

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Transportation and Telecommunications Committee March 10, 2025

**MOSER:** --for the Transportation and Telecommunications Committee will now come to order. My name is Mike Moser, I represent District 22, which is Platte County and Stanton County, most of Stanton County. Then we'll have senators self in-- introduction, starting with my right.

**GUERECA:** Dunixi Guereca, LD 7, downtown and south Omaha.

**STORER:** Good afternoon, Senator Tanya Storer, I represent district 43, 11 counties in north central Nebraska, Dawes, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer.

**BRANDT:** Tom Brandt, District 32, only four and a half counties. Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

**BALLARD:** Beau Ballard, District 21, in northwest Lincoln, northern Lancaster County.

**DeBOER:** Good afternoon everyone. Hello, my name is Wendy DeBoer. I represent District 10 in beautiful northwest Omaha.

**MOSER:** OK. Our committee clerk is Connie Thomas. Our counsel is Gus Shoemaker. There are green testifier sheets on the table near the entrance of the room. Please complete it and hand it to the page when you come up if you plan to testify. If you're not testifying, but would like to record your presence at the hearing, sign the yellow sheet in the book on the table near the entrance. The Legislature's policy is that letters for the record must be received by the committee by 8 a.m. on the day of the hearing. Handouts submitted by testifiers will be introduced-- will be included as part of the record as exhibits. Senators may come and go during our hearing. This is common and required as they may be presenting bills in other committees during this same time. Testimony will begin with the introducer's opening statement. Then we'll hear from any supporters of the bill, then those in opposition, and then those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. Begin your testimony by giving us your first and last name, and please also spell them for the record. We'll be using a three minute timer system today. There will be no demonstrations of opposition or support on testimony allowed. Be sure to turn off your cell phones or put them on vibrate so they don't disturb our testimony during the meeting. Our

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pages today are Alberto and Logan. OK. With that, we'll start with LB175.

**HALLSTROM:** Chairman Moser, members of the Transportation and Telecommunications Committee. My name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I'm a state senator representing Legislative District 1, here today to introduce LB175. LB175 makes an amendment to Nebraska Revised Statutes, Section 74-1335, to clarify that a successor in interest to a railroad has the same obligations as a railroad itself to provide and keep in repair at least one adequate means for a landowner who owns land on both sides of the railroad right of way to cross the right of way. The only condition that may be imposed under the existing statute is that the landowner must bear one half, excuse me, of any expenses incurred in excess of \$1,500 if the Department of Transportation requires overhead, underground, or grade crossings and wing fences at underground crossings, or requires existing crossings to be rel-- relocated for safety reasons. Sometimes laws are enacted as a result of a legislator encountering circumstances for which he or she determines there ought to be a law. In other instances, lawyers who subsequently are elected to the state Legislature deal with statutory provisions on behalf of a client, which are subject to interpretation and possible need of clarification. The latter situation is what led to the introduction of LB175. In mid 2023, I represented a client who was in the process of purchasing a tract of land through which a railroad line ran. The railroad line was owned, along with the right of way on both sides of the railroad line, by the Omaha Public Power District. During the course of the acquisition, my client's lender indicated that a perpetual easement over the railroad line and right of way would be required in order for the land to be used as collateral for the loan. Prior to learning of the existence of Nebraska Revised Statu-- Stat Section 74-1335, we entered into negotiations with OPPD for a permanent or perpetual easement. In response to our request, OPPD presented us with a private roadway and crossing agreement, which was not in conformity with Nebr. Rev. Stat. Section 74-1335. The OPPD agreement was, one, limited to a term of 25 years rather than being perpetual in nature as we had requested; two, required my client to pay for all cost of maintenance, additions, and improvements to the crossings, which were to be performed by OPPD; three, required, if the right of way was ever fenced, to construct, maintain and keep repaired at my client's expense crossing gates, to keep them closed except when necessary to be open for travel, and to assume all damages resulting from my client's failure to keep the gates closed, or to keep the crossing gates in good repair; four, required my client to keep the

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flange ways of the crossing free and clear of all snow, dirt, or any other accumulated obstructions; five, remove at my client's expense any vegetation at the crossing that interferes with the view of approaching trains; and six, required my client to release and discharge OPPD from any and all liability for damages to, or destruction of the crossing or any property of my client.

Notwithstanding the provisions of Nebr. Rev. Stat. Section 74-1335, we were unable to obtain the desired permanent or perpetual easement and were faced with conditions, limitations, and obligations that bore no resemblance to the provisions of existing law. With the advent of railroad lines and railroad right of ways being acquired by third parties, landowners with land on both sides of the right of way and railroad line are in need of, and entitled to gain access across the railroad line and right of way, irrespective of whether the owner of the railroad line is the railroad or its successor in interest. LB175. Makes a simple and justified clarification to existing law, which I believe carries out the intent of the existing statute, and I would respectfully request that LB175 be advanced to General File. I would note that my client is here today to give some brief comments regarding our situation, and he will testify after I am done, and would be happy to address any questions of the committee.

**MOSER:** Questions from our committee? Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Senator Hallstrom, for bringing this. Why do you even have to bring this? This is, this is law in the state of Nebraska for as long as there's been railroads, is it not?

**HALLSTROM:** The law, I think, was passed, Senator, in 1963. The issue in my mind would become arguably-- I would not disagree with you, that was our position that it ought to apply, irrespective of whether you're dealing with the railroad or its successor in interest. But that was not the remedy that we received in this particular instance. We, we didn't get the perpetual easement, we didn't get the treatment that we requested in terms of the-- any type of agreement or understanding.

**BRANDT:** So is the problem here the, the-- somebody else bought this rail line and are trying to say they are not a railroad company?

**HALLSTROM:** I don't know that they ever said that specifically, but that was the end result, that we, we brought the, the particular statute to their attention, and we still continued to discuss and bicker over whether or not we were going to have a private railroad

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crossing agreement rather than, than automatically get what the statute, I would argue, entitled, entitled my client to under those circumstances.

**BRANDT:** Because I can certainly see your client's point. If you have a landlocked piece of land and this is the only way you can access that, no bank in its right mind is going to guarantee a loan on that without access to that property. Would that be right?

**HALLSTROM:** And yes, and that's exactly what happened in this case. You have to be able to get to-- you know, it's kind of like why did the chicken cross the road? Why did the farmer cross the railroad line to get to the other side? And you have to get to the other side in order for, for you to have full access and enjoyment. And the, and the lender in most cases is going to require that.

**BRANDT:** So this change satisfies the lender that they can perform the contract, then on the on the land?

**HALLSTROM:** Yeah. Our, our situation went forward because the individual was able to have substitute or replacement collateral and didn't in the particular instance need to have that as collateral. But if we'd been a beginning farmer, we probably wouldn't have had that, that luxury and may not have been able to close on the loan to, to finish the acquisition.

**BRANDT:** All right. Thank you.

**HALLSTROM:** Thank you.

**MOSER:** Senator Storer.

**STORER:** Thank you, Chairman Moser. And thank you, Senator Hallstrom. What-- has there been other situations, I can't imagine that we haven't had a situation similar to this in the state of Nebraska that didn't have a snag, or that--

**HALLSTROM:** I wouldn't disagree with you. I'm not specifically or personally aware of any other circumstances.

**STORER:** OK. So there's not any known precedent.

**HALLSTROM:** I imagine in most cases, the railroad owns the line and the right of way, and they're familiar with and are accustomed to complying with the statutes, so it wouldn't be an issue. OPPD, if I remember correctly, the deed that I looked at was from sometime in

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early 2003 when they, when they took over. At least that's what the deed that I saw indicated in terms of the timing. So they were relatively new, if that's correct, to this situation.

**MOSER:** OK. Thank you. Other questions? Seeing none, thank you.

**HALLSTROM:** Thank you.

**MOSER:** Supporters for LB175. Welcome.

**DAN WATERMEIER:** Thank you, Chair. Good afternoon, Chair Moser and members of the Transportation and Telecommunications Committee. My name is Dan Watermeier spelled W-a-t-e-r-m-e-i-e-r, and I'm here today to express my support of LB175, and I do not have-- I'm not here as a state commissioner. Two years ago, I encountered a situation in which having LB175 in statute would have been extremely beneficial. I purchased a property, really under an option to purchase, with two railroad crossings that serve as the only means of access. However, before closing on the property, I discovered that the railroad would not grant an easement. These crossings have existed on the property for over 50 years as my family's farmed it, and possibly over 100 years or more. Yet the railroad's refusal to cooperate remains puzzling to me yet this day. Throughout my life, I have willingly cooperated with the construction of new bridges, pipelines, road infrastructure, railroad and utility improvements, all of which enhance public safety and economic growth for all Nebraskans. I have always respected the role of utilities and railroads, understanding their importance to both our state and the country. However, at its core, this issue is really about personal property rights. When a property owner is left without legal access due to the lack of reasonable cooper-- cooperation, it causes an unfair burden. LB175 is necessary to ensure that all property owners are treated fairly, and that long standing access rights are not arbitrarily denied. This LB, this legislative bill would apply to commercial, residential, and ag land property owners. I respectfully urge you to support LB175 and provide property owners with the certainty and fairness that they deserve. I'd be glad to answer any questions if I can.

**MOSER:** Questions from the committee members? Senator Storer.

**STORER:** A long pause there, Chairman Moser.

**MOSER:** Well, I was thinking.

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**STORER:** Did I understand you say that there was there-- there was a crossing there that existed when you owned on one side and were seeking to purchase on the other side, but not an easement.

**DAN WATERMEIER:** Correct. There's actually two railroad crossings because my property has got a creek in between us as well, this new piece of property. And so it needed two crossings, two separate crossings. And they've been there as long as I've farmed it. I know from 50 years, probably longer than that.

**STORER:** So there's not been a need for the easement prior to this, because it wasn't owned by the same individual on both sides of the track. Is that--

**DAN WATERMEIER:** No, they always were owned by the same individual. They were. But just when I purchased it or actually bought it through an option and then was in the process of doing financing, they came across this issue and subsequently I just decided I didn't-- I could just use cash for it and do it on my own.

**STORER:** Thank you.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Mr. Watermeier. So have they. Do you have an agreement now or not?

**DAN WATERMEIER:** No. I just failed to want to sign what was there for 25 years knowing really it wouldn't do me any good. And I still couldn't have gotten the financing on it if I wanted to. Or more importantly, really, the next person or the third person wouldn't be able to finance it.

**BRANDT:** So potentially what could happen is you sell this 30 years from now, your agreement has run out and they could just close the property off and not grant an easement to the next owner.

**DAN WATERMEIER:** Well, they wouldn't even have to close the property off without losing the easement or right away. What really will happen, I'm fine with my lifetime, probably with my children, they'll inherit it, probably cash free, or liability free. But if you think about it, when the third ownership comes along and they try to sell it, it'll probably be a standalone property. And most of those need financing. And at that point in time, without the easement, they will not be able to receive financing.

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**BRANDT:** All right. Thank you.

**MOSER:** Thank you very much--

**DAN WATERMEIER:** All right. Thank you, Chair.

**MOSER:** --for your testimony. More supporters for LB175?

**ANDREW FOUST:** Hello, Chairman Moser and members of the Transportation and Telecommunications Committee. My name's Andrew Foust, A-n-d-r-e-w F-o-u-s-t. I'm the Nebraska legislative director for SMART-TD. Today I'm here in support of LB175. This bill represents common sense legislation. In 2024, the agriculture sector in Nebraska generated \$29 billion. Railroads are one of the largest landowners in the state, and it is likely that farmers own land on both sides of the railroad right of way. Passing this legislation is crucial to ensure that both these vital economic drivers operate efficiently. This represents a strong partnership for both farmers and railroads. Many farms have only one entrance and exit, which poses a safety concern. If an accident were to occur, which we all know are-- happen every single year, first responders might not be able to access the property without a designated crossing. We urge the Committee to support LB175, and thank you for your time today, and I'd be happy to answer any questions you might have.

**MOSER:** Questions from committee members? Seeing none, thank you.

**ANDREW FOUST:** Yep. Thank you.

**MOSER:** More supporters for LB175? Anybody in the opponent to LB175? Welcome.

**JACOB FARRELL:** Thank you. OK. Chair Moser and members of the committee, my name is Jacob Farrell, J-a-c-o-b F-a-r-r-e-l-l. I am the manager of real property and land management for Omaha Public Power District. And I'm here to testify on OPPD's behalf. I thank you for this opportunity. OPPD is testifying against LB175. OPPD is a political subdivision of the state of Nebraska, is a publicly owned electrical utility engaged in the generation, transmission and distribution of electricity. OPPD serves an estimated population of 855,000, in a 13 county, 5,000 square mile service territory in southeast Nebraska. OPPD also owns a 56.4 mile-- 56.4 miles of the Arbor rail line in southeast Nebraska, which has connections to Burlington Northern Santa Fe, as well as Union Pacific. OPPD feels this legislation is not needed. There are railroad crossings for all the properties in question here. And in no way are we trying to get

out of providing crossings for other properties or this property that are owned by the same landowner on each side of our rail, and this bill is underli-- and this bill, and underlined statutes require that already. OPPD has been in negotiations with this impacted landowner, as well as Senator Hallstrom, since 2023 to come to an agreement for an existing crossing. OPPD has offered a 40-year crossing agreement, but the landowner has requested a permanent one. We are more than willing to discuss issues with this landowner, as well as Senator Hallstrom, to address these issues, to document this existing crossing. Once again, since there are crossings for all of these properties in question, we feel that this bill is not needed. And with that, I'll answer any of the questions that you might have. And I thank you.

**BRANDT:** Questions? I just have one. You don't feel current law guarantees that they have access from both ar-- both properties across the railroad?

**JACOB FARRELL:** I think as long as ownership is owned on both sides, that is the-- we, we follow that, that type of requirements in internal policy of ours. I just don't feel that this add is needed. I, I think that one of the questions that we're having here is that this legislation doesn't require documentation. It requires that a crossing be installed. But there, there's no there's no requirement for a written agreement between the parties.

**BRANDT:** Currently.

**JACOB FARRELL:** Yes.

**BRANDT:** OK. Senator DeBoer.

**DeBOER:** So your, so your concern then is that a permanent easement would require written documentation of the permanent easement?

**JACOB FARRELL:** We, we require, or we seek out a license agreement which most railroads do. A license is a, is a property right that, that allows access across our railroad. An easement has different connotations around it and stuff where, where an easement couldn't be revoked. So in the essence that, that both sides would not be owned by the same landowner, we could, if required for safety purposes, remove that. It's no longer needed, where an easement is in perpetuity.

**DeBOER:** So my understanding is that the bank required a permanent easement in order to provide for the loan, and that the lack of the permanent easement was making financing difficult.



**JACOB FARRELL:** Understood.

**DeBOER:** OK.

**JACOB FARRELL:** Yep.

**DeBOER:** If you were a railroad rather than a utility, would the landowner have been able to get a permanent--

**JACOB FARRELL:** So I, I don't want to speak on behalf of other railroads and-- but, but we follow-- and actually the document we use was borrowed from one of the major railroads. So the documentation that we use we, we have taken from Burlington and UP and, and formed our own documentation. Railroad's not what OPPD normally does. We, we own this railroad to-- for, for coal contracts. Right? So as, as part of that, we, we do have to do some property management and, and act as a railroad for, for certain activities. We don't do that on a normal basis, so we, we do rely on, on some of the Class I railroads and their documents and, and activities to understand how to, how to approach these. But again, I'm not speaking on their behalf, but it's our understanding that licenses are used for crossings at those railroads as well.

**DeBOER:** Because I think what Senator Hallstrom is trying to do with this bill is make sure that you would have the same obligations that one of those railroads would have.

**JACOB FARRELL:** Which we act upon too. And again, I, I think the confusion that, that we're having as OPPD is this, this LB175 does not require documentation. It requires a crossing to be installed, and that crossing is installed and in use.

**DeBOER:** So then I guess I don't understand what your objection is because if what you're saying is that the law already essentially demands this of you, then clarifying it in the law shouldn't harm you.

**JACOB FARRELL:** No, I, I just don't feel the bill is needed. I, I think that by adding certain language in statutes can have unintended and unforeseen consequences later on. So I, I feel like the best course of action here is to work out an agreement. But, but again, it doesn't force an agreement to be made.

**DeBOER:** What unintended consequences do you--

**JACOB FARRELL:** At this point, I don't know.

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**DeBOER:** --do you imagine might happen?

**JACOB FARRELL:** I don't-- it's just to me there, there's some ambiguity in that. Right? And it's just unforeseen that, that some future date could, could create a challenge to it.

**DeBOER:** So your argument is you'd rather not have new language put in in case it accidentally does something in the future.

**JACOB FARRELL:** Yes. Yes, ma'am.

**DeBOER:** OK. Thank you.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, chairman Moser. Thank you for appearing today. You said new crossings, but these crossings have been in existence for 50 or 100 years, possibly. These are existing crossings.

**JACOB FARRELL:** Yes they are.

**BRANDT:** So isn't it obvious, then, that this is not something new that, that maybe will be here for another hundred years?

**JACOB FARRELL:** The, the, the crossings themselves, you mean?

**BRANDT:** Yes.

**JACOB FARRELL:** I'm sorry, that's all twisted. Yeah. Our intent is to, to leave these crossings in place. You know, they've been there, we are still maintaining them. I just-- it doesn't require a written document between the two parties, and I think that's where we're having the rub right now is how do we document this?

**BRANDT:** But it almost seems to me like you're a power company and you own this railroad, and you're saying it's part of the power company. And that argument would be kind of like if the Union Pacific bought a generating plant and said it was a railroad. And I guess I, I think this is fairly straightforward, what Senator Hallstrom is trying to do is just the same rules apply to all the rail crossings in the state of Nebraska. Am I reading this wrong?

**JACOB FARRELL:** Well, I mean, we haven't acted in that way. Right? So, so the crossings are in place. Right? And we haven't removed the crossings, the, the-- I guess the pressure is not to install a crossing that's already there.

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**BRANDT:** But the bank is concerned that you could remove the crossings without an agreement. Therefore, they do not want to loan money on this ground without the agreement.

**JACOB FARRELL:** The, the, the legislation doesn't require an agreement. That's what I'm, that's what I'm saying. There's nothing in that legislation that requires a written agreement.

**BRANDT:** All right. Thank you.

**JACOB FARRELL:** That makes sense?

**BRANDT:** Oh, OK.

**JACOB FARRELL:** OK.

**MOSER:** Current legislation doesn't require an agreement.

**JACOB FARRELL:** This is true. Yes.

**MOSER:** You're trying to improve on current legislation. OK. Next opponent to LB175. Next opponent? Seeing none, how about neutral? Is there anyone in the neutral to testify? Senator Hallstrom, it looks like we're ready for your closing remarks.

