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Transportation and Telecommunications Committee
February 09, 2009

[LB181 LB217 LB245]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 9, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB181, LB217, and LB245. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Galen Hadley; Charlie Janssen; Scott Lautenbaugh; and LeRoy Louden. Senators absent: None. [LB181]

SENATOR FISCHER: Good afternoon, and welcome to the Transportation and Telecommunications Committee. I am Deb Fischer. I am the Senator from the 43rd District and I am chair of the committee. At this time I'd like to introduce my committee members. On my far right is Senator Charlie Janssen, Senator Janssen is from Fremont; next to Senator Janssen is Senator Kathy Campbell from Lincoln; next we have Senator Tim Gay from Papillion; on my immediate right is our committee counsel, Mr. Dustin Vaughan; on my immediate left is our committee clerk, Ms. Laurie Vollertsen; next to Ms. Vollertsen is Senator Scott Lautenbaugh, he is from Omaha; next to Senator Lautenbaugh is Senator Galen Hadley, he's from Kearney; and on the end we have Senator LeRoy Louden from Ellsworth, Nebraska. Our pages today are Justin Escamilla from Scottsbluff and Jamie Myers from my legislative district, from Stuart, Nebraska. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. I ask that you please complete the yellow sign-in sheet at the on-deck table so it's ready to hand in when you testify. We are using our computerized transcription program so it's very important that you follow the directions on the sign-in sheet. You will need to hand in that sign-in sheet to our committee clerk before you testify, please. For the record, at the beginning of your testimony please spell your last name and also your first name if it can be spelled in several different ways. Please keep your testimony concise and try not to repeat what someone else has covered. If you do not want to testify but you want to voice your support or opposition to the bill you can indicate so at the on-deck table on the sheet provided. This will be part of the official record of the hearing. If you want to be listed on the committee statement however as a testifier, you must complete the yellow sign-in sheet and actually come forward and testify just if you state your name and your position on the bill. If you do not choose to testify, you may submit comments in writing and those will be read into the official record. I ask that you turn off all cell phones. At this committee we don't have cell phones on and that means no text messaging. We will be seeing a lot of Senators today leaving. I will be leaving in a few minutes to go to Education Committee to introduce a bill and if our Vice Chair, who is Senator Stuthman, is not back at that time I have asked that Senator Louden take over the duties as chair when I leave. With that, I will open the hearing on LB181 and Mr. Vaughan is here for the introduction. []

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DUSTY VAUGHAN: Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record my name is Dustin Vaughan, spelled V-a-u-g-h-a-n, and I am the committee counsel for the committee. LB181 authorizes the Public Service Commission to resolve wire-crossing disputes between railroad and telecommunications carriers. The bill requires that a telecommunications carrier who wants to place a wire, line, or cable across the railroad right-of-way to request permission from the railroad through a written application. If the carrier and the railroad are unable to reach an agreement within 60 days after receipt of the application, either party can petition the Public Service Commission for a hearing on the disputed terms and conditions. The commission shall hold a hearing within 60 days and shall consider whether the terms are unreasonable or against the public interest. In no case may the commission consider the safety, engineering, or access requirements of the railroad as these areas are governed by federal law. Upon issuance of an order the carrier and railroad shall have 15 days to file a conforming agreement. The commission may reject the agreement if it does not conform to the order. The bill requires the telecommunications carrier to bear a one-time standard crossing fee of \$1,250 to the railroad. This fee will be in lieu of any direct expenses incurred as result of the placement of the wire. The carrier shall also reimburse the railroad for any flagging expenses. The bill does provide for a special circumstances exception and either party may petition the commission for additional requirements for relief from the standard fee. The bill also declares in a provision of an agreement that indemnifies or holds harmless the railroad or its representatives for damages resulting from its own negligence or intentional acts to be against public policy and is unenforceable. LB181 applies only to telecommunications carriers certified by the commission. This section does not apply to any longitudinal encumbrances or any line, wire, or cable within the public right-of-way. And with that, Senator Fischer, I will end my testimony. [LB181]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. At this time I would ask how many people are here to testify in favor of the bill, if I could have a show of hands. Two, four, five. How many against the bill? One, two, three. Three against. Anyone in the neutral? Okay. I think you folks will certainly keep your testimony concise so we shouldn't have to use the lights today. With that I would ask that the first proponent step forward, please. Good afternoon. [LB181]

TIM SCHRAM: (Exhibit 1) Good afternoon, Senator Fischer and members of the Transportation and Telecommunication Committee. My name is Tim Schram, T-i-m S-c-h-r-a-m, and I am a member of the Nebraska Public Service Commission representing the 3rd District. I am here today in support of LB181. The commission was approached by telecommunications carriers regarding certain difficulties they were having entering into crossing agreements with railroads when attempting to build lines that require crossing railroad tracks. One of the main concerns we heard was the delays in construction to serve customers that were occurring due to these difficulties. Currently, the law gives the commission the authority to regulate wire crossings over

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railroad right-of-ways at public highways, including determining the terms and conditions of such crossing agreement if the two parties to the crossing agreement cannot agree on the terms. These provisions are codified in Section 75-707. The commission currently has no rules and regulations to administer the provisions of these statutory sections, so rules were drafted and a rule-making procedure was instituted by the commission on August 27, 2007, and comments from interested parties were sought. After receiving comment from numerous parties, many of which you will hear from here today, the commission revised the proposed rules and issued a first set of revised proposed rules on January 8, 2008. The commission also scheduled a hearing on the revised rules and regulations for February 27, 2008. Subsequently, concerns were raised by certain parties that the commission lacks statutory authority to regulate crossing agreements. As a result, interim study LR313 was introduced by Senator Fischer to examine the need for a uniform procedure for dispute resolution regarding crossing agreements between entities and railroads. This committee held a workshop on LR313 on August 22 of last year. LB181 is the bill resulting from the work done on interim study LR313. As you have previously heard, the commission's involvement with crossing disputes between railroads and telecommunications carriers only arises if one or both of the parties voluntarily petition the commission's involvement. LB181 simply gives both parties to such agreements an avenue to move the process along if costly delays are occurring due to a few terms which an agreement cannot be reached. I urge your support of LB181 which does establish a reasonable framework for resolving disputes relative to the construction of telecommunications infrastructure which crosses railroad right-of-way in Nebraska. I'd be happy to answer any questions that you may have. Thank you. [LB181]

