rural Electric Association informational pamphlet
S.B. 209	C	Clay Fitch, Wells Rural Electric Company; Nevada Rural Electric Association	Letter from a law office about capital credits of non-profit electric co-ops