**HALLSTROM:** Thank you, Chairman Moser and members of the committee for your patience. I think the real rub here is what Senator Brandt noted. OPPD is not a railroad for purposes of this statute, arguably, or at least, they seem to indicate as such in the way that they're negotiating. They indicate that there is no documentation, but it's not crystal clear that they are subject to the statute. All LB175 would be is to say, someone that acquires the railroad line and right of way from a railroad, which is clearly subject to the statute, is going to be subject to the same requirements. I think it's clear, and I do not disagree, that there is no documentation requirement for railroads, but at the same time clarifying that OPPD in this instance is subject to the same obligations is going to make it clear that if we encounter the same situation in the future, we will clearly have a legal right to enforce that statute and its requirements against OPPD as a successor in interest. It's pretty obvious to me that they are at least seeming to indicate that they're not subject to the statute, because when they want to put together a written agreement of some nature, they want to put all of these limitations in terms of duration and in terms of conditions and obligations that are foisted upon the landowner who is entitled to these rights under that statute, if applicable, upon the landowner, and do something completely different

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than what the statute would seemingly obligate them to do. They're concerned about unknown unintended consequences. Those are obviously the most scary. But I'm being sarcastic. So with that, I would request that the committee advance the bill. And I'd be happy to address any other questions that may have arisen.

**MOSER:** Senator Storer

**STORER:** Thank you, Chairman Moser. So let me, let me say how I believe this is the intent and written and, and you refute, please, if I misunderstand it. You're-- this change-- the current law, nor does this change require an actual document of any kind.

**HALLSTROM:** Correct.

**STORER:** You're not asking for any document.

**HALLSTROM:** We're just asking that they be clearly subject to the same requirements as if they were a railroad.

**STORER:** OK. I think that is very clarifying. So the-- someday, the railroad-- well, it happened in my, much of my district where the railroad was abandoned and it became the Cowboy Trail. This would apply, those same obligations, to whomever would acquire that would apply to adhering to this piece of statute to ensure access. That's really all you're trying to do.

**HALLSTROM:** Correct. It's not, it's not just subject to OPPD, it's, it's a successor in interest. So that would pertain--

**STORER:** It could be a private entity.

**HALLSTROM:** --to anyone, anyone that acquires those interest or ownership rights from the railroad.

**STORER:** So it's sort of establishing an easement, but not-- by statute, but not through legal documentation of a signed easement.

**HALLSTROM:** Correct.

**STORER:** There's no, there's no attachment to the deed.

**HALLSTROM:** Yeah. And the o-- the other issue I note that your question has given rise to is that if-- it, it's, it would be very easy for the easement to have some type of condition or even their railroad crossing agreement to make it permanent in nature. But if you put

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something in, for example, and I think the witness from OPPD referenced this, that if the land ever became not owned by the single person on both sides of the land, they could simply put something into the agreement that says under those conditions, this easement is, is terminated. So there's, there's many ways to skin this cat.

**STORER:** But am I understanding right, really that there's not even a need for an official agreement.

**HALLSTROM:** No.

**STORER:** There's, there's just a need for the clarification of who must adhere to this. 17--

**HALLSTROM:** If, if-- Yeah, I, I think the way to look at it is work your way in backwards. We ask for a per-- permanent or perpetual easement. They obviously were not willing to give that, and we're suggesting that something different than a permanent easement and something beyond the owner being responsible for up to one half of the expenses, no more than \$1,500, was what they wanted to put in the agreement. So they're obviously suggesting that they are immune from, from complying with that statute. When if we simply clarified the statute, then we're going to know that even in the absence of any type of an agreement, if they cut off our access at some type, some time in the future, indiscriminately, even though we still own land on both sides of the railroad line and right of way, that we have a cause of action under that statute, because it clearly applies to a successor in interest.

**STORER:** Last question. So would this change to state statute have satisfied the lender in the case that really prompted this?

**HALLSTROM:** I believe, I, I believe and hope it would because there would clearly be the, the requirement for them to provide that access by state law.

**STORER:** Without any formal easement attached to the title. This sort of replaces the need for that.

**HALLSTROM:** That, that would be my intention and my hope. I can't speak for that lender, but it, it ought to be sufficient if it's clear that the statute applies for them to obligate them under state law to provide that, that access.

**STORER:** Thank you.

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**HALLSTROM:** Thank you.

**MOSER:** Thank you very much. That'll end our hearing on LB175. We had two proponent letters, one o-- no opponent or neutral letters on LB175. Now we're on to LB256. Welcome.

**QUICK:** Thank you, Chairman Moser and members of the Trans-- Transportation and Telecommunications Committee. I'm Dan Quick, D-a-n Q-u-c-- Q-u-i-c-k, and I represent District 35. And I'm here today to introduce LB256. LB256 reinstates Nebraska as a member of the Midwest Interstate Passenger Rail Compact, or MIPRC. The MIPRC was conceived by Midwestern state legislators in the late 1990s through the Council of State Governments, CSG, and Western Legislative Conference, and was developed with input from federal and state officials. Nebraska was one of the first states to join the compact after governor Mike Johanns signed enabling legislation in 2001. The compact brings together Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, and Wisconsin in order to coordinate and advocate for passenger rail improvements across the Midwest. In addition, the MIPRC works with public and private sector, private sectors, and the, and the federal-- and federal, state, and local levels to ensure coordination among various entities having an interest in passenger rail service. MIPRC has also taken their primary role in advocating for federal government collaboration with states for passenger rail development similar to the partnership it has with states on other modes of transportation. With its bipartisan mix of gubernatorial, legislative, and private sector delegates from each member state, MIPRC had been successful in protecting long distance passenger rail service, including the California Zephyr line service through Nebraska as a viable transportation option for many Midwes-- many Midwesterners. We have been speaking with the Midwest Interstate Passenger Rail Commission, and we will be granted a waiver for roughly \$15,000 in unpaid dues Nebraska owes from 2019. And I will tell you that I, I served on that compact at that time. I was actually-- 2017, and 2018 was my first years in the Legislature, and I served on the compact as part of the Legislature, Senator Lynne Walz and myself were. And I think we'd spoken to the exec board about maybe paying those-- that last, that last set of dues that were owed, and we weren't able to get that done at that time, but that sounds like they were-- it is-- it would be forgiven. Nebraska has been a leader in rail for over 100 years. We are a pro rail state. It's important for Nebraska to have a voice in current and future passenger rail development that will bring significant transportation and economic benefit to our state. Thank you for your consideration of LB256, and I will be happy to answer any questions the committee might have.

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**MOSER:** Questions from committee members? Seeing none, thank you, Senator. Supporters for LB256. Welcome.

**ROBERT KUZELKA:** Welcome. Thank you. My name is Robert Kuzelka, K-u-z-e-l-k-a. And I am here in support of LB256. I'm a board member of an organization called Pro Rail Nebraska, which advocates for passenger rail in the state of Nebraska, and the board of that organization had also will be re-- through the hearing today will be talking in favor of LB256 and has reviewed my comments, which copies of which I think are being given to you. So I first, I want to thank Senator Quick and Senator Dungan, who introduced and have signed on to this bill before the hearing today. I also want to thank Chairman Moser and members of the Transportation Telecommunication Committee for holding this hearing on LB256. LB256 is the third identical bill introduced in the Unicameral with the purpose of the state of Nebraska re-adopting. It says adopting, but in a point of truth, you're going to be re-adopting the Midwest Interstate Passenger Rail Compact, MIPRC. Previous similar bills were introduced in the 107th and 108th Legis-- Nebraska Legislatures. Hearings on those bills were held by the, then members of this committee in those two previous Legislatures. Both bills were never advanced from the committee to the Legislature. You may ask, why do supporters of the purpose for this bill keep working to have such a bill introduced and enacted? As you will hear from other presenters, there are reasons from many areas, transportation, economic, social to name a few. All point to an urgent need for Nebraska to undertake activities related to continued and improved passenger rail service in this state, and in cooperation with neighboring states. These activities should obviously be undertaken by the Nebraska Department of Transportation, NDOT, but currently they are not. When asked why not, the past three department directors suggested NDOT may not have authority to do such work. The result of their promised investigation into this situation have never been reported back to me or my colleagues who requested it. Further, their other standard response for no activities related to passenger rail is NODT [SIC] does what the Legislature directs, implying that the Legislature has not so directed them. The passage of LB256 would provide NDOT with the necessary direction from the Legislature to undertake activities related to passenger rail for the State of Nebraska. Please advance LB256 from your committee to be discussed by the entire Legislature. Thank you and I would be happy to respond to any questions.

**MOSER:** I don't see any questions, but thank you for your testimony. Anybody else to speak in support of LB256? Welcome.

**LAURA KLIEWER:** Thank you very much. My name is Laura Kliewer, L-a-u-r-a K-l-i-e-w-e-r, and I-- it's a pleasure for me to come before the committee today to talk about LB256. I am the director of the Midwest Interstate Passenger Rail Commission. And so much is going on in the Midwest to bring increased passenger rail service to our states. And now is the perfect time for Nebraska to join its fellow Midwestern states in exploring how this critical mode of transportation can bring bet-- both better urban and rural transportation options to your citizens, especially those with limited mobility, seniors, and those who don't want to or can't take other modes of transportation. Senator Quick described a little bit of what the Midwest Interstate Passenger Rail Compact is, so I won't go into that, but it's in your handout. But during the past ten years, through MIPRC and its member states advocacy, the federal government has established now a series of grant programs to help passenger rail development every step of the way. Much regional work has already been done that would benefit Nebraska, but you need to be at the table in order to benefit. There's a few things that I would like to tell you about that you could benefit from. First of all, MIPRC was the entity that asked the Federal Railroad Administration to conduct regional rail planning involve all Midwestern states. So Nebraska was part of that effort, which resulted in the 2021 FRA Midwest Regional Rail Plan. Expansions identified in that plan strengthen the Midwestern states' applications to the inaugural federal-- the inaugural FRA quarter ID program, which provides \$500,000 upfront in federal funding to chosen corridors with no match required, so that you could take the first steps in deciding if you want to pursue that route. MIPRC's input, input into that grant program was the key reason they are providing the seed money. Secondly, this January, the FRA issued the Long Distance Service Study to Congress detailing proposed new long distance routes. MIPRC and its member states participated actively and put in both through the workshops they held and joint letters. The final report has two potential routes that would give Nebraska new north-south connections to neighboring Midwestern states. And with brevity of time, I won't go into what those are, but those are in your notes. Being a participating member of, of MIPRC allows states to benefit from our grants, both in putting input-- providing input as to the grant scopes into their outcomes. We have been awarded a 2024 Federal Consolidated Rail Infrastructure and Safety Improvement, or CRISI Grant, which will expand on the Midwest Regional Rail Plan that I mentioned before, identifying additional corridors across the Midwest and conducting initial ridership and revenue, as well as economic impact analyses for each route. So we'll do the initial work.



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But if you aren't a member of the compact, we don't know how much we'll be able to incorporate Nebraska routes.

**MOSER:** You can see the red light is on there.

**LAURA KLIEWER:** Yes, I do see that. So I will just close by saying, I do hope, strongly urge you to take the first step in giving Nebraska the opportunity to benefit from the regional passenger rail network that MIPRC and its member states are undertaking by passing LB256 out of committee. And I'd be glad to answer any questions.

**MOSER:** Questions from the committee? Senator Ballard.

**BALLARD:** Thank you for being here.

**LAURA KLIEWER:** Sure.

**BALLARD:** Senator Quick said dues are \$15,000 a year. Is that still the case?

**LAURA KLIEWER:** It's actually \$25,000.

**BALLARD:** \$25,000 a year. OK.

**LAURA KLIEWER:** Yes.

**BALLARD:** OK. Thank you so much.

**LAURA KLIEWER:** Sure.

**MOSER:** All right. Thank you very much for your testimony. Any other supporters for LB256? While they're coming up, there were senators who arrived late. If you would like to introduce yourselves.

**FREDRICKSON:** Oh, sure. John Fredrickson, I represent District 20, which is in central west Omaha.

**MOSER:** All right. Thank you. Welcome.

**DAN BILKA:** Welcome. Afternoon. Chair, Vice Chair, members of the committee, my name is Dan Bilka, D-a-n, Bilka, B as in bravo, i-l-k-a. I'm president and co-founder of All Aboard Northwest, which is a regionwide passenger rail transit transportation advocacy group. I also serve on the Rail Passengers Association board of directors as vice chair, but I'm only speaking as part of All Aboard Northwest, and as a friend and neighbor from South Dakota. We encourage you to support this bill for Nebraska to rejoin the Midwest Interstate

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Passenger Rail Compact to help position Nebraska for passenger rail expansion serving the entire state, including the Panhandle. I can personally attest to how critical MIPRC's reps were in getting Nebraska Panhandle on the proposed networks, referenced to the long-distance service study. Without them, there would not be a route through the Panhandle. While I, as a participant, made the case for such route, MIPRC's reps and support gave added weight to the argument. More broadly, we believe that all long distance routes should be developed to run twice in a 24 hour period in order to provide daylight service to every single station stop, including across Nebraska on the Zephyr. The long distance service study has continued to galvanize interest all across the state and across the nation in passenger rail, and making-- MIPRC has been critical in making the case for smaller communities to be served as well as the larger cities. In our professional opinion, MIPRC membership is critical for Nebraska to give you a leg up for federal funding opportunities, especially since you do not have a current state rail plan that includes passenger rail. MIPRC, as an eligible applicant on certain federal grant app, can apply for these federal grant opportunities in addition to those pursued by the DOT, MPO, and others. Omaha and Lincoln are great world class cities, but the value of MIPRC membership will crucially be for the other communities across the state. And as we see it, the value of passenger rail isn't for the largest of communities that can be served, but for the smallest ones that can reasonably be served. Rejoining MIPRC will say to Washington, D.C. that this state and its citizens matter on the national stage. I thank you for your time and look forward to any questions.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here for your testimony. You mentioned that there's possible federal funding opportunities that, am I saying it right, MIPRC?

**DAN BILKA:** Yep.

**FREDRICKSON:** That MIPRC has been able to facilitate with maybe some other members. Approximately, what's the-- how much federal funding? Do you have a sense of that or--

**DAN BILKA:** That would be a better question for MIPRC to answer.

**FREDRICKSON:** OK.

**MOSER:** OK. Senator Ballard.

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**BALLARD:** Thank you. Just a quick one. Can you expand a little bit on how this will benefit smaller communities in Nebraska? Just like the economics behind railroad passage? It's like you pick up Omaha, you pick up Minneapolis and Chicago.

**DAN BILKA:** But it's really for the smallest communities that can be served. So McCook, Holdrege, Hastings, that way as it is on the existing Zephyr. And that's why we're making the case for daylight service that people do use it, and quite robustly. But you should be able to have a chance to get on a train in daylight as well in Nebraska, not just in Iowa or Colorado. But really it's for the smallest communities, by being a critical access point to the broader transportation network and economic opportunities there, and that often the train might be the last name in town for non personal automobile transportation, not just for those who have no other alternative, but just for those who want to have the freedom of mobility, to be able to be mobile without having to be dependent on their personal automobile.

**BALLARD:** OK. Thank you.

**DAN BILKA:** And that I--

**MOSER:** Thank you. Senator DeBoer.

**DeBOER:** Hi. Thanks for being here.

**DAN BILKA:** Thank you.

**DeBOER:** I have, truth be told, ridden the Zephyr across the state both directions quite a few times in my life. So I've gotten on and gotten off at Hastings, where I went to college at 4 a.m. or whatever time it is. So I know because the Zephyr originates in California and goes to Chicago, because I've actually ridden most of it at one point or another, you know, those trains are going for days by the time they get into Nebraska going east. How would you ever-- like, there's no way to really add a daytime route that I can think of that would not cause-- so what are you suggesting that the, that this rail compact might be able to suggest?

**DAN BILKA:** We'd be suggesting so exist-- having the existing train, but adding another frequency in a 24 hour period so you can have the one in the middle of the night, but then you'd also have one hopefully in a 6, 12 hour offset there to have it in the daylight as well as middle of the night, so that it'd hit like other parts of the route

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there in the middle of the night for the second frequency versus the first frequency.

**DeBOER:** I mean, we're a pretty long state, so at some point it's going to be inconvenient at some part of the state. I think I understand. OK. Thank you.

**MOSER:** Thank you for your testimony.

**DAN BILKA:** Thank you.

**MOSER:** Anyone else to speak in support of LB256? If you plan to testify, please come forward and take a seat up front so you can be quicker to get to the testifier table. Welcome.

**ADAM HAUSMAN:** Welcome, Chairman Mosher and members of the Transportation Telecommunications Committee. My name is Adam Hausman, A-d-a-m H-a-u-s-m-a-n, and I'm the Nebraska state legislative board chairman for the Brotherhood of Locomotive Engineer and Trainmen, the BLET. Thank you for the opportunity to testify in support of LB256, Midwest Interstate Passenger Rail Compact. The MIPRC is a subdivision of the Midwest Council of State Governments that represents the interests of ra-- passenger rail. It serves as a vital forum where Midwestern states work together on funding, development, and operations of rail routes connecting our region and ensuring we have a voice at the national rail discussion. Indiana, Wisconsin, Michigan, No-- North Dakota, and Kansas are making real progress in expanding and improving their passenger rail system. It would be beneficial if Nebraska was included in these discussions. Without a seat at the table, Nebraska risks missing critical funding and planning opportunities. Investing in this would be beneficial by ensuring Nebraska is plugged into federal and regular discussions that will shape the future of passenger rail. Even if no additional routes are constructed, a presence at the MIPRC gives Nebraska the ability to advocate for day-- daily and daylight services, and making rail transportation a much more viable choice for our residents. By passing LB256 and joining the MIPRC, Nebraska legislation can position Nebraska for a more connective, competitive, and forward looking future. Thank you, and I'll answer any questions.

**MOSER:** Comments from senators? Seeing none, thank you for your testimony. More supporters for LB256? Welcome.

**MATTHEW ROQUE:** Hello. Thank you. My name is Matthew Roque. That's M-a-t-t-h-e-w R-o-q-u-e. First, I want to thank Senator Quick for

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introducing LB256. My appreciation is also extended to Senator Moser and the rest of this committee for their work on behalf of the citizens of Nebraska. I am here once again representing ProRail Nebraska, of which I am the president of the organization. It's a nonprofit advocacy group focused on increased passenger rail service, as well as other public transportation needs within the state. At its inception, Nebraska was a founding member of MIPRC. Nebraska took this bold step because members of the Legislature recognized there were benefits to cooperating with other states. MIPRC provides a source for regional passenger rail planning as well as multi-state information sharing and contacts. It is a forum for discussion and developing essential technical and professional contacts in other states, such as Kansas and North Dakota, with similar rail needs and challenges. As some of you are aware, Amtrak daily serves the state with a pair of passenger trains, the California Zephyr, operating between Chicago and Emeryville, California. These trains stop at five stations, Omaha, Lincoln, Hastings, Holdrege, and McCook, and in 2023 had 37,370 passenger arrivals and departures. This benefit is in addition to the approximately \$5.8 million spent by Amtrak within the state for wages, goods and services. If we do not readopt the Midwest Interstate Passenger Rail Compact, we will be sitting on the outside looking in. All of you have sat on boards of various organizations. I am sure you recognize the importance of having a seat at the table, of being part of the discussion. Decisions are made by those who show up. Please vote to advance LB256 from your committee. Thank you.

**MOSER:** Thank you. Questions from committee members. Seeing none, thank you for your testimony. There are more supporters for LB256.