SENATOR FISCHER: Thank you, Mr. Schram. Are there questions? Senator Hadley. [LB181]

SENATOR HADLEY: Yes, thank you, Senator Fischer. Mr. Schram, just a quick question. Was the PUC involved at all in sending the \$1,250? Did you enter into any of those negotiations with the parties? [LB181]

TIM SCHRAM: The staff may have had some discussions. I have not personally. [LB181]

SENATOR HADLEY: Okay. [LB181]

SENATOR FISCHER: Other questions? Senator Gay. [LB181]

SENATOR GAY: You had mentioned here that...the concerns with delay. How long of delays were you talking about here, for the customer could provide service? [LB181]

TIM SCHRAM: From what we've heard at the commission, sometimes delays can range

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up to a year, year and a half and for just basic service. [LB181]

SENATOR GAY: Thank you. [LB181]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Schram. [LB181]

TIM SCHRAM: Thank you. [LB181]

SENATOR FISCHER: Other proponents, please. Good afternoon. [LB181]

ERIC CARSTENSON: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Eric Carstenson, Eric is E-r-i-c, Carstenson is C-a-r-s-t-e-n-s-o-n. I'm the president of the Nebraska Telecommunications Association and their registered lobbyist. The NTA is a trade association that represents the local exchange carriers throughout Nebraska. I'm here today to present our support for LB181. My interest in this legislation really began several years ago. Here's the problem. Federal law requires our members to serve customers within their service territory. And to serve those customers, sometimes we have got to cross the railroads right-of-way. Now, when we cross the railroads right-of-way, railroads charge telecommunications companies a fee. Now we agree that there can be costs associated with us being in that right-of-way. And some sort of a reasonable fee to recover those costs is acceptable. In some cases, this is no longer the actual practice. Some railroads have even delegated right-of-way management tasks to separate private companies which have their own interest in creating profit centers. Seeing the problem developing several years ago, some leaders in the telecommunications industry tried to resolve this problem by unofficially meeting with representatives of the railroads and other telecommunications companies and other companies that are similarly affected to see if we could develop a solution without seeking a legislative remedy. It was a productive meeting and a number of the companies, railroad companies said that they would go back and try and work with their respective companies to see if they could develop a resolution. We thought it was a very productive meeting so we waited. We waited and no change ever happened, and it became clear that the telecommunications industry would have to take the initiative. And the first step was to figure out just how big of a problem we have. So the NTA conducted a survey of our membership. We got about a 33 percent response on our survey. It showed a problem existed. How big of a problem? It's really in several areas. One has to do with the time delays, another has to do with costs, and another one has to do with the kinds of terms. There are other testifiers who are going to follow me that are going to give some specific examples, but I want you to be aware that these examples are really illustrations of what's going on throughout the state. In Nebraska many companies bill the universal service benchmark rate of \$17.50 per month per residential customers. That means that over the course of the year, our companies collect \$210 per residential subscriber. The NTA survey showed a great deal of disparity

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between what railroads charge. When we looked at (inaudible) charges, one of our members is paying \$5,300 over a five-year period, while the lowest fee in our survey was \$75. One-time license fees would equal disparity with the lowest being about \$300. So you can see these costs make it uneconomical to serve some customers but the federal law requires our members to serve them anyway. Nebraska companies provide good service throughout the state and have worked hard to deploy state of the art technologies throughout the state. NTA members that are going to follow me will tell you about significant obstacles like time delays, and requirements to buy insurance that is only available through a railroad company, and costly contracts to cross right-of-ways. All of these are reasons why LB181 should be advanced and ultimately passed. That concludes my testimony. I'd be happy to answer any questions. [LB181]

SENATOR LOUDEN: Okay. Questions for Eric? Senator Hadley. [LB181]

SENATOR HADLEY: Mr. Cartenson, quick question. If \$1,250, was there methodology to arrive at \$1,250 or how was that number arrived? [LB181]

ERIC CARSTENSON: Not that we participated in. But it seems, it's, as we've talked about it, it seems like a fair number for an annual, or for a one-time fee. [LB181]

SENATOR HADLEY: Okay. The second question I have. The actual cost of crossing the right-of-way, does the railroad handle the actual crossing either the work involved in crossing the right-of-way or does it, would telecommunications do that themselves? [LB181]

ERIC CARSTENSON: There are going to be people following me that actually had in the field experience, but on a general basis we've typically...our members typically enter in the public section of the right-of-way going very deep, and some of my members will be able to tell you how deep, and then we exit again on the public right-of-way. So we run a little tiny wire through it, sometimes many, many feet deep, never touching the railroad crossing. [LB181]

SENATOR LOUDEN: Other questions? [LB181]

ERIC CARSTENSON: Thank your for your time. [LB181]

SENATOR LOUDEN: Seeing none, thank you, Eric. Next testifier please. [LB181]

BRIAN THOMPSON: (Exhibit 2) Good afternoon. My name is Brian Thompson, and that's spelled B-r-i-a-n T-h-o-m-p-s-o-n. I am vice president of External Relations for Consolidated Companies, Inc. We provide telephone, cable, high speed internet, long distance, and many other telecommunications services in west central Nebraska. I don't want to reiterate a lot of things but I wanted to tell you basically a list of kind of facts, of