**RICHARD SCHMELING:** Good afternoon, Chairman. Well, years ago when I was a young trial attorney here in Nebraska, I tried my first jury case. I was so afraid I was going to forget something in final argument that I wrote the argument out. And as I conducted the trial and did my final argument, I noticed the jurors beginning to nod and chins dropped and I put them all to sleep. So I'm not going to read you a statement. I'm going to just talk to you. I am the president of a group called Citizens for Improved Transit. Citizens for Improved Transit urges you to pass out of committee this bill, LB256. I'm also district one director of ProRail Nebraska. Now, if you don't remember anything else that I say in this hearing, please remember we have lousy public transportation in Nebraska. A huge segment of our population can't or won't drive cars. Now, one of the handouts that I have shows you the cost of owning a car. That's from the American Automobile Association, and those figures are about three years old. Today I have the figures, I didn't get a new chart made up, but you're

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looking at \$7,000, \$8,000, \$10,000 to own a car and maintain it and run it in the state. And there are a lot of people that can't afford to do that. In addition, we talk about in the state of Nebraska, we talk about workforce development. It doesn't do a bit of good to spend all that money on workforce development if people can't get from home to work and back home again. And today, that's a real problem. I talked to the American Job Center here in Lincoln, partially financed by the state, by the city. They told me the single biggest barrier to placing people in jobs in Nebraska is transportation. They can't get the applicants out for an interview, and if the people get the job, they can't get to and from work. The Bureau of Sociological Research did a survey a number of years ago. They found that the number one barrier to people getting ahead economically and so on in society was transportation. There's, there are other aspects of this. There's a social cost to be an auto centric society. And I've sent you figures there that show you what the cost is in terms of accidents. And that's been put together by the state Department of Transportation Highway Safety. I would leave you with this final thought as I see I'm running out of time. As things currently stand, we don't have a state rail plan that would meet the federal railroad requirements for getting grants. Our federal taxpayer money that's going to DC is going to the 49 other states that have rail systems, either in the planning stage, in the development stage, or in operation. We're giving the money away, and I don't think we can really afford to do that. So I strongly urge you to advance this bill out of committee and then support it when it comes up for debate on the floor.

**MOSER:** Thank you. Could you spell your name for us, please?

**RICHARD SCHMELING:** Schmeling, S-c-h-m-e-l-i-n-g. First name is Richard, common spelling.

**MOSER:** OK. Thank you. We just missed that at your opening. Questions for the testifier? Seeing none. Thank you for your testimony.

**RICHARD SCHMELING:** Thank you.

**MOSER:** More supporters for LB256? Welcome.

**LUKE RILEY:** Thank you. Chairman and members of the committee, my name is Luke Riley, L-u-k-e R-i-l-e-y, and I'm from Lincoln, and I'm representing myself and my family. Nebraska should join the Midwest Interstate Passenger Rail compact. I think the value is obvious to blue and coastal states like California, and a lot of these other ones where they're taking a majority of the federal funds. Nebraskan's are

paying into it and getting almost nothing in return, and we should have a seat at the table. The federal government is willing to fund rail infrastructure projects. We just have to accept the money. But Nebraska's continually declined our seat at the table. It's true what opponents say, Nebraska's previous membership yielded very little benefit-- benefits. This is because we failed to appoint representatives properly to our seats in the compact. We signed up, but we didn't show up. This time would be different. The compact can apply for federal funding on behalf of our state, and work with the DOT without having to stand up a whole new office and pay salaries and stuff. Best of all, it works directly with the Nebraska Department of Transportation. These projects are already in the works. Amtrak is eager to expand rural service to Nebraska communities. Federal infrastructure dollars are looking to create a route along the Missouri River from Kansas City to Minneapolis. This would go through many Nebraska cities. We could influence the route. Since Iowa is currently not at the table. We could have it go through Fall City, Nebraska City, Omaha, Fremont, and up to Sioux City on its way to Minneapolis. Missouri's already applied for and received funding to study the segment from Saint Joseph to Kansas City, so they might get a train just between those two cities, and we could influence something that would connect our communities. There's also the route in the west that would connect Denver to Minneapolis, but it would go through the Black Hills and Pierre. We could go-- it would currently under their plan go through Sydney, Alliance, Bridgeport, Chadron, and Crawford, Fort Robinson. My wife and I took our kids to Grand Junction from Lincoln, and it goes through during the trough of demand, like you were saying. There's-- it doesn't serve Nebraska super well. Daylight service would improve that dramatically. But even with having to take the train and get on at 1 a.m. with four children, six and under, the preference-- the travel was way better than having to drive. When we went to Fort Robinson, it's an amazing part of the state, it should take us seven hours roughly to get there. It took twelve and a half, having to stop for children. But trains have bathroom facilities on board and, you know, it would expand our access to the state. The path forward, I think, is remarkably straightforward. Nebraska joins the compact. The governor can appoint representatives who can secure federal funding on our behalf. And in an era where there's so much skepticism-- skepticism towards federal spending, passing LB256 will show what responsible stewardship of federal tax dollars looks like. That's the Nebraska way. The country needs our voice in regional rail planning, and if we show up and do our part, our state will see substantial, substantial economic returns for generations to come. And I believe there are also at the state level things we could apply for rather than just

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interstate things. The Nebraska Central Railroad, I believe it goes in your district through the middle of the state, potentially. They work in Texas. Their parent company has a subsidiary that runs some smaller trains on some rural routes, so through the DCTA there in Texas, that's kind of an interesting thing, so.

**MOSER:** Questions for the testifier? Seeing none, thank you for your testimony.

**LUKE RILEY:** Thank you.

**MOSER:** Anybody else in favor of LB256? Is anyone opposed to LB256? Anybody to speak in opposition? Is there anyone to speak in the neutral capacity? Senator Quick, come on down. While he's getting to the table, I'll mention that we had seven proponent comments. Six opponent comments, and one neutral comment. Welcome back Senator.

**QUICK:** Thank you, Chairman Mosher and members of the committee. I think I'll-- in my closing I might talk a little bit about my activity when I was part of the Midwest Interstate Passenger Rail. And Senator Lynne Walz and myself, we were part of that. And we traveled to Washington, DC twice in 2017 and 2018. We met with, with members of our federal delegation, either them or their staff. We were able to talk to them about the opportunities that Nebraska had to bring federal funding to, to our state. Currently, Amtrak runs on freight lines, so we got to make sure that those freight lines are kept up to higher standards than you would just for freight but for, for passenger rail. And so those dollars are important to make sure those are coming to our state to make sure that safety aspect is there. We also met with the director of the FRA. We met with the CEO of Amtrak, and then we put on a presentation for staff of the federal delegation. And we each had a part that we, that we, that we had to--a speaking part to talk to the federal delegation. And I thought it was really important. You know, we would partner up with another senator from another state. I was with the senator from North Dakota. We went to some of his, his federal representations and-- or representatives, and we went to, to mine as well. I also traveled to Wichita. We had some meetings just regionally for-- so we met with the people in Kansas. We also went up to Madison, Wisconsin for a meeting. And so I think, you know, you kind of get out of it what you put into it. And so we worked pretty hard on trying to make sure our voices were heard, and that we were maybe getting that opportunity to, to bring some of those dollars here. Now, I can't speak-- I know our DOT, I don't know that they were ever-- I don't know how much they were involved, or if the governor made his, ever made his appointments to go. But as a Legislature, we



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did our part. I know before me it was Senator-- before Lynne Walz and myself it was Senators Burke Harr and Jim Smith. They were part of the delegation before us. And I can tell you personally, my wife and I have ridden the train about three times now. We went to Chicago a couple times. We've also went to Glenwood Springs, Colorado. I'd highly recommend it. It was a great trip. We got on in, in Hastings at 2:00 in the morning. We got to Denver that morning, rode to the mountains that night, or that-- during the daytime. You got to see all the mountains and, and, and, and stuff. So we, we had a great trip and I would highly recommend it for any of you. But I, I would love to see this, this piece of legislation come out. And thank you, and if you have any questions, I'm happy to answer them.

**MOSER:** Questions? Senator Storer.

**STORER:** Thank you, Chairman Moser. And thank you, Senator Quick. I'm just-- I've been kind of perusing the, the website to learn a little bit more about this, and I'm. I guess I still have a few questions. So you indicated you were individually a member? I mean, what are the, what are the-- This, this legislation is basically trying to formalize a membership for Nebraska. Right? But yet you were, you were individually a member when you were--

**QUICK:** No, I was appointed by the Legislature. So we were-- and we were members of the compact the first, first two years I was in. And so it had a sunset date on it. So I think Senator Kintner maybe put a sunset on it. And then, so then at the end of that sunset, then we were out of the compact.

**STORER:** And that-- what year was that?

**QUICK:** For the first two years of the compact, I was-- Lynne Walz and I were, were representatives from the state of Nebraska for that compact.

**STORER:** So how many years had Nebraska officially been, been--

**QUICK:** 2001 is when it was originally put in.

**STORER:** So in 2001 to 20-- do you know about what--

**QUICK:** 2018. So 2019 would have been, would've been the first year we were no longer part of the compact.

**STORER:** And can you tell me what-- like, and I know this is, this is a pretty broad question but generally, what, what did that bring to

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Nebraska. Was there a dollar amount-- I mean, what-- that, for that time span that we were a member, what were the real significant--

**QUICK:** Yeah. I-- you know, I can't speak to the dollar amounts. I know while I was in there, our, our, our position was to go out and, and try to bring those dollars, but I can't speak specifically that we actually brought any dollars here. But being that-- part of that-- but I also thought from the governor's standpoint, he should appoint someone to actually go speak too, you know, like someone from the DOT. When I went to a lot of these conferences and also after Washington, D.C., there were people from DOTs from other states there. So their governors would appoint someone to go to speak on their behalf, you know, for the governors part. And then also some from the private sector was also part of the compact. So-- but then the Legislature, we had our-- we were still part of it. So we sent our representatives, so. But the governor can also, he should app--he should appoint someone too if, if we're a part of it.

**STORER:** So could the governor do this independent of the Legislature directing him to?

**QUICK:** Well, I think originally it's, it's not required. It's like one of those things where it would be a great opportunity if you would appoint those people, but that's, that's what they have laid out in the, in the, in the language, in the, in the, the--, well, even the language we have now, there would be a member, two members of the Legislature, one member appointed by the governor from, from like the DOT or someone under his purview. And then there's someone from the private sector, and I'm not sure, the governor might appoint that position too from the private sector, I'm not--

**STORER:** So this is just your proposal, one way for Nebraska to participate. But certainly the governor's office could independently choose to-- I mean, did we have this, this formal agreement, I guess, when you served?

**QUICK:** Yeah, yeah. It's just it was only the, only the Legislature appointed the people, the governor didn't appoint anybody to go. So that's where the-- where we maybe fall into that crack, where we could have gotten maybe more funds had we gotten-- had we been able to have more support, maybe from, you know, maybe Governor Ricketts at the time? You know, I don't think he appointed anybody. So we as a Legislature, we were fighting for the funds, but we probably needed some help from the governor as well. And not to criticize the governor. I'm just saying that he didn't appoint anybody to go, so.

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**STORER:** And last quick question, can, can you just give me an idea why was that allowed to sunset? Was there just a general sentiment that we didn't feel like it was benefiting the state or--

**QUICK:** I, I can't speak to Senator Kintner 's reasons for not-- for wanting to end the sunset.

**STORER:** Right, and that's not an entirely fair question. But, you know, perhaps I was hoping since you were serving at that time, maybe you had some--

**QUICK:** Yeah, it happened before I beca-- before I came into the Legislature when he put the sunset on.

**STORER:** Thank you.

**MOSER:** All right. Senator DeBoer.

**DeBOER:** Thank you. Thank you, Senator Quick.

**QUICK:** Yeah.

**DeBOER:** Can you tell me how the funding mechanism is going to work a little bit? It says that the-- I'm looking at the fiscal note. It says there's no General Fund impact because the fund shall consist of gifts, grants or bequests from any stor-- source, and may consist of money transferred by the Legislature. So have we-- have we already secured grants? Are there grants out there for such a thing? How are you envisioning this working?

**QUICK:** Yeah. And that's something we probably need to, need to do, is to make sure we have, you know, go out and do some more or less fundraising to get those, to get those dollars. I know at one time SMART actually paid the dues, I think. I don't know if it was one year or if it was more, but I know one year that they paid the dues. And so they can be paid by, you know, others. I've actually asked, you know, met with the Department of Transportation and I've met with the railroads maybe. I haven't had formal meetings, but I've asked them if that would be something they'd be interested in doing. You know, at one time the dues were only \$15,000, so, but now they're up to \$25,000. But, you know, I think that's a minimal amount of money that we could maybe find somewhere. So.

**DeBOER:** So are you thinking that this will not, then, be something paid by General Funds?

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**QUICK:** I would think it would not be paid by General Funds. The problem is that I guess that if you-- people don't want to contribute to it unless we know for sure we're going to be in it.

**DeBOER:** Right? That makes sense. So--

**QUICK:** And so we're like in a Catch 22.

**DeBOER:** So if we, so if we did get in it and then we didn't raise the money through bequests or gifts or philanthropy of some sort, then is the state on the hook to pay the rest of the dues?

**QUICK:** That would probably be the what the position would be. So we're like I say, we're in a Catch 22--

**DeBOER:** Got it.

**QUICK:** --either trying to raise the money without any promise that we'd ever be in it, or, you know, or not raise the money if we do pass it, and then, then it would be on general funds, yes.

**DeBOER:** OK. Thank you. That's, that's very clear.

**MOSER:** All right. Thank you very much, Senator.

**QUICK:** Yeah. Thank you.

**MOSER:** That'll conclude our hearing on LB256. Now we'll go to LB485. Again. It's Senator Quick with a new hat on.

**QUICK:** Yeah. Thank you, Senator, or Chairman Moser, and members of the Tele-- Transportation and Tele-- Telecommunications Committee. I'm Dan Quick, D-a-n Q-u-i-c-- Q-i-- Q-u-i-c-k, and I represent District 35, and today I'm here introducing LB485. LB485 protects the rights and privacy of those who dedicate their lives to keeping our rail-- railways moving safely and efficiently. This bill ensures the confidentiality and dignity of train crew members involved in trespasser incidents. This bill recognizes the unique role train members, train crew members play in our transpor-- transportation system, and the emotional and legal complexities they face in the aftermath of a tragic, of tragic events, tragic events. By safeguarding our personnel's identifying, identifying information in public reports, we not only honor their privacy, but also encourage a balanced and just process for addressing such an incidence. LB454 [SIC] requires that unredacted information is accessible to those who need it, railroads' authorized individuals, by court order, and law

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enforcement or regulatory officials so that justice and accountability are never compromised. At the same time, it protects train crew members from unnecessary intrusion into their private lives and supports their ability to focus on their critical duties without undue distractions or fears. Moreover, the legislation clarifies that train crew members while operating a locomotive or train are not required to present an operator's license to law enforcement. This recognition aligns with the specific licensing and certification processes already in place for railroad personnel. LB454 [SIC] aims to strike a balance between transparency, accountability, and the protection of the hard working individuals who form the backbone of our rail system. Thank you for consideration of LB454 [SIC], and I'd be happy to answer any questions you may have.

**MOSER:** LB485 you mean.

**QUICK:** I have LB454.

**MOSER:** That's all right. We know what you're talking about.

**QUICK:** Oh yeah. In my thing it says four-- Sorry, LB485.

**BRANDT:** OK. Thank you, Chairman Moser. Is this the same bill that was brought in previous years? So, I mean, what is the purpose for this bill? Specific example, please.

**QUICK:** OK. So what this bill does is if so-- someone hits-- the train, hits someone at a crossing, and what happens is, is that let's just say, for instance, that public-- their names are public information. So the person, maybe the people whose family members maybe were killed in the accident con-- start calling the engineers from the train and maybe just saying, you know, you've killed our family member. Maybe they come after them for a lawsuit. It's, it's really difficult to stop a train. So it's not, not that they don't feel empathy for the family and compassion for that family, but they're put in that position that that, that, you know, they've actually hurt someone, but they couldn't stop the train.

**BRANDT:** I guess my concern is in the bill, it'd be line 20, "A train crew member is not required to display an operator's license to any law enforcement officer in connection with the operation of a locomotive or train within this state." In that instance that you outline where there was a car-train accident, which I'm sure-- this is-- I don't know how they could withhold that information from-- I'm concerned that they would withhold that information from law

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enforcement. I understand the purpose of the bill is to keep the public from gaining that information, but I don't, I don't-- I, I--

**QUICK:** I thought, I thought--

**BRANDT:** Is there a conflict here in doing that or not?

**QUICK:** Well, I thought in the bill it actually says it, it's still, if law enforcement there, they have access to the information.

**BRANDT:** Right.

**QUICK:** Everyone has access to it, except that is not released publicly, like in a newspaper.

**BRANDT:** OK.

**QUICK:** Or in public records.

**BRANDT:** All right. Thank you.

**MOSER:** OK. Other questions? Thank you, Senator. OK. Anybody here to speak in support of LB485? Welcome.

**ADAM HAUSMAN:** Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Adam Housman, A-d-a-m H-a-u-s-m-a-n. I'm the Nebraska state legislative board chairman for the Brotherhood of Locomotive Engineer and Trainmen, the BLET. I am here to testify in support of LB485. LB485 provides confidentiality for train crews involved with railroad fatalities and access to confidential information of train members. In the event that a train accident happens, a rail crew's personal information can become public and pose a risk for harassment or physical threats by victims' families. Unfortunately, some of these threats have led to the need for legal protection of our train crews. LB485 will prevent these incidences by keeping the private information of rail crews involved confidential. A train crew member would not be required to display an operator's license to any law enforcement officer in connection with the operation of a locomotive or train within the state. However, it does not intend to impede law enforcement agencies from performing their investigative duties. Reports would be accessible to the employing, employing railroad or to any other person specifically authorized by court order to obtain the information. Thank you for letting me testify, I'll answer any questions.

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**MOSER:** Questions from committee members? Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Just for definition, when you say operator's license, are you talking about a driver's license or a train license?

**ADAM HAUSMAN:** An, an operator's license? Because there's one-- been one incident in a different state that they gave the operator's license and the insurance of that-- the operator license, they tried to go after him for, for damage of the vehicle or whatever. So that's why we put that in there.

**BRANDT:** All right. Thank you.

**MOSER:** Senator Bosn.

**BOSN:** Thank you. So if I'm understanding this correctly, this would prevent this being reported in the public and then would limit the ability for someone to sue in the individual capa-- capacity the operator of the train.

**ADAM HAUSMAN:** Right.

**BOSN:** And in those circumstances, wouldn't that be if, if the train conductor was operating negligently, wouldn't it be the right of the person who's harmed to pursue?

**ADAM HAUSMAN:** No, no, because they're-- when they go over the crossing, they're technically trespassing on, on railroad property. The railroad actually just allows them to cross-- they give them permission to cross, but on an impact that are actually trespassing. So I don't think they would be running the train harmful or, you know, where they could make them impact.

**BOSN:** Well, but isn't that very issue what is for the courts to decide is whether they were or they weren't?

**ADAM HAUSMAN:** True, and this-- and if the courts needed their information then that's a-- that's available to them.

**BOSN:** How would it be available to them under this?

**ADAM HAUSMAN:** It would still be on the reports, the police reports, who was involved and who was a conductor, who was the engineer. And then if the, like the lawyer needed that information by a court order, they could obtain that.

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**BOSN:** How would they obt-- how would they know who to name as the party they're, they're seeking to sue?

**ADAM HAUSMAN:** You mean as the, the police officer, or--

**BOSN:** Well, let's just say, and we're using an example here, I'm a train conductor, you're operating a motor vehicle, and I drive and you're accu-- and you're injured, and I-- you accuse me of being a negligent conductor, right? How would you learn that it was me that was operating "Train Company Co."

**ADAM HAUSMAN:** You personally or just your lawyer, or--

**BOSN:** Me how would you even find out my name if you wanted to pursue, you know, Senator Bosn was negligent in the operations of this train. How would you know to name me if it's not something you can access?

**ADAM HAUSMAN:** Well, they can access it right now. That's why we want it so that if I hit you, then you don't have access to it personally or any of your family members. So if you just die by accident, your family members can't go and say, Senator Bosn was running the train and, you know, now we're going to go harass her. Because this, this bill is-- it comes from Missouri. There was a female engineer that was involved in a fatality accident. Her name was publicly out there. And one of the families, the victims of the family, shortly afterward saw her at a grocery store, harassed her and threatened her and basically ran her out of the grocery store. Then they found out where she lived, spray painted her house, and then slashed her tires. It got so bad where they were almost going to put her in protective custody.

**BOSN:** And I'm not excusing any of that behavior. My point only is, is let's say that family in that example thought she, this female conductor was doing something negligent. How would they pursue liability?

**ADAM HAUSMAN:** Well, they would contact the railroad. The-- they would-- the law-- lawyers would have to contact the railroad company that employs that, and then they would have, they still would have all that record. The railroad crew, or the railroad company would.

**BOSN:** But this would make it seem as though they're not allowed to disclose that information, and in fact, they're prohibited from doing so. Or maybe I'm misunderstanding something here.



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**ADAM HAUSMAN:** I, I, I think you are, I think the thing is that it, it'll be accessible to them if they want to pursue some type of legal action.

**BOSN:** OK.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here and for your testimony. So I was kind of going along with Senator Bosn's line of questioning as well. I, I want to maybe see if I understand your [INAUDIBLE] correct, so.

**ADAM HAUSMAN:** OK.

**FREDRICKSON:** So currently-- so my understanding is the goal of this is to protect a conductor, for example, who might be the recipient of perhaps some nefarious response from, from a family, or member, etc. But if an individual's family wanted to pursue litigation against that person for negligence, they would be able to still under this bill access that information.

**ADAM HAUSMAN:** They still would be able to, be able to get that information from the railroad employee-- employer. So like if it's BNSF or UP, they can go, that, that, that lawyer can go to the BNSF lawyers or whatever and they can-- and they would be able to get that information.

**FREDRICKSON:** And the way the law currently stands-- So I-- how, like you mentioned a case in Missouri, for example, how does that name get out there? Is that just something that's done [INAUDIBLE]?

**ADAM HAUSMAN:** The newspapers or, or, or media. And then, you know, nowadays with social media, once you get your name out there, they can look you up pretty quick and they can find out where you live, and-- but that's how it got out, it was in the newspapers.

**FREDRICKSON:** OK.

**ADAM HAUSMAN:** And there's been several instances here in Nebraska that they, they put the engineer and conductor's name in the newspaper.

**FREDRICKSON:** Sure, sure. So.

**ADAM HAUSMAN:** And that's how they get it.

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**FREDRICKSON:** And the news-- Does the media obtain it just through, like publicly--

**ADAM HAUSMAN:** Yeah, public records.

**FREDRICKSON:** --[INAUDIBLE] reports, or record-- Got it.

**ADAM HAUSMAN:** Yeah. Yeah.

**FREDRICKSON:** OK. Thank you.

**MOSER:** OK. Other questions? Seeing none, thank you.

**ADAM HAUSMAN:** Thank you.

**MOSER:** Anybody else to speak in support of LB485?

**RICHARD SCHMELING:** Afternoon. Once again, my name is Richard Schmeling. Common spelling in the first name, last name S-c-h-m-e-l-i-n-g. ProRail Nebraska would support passage of this bill. Senator Bosn, I'm going to play lawyer here for you. I would say that when, if a train would hit your car at a crossing, your remedy would be to sue the railroad. And if any of those employees, the engineer, the conductor, or brakeman, a flagman, anybody was negligent, then according to the legal doctrine of respondent superior, that would make the railroad negligent. So you wouldn't have to make the engineer or the conductor or the brakeman a party to that lawsuit. Suing the railroad would be sufficient. So if that clarifies your thoughts on that.

**MOSER:** OK. Any other comments?

**RICHARD SCHMELING:** No, I've, I've taken enough of your time.

**MOSER:** OK. Any other questions from committee members? Thank you. Appreciate it. Anybody else to speak in support of LB485? Welcome.

**SONNY FANKHAUSER:** Welcome. Good afternoon, Chairperson Moser and members of the Transportation Committee. My name is Sonny Fankhauser, S-o-n-n-y F-a-n-k-h-a-u-s-e-r. I'd like to give some perspective from a legislative representative/vice local chairman for our local division. Post accidents, we provide some peer mentors that members can talk to that have experienced similar situations. The carrier BNSF specifically will provide through their Employee Assistance Program, an EAP, an independent counselor if members need to seek out help. I don't want to get into any specific scenarios, but generally speaking,

post incidents, I see my brothers and sisters struggling with operating a train over locations that they have struck and killed or seriously injured the public. These could be train versus vehicle or the all too often suicide by train. Some have quit their jobs or moved out of the state to avoid operating over the territory where the incident took place. I have fielded several calls of members concerned and fearful about the families and friends of those that were involved in the incident, with retaliation against them. Currently, those incidents are public record, making it easy for those family members and friends to find out who was involved. This is added stress in an already stressful situation. With the accident report being public record, my members have had to answer questions to insurance providers when their names come up on an accident report, adding again another layer of stress to the post traumatic incident. Passage of LB45 [SIC] would help remove some of the stressful layers that can stack an already stressful incident. This bill will go a long way in providing another layer to public safety of both my members as well as the general public. Please consider passage of LB45 [SIC]. Thanks again for your time. Is there any questions I can answer for you?

**MOSER:** Questions from committee members? Seeing none, thank you.

**SONNY FANKHAUSER:** Thank you.

**MOSER:** Anybody else to testify in support of LB485?

**NATALIE MILLER:** Yes. Hi.

**MOSER:** Hi.

**NATALIE MILLER:** Thank you very much. My name is Natalie Miller, N-a-t-a-l-i-e M-i-l-l-e-r. I am the Brotherhood of Locomotive Engineers and Trainmen Auxiliary national second vice president and national legislative representative. Not only do I represent the 52,000 BLET families across the country. I am a Nebraska native and I live here, and I represent the families of BLET members in Nebraska and many more families from the other crafts and the railroad unions in the Nebraska railroad industry. We want to thank Senator Quick for sponsoring this important legislation. We support LB485 for many reasons. Many have been already described today. A factor not mentioned often is the mental well-being of the crew members. A train collision that causes injury or death to anyone is a horrific tragedy, but it can be a devastating and life altering event to the train crew. Some can go right back to work with no problem. Others suffer post-traumatic stress disorder or depression. Some have been so

traumatized that they cannot perform their job and have actually either quit or had to transfer to another craft, if that is available to them. Some have struggled with survivor's guilt or suicide ideation. They do not need the additional stress of having their identities publicized, or the stigma, notoriety and public scrutiny that can come to their families as a result of that. The harassment that children might suffer with their parents' names being put out in the public like that could be devastating for years to come. Such stress would only add to our--and exacerbate their mental anguish. We hope that you agree, and we hope that you stand with us in support of LB485 today. I thank you for your time, and I thank you all for your service to Nebraska. I can answer any questions.

**MOSER:** Questions from committee members? Senator DeBoer.

**DeBOER:** Thank you. Thank you for your testimony. Could you tell me what kinds of supports are in place for your members when one of these kinds of incidents occurs right now?

**NATALIE MILLER:** Right now, as an auxiliary, we are there to support them in any way possible. There are some-- through the company, they also offer mental therapy and things like that that they-- if they need it. But we also are there to support the families in any way that they need. We actually go to their homes, we visit with them, pray with them, help them with their family situations. If they, if they need help getting their kids to and from school, if their kids need other railroad families to lean on or support-- get support from them. We are there for, for them in any way possible. All they have to do is just-- well, when we find out about the tragedy, we usually reach out to them.

**DeBOER:** Do they, from the companies, typically get time off of work or--

**NATALIE MILLER:** No.

**DeBOER:** --anything like that right away?

**NATALIE MILLER:** No, in fact, I can name one instance where a gentleman from my terminal in Alliance, Nebraska, struck and killed somebody at a crossing and they were asked if they could continue to work, like deadhead them or take them on to by taxi to their tie up destination, where they would stay in a hotel for 12 hours and think about what had just happened, and then try to drive a train home, instead of finding a replacement crew for them right away and moving on that way. I've

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also heard of them doing that where there was no injury at the-- and the train could technically continue after such a thing, or they pulled the train away from the derailment area, the front half of the train, say it's a long train. The front half of the train can still continue, it was the back half that wrecked. So they'll let that crew just take that train on down the road instead of stopping, are you OK? Do you need anything? Are you physically OK? Are you mentally OK? Do you need a relief crew? A lot of times that's not offered, they're just pushed on through.

**DeBOER:** How frequent are these kinds of incidents occurring?

**NATALIE MILLER:** That would be something for the experts to answer. I'm more of a family aspect of it.

**DeBOER:** Thank you.

**MOSER:** All right. Thank you for your testimony. Anybody else to speak in support of LB485? Anyone to speak as an opponent to LB485? Anyone to speak in the neutral? Seeing none, we had three proponent contacts, three opponent contacts, and no neutral. Senator Quick.

**QUICK:** Thank you, Chairman Moser and members of the committee. First of all, I apologize about having the, the-- you know, I read this thing like 20 times and I still didn't catch that I--that-- So that's on me that I didn't have those bill numbers throughout the thing, so. The other thing I--

**MOSER:** That's not a, not a fatal problem.

**QUICK:** All right. Thank you, Chairman. You know a little bit about the court order. People, you know, they can get that information through a court order. Law enforcement has access to those-- to that information as well as the railroad themselves. So I know that was one of the questions. And then I know on Grand Island we've had some incidents, and it's not just about cars getting hit at the crossings, but it's also about people who may be walk, you know, or crawling through, you know, the cars. It's parked there and they're starting to crawl through the cars in town. And we've-- I think we actually had a young, a young teenager who was killed in Grand Island because he was crawling through the cars and the train started to move, and then he got caught. We've also had some people who maybe stepped in front of the train as well in Grand Island, which is devastating for not just what happens to that individual, but also for the crew when they, when they have that happen. I can tell you firsthand, I, when I worked at

the power plant, I'd run a locomotive. I know how big they are. And this-- the locomotive I-- that we ran was a lot smaller than the ones that, that pull the freight through, through our communities. And we also worked out there with the coal trains. We were very careful about making sure we weren't in between the cars because they're unforgiving. They run over you and you're either losing a body part or your life, so. And I can say also, I used to work at a sand and, sand and gravel operation, and we had a crossing not far from where I worked at, and there was a small unit going through across a highway near us and a, a Pepsi truck ran right into the side of it and knocked over the train, hurt the engineers, and that individual also died in the accident, which was very devastating. So I think if we could make sure these protections are in place for the-- these crew members, that their, their names aren't publicly released, but those-- their names are still can be accessed if they need to be, so. But that-- well, I hope you can pass LB485 out of committee. So thank you.

**MOSER:** Any last questions from committee members? Seeing none. Thank you for your testimony, for bringing the bill. That brings us up to LB37, Senator Jacobson. Welcome to the TNT Committee.

**JACOBSON:** Trying to get my bearings here, I, I'm coming to the Banking Committee hearing room to give a TNT--introduce a TNT bill, and I came from the Exec Board hearing room for the Banking Committee.

**MOSER:** And you traveled by train.

**JACOBSON:** And I traveled by train. Yes. Well, thank you. Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Mike Jacobson, M-i-k-e J-a-c-o-b-s-o-n, and I represent District 42 in the Nebraska Legislature. Today I'm introducing LB528, the Railroad Safety Act. This bill enhances rail safety procedures and prioritizes Nebraska's public safety and emergency preparedness. Rail transportation is critical to Nebraska's economy, moving millions of goods annually across the state. However it possesses-- it poses risks to our communities and infrastructure without proper oversight. Just last month, two Union Pacific Railroad derailments occurred in Nebraska. The first occurred in Dix, involving nearly 60 double stacked containers, some of which caught fire. The second, east of North Platte, involved over 40 carloads of corn, blocking the main Union Pacific line. Thankfully, these incidents, recent incidents, did not result in injur-- injuries, but they did serve as a reminder of the risks to communities. As we all know, many derailments have caused harm. In February 2023, derai-- a derailment in East Palestine, Ohio

was one of the most devastating in recent history. A Norfolk Southern train carrying hazardous materials derailed, causing massive fires and releasing toxic substances into the air and water. The long term consequences for the health of the residents and environment are still unfolding. So key provisions of the bill are this. Number one, it limits that-- on train-- it puts limits on train length for safety. A, LB37 prohibits class one railroads from operating trains carrying hazardous substances over 8,500 feet on main lines; and B, it excessively-- excessive with the long trains increase derailment threats, obstruct emergency responsive efforts, and lead to operational challenges. As an example, years ago trains were less than a mile long, so they did not block-- they could, they could be stopped and not block crossings. Today these, these trains have gotten longer and longer and can, and can block multiple crossings, should there be a problem with that, with the engine or a derailment. As we found in North Platte, with the derailment of the corn cars, we did have a derailment. And interestingly enough, where that particular crossing road was at, you had to go miles to find the next intersection because it was the end of the Sandhills just north. And so if there was an emergency that had that occurred, how would you get the emergency responders to the home that was on the other side of the track without them going miles out of their way to get there? Number two, wayside detector system requirements. Railroads must install and maintain wayside detectors, hot bearings, and dragging equipment detectors at least every 20 miles along main lines. These detectors identify any mechanical issues before they lead to derailments. Additionally, railroads must submit annual reports to the Public Service Commission detailing detector locations, type, operational status, and characteristics. And three, restrictions on blocked crossings. This bill limits blocked public railroad crossings to a maximum of ten minutes, unless the train is continuously moving, or an unavoidable circumstance prevents, prevents movement. Blocked crossings, delay emergency responders, and disrupts local communities. Number four, union representative access for safety investigations. Railroad workers could report safety violations, energy-- injuries and deaths to their union representatives, and a designated union representative may enter the railroad's place of operation to investigate safety concerns after providing reasonable notice. This is the only section of the bill that is federally preempted. B, this measure ensures that worker safety concerns are addressed properly. Number five, hazardous materials training for first responders. LB37 requires railroads to provide hazardous material training to fire departments along their tracks at least once every three years. And B, this ensures first responders can handle rail related emergencies safely. Number six,

penalties for violation. Railroads that violate these provisions can face fines from \$10,000, \$25,000 per violation, with increased penalties for repeat and intentional offenses. Finally, we have rec-- we have recently heard concerns regarding the constitutionality of this bill, and I want to assure you that I am open to making any necessary adjustments to ensure LB37 remains both legally sound and ensures the safety of our railroads. I've also included and, and handed out by the clerks, AM42. AM42 to LB37 simply clarifies that the bill's provisions only apply to railroads operating on main lines in Nebraska. Interested entities such as Nebraska Cooperative Council raised concerns that the original language could be interpreted too broadly, potentially affecting yard operations or smaller rail movements. This amendment assures that LB37 focuses on high traffic railroads, areas where these safety measures are the most critical. With that, I'd take any questions from the committee.

**MOSER:** Questions from committee members? Senator Fredrickson.

**FREDRICKSON:** That you, Chair Moser. Thank you, Senator Jacobson, for being here. Welcome to your usual hearing room.

**JACOBSON:** It's always fun to be here.

**FREDRICKSON:** Always fun to be here. You, you kind of enumerated the, the number of things, kind of the main components of the bill. I-- one question that-- or one thing that stood out to me is you mentioned it limits trains to 8,500 feet, I think, for hazardous substances. Do, do you know how long the trains currently are that are operating or--

**JACOBSON:** Let's just say this, there are no preemptions in terms of, of lengths. And so it's, it's really not-- there is no limit that's, that's federally mandated. And I think when you read some of the information from the AG's report, understand that I think those are not, those are not-- it's not an attorney's opinion, it's simply giving you areas to look at. I would tell you these are not new issues that were raised. These issues have come up in other states. Some cases are being litigated, but none of them gone to the Supreme Court and had a ruling. And so I think it's important in all the discussion today to understand that, that there are court cases out there that make it clear that that states do have control over safety issues in, in-- of the trains that go through their state, as long as that's broadly-- it's the entire state's impacted and there's not undue, you know, it's not too expensive and too intrusive to what they're doing. So again, you don't just have to turn a blind eye to safety and that there are certain things you can require as a state. And anybody



that's challenged those have never gotten a Supreme Court ruling to suggest that they can't do it. So I think it's important to keep that in mind along the way. At the end of the day, I think we're continuing to see derailments. We are finding at many cases the derai-- the derailments, I think the one derailment at Dix had to do, was my understanding, was a wheel problem with a hot bearing. So the way you detect hot bearings is you've got these detectors that are along the track that read temperature. So as that train's going by, it's going to detect and send an alarm that you've got heat, excessive heat coming from that wheels, which is the bearing that's going out. And if it goes unresolved, you're gonna end up with a derailment. OK? So we've got to make sure, and seems to me that having those wayside detectors are critically important if we want to truly be serious about limiting the number of derailments that occur and the problems that they cause.

**FREDRICKSON:** Sure. And my-- just one follow-up, if I may. So in previous iterations of the bill, we've had discussions about how obviously a lot of these trains operate, both-- all of them primarily operate in multi states. Right? And so I'm thinking the other border states around us that have any similar provisions of what's proposed in this, do you know?

**JACOBSON:** There, there are, I can't speak specifically to what the other states are doing, but I can tell you that there are other states that have im-- that have imposed laws. I believe Colorado has done something in this area, and I think it's been challenged, but there's not been a ruling in that that says they can't impose what they're doing. I would defer to a follow up testifier on that one. But yes, there, there are other states, and Nebraska is not out here cutting necessarily where-- there are some nuances in this bill, but there's pieces of this bill that have been brought in other states as well.

**FREDRICKSON:** Sure. Thank you.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Senator Jacobson, for bringing this. How many wayside detectors are we short in the state of Nebraska?

**JACOBSON:** That's a really good question. A lot. Let's, let's start with that. And probably the bigger issue is we got to make sure that the wayside detectors are turned on at all times.

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**BRANDT:** And what do those cost?

**JACOBSON:** I couldn't give you a cost on them.

**BRANDT:** But isn't it to the benefit of the railroad companies to have these detectors in and working? I mean, because if you derail a train, that's a tremendous cost to them, right?

**JACOBSON:** It is. Although I would also tell you that, you know, as a farmer, if you've got, if you've got something on a piece of equipment, you've got a wheel bearing going out on a disc, and you've got 20 acres left to disc. Do you stop right there and fix the wheel bearing? Or do you see if you can limp along and get through it and get done at that field, and then fix the wheel bearing afterwards?