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what's going on with our undercrossing situations around the state. Our service territory covers 9,000 square miles in about 24 communities, not all of them are recognized as full-blown communities but several communities along Highway 23 in south central Nebraska, Highway 2 in north central Nebraska and along Interstate 80 both east and west of North Platte. Today I'm here in support of LB181. I was compelled to explain how these costs of Consolidated's current undercrossings have been increasing significantly over the last few years. I've analyzed the last three...the three companies Consolidated is required to undercross. These are the Union Pacific Railroad, Burlington Northern Railroad and the Nebraska Kansas Colorado Railroad. In the case of the Union Pacific Railroad we have undercrossings with those folks and it is a very workable one-time fee structure that we've seen from the last undercrossing that we've done. Our rate in that case was around \$2,000. We don't tend to negotiate these rates. These are the dictated rates that are given to us when the contract is sent to us. In the case of the Burlington Northern Railroad, we undercross them many places along Highway 2 and they use a management company called Railroad Management Co. III, LLC. Burlington Northern bills us annually for having these buried crossing and in 2007, those buried crossings averaged \$69.90 per year per crossing. In 2008 we found that Consolidated's undercrossings cost an average of \$82.87 per year per crossing. That's an 18.5 percent increase year over year. We also have to pay an original engineering, construction and insurance fee at the time that we do the actual undercrossing. And the third company Consolidated crosses is the Nebraska Kansas Colorado Railroad using an undercrossing management company called LandRail, LLC. Nebraska Kansas Colorado bills us annually for having buried crossings for our lines. In 2007 these crossings cost on average \$709 per crossing per year, ten times more than Burlington Northern. In 2008 we found that undercrossings had increased in cost to \$762 per crossing per year. That's a 7.5 percent increase. We also have to pay our original engineering and construction fees when doing a new crossing with the LandRail group. I received a letter dated January 20, 2009, and this letter indicated our 2009 increased to be \$872.84 per crossing per year. If all of Consolidated's crossings increased to that amount, that would be a 14.46 percent increase on average. That seems to be getting out of control in terms of the price increases. In many cases these crossings serve only one customer in a rural area. Mr. Carstenson had discussed with you the \$17.50 benchmark rate from the Public Service Commission which yields \$210 a year. Well, it takes four customers just to cover the crossing cost and if they're only serving one, that's definitely a problem. In 2008 Consolidated paid over \$11,400 to LandRail for our undercrossings for annual rent payments. This situation is changing the way that we're thinking about billing to our customers, local rates. Somehow we have to cover these costs and the carrier of last resort that we are, serve these customers who request service. Consolidated can ask a customer to aid in construction at the original construction time, but after that we have a hard time asking for on-going rental costs that are going up significantly. LB181 seems to be the best solution to a problem which is growing annually. If the crossing costs are allowed to grow at these rates we will not be able to justify crossing the tracks to serve customers. Our company serves

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customers for hundreds of miles adjacent to these three railroads that I've identified. I would ask that you please vote to pass this bill out of committee and on to floor for full debate. I'm happy to take your questions. [LB181]

SENATOR LOUDEN: Any questions for Brian? Senator Janssen. [LB181]

SENATOR JANSSEN: Thank you, Senator Louden. Mr. Thompson, something came up when you were giving your testimony that I kind of wondered about. I guess I should have probably figured this out on my own, but I was going along with the assumption that you put a tunnel under these railroad lines, you have one customer but indeed there's several. How many customers could be accommodated by just one undercrossing? [LB181]

BRIAN THOMPSON: That's a good question. The...it's varied, it's varied is the best answer. In some cases we're going under the railroad with a fiberoptic cable that is going to cover customers throughout our company as a total network or a long distance facility or an internet background facility. In many other cases we'll have a customer build a home on the north side of the tracks where there's never been a customer before, and we will have to bury facilities under that track which it might be a fiberoptic line or a copper line to go directly into that one customer's home to provide one telephone line or internet service or whatever the case may be. So it varies all the time as to, you know, what we're doing, but when you put in that undercrossing typically we build them with some extra capacity so that in case there was a reason for us to cross under the tracks again we would have that capacity. [LB181]

SENATOR JANSSEN: Thank you. [LB181]

SENATOR LOUDEN: Senator Campbell. [LB181]

SENATOR CAMPBELL: Thank you, Senator Louden. Mr. Thompson, you clearly outlined that this is an annual amount which just is raised, I mean, you're notified of the amount that you'll have to pay. Is there a cost of maintenance for either you or the railroads in this line? [LB181]

BRIAN THOMPSON: To my knowledge I don't know of any cost of maintenance for the railroad but from our standpoint we have to maintain those facilities from any number of different things. I mean there could be lightning damage, there could be gopher damage, there could be all types of different things that could end up causing a problem. Typically when we bury facilities under the railroad we would bury them in a conduit that would protect those facilities that go directly under the rails and in the right-of-way, and typically we come up on each side 60 or more feet away in the private area where we would come up into a pedestal and then go to the customer's facility. [LB181]

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SENATOR CAMPBELL: Thank you. [LB181]

SENATOR LOUDEN: Senator Hadley. [LB181]

SENATOR HADLEY: Senator Louden. Thank you, sir. A quick question. You have stated Consolidated can ask the customer to aid in the original construction costs to serve a location where there has never been service before. Does that mean if I'm on the other side of the railroad tracks and UP comes in and says it's going to be \$2,000, you can go to that customer and say if you want service and it's going to be \$2,000, you're going to have to pay the \$2,000 to get the service. [LB181]

BRIAN THOMPSON: The way that works in most cases is that there is a tear up process at the Public Service Commission that companies set up so that they are able to ask for an aid in construction. If your facilities are so far away, usually a third of a mile, half of a mile, a mile away from where a new customer is putting in a new home or business, they could ask for aid to construction to build to that new facility, whether it's across the tracks or whether it's not. And so that's how we could ask for aid to construction to a new facility. Now if we have a customer who...we have a facility on the south side of the track and we have a new customer home that's built on the north side of the track and that distance is 120 yards, we would usually never asks for aid to construction because the distance is so short and that's based on that tariffed distance that the Public Service Commission maintains. [LB181]

SENATOR HADLEY: But just a...can I follow up with just one. So you wouldn't ask the customer though to pay part of the tab for this charge or would you? [LB181]

BRIAN THOMPSON: For the undercrossing specifically? [LB181]

SENATOR HADLEY: Yes. [LB181]

BRIAN THOMPSON: Not if it's in a short distance from where our facilities already are. If there was a long significant distance to the facility and that actually included another crossing we would then use...ask for aid to construction because that construction is not only the undercrossing but a significant length of cable. [LB181]

SENATOR HADLEY: But the aid to construction would that come from the Public Service Commission or the person you're giving the service to? [LB181]

BRIAN THOMPSON: The person that we are giving the service to. The person who has requested the service would have to help pay for building the facilities to them. [LB181]

SENATOR LOUDEN: The question I would have is this \$1,250, would you feel

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comfortable with paying that then for that crossing? [LB181]

BRIAN THOMPSON: Yeah, I think that is a reasonable rate. And the rate for the one-time fee at \$1,250 that's in the bill is, I think, a fair and reasonable price structure. I wasn't involved in negotiating that number but it definitely would seem like something that we would be happy to live with as a company. And you can see from my testimony that we pay well over \$1,250 on an annual basis on some of these and it's just exploding, our rates are. So if we could get a one-time fee process, that would be significantly better in terms of providing the service. [LB181]

SENATOR LOUDEN: Now with all the railroads here, the Nebraska Kansas, do you have to go down 12 feet to go under theirs also? [LB181]

BRIAN THOMPSON: Typically we are down in the 15 foot range when we go under. [LB181]

SENATOR LOUDEN: And that's with all three railroads that you work? [LB181]

BRIAN THOMPSON: All three railroads. And we have to usually provide an engineering diagram that identifies, you know, the length that we will be away from the track as well as the depth that we will be throughout from the start of the construction process to the end of the construction process and all throughout. So we provide a full depth engineering diagram that will indicate that. [LB181]

SENATOR LOUDEN: Okay. Any other questions? Seeing none, thank you. And since Senator Stuthman has returned, he's Vice Chairman of the committee, I'll turn the committee back over to Senator Stuthman. [LB181]

SENATOR STUTHMAN: Thank you, Senator Louden. Are there any other proponents? Good afternoon. [LB181]

WYMAN NELSON: Good afternoon, Mr. Chairman. My name is Wyman Nelson, it's W-y-m-a-n N-e-l-s-o-n. I am a vice president of Great Plains Communication. We're headquartered in Blair but we serve approximately 80 communities around the state of Nebraska with telecommunications, cable TV and broadband. We appreciate your considering this issue. And let me start by telling you what we do on a directional bore and what the circumstances are and then I'll give you a couple examples where we've been delayed well over a year and up to a year and a half. A directional bore goes down underneath. We enter...generally we are on a county road right-of-way or the city right-of-way. It's generally always on a road right-of-way of some sort. We start outside of the railroad road right-of-way. We go down underneath and as Mr. Thompson said, generally we are down a minimum of 15 feet underneath the tracks. We come back up and we come out, outside of the railroad right-of-way. We too also put innerduct

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underneath and it's about a 2 inch pipe so it's very unintrusive and then we run fiberoptic cable through it, which is just simply putting lights through it. There's no electrical current of any sort. As far as our specific example, and these are specific, however we deal with various railroads in the locations that we are around the state, and we too have experienced general problems with not only the fees but sometimes the timetable as well. We had two crossings in Grant, Nebraska, that we needed to get completed. We had all the rest of the fiber on both sides of the track completed and it was necessary so we could pump broadband farther out into the countryside, out into the rural areas. We started with the railroad company out there and we were told that it would be a \$750 application fee and that was simply to determine how much the license fee was going to be, which they wouldn't tell us what it was going to be. We finally got them to the point where they said, well, it's probably going to be about \$2,000. And quite frankly, that was so far over what we were accustomed to paying that we just simply bowed our necks and said, no, we're not going to play that game with you. They also wanted a annual fee and Great Plains position has been once that cable is there, there's nothing else the railroad needs to do to it, be concerned with it. They need to know where it's at and we want them to know where it's at, so we've taken the position for a number of years that we do not pay an annual fee. We will pay a one-time fee up front. I ended up dealing over the course of about a year and a half, just short of a year and a half, with four different individuals with the real estate management company. Every time I dealt with a different one, the fee kept changing, which had me wondering how they were determining the fee when it could change just on a different individual getting involved. It went from \$450 plus \$200 to a \$1,000 administration fee, plus \$1,000 for the engineering review, plus \$800 if we needed to do any surveying or enter the right-of-way at all. And then there would be an annual fee of \$2,000. Once again, I declined their offer. Then it went to a one-time application fee of \$5,000, which again was far, far in excess of anything that we were accustomed to paying. In the process, it held up deployment of broadband to those customers in improved service because we couldn't connect across an 80 foot stretch of ground with what we deemed to be a reasonable fee. I'll be honest with you, I think we finally got it settled because they just got tired of me. We wouldn't give in and at that stage of the game it was a matter of principle for us. But I encourage you to vote for LB181. If we can get along with the railroads we certainly intend to do that and work out agreements, but we certainly see a benefit in this in having a backup so that if we can't get that agreement we have some way of getting service out to that customer and getting it resolved. So I thank you for the legislation. I appreciate your voting in favor of it, and if you have any questions, I'd be happy to answer. [LB181]