**BRANDT:** I guess it depends how risk averse you are.

**JACOBSON:** That's true. And I will tell you that we see this particularly with the railyard in North Platte, and it's-- if you have to stop that train and do maintenance on that train for a bearing that may be getting hot, does that train have the ability to get the rest of the way to Denver and be repaired in Denver? And that, that-- I think that gets played from time to time, that we think it's got a little more mileage on it and we'll take it on to the next place, and, and you do run that risk. You're not always going to have a derailment, but, but-- and many cases the, the, the wheels will go longer. But that's one of the examples of, of when do you shut the train down where it's at, and when do you limp into the next rail yard to be able get it repaired?

**BRANDT:** But who should make that decision?

**JACOBSON:** Well, I think the, the, the railroad companies make that decision, but the public is the one that suffers the consequences if there's a derailment.

**BRANDT:** OK. Thank you.

**MOSER:** All right. Thank you for your-- oh, I'm sorry. Senator Storer.

**STORER:** It's all right. Slow to the-- Thank you, Senator Jacobson. I'm, I'm trying to get my head wrapped around the wayside detector issue as well, from the standpoint of the requirement for reporting. So is that currently, is there currently any, any reports given to either the Legislature or the Public Service Commission?

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**JACOBSON:** I, I don't know that there's specific reporting. There's-- there are detectors out there, but I'm not sure that, that mishaps or-- and problems that are along the way are necessarily reported to the PSC today. And I'll let PSC testify to the contrary.

**STORER:** And, and this may be a question for them as well. But, I mean, I've learned that there's only as much value in a report as there is to the ability for it to be read and, you know, something to be done with that report. And I may save that for the representative from PSC, but what they would do with that information is sort of what-- what is the intent of this bill for what they would do with that information? It would--

**JACOBSON:** I, I think the intent in the bill is that if this is a becoming a bigger and bigger problem and there are more and more detections, I think it's indicative of maintenance schedules and the lack thereof.

**STORER:** So it's really just more to develop a log or a--

**JACOBSON:** That would be my view. Yes.

**STORER:** Not necessarily for immediate action or having personnel in place. OK.

**JACOBSON:** That would be my view, that you're-- because you've got a detection that's occurred, the bigger question is how many of them are you having, and what are you doing about them once you to detect them.

**STORER:** Thank you.

**MOSER:** OK. Thank you, Senator.

**JACOBSON:** All right. Thank you.

**MOSER:** Supporters for LB37.

**ANDREW FOUST:** Good afternoon, Chairman Moser and members of the Transportation Telecommunication Committee. My name is Andrew Foust, A-n-d-r-e-w F-o-u-s-t. And I'm the Nebraska legislative director for SMART-TD. We're a rail organization representing over 1,200 conductors and engineers across Nebraska. I'm here to testify today in support of LB37. And on behalf of our organization, we'd like to thank Senator Jacobson for introducing this vital rail safety legislation. LB37 aims to prevent accidents, injuries, and potential fatalities in Nebraska. Although I won't have enough time to cover every aspect of the bill,

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I'd like to highlight some of its most important points. I provided a handout for the committee to review while I give my testimony today. This may clarify some questions regarding sections of the bill and its intent behind the language. That is-- this is-- the language is the Rail Safety Act of 1970. Number one is wayside detectors, which are not federally regulated and play a crucial role in preventing potential accidents. We have confirmed that Union Pacific is turning off these detectors, while BNSF is ignoring the messages sent by them, similar to the situation that occurred in East Palestine, Ohio, two years ago. This proposed bill aims to hold railroads accountable for the proper functionality and maintenance of these detectors. Number two, Hazmat training for-- Hazmat training for first responders, which is also not federally regulated. After the explosion in North Platte in September of 2023 and another incident last month in Dix, Nebraska, it was discovered that first responders had not received sufficient hazmat training and had been requesting this training for an extended period. LB37 will require railroads to provide this three year-- every three years hazmat training for first responders in their jurisdiction. It's time for railroads to understand that safety requires investment. In Nebraska-- and as a Nebraska, we take safety and our community seriously. Both railroads in the state claim that they want to be good neighbors, but now it's time for them to demonstrate in commi-- their-- that commitment through their actions. I encourage all committee members to support LB37 and protect the citizens of Nebraska and thank you for your-- for allowing me to speak today, and I'll be happy to answer any questions you might have.

**MOSER:** Questions from the Committee? Senator Guereca.

**GUERECA:** So the information from the wayside detectors, that goes to who?

**ANDREW FOUST:** The Public Service Commission.

**GUERECA:** The PSC does have access to the wayside detectors?

**ANDREW FOUST:** No, they do not.

**GUERECA:** Currently [INAUDIBLE].

**ANDREW FOUST:** Currently they do not. This bill would require the railroads to supply the wayside detector information, the functionality and the latitude and longitude where they-- where they are currently at to the PSC.

**GUERECA:** Gotcha. OK.

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**ANDREW FOUST:** Yep. The PSC actually has a motive power and equipment inspector and also a track inspector, and then that information they could use to do their job. So they inspect the cars, the motors, the trains. Right? So if they had, say, 10% of the trains that went over a certain detector that were bad ordered, he could go into the, the rail yard and actually get the information to make sure that those, those cars were fixed. So it would actually help out the PSC also. The-- and the PSC inspector doing his job, or her job.

**GUERRECA:** Thank you.

**MOSER:** OK. Senator DeBoer.

**DeBOER:** Thank you. Thanks for being here.

**ANDREW FOUST:** Thank you.

**DeBOER:** So you mentioned that there-- that you've observed, or can observe, or someone has observed a pattern of turning off the wayside detectors or ignoring their information. Can you tell me when that began? When you started to notice that pattern? Do you have a time frame on this? Is this a very recent occurrence or has it been happening over time?

**ANDREW FOUST:** It depends which railroad. So in 2023, I think it was February of 2023, there was a derailment in Main St-- on Main Street, Gothenburg, Nebraska. So that got us to look at-- we obtained records of a certain month where for the Union Pacific Railroad, which we obtained that said that a detector east and west, that are placed east and west of North Platte, so coming in, coming out of North Platte, that detector was on 7% of that month. So that means 93% of that month the detector was off or broken or malfunctioning. On the, on the BNSF side, we had a derailment in Aurora, Nebraska. And I know I've supplied an email to numerous people that were on the committee, or on this committee last year. A certain detector found a broken wheel eight miles west of Aurora, Nebraska, and this was on BNSF. That-- an alert was sent to Fort Worth, Texas. The decision was made to set that car out in Alliance, Nebraska. It was not done. It was sent on to the mines and then loaded with coal, sent back through Nebraska, and then derailed eight miles away from the detector that found it. So that's when, when in my testimony, when I said that BNSF was disregarding the detectors and the message that it was sent, that was the example of that. I've met with numerous employees with BNSF, and they have said that it's almost physically impossible to shut off the detector, but they turn them down. So when they get backed up on bad orders, say in

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Lincoln, Nebraska, they have-- they're just clogged up with bad orders they call them, like bad wheels, bad bearings, bad dragging equipment. There's a list of-- a laundry list of stuff that could happen. When they get backed up, then they turn down the frequency of, of the detector when it says-- I don't know if you know what kips means, but it's when you hear the wheel going around, it's a flat spot and it'll make a "dinga" noise. There's a certain amount per kip they, they detect and then they turn down that, so then it's a larger-- you know, broken wheel going further, like Senator Jacobson expressed when they said we're just going to roll the dice and see if we can make it to Denver, or we're going to roll the dice and see if we can make it on to the next station.

**DeBOER:** Thank you.

**ANDREW FOUST:** I hope that answers your question.

**DeBOER:** It does. Thank you.

**MOSER:** Senator Storer.

**STORER:** Chairman Moser. Just for clarification, I thought I understood you to say that, that there was-- the paperwork that was requested after the derailments indicated that was it UP? That the detectors were only on 7% of the time?

**ANDREW FOUST:** Yes. That's the, the information we obtained.

**STORER:** But then did you say you were, if I understand you correctly, that it's basically impossible to turn them off?

**ANDREW FOUST:** Yeah. That information actually came from Union Pacific. And then when I was talking to Carmen from BNSF, they were the ones that stated it was almost impossible to turn off. So I, I don't know what detector he was talking about, because there's multiple styles of detectors and multiple detectors that find different things. So I just know that that detector, we pulled the information from Union Pacific and it said it was on 7% of the time.

**STORER:** And was that, do you know what type of detector that was specifically?

**ANDREW FOUST:** I do not. I couldn't answer that question.

**STORER:** Would you be able to get that for us?

**ANDREW FOUST:** Yes I could. Gladly.

**STORER:** Thank you.

**ANDREW FOUST:** I have that in an email. I could get that for you.

**MOSER:** Other questions from the committee? Thank you sir.

**ANDREW FOUST:** Thank you.

**MOSER:** Other supporters for LB37. Welcome.

**CHRIS BRUNS:** Good afternoon, Chairman Moser, members of the committee. I'm Lincoln County Commissioner Chris Bruns, spelled C-h-r-i-s B-r-u-n-s. I'm here today on behalf of the Lincoln County Board in strong support of LB37. I've also provided you with a unanimous resolution from my colleagues in support of the Railroad Safety Act. This legislation is a necessary and forward thinking step toward enhancing railroad safety, protecting Nebraska communities, and ensuring the efficient operation of our state's transportation infrastructure. It's a good bill, and I give great credit and thanks to Senator Jacobson for introducing it. Lincoln County is home to Bailey Yard, the world's largest classification rail yard, and it's no stranger to rail safety issues. Our region has experienced numerous derailments, and recently a rail car explosion that led to the evacuation of many constituents that I represent. In the aftermath of these events, one thing is apparent. There is a need for the things included in this bill. All of them are worthwhile, and yet there's too many for me to discuss in my limited time here. One of the key provisions of this bill is that it mandates the installation of wayside detector systems. These systems are crucial in identifying mechanical failures and are already in existence and in use often. But too often they are shut off or ignored, as I hear from my constituents that work on the railroad. This leads to catastrophic accidents, much like the accident and the derailment that we had just a few weeks ago east of North Platte, where our railroad crossing for first responders leading into a subdivision was closed for five and a half, almost six days. Requiring reports on the status and location of these detectors will promote transparency and accountability, ultimately making Nebraska's railways safer for both workers and the public. The bill also addresses issues of blocked crossings, which pose a major hazard to emergency responders and local communities. Prohibit-- by prohibiting railroads from obstructing public crossings for extended periods, ambulances, fire trucks, and police vehicles can reach those in need without unnecessary delays, and this provision alone has the

potential to save lives. Furthermore, LB37 introduces strong enforcement mechanisms to ensure compliance and provide a meaningful deterrent against willful noncompliance or negligence. Finally, LB37 recognizes the importance of preparedness. The requirement for railroads to offer training to local fire departments ensures that our first responders have the knowledge and tools necessary to handle railroad related emergencies effectively, which was a major factor related to the railcar explosion we recently experienced in 2023. This proactive approach will improve emergency response times and mitigate potential disasters. In conclusion, I urge your advancement of LB37 as a common sense and necessary piece of legislation that prioritizes public safety and responsible railroad operations. By enacting these measures, Nebraska will set a strong standard for railroad safety, ensuring that our communities remain protected while supporting the continued growth of this essential industry. Thank you, and I welcome any questions that the committee may have.

**MOSER:** Seeing none. Thank you for your testimony. Other supporters for LB37.

**JAKOB FORSGREN:** Good afternoon.

**MOSER:** Welcome.

**JAKOB FORSGREN:** Thank you, Chairman Moser and the rest of the committee members here. I appreciate you letting me testify on behalf of this. My name is Jakob Forsgren. I am a vice general chairman for the Brotherhood of Maintenance of Way Employees Division.

**MOSER:** Could you spell your name?

**JAKOB FORSGREN:** Yes, I'm sorry. J-a-k-o-b F-o-r-s-g-r-e-n. Again, I'm, I'm vice general chairman of the Brotherhood of Maintenance of Way Employees division of the International Brotherhood of Teamsters. And I'm also the Nebraska legislative director for the Brotherhood as well. It's a long road to the short thought of saying that I represent maintenance workers on the railroad. I come to you today, speak in favor of LB37. I worked for BNSF railway as a track maintenance worker for twelve and a half years prior to being elected to the position I hold now. Early in 2023, February 3rd, in fact, you guys have all heard about East Palestine, Ohio. Earlier that day, a southbound freight train passed a wayside detector that reported the train had a defect. Rather than act on that knowledge it was ignored and the train crew was instructed to keep moving. It then passed another detector



and another defect was reported a second time. Again, the train crew was told to keep moving. Only it after-- only after it passed a third detector and a defect being reported for a third time did BNSF decide to do anything about it. However, due to the train's length, it was too long to fit into the any of the upcoming sidings that were built for shorter trains. Instead of instructing the crew to stop and inspect the train immediately, they were told to keep moving to the next yard where they could inspect the train without impeding traffic. The train derailed several miles later on the railroad bridge in Rulo, Nebraska over the Missouri River due to a hot bearing that caused a wheel to break or delaminate. Members of this committee have heard about East Palestine, Ohio more times than they can count. The devastation caused that day, and still to this day, is immeasurable and won't be fully known for years to come. We thankfully avoided a similar release of hazmat that day, but the threat was there. Would the result have-- what would the result have been if a similar release of hazmat were to have ended up in the Missouri River? The result, the results would have been catastrophic. The fact of the matter is that the wayside detectors were ignored because they could be. It is up to them whether or not they listen. Slowing these trains like this bill would require after reported defects serves two purposes. One, it makes derailments less likely with slower speeds. Two, it makes it much more likely the railroad inspects the train immediately. The train was also not stopped because it was too long for any of the upcoming sidings that were designed for much smaller trains. Limiting the train's length would make it easier to fit into these sidings, so they could have-- they could be inspected without impeding traffic. This bill would go a long way to help prevent this type of derailment in the future. The railroads have shown they value profit and stock price over the safety of the public and their workers time and time again. If we do nothing to rein that in, it won't be the last time a preventable derailment results in catastrophe for another community, possibly one in this state. The members of this committee have the ability to help prevent the next one. I ask you to support LB37 to contribute to that effort. Thank you. And I can answer any questions you may have.

**MOSER:** Questions from the committee? Seeing none, thank you.

**JAKOB FORSGREN:** Thank you.

**MOSER:** Other supporters of LB37?

**RICHARD SCHMELING:** Well, good afternoon again, Chairman Moser and members of the committee. I'm Richard Schmeling, R-i-c-h-a-r-d

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S-c-h-m-e-l-i-n-g. I'm, I'm curious. I, I love Senator Jacobson's bill. I think it's very well crafted. It addresses issues that need to be addressed. But I'm puzzled as to why we would task these oversight responsibilities to the Public Service Commission. We have a State Department, Department of Transportation, and it would seem to me that when you're talking about railroads and enforcement of the railroad safety and railroad rules, that responsibility should go to the Department of Transportation rather than the Public Service Commission. Historically, the Public Service Commission was formed because the so-called robber barons years ago were enacting high freight rates that confiscated money from the farmers. And so each state had a, a commission that regulated railroad rates. Well, that function has gone away. We had the Staggers Act in Congress some years ago. That gives railroads a great freedom to set rates. And so the Public Service Commission doesn't really deal much with railroads anymore. As a matter of fact, there was a report that the Public Service Commission railroad and track inspectors, that there were supposed to be three of them and two of the positions had been unfilled for a number of years. There was only one guy out there trying to inspect all the miles in the state of Nebraska. So I would, I would think that possibly we ought to send this out to the state DOT. And gosh knows our state DOT is supposed to be a Department of Transportation, but they tend to dwell so much on highways that we need to give them some more rail responsibility. I am concerned about train lengths. Just for your information, when I was a kid growing up, the average freight train had 40 cars. Then we started getting unit trains, unit grain trains, unit coal trains. We went up to 110, 120 cars Now the railroads are running, running double trains. 280 cars and more. And, Senator Brandt, that creates a problem down in your district, because when the Union Pacific has one of those big trains that has difficulty, they block all the crossings from Steel City to north of Endicott, and the emergency vehicles can't get around. So those are my thoughts. I say enact the bill, but maybe give it to DOT to enforce.

**MOSER:** Any other questions for the testifier? Thank you sir. More supporters for LB37. Welcome.

**AMANDA SNIDE:** Good afternoon, Chairman Moser and committee members. My name is Amanda Snide, A-m-a-n-d-a S-n-i-d-e, and I'm the assistant state safety and legislative director for SMART-TD. I'm also here on behalf of the Nebraska State Volunteer Firefighters Association. When I'm not building trains, I've been a firefighter and EMT for 18 years. And I can't thank Senator Jacobson enough for this bill. Class I railroads already have detectors on their tracks, and in the past have

chosen not to take heed to warnings from this equipment. In the packets handed to you, you'll find a report to prove this. You'll also see a safety advisory issued in the aftermath of a Nebraska derailment, urging carriers to utilize detector technology. Senator DeBoer asked earlier, 2019 is listed on there as the first time that I'm aware of these detectors being ignored. East Palestine has been talked about multiple times. The cost of detectors has been mentioned. That derailment cost more than \$2 billion, the average detector anywhere from \$200,000 to \$2 million. But at what cost is Nebraskans' safety? Each of those derailments had issues that can be caught by a detector if it is working as intended, and if the crew is made aware of an issue. LB37 would enforce both. If carmen are given information about enroute failures, they can use that as an added tool to find the defects during their inspection process, leading to the betterment of the mechanical reliability of that car. Another purpose of this bill is to prepare emergency responders for when accidents occur. 92% of the fire departments in the state of Nebraska are staffed by volunteers. The types of classes we are talking about to be more available do exist, and bulk carriers that you'll have representation from today have the trainings, and they have these training trains as a part of their fleet. However, they do not advertise the training nearly enough and most departments are unaware and don't understand what can be offered, and we would like that to change. The derailment Senator Jacobson talked earlier of near Dix and Kimball, Nebraska, was in October of 2024. Fire crews from the Kimball area responded to a grass fire in the right of way when 911 officials asked to have a train stopped as it was believed to be the cause. It was. The wheel that was to blame had crossed a detector almost 60 miles prior when it was over 400 degrees. This same train had gone over 16 different detectors in 240 miles. If you look behind me and they're not in a suit and they aren't a state director, they're part of why I'm here today. We want to provide safe and reliable service to our employers. We know the sounds of the cars make. We can feel defects in the track before they become an issue. Yet our skill set and the technology are often ignored to simply move trains faster. I thank you for your time today, and I urge you to support LB37.

**MOSER:** Questions from the committee? Seeing none, thank you. More supporters for LB37? If you plan to support it, come on up to the front and be close by. Welcome.