SENATOR STUTHMAN: Thank you, Mr. Nelson. Does the committee have any questions? Senator Hadley. [LB181]

SENATOR HADLEY: Senator Stuthman. Mr. Nelson, one quick question. You said at times you go down the city or county right-of-way to bore down originally, and then

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going underneath or on top. Do you have to pay the city or the county a fee for using their right-of-way to start the process? [LB181]

WYMAN NELSON: No, no, and we simply go on the public right-of-way. Simply there's a...statutorily we have the right to be on county and state highways. Individually with each city it's a different arrangement but I'm unaware of any of our towns that charge us to get on the right-of-way. And we do that simply because to obtain private right-of-way is very difficult and very expensive. So that's where we'll cross. [LB181]

SENATOR HADLEY: Thank you. [LB181]

SENATOR STUTHMAN: Senator Campbell. [LB181]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Mr. Nelson, have you ever had to go back in and repair the line that you've put under? [LB181]

WYMAN NELSON: If we do, we...all we do is pull another line through that innerduct, through that conduit that we have down there. As Mr. Thompson said, unless it's gophers or something like that, no. Once it's in there it's virtually maintenance free. [LB181]

SENATOR STUTHMAN: Any other questions? I have one. Mr. Nelson, when you go down a county road right-of-way, you do get permission granted to do that, right? You go before the board? [LB181]

WYMAN NELSON: Yes. Whether it's the board or we get a hold of the county road superintendent generally and we show him what we're going to do and where we're going to be. And generally it's a very informal approval process. [LB181]

SENATOR STUTHMAN: Okay. But the county has on record where your line is, right? [LB181]

WYMAN NELSON: Yes, and if they're going to be digging, hopefully they're calling diggers hotline before, so they know exactly where it's at. [LB181]

SENATOR STUTHMAN: Okay. Thank you, Mr. Nelson. Any other questions? Thank you. Any other proponents? Good afternoon. [LB181]

ROB LOGSDON: Thank you. Senator Stuthman and members of the committee, my name is Rob Logsdon, that's R-o-b L-o-g-s-d-o-n. I appear here today in my capacity as president of the Nebraska Cable Communications Association. This association provides telecommunication services to over 170,000 households throughout Nebraska. The association supports LB181 because it provides a structure for resolving issues

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between telecom providers and railroads regarding the access to right-of-ways. For those situations where it takes longer than 60 days to resolve access issues, it will be beneficial to our association members and their customers to have a mechanism in place to assist in expediting the process. I would welcome any questions. [LB181]

SENATOR STUTHMAN: Thank you, Mr. Logsdon. Does the committee have any questions? Senator Campbell. [LB181]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Mr. Lodgson, did you serve on the working group that came up with the bill? [LB181]

ROB LOGSDON: I attended the meetings. [LB181]

SENATOR CAMPBELL: Okay. Thank you. [LB181]

SENATOR STUTHMAN: Okay. Any other questions? Seeing none, thank you for your testimony. [LB181]

ROB LOGSDON: Thank you. [LB181]

SENATOR STUTHMAN: Any other proponents? Any other proponents? Any opponents? Good afternoon. [LB181]

DALEN WINTERMUTE: Good afternoon, Senators. Thank you for having nice warm weather up here for us today. My name is Dalen Wintermute, that's spelled D-a-l-e-n W-i-n-t-e-r-m-u-t-e. I'm the manager of Land Revenue Management for BNSF Railway Company. That's...Land Revenue Management is a fancy term for real estate department. I've prepared a written statement I'd like to read regarding LB181. But first, I'd like to begin with a brief outline of our permitting process that might help you understand how we go through the process, and since one of the major issues is timing. An applicant for a license agreement can go to BNSF's Web site and download an application, which has instructions for completing it. And the instructions includes a list of information we need in order to process the permit and it has contact information for our outsource partner, Jones Lang LaSalle, who is our business partner that processes the applications. Upon their receipt of the applications, JLL forwards the plans and specifications that are received with the application to our engineering partner, Bartlett & West, who will review the plans to ensure they comply with our utility accommodation policy. That's our safety specs. And once they confirm they meet those, they will prepare an exhibit print that then goes back to JLL to attach to the license agreement. JLL then forwards the agreement to the applicant to execute it and return it with the fees, at which time we also request their insurance information be sent to another third party, which is Ebix that reviews those and makes sure that they're in proper form. Once they, JLL receives the executed agreement back from the applicant and an insurance