**NATALIE MILLER:** Thank you. Good afternoon again. My name is Natalie Miller, N-a-t-a-l-i-e M-i-l-l-e-r. Thank you again, Mr. Chairman, Mr. Vice Chairman and Senators, for thank you for allowing me to speak in support of LB37. I am the BLET national auxiliary second vice

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President, and national legislative representative. Again, I do represent the 52,000 families of our members throughout the nation. But today, I'm here as a Nebraskan, and I represent the families of 800 Bailey team members and countless more railroad families from other unions and crafts that make up the 10,000 member workforce of railroaders in the state of Nebraska. I also speak on behalf of the communities and ranchers who live alongside railroad mains and have had to spend some-- sometimes hours waiting for a blocked crossing to become unblocked. We want to thank Senator Jacobson for sponsoring this bill, and we ask for your help to keep our railroad crews, track workers, and communities in Nebraska safe by supporting and, and moving LB37 forward. I live in the Sandhills of Nebraska on a ranch between Lakeside and Rushville. I don't know how many of you know the area or the highway and county road system in some areas of the Sandhills. But in many of the towns adjacent to the railroads, there is only one road in and out, and only one crossing to get across the tracks. And there are times when broken down trains have blocked crossings for hours, especially long trains. At my crossing in Lakeside on Highway 2, to get around a blocked crossing to get where we work in Alliance 36 miles away, I have to drive 46 miles north to Rushville, 10 miles west to Hay Springs, and then 56 miles southwest to Alliance. That's 122 miles to get to a 36 mile drop. We recently marked the second anniversary of the tragic derailment of East Palestine, Ohio. LB37 would mandate installation, use, and maintenance of wayside detector systems and provide administrative penalties for railway safety violations, which are key components to ensure that an accident like East Palestine never happens in Nebraska. While it does not have all of the provisions that our families had hoped for, it does have many of the same provisions that are in the Federal Railway Safety Act that our then senator, now current Vice President J.D. Vance, or the amended version introduced with bipartisan sponsorship in the House of Representatives on February 3rd. LB37 is an excellent start in providing the level of-- and enfor-- and enforcing the level of safety that is now expected by the general public. We hope that you agree and that we ask-- and we ask that you support Nebraska and help lead the way in our efforts to keep our railroaders and communities safe by supporting and passing forward LB37. I thank you again for your time and I can answer questions. I do have a specific sighting of a crossing blocked by Strategy Bison Ranch in Antioch, Nebraska, where it sat for hours, and I can give you specifics on that if you'd like.

**MOSER:** Senator Frederickson.

**FREDRICKSON:** Thank you, Chairman. Thank you for being here. How often do you find these blocked crossings occur?

**NATALIE MILLER:** It can happen-- I don't know the specifics of how often it happens, but where I live, it happens frequently. It, it could be for only a few minutes. But there have been times where we have waited hours and have had to drive that 122 mile route around. We had-- Strategy Bison in Antioch had five trucks loaded with bison, and a mega train, a long train, literally stopped working on-- and they could not get it going for hours. They could not get it. They-- she called the, the blue sign, they have blue signs at the crossings that you can call if there's a block. It, it's supposed to reach somebody that can help get that information to somebody who can do something about it. However, the owners of Strategy Bison that day were hung up on three times by the people who answered that, that number on the blue placard. Then the sheriff was called after about four and a half hours of waiting. And the sheriff tried the number on the blue placard, and he was also hung up on. And the reason I know all of this is because they then called me because I'm a national representative in our union's auxiliary, which represents the families. They thought that I might have some kind of pull to get something done about it. I don't, but I did ask my husband to call the, the Alliance terminal, and they were finally made-- they, they didn't realize that it had been blocked that long. They were not aware of the blockage and it had already been five and a half hours. Now Antioch is 20 miles away from Alliance. That's not very far.

**FREDRICKSON:** And when you say frequently, is this a weekly occurrence, is it like--

**NATALIE MILLER:** I, I would say at least monthly, at least monthly. And to, to do a work around, a drive around 122 miles to get around a train once a month is not very fun, especially in the weather.

**FREDRICKSON:** Yeah. I see. Thank you.

**NATALIE MILLER:** Thank you.

**MOSER:** Senator DeBoer.

**DeBOER:** Hi. Thanks for being here again. The blue signs that you're talking about. Are those new?

**NATALIE MILLER:** No. They, they're at most crossings, they have the cross arms, they will have a blue placard sign. And I believe tthey're at all crossings, but they're not as prominent at some of the smaller crossings as they are on those bigger crossings. But there's a blue placard sign that is a, a mandated sign that we all-- the federal-- I

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believe that they are mandated by the Federal Railroad Administration, but I-- don't quote me on that. That would be something that I would ask the union guys. But they are all at the crossings, and it gives an 800 number that you can call to directly talk to somebody in the rail-- at the railroad who's supposed to be able to do something about that.

**DeBOER:** Was the cro-- was the hang ups you talked about, if you know, these hang ups that they kept being hung up on, was that like inadvertently hung up on you, or were they just like--

**NATALIE MILLER:** No, no, no. They were, they were taking information and the, the person said, well, we're aware of the blockage, there's-- we're working on it. Click.

**DeBOER:** Got it. Thank you.

**NATALIE MILLER:** Yeah.

**GUERECA:** I'll call you here.

**STORER:** Oh.

**MOSER:** She, she doesn't need help.

**STORER:** Maybe I do.

**MOSER:** Senator Storer.

**STORER:** Thank you, Chairman. I don't really have a question other than just to welcome a fellow Sandhillier. So I, I have to turn at Whitman to go 25 miles home, so I really validate to this to the committee, and the, the distance--

**NATALIE MILLER:** Yes.

**STORER:** --in the crossings in our neck of the woods.

**NATALIE MILLER:** Yeah. Well, and then we appreciate your representation. Thank you, Senator.

**MOSER:** Thank you for your testimony. Other supporters for LB37. Welcome.

**KEVIN STOCKER:** Good afternoon, committee, Senator Moser. My name is Kevin Stocker. I'm here on behalf of the fifth district of the commission, of the Public Service Commission. And I'm here to provide

testimony in unanimous support of LB37. I would like to thank Senator Jacobson for introducing this bill. The commission has a long-standing history of supporting legislation that seeks to increase railroad safety within the state. Ensuring that railroad operations and infrastructure are safe and efficient for railroads, railroad employees and Nebraskans is of the utmost importance. LB37 would codify several items that undoubtedly would increase railroad safety. While not every railroad related accident is preventable, having systems in place like those outlined in LB37 to mitigate railroad related disasters would benefit the state greatly. The Commission remains committed to collaborating to address issues of, of railroad safety. The commission believes the elements of LB37 would provide much needed additions to railroad safety in Nebraska. Enforcement regarding regular wayside detection systems, trains carrying hazardous substances, and blocked crossings can ensure that the public safety is maintained. Requiring periodic training to first responders to address techniques and protocols when using-- when dealing with hazmat related railroad incidents would ensure that railroads and the communities that they work-- and the communities they cross work together to migrate-- mitigate any incidents, any incidents officially. The Commission also regularly receives complaints regarding blocked crossings, such as concerns that re-- first responders are unable to respond to calls for help, showing that this is an important issue to many of our constituents. It is important to note that numerous states have passed laws limiting blocked crossings and train length. While the commission feels that addressing blocked crossings and train length is important, we would note that such limitations would likely be challenged in court as preempted under federal law. Additionally, various other provisions of LB37 may be challenged as federally preempted. Thank you for your time, and I would be happy to answer any questions for you that you may have.

**MOSER:** Questions from the committee? Senator Storer.

**STORER:** This is my question day, I [INAUDIBLE]. Thank you, Chairman Moser. And thank you, Mr. Stocker. I had asked the question earlier of Senator Jacobson, and maybe you can help, help answer this in terms of what, what reports if any does the commission currently get on wayside de-- detectors, and what would you anticipate, what capacities do you have to do with that information? What would you anticipate doing with that information?

**KEVIN STOCKER:** Senator, currently we have two trained, one is almost finished in rail inspection. But our MP&E inspector is fully trained. These people are trained by the FRA, so they're highly skilled people.

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The reports that we received, I would probably defer you to our, our transportation director who is ready to testify after me.

**STORER:** Thank you.

**MOSER:** Senator Ballard.

**BALLARD:** Thank you, Chair. Thank you for being here, Commissioner. What other railroad safety issues fall under the commission? Is there other?

**KEVIN STOCKER:** Well, we've been handed a whole lot of things, and-- The governor of the state of Nebraska approached me personally after the Gothenburg derailments. And he said, I want these positions filled. We made it priority one at the commission to get these people filled and trained. They're now out in the field, inspecting locomotives and inspecting train cars. And also writing reports that they submit to the FRA. And I will cover something additionally, on the next bill that would enhance our ability to do that.

**BALLARD:** Thank you.

**MOSER:** OK. Thank you for your testimony. More supporters for LB37. Welcome.

**DILLON KEIFFER-JOHNSON:** Good afternoon, chair Mosher and the members of the Transportation Telecommunications Committee. As Commissioner Stocker mentioned, I am the railroad safety manager for the state's railroad safety program with the FRA. To answer your question, Senator Storer. Currently, we do not get any information on any wayside detector systems that happened in Nebraska. But if LB37 were to pass, what we could envision is using that information, as Mr. Foust mentioned, to help in our supplemental investiga-- inspections with the FRA. So it would allow us to identify problematic areas that we could send our inspectors to. To continue Commissioner Stalker's response to Senator Ballard's question, the, the commission's railroad safety program is a supplementary program that we are in agreement with, with the FRA. It allows us to complete supplementary safety inspections under a state program. Currently, the commission is permitted to only have a track inspector and a mode of power and equipment inspector. There are four other disciplines that railroad safety programs across the nation can have, but our state statutes limit us to only having an inspector in those particular disciplines. With that, with the information, what we do is we conduct supplemental inspections. So our MP&E, our motor power and equipment inspectors,



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will go to yards and complete inspection, safety inspections on the locomotives and rail cars. What our track inspector would do once he is fully certified through the FRA, we can go out and inspect the actual track, the mainline track throughout our state. And I'd be happy to answer any questions or provide any further clarity that you may need.

**MOSER:** Are there questions from the committee? Senator Brandt.

**BRANDT:** Could you give us and spell your name, please?

**DILLON KEIFFER-JOHNSON:** Oh, yes. Sorry. First name is Dillon, D-i-l-l-o-n. Last name is Keiffer-Johnson, K-e-i-f-f-e-r J-o-h-n-s-o-n.

**BRANDT:** Thank you. OK.

**MOSER:** Other questions? Thank you--

**DILLON KEIFFER-JOHNSON:** Thank you.

**MOSER:** -- for your testimony. Any other supporters for LB37? Are there any opponents to LB37?

**ROD DOERR:** Good afternoon, Chairman Moser and members of the committee. My name is Rod, R-o-d, Doerr, D-o-e-r-r. I'm the vice president and chief safety officer for Union Pacific Railroad. Thank you for this opportunity to remark on LB37. Though the railroads were not consulted in the drafting of this bill, Union Pacific welcomes conversation with the Legislature regarding rail-- railroad safety. We do applaud LB37 for recognizing that rail transportation is a critical component to Nebraska's economy. We also appreciate the bill spotlighting our industry's leading edge detector technology, the importance of private investment in our infrastructure, and the ability to collaborate with our first responders. That said, LB37 proposes policy we believe to be preempted by federal law, misguided in its understanding of emerging technology, and restrictive to our state's freight fluidity, and therefore we must oppose the bill. Given the wide variety of topics covered in the bill, I will prioritize my comments. It is our assessment that the bill's proposals regarding train length, blocked crossings, union reporting and access, along with comparative fault are preempted by federal law. The bill's train length and blocked crossing proposals are also barred by U.S. Constitution's Commerce Clause. So while the application of the bill is dubious, I will quickly move on to other insights. As technology has advanced, so has achievements in the railway industry's safety.

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Since the early 1970s, accident rates have declined 80%. Last year, Union Pacific reduced injuries 25% and derailments 27%, tying with our largest competitor for first place. While these reductions are due in large measure to the diligence of our hard working employees, technology has also greatly added-- aided in this advancement. Union Pacific is proud of our innovation regarding wayside detectors. Many of them we have invented. This is one of the best examples of capital investment directly funding derailment prevention. We have over 7,000 detectors on the network, and we plan to install another 80 to 100 bearing-- hot bearing detectors this year. Introducing the state as the authority for director-- for detector placement restricts our industry's ability to adapt and install new technology. Advancements in train length have resulted in fewer trains passing through our communities, and sped movement of our shippers freight. There is simply no evidence linking train length to derailments. None. Union Pacific understands the impact that stopped trains have at road crossings. It is not our intention to inconvenience our neighbors, which include our employees and our customers. To mitigate the impact of blocked crossings, we are leveraging GPS technology in new ways to reduce the frequency of blocked crossings. Concluding. Thank you for your attention. Happy to take questions.

**MOSER:** Questions from committee members? Senator DeBoer.

**DeBOER:** Thank you. Hello. Welcome to TNT. Thanks for being here. Can you speak to the issue of the turned off wayside detectors, or possibly disregarded wayside detectors? Can you speak to that issue?

**ROD DOERR:** Certainly, Senator. There is no on and off switch to detectors. It is-- we, we would not spend \$2.5 million to \$4 million per detector just to shut them off. I'm not sure where that hyperbole comes from, but the detectors are on. Now, do they fail from time to time? They're sophisticated pieces of equipment, and sometimes they fail, causing us to, to make repairs. Downgrading a detector is something foreign to us. I'm not sure what the other speakers are referencing. We do not downturn our detectors. They either detect or they don't. They're binary. Relative to ignoring a detector, that is written in our operating rules, which is handed out to our employees. And once a detector alerts, there's a prescriptive protocol that our employees are to follow when a detector alerts. The ability to communicate and turn down a detector or turn off a detector, and tell 32,000 employees all at one time is, again, hyperbole. There is a prescriptive approach for when a detector alerts and our employees are asked to follow it.

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**DeBOER:** OK. But I have heard this bill-- this is not the first time for this bill. I've heard these kinds of reports over time. Do you know what might be causing them, particularly when they have examples like the one, was it, they said, Aurora? You have a detector was-- I think that was maybe yours, I can't remember if that was BNSF. And that there was the Gothenburg, or was that the derailment in Gothenburg?

**ROD DOERR:** Well, one of the detectors referenced by somebody that testified earlier indicated a 7% availability for a month.

**DeBOER:** Yeah.

**ROD DOERR:** Our-- my team was asked to research that.

**DeBOER:** OK.

**ROD DOERR:** And what we found is that detector had a, a failure, and we were having trouble obtaining the parts. So yes, the detector was on for 7%, but that's not by virtue of us turning it off. It had a failure. What wasn't known to the person emailing, they had one side of the story-- they didn't understand that an alert had gone into the Harriman, our dispatch center, which indicates the detector had went offline. That starts a protocol to determine, by our signal department, what components in the detector had failed, which then got passed through our supply department to order the material and then get it out to the detector for repair. The individual emailing back and forth only had one aspect of the story. The rest of the story was unknown.

**DeBOER:** So how often do your detectors fail, would you say?

**ROD DOERR:** Not very often, but they do, they do fail from time to time. There's different components that, that fail. They might be struck, they might be snowed over, they might be frozen. There are other conditions that occur.

**DeBOER:** You can-- so snow might interrupt their ability to work.

**ROD DOERR:** Yes. Let's talk about a hot bearing detector as an example. There's a shield that is used to shine an ultra-- a light onto the wheel which detects heat. OK. If that shield freezes shut, again, there's an alert that's sent to the, the Harriman dispatch center. It says, we've got to get a technology, technology person out there, a signal person, to make sure that that door opens.

**DeBOER:** How often do those sorts of things happen in the winter?

**ROD DOERR:** Not very often, but when when you receive a lot of moisture and then an extreme cold event, sometimes they do occur--

**DeBOER:** Like we had recently?

**ROD DOERR:** Like we've had recently.

**DeBOER:** Did you have any go offline?

**ROD DOERR:** Not that I am aware of. No, Senator.

**DeBOER:** OK. So because you said that these things are not being turned off, you're doing the best that you can with them, occasionally there's one that goes offline. I'm wondering. Let's imagine for now that this is the only aspect of the bill. If the only aspect of the bill is that you need to provi-- provide the report to the Public Service Commission, do you object to the bill?

**ROD DOERR:** The Public Service director, who just testified, if they sought the information and asked for it, we would gladly provide it.

**DeBOER:** So if they just as a matter of course, always asked for it, you would always provide it?

**ROD DOERR:** We'd like a chain of custody, who asked for it, and we'd provide the information that they sought. Yes.

**DeBOER:** So then if we just said as a Legislature, always provide it, what would the difference with that be?

**ROD DOERR:** We'd want to know who the information is going to, to make sure that is in the right hands and not misinterpreted. As you heard from early testifiers. They are well-trained people, not just a generalist that doesn't understand how all of this works.

**DeBOER:** So presumably someone at the Public Service Commission, the transportation specialist, etc. would be able to handle receiving that sort of information, or we could train someone to do so.

**ROD DOERR:** Certainly.

**DeBOER:** So if we required this to go to such a specialist at the Public Service Commission, the reporting requirement with respect to those wayside detectors, would that be OK with you?

**ROD DOERR:** I don't see why that wouldn't be.

**DeBOER:** OK. I remember there was a discussion about long, the extr-long trains before. It's-- was that the one that you said was-- the argument I think is that is that one's preempted. Is that right?

**ROD DOERR:** Yes. Correct. Train length is preempted.

**DeBOER:** The train length is preempted?

**ROD DOERR:** Yes.

**DeBOER:** And is that through the negative Commerce Clause, or is that just preempted through some specific piece of legislation?

**ROD DOERR:** There, there's a series of, of laws here that-- and I'm no attorney, that I would need help with. But there's federal railway safety, there's the Interstate Commerce Act, there's certainly the Commerce Clause, restraint of trade clauses. There's, there's a host of those--

**DeBOER:** Is there--

**ROD DOERR:** --federal laws that would preempt this.

**DeBOER:** Is there a specific one with regard to train length? Does it anywhere in federal law discuss train length?

**ROD DOERR:** None. None that I'm aware of. But again, I'm not an attorney.

**DeBOER:** OK. So your argument is that these other areas of law dealing with commerce in general would preempt the area with respect to train length.

**ROD DOERR:** Yes. And they have been found such by federal courts.

**DeBOER:** District courts, Supreme court?

**ROD DOERR:** That I can't answer.

**DeBOER:** OK. The blocked cro-- So were you here for the blocked crossing bill a year or two ago? I believe we had a discussion about it.

**ROD DOERR:** I believe so, yes.

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**DeBOER:** OK. And at that time, I thought there was a sort of a compromise resolution. Do you recall this, where there was going to be a report made or there was some kind of additional signage or something that was going to happen? Do you recall this?

**ROD DOERR:** I want to, I want to say, Senator, that it was the blue signs we've talked about. But I'm not certain of my timing here. There's a lot of water going under the bridge.

**DeBOER:** That's why I asked if those were recent, but it sounds like they maybe aren't. You know, there are obviously some, some real concerns about blocked crossings, particularly when someone has to go, as you heard--

**ROD DOERR:** Certainly.

**DeBOER:** --a very large way around. I know that in the past we've talked about how that would cross the, you know, on grade crossings, you're basically going to have that we obviously can't afford to do, not on grade or whatever you call those.

**ROD DOERR:** Grade separation.

**DeBOER:** Grade separation crossings on every crossing in the state, that's just impracticable. But what is the solution that you would offer to the folks who are finding themselves, monthly, unable to get where they need to go?

**ROD DOERR:** The number of blocked crossing reports that we are receiving is coming down nicely. Now, none of us would find it fast enough. But what we are using is GPS technology. Our locomotives have GPS on them, and will alert when we're across the crossing. That alert goes to our dispatch center, and again, the dispatcher is motivated to move the, the train off of the crossing. Furthermore, if we know we've got a problem down line, we will hold back the train from blocking crossings. With that technology, we've had a good reduction in the number of blocked crossings. So this is technology that we're working on. It is not foolproof. We've got more to do on this technology, but we feel that this is the path forward so that we can not be an impedance to the driving public at our crossings. Look, these communities that we operate in, the last thing we want to do is, is block crossings, because at the end of the day, the driver is also a voter and we want to be a good steward with, within our communities.

**DeBOER:** So the GPS technology, I mean, couldn't your-- I mean I'm assuming that your, your engineer could just call you. They have a

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cell phone or some kind of radio or something to call you and say, hey, dispatch, we're stopped. Which wouldn't require the GPS unless you're saying the GPS is needed because they don't know exactly where they are. Is that kind of--

**ROD DOERR:** That's part of it. But our, our employees that operate out here every day, they, they know where they are.

**DeBOER:** I was going to say, they probably know every blade of grass.

**ROD DOERR:** But what the engineer wouldn't have insight to is trains that are delayed, stopped, or have some kind of problem in front of them necessarily, because they could be--

**DeBOER:** Got it.

**ROD DOERR:** --10, 15, 20 miles downstream. And so the GPS is helping that, helping that dispatcher to understand, hold short of crossing x, y, z.

**DeBOER:** OK. Thank you.

**ROD DOERR:** Certainly.

**MOSER:** Senator Guereca.

**GUERECA:** Thank you, Chair, and thank you for coming in for your testimony today. The-- there's been mentioned in conversation about the PSC's rail inspectors. Can you talk about what they do, how they fit into the whole ecosystem currently?

**ROD DOERR:** Sure. From, from my vantage point as the chief safety officer, they are no different than a federal FRA inspector. They've been trained by the FRA. They have the ability to write violations or notices of nonperformance or noncompliance. They bring to our attention areas that they are concerned about relative to safety. It's our effort, then, to work with those state inspectors to rectify the, the unsafe environment. As we've heard, there are two of them. They're very busy. And, you know, there's two large Class I carriers in the state, but many short lines. And, and so their territories are large. Again, we try to work with them to advance safety wherever we can.

**GUERECA:** you mentioned a federal-- it's about how many federal rail inspectors are in Nebraska?

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**ROD DOERR:** That, I don't know, it's doubled in the last two years, but I don't know the number you seek.

**GUERECA:** OK. Last one. You said introducing-- in, in your testimony, introducing the state as the authority for detector placement restricts our industry's ability to best adapt to tech-- technological advancement. The only mention of placement is just that it has to be at least every 20 miles.

**ROD DOERR:** We're working to close that gap to 15 miles.

**GUERECA:** OK.

**ROD DOERR:** Now, the, the, the comments are specific to where should those placements occur. Not every mile of railroad's created equal.

**GUERECA:** Sure.

**ROD DOERR:** And so we're looking at the risks that we're trying to protect against with the use of the detector. Grades, cliffs, up against water, in cities. And the list is as long as your arm. We try to use that data to say this placement of this specific tight detector needs to be here. What we are worried about is, again, people well intentioned but may not have insight to all of these risks that we're trying to manage, saying the detector must be here. And as I said, we would bear the cost of these very expensive detectors, and they may, may not produce the risk mitigation that, that we're looking for.

**GUERECA:** But you, you stated that you're currently working to close that gap to 15 miles or so?

**ROD DOERR:** Yes, sir.

**GUERECA:** OK. Thank you.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for, for being here and for providing your, your testimony. A couple questions. So one of the components of the bill would be to limit trains transporting hazardous substances to 8,500 feet. Do you know approximately how long trains currently are or how, how long-- how much larger are we seeing than that 8,500 feet currently?

**ROD DOERR:** Union Pacific's average train length right now is 9,200 feet.



**FREDRICKSON:** OK.

**ROD DOERR:** Being an average, there are many that are shorter and some that are longer. The average is 9,200.

**FREDRICKSON:** OK. And what's the longest?

**ROD DOERR:** The longest that I'm aware of is 18,000.

**FREDRICKSON:** 18,000. OK. And how often on that larger, longer spectrum, how frequently is that type of train operated?

**ROD DOERR:** 3, 4%. It's a tail, if we're looking at a distribution, it's a tail at one extreme.

**FREDRICKSON:** OK. OK. And you mentioned train length, not necessarily, there not being data of train length correlating with safety related concerns. Is that-- did I understand that correctly?

**ROD DOERR:** That is correct. There is no data to support that longer trains are somehow more unsafe.

**FREDRICKSON:** OK. Can you speak at all towards-- on this-- provide the committee, maybe, with a bit of-- fairly briefly like kind of historical context of kind of train safety in recent years in terms of as we've seen longer trains come, like-- help, help me thread that needle a little bit more.

**ROD DOERR:** Certainly, Senator. As train length has grown, because frankly, the equipment has gotten larger. Used to be a 40-foot boxcar, now we see them 53, and some of our equipment is 80-foot long. Train length has grown. We know that we have to manage simple physics. It has nothing to do with length. It has everything to do with what's referred to as in-train forces. Trains are nothing more than a large accordion. They expand and they contract. When you don't control the forces appropriately, and you allow the equipment to slam together with great force, that is when derailments occur. So the technology being deployed, the additional locomotives inside these longer trains, which adds to both smooth acceleration as well as braking effort, controls those in-train forces. We have software that simulates those, those in-train forces. We run this real time for every train that's operating on our network, and where we believe the topography or operating conditions, cold, wet, high winds, whatever the case may be, could, could, could significantly change the physics inside these trains, these forces. We will, through the dispatch center, ask our train crews to slow down. Slowing down the train takes energy out of

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the train, and again is another way to mitigate these in-train forces. That's how we were able to control these, these trains, reduce derailments, as well as run a longer train. And again, if the physics are in control, there is no risk of a derail.

**FREDRICKSON:** OK. Thank you.

**MOSER:** Senator Ballard.

**BALLARD:** Thank you. Thank you for being here. It's good to see you. Just a clar-- clarifying question. So every 15 miles is a detector. That's between-- it's about \$4 million a detector. So every 15 miles at \$4 million.

**ROD DOERR:** Yes, Senator. It's an expensive endeavor. But it is far better not to expose the public to a possible risk of a derailment. And it's in our vested interest not to have the expense of a derailment. We bear all of these costs. So it's our interest to eliminate those failure costs and run a good railroad.

**BALLARD:** OK. And then second question. A couple of testifiers mentioned training. What training does UP provide for rail work-- for railroad workers. Is there any training on-- They said, they also mentioned there's not a lot of marketing involved. Can you, can you speak to that.

**ROD DOERR:** Significant training. Hundreds of hours. To hire a new hire employee in a railroad, it'll take six months to get them ready at a minimum, to get them ready to railroad. The books that we hand out, they're also on electronic media now, is, is-- provides guidelines so that if you forget, you have the ability to reference the various rules that you may be exposed to based on the situation you're up against. As an example, one of these detectors alerts depending on the type of director-- detector. As an example, a hot wheel, you'd reference the right page in the materials and it will take you through step by step by step what to do and who to communicate with. That's all available to our employees based on the situation.

**BALLARD:** OK. Thank you.

**MOSER:** Other questions? Thank you for your testimony.

**BALLARD:** Thank you.

**MOSER:** Any other opposition? Welcome.

**JEFF DAVIS:** Mr. Chairman, members of the committee, Jeff Davis, J-e-f-f D-a-v-i-s, on behalf of BNSF railway, testifying in opposition to LB37. BNSF shares the safety concerns expressed by our rail work-- railroad workers here today. BNSF is committed to safety. We just respectfully disagree on how to best achieve the same goals of zero accidents and making sure everyone gets home safely. LB37 is patterned after a federal bill, the Federal Railway Safety Act. It is important to note state legislatures around the country cannot make a few changes to that act, pass it, and enforce the provisions because almost all of them are federally preempted. Please review the AG's letter, as well as the written testimony filed by our BNSF senior attorney, Kevin Baldwin. Federal courts have repeatedly struck down state laws regarding train length, train speed, blocked crossings, including one already on the books here in Nebraska. Three years ago, Nebraska AG Doug Peterson, along with a dozen other states and SMART-TD, appealed an Ohio blocked crossing case to the US Supreme Court and lost. These issues have already been litigated and the citations can be provided to committee counsel. The installation of wayside detectors, the insurance-- well, not-- inspections are also prohibited by the Interstate Commerce Commission Termination Act or the Federal Railway Safety Act of 1970. This bill appears to be an attempt to regulate issues already covered by federal statutes, and more than 1,300 pages of federal regulations, regulations based on science and data, not opinion. Congress has expressly reserved for the US Department of Transportation the power to regulate every area of railroad safety via the Federal Railway Safety Act of 1970. In the FRSA, Congress mandated that the regulation of railroad safety shall be nationally uniform to the extent practical and explicit, explicit, explicitly preempted state laws attempting to address any issue that is covered by the regulations from US DOT. The FRA has been collecting data since 1975. They have a Rail Safety Advisory Committee where railroads meet with rail union stakeholders and scientists. We've been meeting on wayside detectors, and they actually recommended the BNSF algorithm be used as an industry standard. We support that process at the federal level because it's working. In conclusion, we disagree with the sponsor and the supporters on the benefits of this legislation, but we're still committed to working with everyone to meet the needs of our customers in a way that promotes safety for everyone.

**MOSER:** Questions for the testifier. Yes.

**BALLARD:** You were brought up-- I'm looking for the testimony, you were brought up in proponent testimony. I think it was the Aurora derailment.

**JEFF DAVIS:** Yes.

**BALLARD:** Is that-- can you, an you--

**JEFF DAVIS:** Yeah. OK. So let me just see if I can't put this in context. We operate 1,500 trains a day, 365 days a year. So that's more than half a million trains a year. So Aurora was 2023, so two years ago. We've moved more than a million trains since then. Now occasionally we get run-- one wrong. And this is one where we got, we got it wrong. We did not ignore the warnings. The decision was made to take the train to Alliance. Then they said take it to the mines. The message was sent to set the car out at the mines. My understanding of what happened is the employees at the mines did not get the message, because it was sent electronically via iPad. They had no signal. That's on us. That's our fault. We made a mistake and we've, we've tried to correct it. So yes, that is an example. But you know, once again, put that in the context of, you know, that's one out of roughly a million or more here in the last two years. And it's important, I think, to draw the distinction, we didn't ignore the warnings. I mean, these decisions are judgment calls. There's somebody in Fort Worth looking at every one of these. They are making the ultimate decision.

**BALLARD:** Thank you.

**MOSER:** The-- we can argue the preemptive nature of federal law that covers some of these same things that this bill is attempting to legislatively, legislatively readdress. But one thing that I think I sense-- I should-- sense isn't a good word, it's pretty much hit me over the head, that communication is kind of a factor. You know, when people call the numbers on the signs on the crossings. Should those people who took up those calls be able to give more information? Or do you think they're trying to get rid of the caller as quick as they can to take the next call from somewhere else?

**JEFF DAVIS:** I think it is a judgment call. You know, based on the circumstances. You know, for instance, if you have a situation in a major metropolitan area where all of a sudden the train has stopped and it's blocking multiple crossings, I mean, it could it could potentially, you know, not saying overload the phone system, but you have this situation where you could have hundreds--

**MOSER:** 25 calls.

**JEFF DAVIS:** More, even more than that.

**MOSER:** Everybody's got a phone.

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**JEFF DAVIS:** Every, everyone's got a phone number, every, everyone's calling. And so yes, we're aware and we're trying to do something, but in ca-- you know, if that train is stopped and in distress, it takes time to get people there. It takes time to get the right, you know, even if they have all the equipment there they need to get from wherever that piece of equipment is on the train, you know, or to get it there to make the necessary repairs and then do the inspections. It's gonna, it's gonna be blocked for a couple hours, maybe even longer.

**MOSER:** Thanks. Any other questions from the committee? Thank you for your testimony. Appreciate it. Any other opponents to LB37. Is anyone here to speak in the neutral about LB37? Senator Jacobson, come on back.

**JACOBSON:** Well, thank you again, Chair Moser and members of the Transportation Telecommunications Committee. I was struck by the first opposition, opposition testimony, indicating that no one reached out to the railroads regarding this bill. This is LB37. It would have been filed day one of the Legislature. That was two months ago. No one from any of the opposition reached out to my office to meet to talk about the bill. No one. So I guess the plan was just come to the committee hearing, say everything that we do in Nebraska is unconstitutional, and they can do whatever they want to do. So why bother having a meeting with the senator that brought the bill? So I take a little offense to be suggesting that I had a duty to reach out to them in crafting the bill. I think once the bill is introduced, it's your responsibility over the last two months to reach out and suggest what issues you have with the bill. It's probably my biggest pet peeve as a senator when I had hearings is people show up the day of the hearing and say, this is a great bill, and you know, we care about all these issues, but there's just some things that need to be changed. And I don't have any suggestions for changes, and I didn't bother reaching out to the senator that brought the bill to tell you what my issues were. Other than that, your bill is a horrible bill, we hate everything in it, and so let's just kill it. OK? Sound familiar at all? So I don't want to, I don't want to point anybody out in particular, but it's, it's, it's, it's a little frustrating. So I would tell you this, that yes, federal law would preempt state law. I'm not an attorney, but if you don't address a particular issue, you're not preempting anything. State law is not trying to-- we're not trying to preempt where federal law is clear, but give you an example. Training for first responders with regard to fire departments, trying to deal with the kind of materials that are being brought through the state. OK? There was a situation in Bailey Yard where there was a

hazardous container on a rail yard that got-- was, was being humped, and the bit-- and, and the train ultimately had a, had a collision. It was, I believe, the material that was in the plastic container was on a wooden pallet. And the material, the acid that was in the plastic container was combustible if it came into contact with a carbon based material. So why it was being shipped that way is beyond me. And it was-- clearly wasn't secured well enough as it was secured on the rail car. It caused a huge explosion. There was an individual that was in a building nearby, that it shook the building and they were harmed, they were hurt inside the building not too far away. Two people were in a pickup driving over when they saw the fire take off. Fortunately, they backed away before the explosion occurred. So there's a couple of issues there. One of them is, why is material being shipped like that? And the state has no ability to do anything about that? I mean, none? And, and at the same time, what about our first responders and who show up to deal with this? How do we contain that fire? What do we know about that material? How-- what, what, what should we use to put the fire out? Can we use water? What do we use? That's where this training is so important. Whether it's mandated or not, it ought to be at least be voluntary. I mean, it ought to be something that they would reach out and do on their own. The other thing when it comes to interstate commerce is the Supreme Court, from what I've read, and I'm not an attorney, I would be the first one to say that, don't ever accuse me of being an attorney, but I will tell you that we're not-- if you're trying to take care of safety issues that affect the entire state, and you're not preempting additional-- existing state law, I'm looking at opinions it says you can do that. But to simply come in here and wave and say, you can't do anything. TNT Committee, you've got no power over the railroads. They can do whatever they want to, whenever they want to, because you can't preempt federal law. I push back on that argument. So with that, you've been here a long time, and the Banking Committee's adjourns several hours ago or a couple hours ago, probably an hour ago, so.

**MOSER:** Without you.

**JACOBSON:** Without me. It, it goes faster when I'm not there.

**MOSER:** Maybe we're better-- Other questions for the testifier? I think, not to defend the railroads, but I think there is a manifest that says what's supposed to be on the train. So if there are hazardous materials on there, they should know. But then they'd have to communicate with the first responders. Because some things you can, you can use water to treat if they start on fire, some things, you have to use foam, depending on what it is that's--

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**JACOBSON:** Well, in fairness, this happened in the yard, so it wasn't connected to a train. So being able to figure out what was on that car took longer to figure out.

**MOSER:** It was kind of in transit between trains?

**JACOBSON:** It was in the yard, so it was being switched over to another train. So, so that made it a little more complicated. But I think once it was identified what was there, do the first responders know how to deal with that kind of fire? I mean, there are some really unique things, and the railroads are required to carry all materials, so--

**MOSER:** Yeah, I don't, yeah, I don't think they can decline.

**JACOBSON:** They can't decline the load. And so it-- we just need to know what's, what's being carried. I would also tell you that for what it's worth, I mean, the Union Pacific and the Burlington Northern have been huge benefit. I mean, the state has benefited having them here. I have, I have no ill regard to UP or BNSF. UP's headquartered here. They're a huge property taxpayer. They, they've been a huge employer in North Platte. So I'm really glad they're here. And I think what we continue to look at is continuing to do the right things for safety. We all say we care about safety. This is our opportunity for everybody to show that we care about safety. So whether it's legislated or whether it's done voluntarily, that's what a bill like this can do, is to say these are priorities for the state. We would like for you to address these. So with that, thank you.

**MOSER:** Thank you Senator. Appreciate that. That will conclude our hearing on LB37. The comments for LB37. Twelve proponents' comments were received, one opponent, and no neutral. Senator Ballard will be taking over as the vice chair for a few minutes.

**BALLARD:** All right. LB128, Senator McKeon. McKeon. How are you?

**McKEON:** I'm good. Last one of the day and everybody's leaving. So, you ready?

**BALLARD:** Whenever you are. Good afternoon.

**McKEON:** All right. So thank you, Transportation Committee. Senator Moser and members of the Transportation Committee, and I am Dan McKeon, D-a-n M-c-K-e-o-n, representing District 41. I'm here to introduce LB128. LB128 is a short, simple bill brought for the Nebraska Public Service Commission to help facilitate their ability to investigate railroad accidents. The PCS voted 5-0 to support this

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bill. Currently, the Public Service Commission has voted power and equipment inspector and a track Inspector who can collaborate with the Federal Railroad Administration, FRA, inspectors to ensure railroad safety. The intent of this bill would be-- would allow the PC-- PSC inspector to attend railroad accidents when they occur, rather than waiting to be invited. Under LB128, this still means that the inspectors would only be able to work along the side that the FRA. Other states have been-- other, other states have this ability, so this is not a big change. Given the current low staffing levels with the FRA, having an additional inspector at the investigation site could help prevent railroad accidents in the future. This does not increase liability or additional burdens on the railroads, but it is another tool to help safety. Nebraska has two federal inspectors positions based in North Platte, but positions are currently unfilled. So for the time being, someone would have to be brought in from out of state if there's an accident. On February 10, 2025, there were two Union Pacific train wrecks in western Nebraska. The two train wrecks once-- one inspector, approximately the same time. The P-- the PSC inspectors being able to attend accident sites does not alone, not alone solve what appears to be a legitimate labor shortage. However, it certainly helps having an additional qualified eyes to identify problems that might be avoid in the future. I ask that you advance a short, simple, commonsense change to help with the railroad safety to General File. The PSC Commissioner Stocker will follow with testimony to better explain the reasons for this small change.