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approval from Ebix, then they forward the agreement to me for execution. I review it and execute it and return it to JLL and then they submit it to the applicant. Therefore, we have a fully executed agreement that's out to the applicant. We then forward our counterpart back to Bartlett & West so they can post it to our corporate maps and also then file it in our corporate records. And that in a nutshell is our process. And I'll get to the timing issue of how long it takes us to get to that towards the end of my statement. Shifting now to BNSF's concerns with the proposed bill. The requirements in the bill, they address some of the issues, but leave open to argument many terms that are already addressed in our forms of agreements, such as nonexclusivity. What information would be required to be submitted with the application or the railroads ability to request additional information. There's no process for reviewing and approving the plans or specs provided with the applications. It ignores the federal and other railroad safety requirements that are key to us. The bill contradicts itself in stating it doesn't supersede the rights of condemnation while at the same time fixing an arbitrary price. That there's no escalation. It's \$1,250 now. Is that forever? You know, there's no escalation included into that. Another concern is, we have obligations internally to...in contracts that some of these we just can't do. We can't warrant title. Railroads don't have full gamut of title to our property and we have mortgages that we cannot subordinate to a license agreement. The bill requires the parties to negotiate an agreement within 60 days. However, our concern is that the telecoms could use that time frame to just not negotiate in good faith if they think they have a better chance, getting better terms with the PUC. And regarding concern with the cost and insurance, we all seen lately in the news, even largest corporations are having trouble with solvency. The indemnities that are in our agreement are only as good as the financial ability of the company to back those up. And that's why we have insurance. We have it on our cars. We have it in all parts of our lives now. It's my understanding and from hearing today, that a major factor in proposing the legislation is the time it takes to process an agreement and to get it in place. As such, I wanted to find out how long does it take BNSF to get that done. So I had a report generated and I did 2007 and 2008 just so we can see, are we getting better, are we getting worse, just what it is. And in 2007, these were for communication agreements, 2007 the average time it took us once...from getting an application to sending an agreement to the applicant to execute it, was 25 days. In 2008 it was 19 days. This clearly indicates that BNSF is very responsive to requests for permits across our property. BNSF is willing to continue to work with telecommunication carriers on outstanding issues and strongly feels that the proposed legislation is unnecessary. Thank you for your time and consideration of my comments. [LB181]

SENATOR STUTHMAN: Thank you, Dalen. Are there any questions from the committee? Senator Fischer. [LB181]

SENATOR FISCHER: Thank you, Senator Stuthman. Thank you for being here today. I'm sorry I missed the proponents. I'm sure I would have had questions for them too.

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You mentioned federal safety railroad requirements. Could you give us some examples of those? [LB181]

DALEN WINTERMUTE: I'm not in the engineering department but I know that we have a utility accommodation policy that lists out all of our requirements, height, depth, casings, all of that information. And having it all written out that way...and it's on our Web site so telecommunications, electric providers, pipelines, everybody can go and see how they need to design their specs so it's not a back and forth. You don't design it one way and then you say, nah, this week we want it differently. [LB181]

SENATOR FISCHER: So these are federal requirements that every, I guess, that you implement in every state. They're federal requirements? [LB181]

DALEN WINTERMUTE: The federal ones, the federal ones are and our...the ones that are specific to the railroads, I can't speak for the other railroads, but ours are standards that apply through all of the states that we operate. [LB181]

SENATOR FISCHER: So are they...are the requirements by the federal government or are they requirements that you have put on yourself? [LB181]

DALEN WINTERMUTE: They are the federal requirements that we have to abide by and they're... [LB181]

SENATOR FISCHER: So every railroad then has the same requirements, correct? [LB181]

DALEN WINTERMUTE: Every one has, I'm sure, has the same federal ones. But I think the ones that the railroads feel are even more important maybe go a little farther. Those, I think, could vary but ours are not state specific. We have one set that if someone lives up to what we have in our utility accommodation policy, they should be fine. [LB181]

SENATOR FISCHER: Okay. You mentioned that the time involved in this isn't much. You know you did your survey there, the 2 years, 25 days, for an agreement. Was that your average for all states? [LB181]

DALEN WINTERMUTE: I just pulled Nebraska. [LB181]

SENATOR FISCHER: Oh, that's the average in Nebraska. [LB181]

DALEN WINTERMUTE: That's Nebraska. [LB181]

SENATOR FISCHER: Just 25 days and these telecommunication companies can get an agreement from you. Is that right? [LB181]

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DALEN WINTERMUTE: I'm sorry. I didn't hear the very end of it. [LB181]

SENATOR FISCHER: Oh, the companies can get an agreement from you in 25 days, right? [LB181]

DALEN WINTERMUTE: That was in '07. It was 19 days in '08. [LB181]

SENATOR FISCHER: So what are they complaining about? [LB181]

DALEN WINTERMUTE: It's not BNSF. I don't know what the time frame for the other railroads but we've got...we watch our costs and we've got a team and they really, they work really hard. We get about 1,500 agreements a year requests and, you know, it takes a little bit of time to get the application, get it to Bartlett to review those specs, and that includes if there's something wrong with those specs and we have to go back. But from the time we get it to the time we can send them an agreement to sign, it's 19 days. So, you know, what they're doing with the rest of the time, I don't know if they're redlining, reviewing, but the time we can get them an agreement that they can sign, on average last year was 19 days. [LB181]

SENATOR FISCHER: Oh, so, maybe I misunderstood you in your testimony then. So the time that you've reached an agreement and that your company sets it all up then, gets it in writing to when you send it to the companies, is 19 days. [LB181]

DALEN WINTERMUTE: No, ma'am. [LB181]

SENATOR FISCHER: It's not the process in leading up to the agreement? [LB181]

DALEN WINTERMUTE: No, when we get the application we get an exhibit prepared by Bartlett and we send them an agreement to execute. They execute first, then it comes back with the insurance and the fees, and then it comes to me for execution. We execute last. [LB181]

SENATOR FISCHER: But this is after you agree? [LB181]

DALEN WINTERMUTE: No, this is the time frame for when they apply and we send them an agreement. So it's good to point that out that if they're really concerned about time, they can sign our agreement and send it back and we're done within 30 days. [LB181]

SENATOR FISCHER: What if they don't like your agreement? [LB181]

DALEN WINTERMUTE: Exactly. They're...that's where we get to the... [LB181]

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SENATOR FISCHER: Aye, there's the rub, right? [LB181]

DALEN WINTERMUTE: Right. But the fact is we're not delaying them at that point. [LB181]

SENATOR FISCHER: Do you negotiate the...I'm sorry, I'm going on on this. Forgive me, again, for missing the proponents. Do you negotiate agreements ever or do you just want them to sign what you send them. [LB181]

DALEN WINTERMUTE: We negotiate, and... [LB181]

SENATOR FISCHER: Then is it 19 days if negotiations involved? [LB181]

DALEN WINTERMUTE: No. That's where...we're very proactive. We have outside counsel dedicated to that. There are business points that I review, legal points that our person reviews and we get those back. Now, there's no time frame for the other side to, you know, have their attorney to review it, get back to us. Beside they're, you know, not really ready yet to proceed with this. They want to provide the railroad protective liability for the construction so that's where the delays are. But I don't see those as being assessed because we're proactively working. We've given them an agreement. Sure, not everybody likes it and there are points we can concede on it and work with them on and we do that. And we spend a lot of money on outside counsel to do that. That's...this \$1,200 we eat that up, you know, quickly. [LB181]

SENATOR FISCHER: The problem I have, the Burlington goes through part of my district, the southern part of my legislative district, and when I have constituents that are waiting for a telecommunications company to lay down some line and that company is in negotiations with your company, my constituents aren't being served, I don't believe in a timely manner. Would you agree with that? [LB181]

DALEN WINTERMUTE: Yes. [LB181]

SENATOR FISCHER: So how can we move forward in trying to address that and speed the process along? [LB181]

DALEN WINTERMUTE: Have them sign the agreement. (Laughter) [LB181]

SENATOR FISCHER: Just do it my way and everything will be great, huh? [LB181]

DALEN WINTERMUTE: We prefer not to even have them there. But as good corporate citizens we, (laughter) we know they have to be there. You know, people want their MTV. So... [LB181]

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SENATOR FISCHER: Yes, we do. [LB181]

DALEN WINTERMUTE: So we accommodate that and we have forms that have been developed over the last 100 years that we feel...for us taking on the risk of somebody being there, we're not stopping them. We're allowing them to be there, but we're running a railroad which is a linear network and for \$1,250 or \$2,500 over, you know, is a perpetual 20 years, 25 years, call it \$50 or \$100 a year to have this thing dangling over our line, it can fall, it can be in our ways or underneath, you know... [LB181]

SENATOR FISCHER: Well, how does society...and I know the importance of railroads. You know, I love you guys, so but how does society deal with this linear network going through our states when our constituents cannot be served with what I view as basic infrastructure rights? That's what this boils down to for me. [LB181]

DALEN WINTERMUTE: We negotiate our forms, and... [LB181]

SENATOR FISCHER: But that's like saying to somebody, you have to sign this contract or you have to sign the contract. You have no choice. We're the railroad, you have to sign our agreement. This is it. Or you have to sign our agreement. That's what I'm hearing. [LB181]

DALEN WINTERMUTE: I believe there's condemnation rules, laws that are in place they could condemn and then that goes back to the fixing of the \$1,250 price. There's a vehicle in place for them to get what they want. But that will probably take longer than working with us on an agreement. If I was saying, no, we will not redline our agreements, you will sign our agreement, take it, and we're going to railroad you... [LB181]

SENATOR FISCHER: So to speak. [LB181]

DALEN WINTERMUTE: ...so to speak, that's one thing. But we do...and approximately, I believe it's 60 percent systemwide, people sign our standard forms. And they're not that bad. They don't like... [LB181]

SENATOR FISCHER: Just here in Nebraska they're kind of ornery or what? [LB181]

DALEN WINTERMUTE: I'll take the Fifth on that one. (Laughter) [LB181]

SENATOR FISCHER: I won't put you on the spot. I'm sorry, I'm sorry. I had one more question. You talked about that it was an arbitrary price that was in the bill and there was no escalation of the price. Do you want us to escalate the price in the bill? [LB181]

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DALEN WINTERMUTE: Well, the...that goes back to and we'll get to that in the next bill on the electric, there's...Union Pacific has had a \$1,500 fee. You know, that's over 10 years old. If we say this \$1,250, 50 years from now are we still \$1,250 when the price should be \$5,000, \$10,000. Yeah, it goes back to the condemnation laws specifically designed so that people pay fair price for crossing other people's property. [LB181]

SENATOR FISCHER: Okay. Thank you very much. [LB181]

SENATOR STUTHMAN: Senator Gay. [LB181]

SENATOR GAY: Thank you, Senator Stuthman. You said 60 percent of the time you're getting an agreement signed, is that what you just said? So 40 percent of the time your going to be in, going under the PSC probably because you have a disagreement. Because if you can't agree with that person, one of the two is going to come to the Public Service Commission and then Section 4 it says that there is special, if there is a belief a special circumstance exists for the placement of the line, you know, you can petition the commission for relief from this. I assume that means UP as well. So 40 percent of these are going to be going to the Public Service Commission is what you believe, \$1,200 doesn't quite cut it on your end of the deal. And so they would have pretty big latitude there. What's the average fee then, your cost? [LB181]

DALEN WINTERMUTE: I believe \$2,500. [LB181]

SENATOR GAY: Over half is what you believe is what she was getting at. [LB181]

DALEN WINTERMUTE: So this is, this is half, yeah. And it's...yeah, it's half. [LB181]

SENATOR GAY: But at some point, I mean, at some point as Senator Fischer brought up too, where's the commonality, where's this we're looking for here, of and what we're going to have to decide of where you can come to an agreement. Forty percent, I believe, is a pretty high rate to be going to the Public Service Commission. They'd have somebody doing this constantly. What were the numbers you said just alone, was that nationwide or Nebraska? [LB181]

DALEN WINTERMUTE: The numbers I've got are Nebraska, but the 40 to 60 percent that is across our entire system. [LB181]

SENATOR GAY: But it probably go here to. That's a lot of cases. [LB181]

DALEN WINTERMUTE: Anything that's a change to our form comes to me. That could be we decide to adjust our insurance awards. They wanted 90 days if we need them to relocate instead of a 30 days relocation. It can be minor. It can be a full-blown major, you know, redline of every term. [LB181]