**BALLARD:** Thank you, Senator McKeon. Are there any questions? Seeing none. See you at closing?

**McKEON:** I will see you.

**BALLARD:** All right. All right. Proponents. Good afternoon.

**ANDREW FOUST:** Hello, Vice Chair Ballard and members of the Transportation Telecommunication Committee. My name is Andrew Foust, A-n-d-r-e-w F-o-u-s-t, and I'm here to represent the Nebraska Legislative Board for SMART-TD. While SMART did not collaborate with Senator McKeon on the specific language of the bill, we're here today to express our support for LB128. We'd like to thank Senator McKeon for introducing this important legislation to address rail safety in our state. Currently, the statute requires the, the FRA, which Senator McKeon touched on, to contact the transportation director of the Public Service Commission and invite the PSC railroad inspector to participate in accident investigations. After receiving the invitation, the director dispatches the inspector to the



investigation. This bill simplifies the process by allowing the director to send the PSC inspector to the investigation directly, without needing the-- needing to wait for contact from the FRA, which at this time is severely understaffed. I've distributed a March 6th, 2023 press release from Governor Pillen regarding rail safety in Nebraska. The Public Service Commission has responded to this request, and I urge the committee to respond to-- also to respond to his request. I encourage all committee members to vote in LB128. Thank you for your time. Thank you for allowing me to speak today, and I'll be happy to answer any questions that you might have.

**BALLARD:** Thank you for your testimony. Are there any questions? Seeing none. They let you off easy this time.

**ANDREW FOUST:** Yeah. Thank you.

**BALLARD:** Next proponent. Commissioner, good afternoon.

**KEVIN STOCKER:** Well, good afternoon again, Vice Chair. Good afternoon to everybody on the committee. My name is Kevin Stocker, K-e-v-i-n S-t-o-c-k-e-r. I represent the Public Service Commission's fifth district, and I'm here to testify to the commission's unanimous support of LB128. The commission is required by state statute to have two rail inspectors who provide supplementary inspections under the Federal Railroad Administration, FRA, State Participation Program. Under this program, the commission's inspectors perform supplemental inspections to those done by the FRA and may assist with accident incident investigations that take place in our state. LB128 would allow for more timely access to information, and gives the commission flexibility to operate more efficiently. The Commission would have more discretion to decide when a prompt investigation is needed. Given the expansive railroad infrastructure in Nebraska, and the limited FRA staff, this bill allows our inspectors to be more responsive to the needs as they arise and gather information quickly. This bill is about gathering information, and would not change how any alleged violations are enforced. Under LB128, the commission's inspectors would be able to recommend violations to the FRA in situations outside of their normal inspections. I've provided the committee a handout on the State Safety Participation Program. This handout summarizes the six railroad inspection disciplines. The Commission has one certified motive power and equipment inspector and we are currently onboarding a track inspector. The commission would only provide inspections within their approved disciplines, but if LB128 were passed, the commission would ask-- would seek out additional training for our inspectors for accident and inci-- incident investigations. The Commission seeks to

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ensure that Nebraska has safe and dependable transportation services, and LB128 would further that by encouraging efficient operation and access to timely information. Similarly, provisions have been implemented in other states successfully. We would like to thank Senator McKeon for introducing this bill, and I'd be happy to answer any questions you may have.

**BALLARD:** Thank you, Commissioner. Are there any questions? Senator Bosn.

**BOSN:** Thank you. Thank you for being here. If I'm looking at this, it basically moves-- it strikes the section that says the commission shall promptly investigate and makes it a may investigate. Can you tell me what the-- why you would want to go from a required investigation, you shall do it, to a may investigate?

**KEVIN STOCKER:** Currently under statute, we have to be invited by the FRA to an incident to do any inspections. A lot of times when there is a, a cat-- catastrophic derailment, as there was a couple of weeks ago where we had two derailments on the same day, these people are overwhelmed with getting to the situation, and they, they were, neglecting to call us and ask us for our help. So we were able to monitor it remotely, and until we're invited to the situation, we cannot send our trained investigators to assist.

**BOSN:** But if we put that as a shall, you would be eligible to do the investigations regardless of the FRA, is that-- am I understanding the purpose-- intent of the bill?

**KEVIN STOCKER:** This was, this was discussed quite extensively, Senator. That shall and may, you would know as a lawyer better than I do. And I don't want to be-- I'm not a lawyer, I'm going to state that first and foremost. But may is at our discretion, shall would be at the discretion of the FRA.

**BOSN:** OK. I won't hold you accountable for that. But I don't know that I agree with their interpretation of that, but I understand what you're telling me. So right now, how many of these reports do you do on average a year?

**KEVIN STOCKER:** I couldn't tell you that right now, but I do have Director Keiffer-Johnson ready to testify after, after myself. He's the rail division manager at the FRA. He knows the nuts and bolts of this program and would be better at explaining it for you.

**BOSN:** OK. And then I'll save that question for him then.

**KEVIN STOCKER:** Very good.

**BOSN:** And then it says all accidents. So are you talking about like even accidents in a railyard that are workplace accidents, or is this--

**KEVIN STOCKER:** Well that, that has been brought up also. And I think we wouldn't probably dispatch investigators to those types of incidents, accidents. I know that that has given the railroads a little heartburn, that language. I've invited them to give us an amendment on this or help us with the bill. And here we are today. So this is the bill we're putting forth. And, you know, deeper into my testimony, I said we would assist in the type of incidents that we go to normally. So it's not looking-- we're not looking to drill down on every incident and, and be in the railyards all the time. That, that's furthest from our intention. We want to just have the ability to use the tools in our toolbox to send these people to investigations. These are highly trained individuals. They've cost the state of Nebraska a lot of money to train them and keep them. And we want the ability to send these people to incidents when we feel it's fit.

**BOSN:** So I guess it's-- we-- you-- the proposed bill, though, strikes sort of what those caveats for Investigations of accidents were. So that's perhaps where I'm going-- I'm a little confused, because it strikes the language of serious personal injury, loss of life to persons other than railroad employees, resulting from an accident in a railroad crossing, or from an accident involving an explosion or fire or release of noxious fumes occurring upon any railroad. So that would to me have been the language that provided what sorts of accidents were being investigated. And you're strike-- you're seeking to strike that. So I guess that's what my question is.

**KEVIN STOCKER:** Well, I, I'd like our, our experts to testify to that. They have known the language way better than I have. This is a, a priority, once again, that the governor got me aside and said, you get those damn positions filled. And we made it priority one to get those filled. Now we just want the ability to send these people out as we see fit.

**BOSN:** Ok.

**MOSER:** Ok. Thank you. Any other questions? Seeing none, next supporter of LB128. Our hearing is going kind of long today, and I scheduled all the railroad events the same day because a lot of people travel quite a distance to be here, and I thought it would just better to do it in

one day than two. So bear with me that we're-- we'll get through it here in a little bit. Thank you.

**DILLON KEIFFER-JOHNSON:** Good afternoon, Chair Moser and members of the Transportation Telecommunications Committee. My name is Dillon Keiffer-Johnson, spelled D-i-l-l-o-n K-e-i-f-f-e-r-J-o-h-n-s-o-n. And as Commissioner Stocker mentioned, I am the railroad safety manager for Nebraska's Rail Safety Program with the FRA. To answer some of your questions, Senator Bosn, the, the language that is being stricken, the shall, the way that it, it, it works currently is that there has to be in an accident incident at a crossing that has an explosion, fire, or release of noxious fumes. And as a result of that particular accident, there has to be an injury or a loss of life to a person other than a railroad employee. So what that wouldn't allow us to do currently without a invitation from the FRA is to potentially investigate a derailment that doesn't fit those parameters. So, for instance, if there was a, a broken rail or-- and a derailment happened due to a broken rail, if that accident didn't have a release of one of those three items as currently dictated, then that would be a, an investigation, accident investigation that under the new language, we would be permitted to go out there and use our discretion to conduct an accident incident investigation for that. And a little bit more clarity on that is our accident incident investigation that we would conduct, there wouldn't be, for lack of a better phrase, an enforcement mechanism. It would just be purely to gather information. The FRA is still the overarching authority for any any penalties, enforcement actions against a railroad, our investigators or inspectors that would go out and potentially participate in these incident investigations could write a defect, could recommend a violation, as they currently do, but it wouldn't put any authority in the commission to fine a railroad or anything along those lines. It is purely-- while it does strike the terms shall, that shall only applies in a very particular subset of accident incidents. So broadening it to a may with, with striking that language would actually allow us access to more accident incident investigations than what we currently conduct. If that helps clarify that a little bit more.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here and for testifying. I actually have just one question. I'm, I'm looking at the fiscal note on this, and it says no fiscal impact, which is great. And at the same time, I would imagine expanding investigations would cost something. I mean, can you sort of help me understand a bit more?

**DILLON KEIFFER-JOHNSON:** So currently, as part of a state's railroad participation safety program, as Commissioner Stocker mentioned, it's supplementary to the FRA. Now, as part of that program, we could conduct accident incident investigations if we're invited. Because we don't currently have that language that would require us to conduct those inspec-- investigations, our two railroad inspectors aren't currently certified to do accident incident training, or accident incident investigations. However, under the program, the FRA would give us that and the only cost that would be associated with it would be the nominal cost of travel and board at the training facility. So there is no cost directly associated with conducting that training or getting that accident incident investigation training, nor any additional cost in doing those inspections that we would have already currently been able to do.

**FREDRICKSON:** That's a helps. Thank you.

**DILLON KEIFFER-JOHNSON:** Yes, sir.

**MOSER:** Senator Bosn.

**BOSN:** Thank you. So you heard some of the questions that I had for the Commissioner Stocker about the reports. Can you provide us about how often do you do these each year?

**DILLON KEIFFER-JOHNSON:** Yes, ma'am. So it-- there are-- the, the most common types of report that we get, we probab-- we get telephonic calls from both the-- both Class Is and all of the short line railroads as well. I would say on average we get about 8 to 10 of those a week, but not all of those rise to a level that are reportable to the FRA, nor deal specifically with instances that would necessitate an accident incident response. For instance, most of those calls that we get a week are instances that happen in a rail yard, for instance, a five gallon release of diesel fuel in the Bailey Yard, or a upright derailment in a humping operations, or things along those lines that aren't necessarily meet the-- that do not necessarily meet the level of reportable to the FRA. But we could go out there under the proposed language on 128 and do an accident incident investigation to see if there was a defect or a potential violation that could have caused an accident.

**BOSN:** OK, but my question is of the authority that you've had thus far, how many reports have you done in the last year?

**DILLON KEIFFER-JOHNSON:** We have not-- to my knowledge, none.

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**BOSN:** OK. When's the last one you did?

**DILLON KEIFFER-JOHNSON:** I would have to go back and get you that information.

**BOSN:** OK.

**DILLON KEIFFER-JOHNSON:** After this hearing, if that is OK.

**BOSN:** Are you able to provide us a copy of that re-- what that report looks like? I mean, just so we have some frame of reference of why we're changing this and what problem we're solving with this in terms of what those reports look like would be helpful.

**DILLON KEIFFER-JOHNSON:** And so the reports that, that currently are in place would be a report from the railroad, not necessarily a commission report. And those railroad reports typically take the form of the respon- the accident incident report that they file with the FRA. So we, we do get those and we make those part of the, the commission's file. But the commission doesn't then take that report and make a, a secondary report based on that report. But I could get you that information, yes, Senator.

**BOSN:** Thank you.

**MOSER:** OK. Other questions? Thank you for your testimony. Anybody else in support?

**RICHARD SCHMELING:** Once again, Richard Schmeling, common spelling of the first name, last name S-c-h-m-e-l-i-n-g. And you did schedule all the railroad bills, and so I got all my testimony in, in one afternoon. Now I can go home and watch soap operas. My comment about this bill, and I think it's-- the intention of it is good, but I, I'm very curious as to why the Public Service Commission is tasked with this particular area. And the reason I say that is that we have a state Department of Transportation. The state Department of Transportation supposedly is a multimodal department. They have a rail section. Going back historically, this is kind of fun. The original Department of Roads was, first of all, a Department of Bridges and Ditches years ago. And then it became a Department of Roads and Ditches. Then it became a Department of Roads. It was the last state of the 50 states to convert from a department of roads to a department of transportation. It would seem to me that this is a good project for a legal counsel to research, in all the 50 states, how many of those states have the state department of transportation investigating railroad incidents and, and mishaps. And are there any other states

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that have it go to the Public Service Commission or whatever the remnant of that was. I don't know the answer. It would be interesting. But to me, logically, this function should be in our state DOT, not the Public Service Commission.

**MOSER:** OK. Any questions for the testifier? Thank you very much. Appreciate your comments. More supporters for LB128. Opponents to LB128.

**ROD DOERR:** Thank you. Afternoon again.

**MOSER:** Welcome back.

**ROD DOERR:** Again, my name is Rod, R-o-d, Doerr, D-o-e-r-r, VP of safety and chief safety officer, UP. Thank you for the opportunity to offer remarks on LB128. Union Pacific is open to exploring evidence-based and practical solutions to enhance emergency response and investigation protocols. However, LB128 does not offer additional or unique benefits to justify widening the Public Service Commission's scope. Current law empowers the PSC with some limited railroad investigation authority. For example, the agency can investigate an incident and present a report of findings on those meeting specific criteria, including accidents at railroad crossings or accidents involving explosion, fire, or release of noxious fumes resulting in personal-- serious personal injury, loss of life to persons other than railroad employees. LB128 would broaden the PSC's accident investigation authority by including a provision stating the PSC may investigate the cause of all accidents on any railroad within the state that results in loss of life or injury to any person or property. This bill would greatly increase the scope of their investigation authority, increasing redundancy, redundancy of federal, state and local authorities already trained and accountable for this broader mission. Despite the freight railroads' ongoing achievement of safety milestone, safety incidents can still occur, sometimes involving our employees. When such incidents happen, a well-established protocol is followed which involves multiple layers of trained authorities. These typically include first local responders, state agency officials, the Federal Railroad Administration, the National Transportation Safety Board, or NTSB, the Environmental Protection Agency, and other relevant entities depending on the specifics of the incident. Accident investigation, a process that requires securing and thoroughly documenting the scene of a-- by experienced professionals before it can be accomplished by well intentioned but untrained individuals. Prompt respon-- response is critical to interview emergency response and accident participants, to

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capture their immediate recollection. In the case of rail equipment accidents, unique safety record-- safety risks and hazards may not be recognized by those who do not regularly perform this type of work. The existing parties who conduct an accident investigations are trained and equipped to contribute effectively to this process. Union Pacific is unaware of any undressed ga-- unaddressed gaps, and how this bill will widen the scope of PSC's work would-- or how it would uniquely add value in this investigation process. Although we oppose LB128, Union Pacific remains committed to exploring evidence-based and practical solutions to enhance emergency response and investigation protocols. Thank you for your attention. Be more than happy to take questions.

**MOSER:** OK. Questions from the committee. Senator Guereca.

**GUERECA:** Thank you, Chair. I've got the reading here for your testimony. Does this mean our state inspectors aren't trained?

**ROD DOERR:** I don't believe I inferred that. I believe they are trained.

**GUERECA:** OK. Oh no, it's at the-- scene, but-- it's referring to scene be compromised by well-intentioned but untrained individuals. The inspectors would be trained.

**ROD DOERR:** They would be.

**GUERECA:** Correct.

**ROD DOERR:** Yes. And the, the purpose here is not to throw the doors open. When, when, when such words in a proposed bill say all, even with property damage, that's a huge workload for a couple people. And inviting others to get involved here is not the best solution.

**GUERECA:** OK, I get your point.

**ROD DOERR:** Thanks, Senator.

**MOSER:** Other questions. Seeing none, thank you for your testimony.

**ROD DOERR:** Thank you, Chairman.

**MOSER:** Sure. Other opponents to LB128. Welcome again.

**JEFF DAVIS:** Mr. Chairman, members of the committee, Jeff Davis, J-e-f-f D-a-v-i-s, on behalf of BNSF railway to testify in opposition



to LB128. You heard it here. The PSC does inspections, not investigations. Current law requires investigations in serious cases. I have lobbied and worked with the Nebraska PSC for more than 13 years. I cannot recall a single occasion where I've been contacted by the PSC concerning one of these investigations that are currently permitted under statutes. I follow their meetings and I've never seen them discuss the train accident or accident report. Yet this bill seeks to expand PSC regulatory-- regulatory authority to investigate workplace injuries and illnesses, duplicating the work of other federal agencies in opining on accidents and illnesses that they have no skills or qualifications to investigate. And I don't think that's contemplated in the training that they would be getting. LB128 also expands commission authority to investigate all accidents resulting in injury to property. There is no minimum threshold for reporting under this proposal, so the commission can investigate every accident, no matter how slight. So regardless of the bill's intent, under this language, railroads would have to report every spilled drop of hydraulic fluid and who knows what else. Pursuant to FRA regulation, railroads don't report every accident. We report all collisions between rail users and highway users, any workplace injuries or occupational illness, plus those equipment accidents where the damage exceeds \$12,400. The FRA and NTSB still have primary jurisdiction over train accidents. The FRA already has a very thorough reporting system, and they record every accident, every incident, and make that data available on their website. Notably, the bipartisan infrastructure law passed in 2021 directed the FRA to create a standard process for gathering information and when appropriate, consult with stakeholders about an accident under investigation. The PSC is already a stakeholder. You should have a handout. The FRA's Collaborative Investigative Reporting Environment, iCARE, is a SharePoint portal stake-- for stakeholders in the FRA that they can use for accident investigations. The law contemplates sharing information, not states doing their own independent investigations whenever they feel like it. We do work with local jurisdictions to ensure that they have the resources they need. Scottsbluff just recently sent me a request looking for \$10,000 to help with the purchase of GPS accident reconstruction equipment. They already have specialized training. In conclusion, because the PSC has no experience investigating workplace illnesses or accidents, because a PSC already has authority to investigate train accidents, but they haven't done it to my knowledge, because they have no accident investigation training and apparently don't even know what how the FRA defines an accident. I would say this bill needs more attention. Thank you.

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**MOSER:** All right. Thank you. Questions from the committee. Seeing none, thank you. Any other opposition to this LB128? Any more opposition? How about neutral? Anyone in the neutral? Senator McKeon, you're welcome to close.

**McKEON:** To me, looking at this, like I said, there's more information, more experts behind here. But I was going to use some of my background and, and as a wrestling official. And when you-- at the state tournament, you have two officials. You have a head official has the whistle and you have the assistant official. OK? That's how I'm looking at this. The head official is the, the FRA, OK? And the assistant official is the PCS. So they work together to understand how to make sure that the match is, is reffed right. And that's how I'm looking at this bill, and from my perspective of how you can work together, communicate, and do the right things to make sure that these accidents are, are evaluated and done right. So that's-- and actually there was some, some comments here, the what-- the one the PCS Inspector Smith that was just testified was able to handle multiple federal violations on locomotives in the last two weeks. And he found 30 various defects on multiple trains. This shows the value of an assistant official. So that's, that's how, from my standpoint, LB128. So hopefully we can come together, and if there's some amendments, great, but that's-- so that's kind of how I look at this, LB128. Any questions?

**MOSER:** Any questions. Thank you very much. Appreciate that. And with that, that will end our hearing for the day. Thank you. Online-- I take that back, online comments for LB128. There are two proponent comments, two opponent comments, and no neutral comments. Committee, if you could stick around for just a minute.