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SENATOR GAY: Okay, then one more. Did you have, do you have a representative on this, this summer, this legislative resolution? Was somebody on that committee from your railroad? [LB181]

DALEN WINTERMUTE: As far as the 19 days, it's interesting. The one on here Consolidated. It's only five of them last year so let me, Time Warner was four days, Qwest was 14 days for one, 4 days for another. [LB181]

SENATOR GAY: Yeah, I'm not interested in that. Did you have a representative though on this 14 group? Was there a representative on the working group that came up with this \$1,250? [LB181]

DALEN WINTERMUTE: No, no, we don't know...and I haven't heard anyone else say where that number came from other than it's half of ours. [LB181]

SENATOR GAY: All right. Thank you. [LB181]

SENATOR STUTHMAN: Senator Hadley. [LB181]

SENATOR HADLEY: Just a couple quick questions. Am I hearing you correctly, Mr. Wintermute, are you completely opposed to a time frame before it would go to another agency for resolution? Is 60 days, you know, if 60 days isn't good, is 120 or 180 or is there a time that it should go to a third party to get it resolved? [LB181]

DALEN WINTERMUTE: My concern with that, Senator, is that the other side will use that if they feel they got a better audience with the PUC than they have with us, and we're only in control of our side of it. And, you know, we're getting an agreement to them, we're working and we're redlining. And my understanding from the last, last August, the PUC does not want all of these coming to them. They even have a form that we say that we'll work it out and not go to them. So, you know, I don't think that we want to spend all of our time, which we're trying to get 1,500 agreements a year through a pipeline, taking people away from that to then have to go to the PUC every time we have a disagreement, when we can work it out almost all of the time. [LB181]

SENATOR HADLEY: Then one last question then. What happens if you and central telephone or whoever it might be, having legitimately cannot reach an agreement. Does that mean this customer is without, will not have communication service because you two can't ever reach an agreement on what we should do? [LB181]

DALEN WINTERMUTE: No sir, they can condemn their rights across us. They can go through that process that's already set up. They pay us what the appraiser says it's worth out there and they get their rights that way. It takes longer. It's not good for either

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of us. We give up some of the things out of our agreement, the relocations, and things like that. So we don't like that. But they don't like it because of the timing so we try to keep it short. We redline quick. We try to get an agreement in place so we don't go to condemnation, don't involve the PUC. [LB181]

SENATOR HADLEY: What is the redline, I, I...I don't know what that term means. [LB181]

DALEN WINTERMUTE: Oh, I'm sorry. That's where they want to make changes to our document. The electronic format, most people put it strikethroughs and red or adding blue, and it's...that's what that is. [LB181]

SENATOR HADLEY: I thought it was something to do urban districts or something we were redlining. [LB181]

DALEN WINTERMUTE: Sounds bad. (Laughter) [LB181]

SENATOR HADLEY: Yes, it does, yeah. [LB181]

SENATOR STUTHMAN: Any more questions? Senator Fischer. [LB181]

SENATOR FISCHER: Thank you, Senator Stuthman. I just wanted to clarify for the record, Burlington was represented at the meeting we had. I was talking to committee counsel and we think we had the meeting in August at the Public Service Commission and Mr. Munguia was there representing Burlington. We had two representatives from Union Pacific. We had short line people there represented. We had a number of the telecommunications companies as well as cable companies and as well as Mr. Hybl and Mr. Schram were also at that meeting. And after that, committee counsel sent out twice, drafts of this legislation to all those people who were involved. So to clarify that, Burlington was involved from the beginning and with the drafts of this bill. [LB181]

DALEN WINTERMUTE: Yes, ma'am. And if that was the way was question was phrased, I'm sorry if I misled you. I thought the question was were we involved, was Burlington involved in setting the \$1,250 fee. That was not your... [LB181]

SENATOR GAY: The question was, were you at the (inaudible) representation? [LB181]

DALEN WINTERMUTE: Were we at the August meeting. Yes, sir, I'm sorry. I was there. [LB181]

SENATOR FISCHER: Okay. I just...that's all right. I wanted to clear up that misunderstanding, so thank you. [LB181]

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DALEN WINTERMUTE: I'm sorry. My hearing is bad and you put me on a plane, it gets worse. [LB181]

SENATOR FISCHER: So is mine and I missed half the testimony, so thank you very much. [LB181]

DALEN WINTERMUTE: Thank you all very much. [LB181]

SENATOR STUTHMAN: One more question. Senator Janssen. [LB181]

SENATOR JANSSEN: Thank you, Senator Stuthman. Mr. Wintermute? [LB181]

DALEN WINTERMUTE: Yes. [LB181]

SENATOR JANSSEN: Thank you. I got that right. [LB181]

DALEN WINTERMUTE: Very good. Luckily it's like it's spelled. [LB181]

SENATOR JANSSEN: I guess a couple of things came up and I think it would be the same question that I would have for the people who would follow, so since you seem to be getting peppered pretty good, I just kind of pile on here a little bit. Not really, but can you at least understand sitting here why in this case, why they would want this, a third party or mediation? I know you say condemnation but from their standpoint I'm looking at it as, they're obligated in some cases, they have to provide this service and it's easy for you, I guess, not easy, but you could throw a number out there and you'd say, well, you can sit on the number if you want, you could sign if you want, but you have a duty to take care of your client constitutionally. And you're holding up the process but you say you aren't because you gave them...and I don't know any specifics of the numbers, but can you see where they're saying, yeah, we want a third party other than, other than this. [LB181]

DALEN WINTERMUTE: Right. I think there are two issues, the timing and the cost. As far as the cost, there was a reference that Burlington Northern is represented by the Railroad Management Company, which we don't like that term because it connotes that they somehow are associated with us. They're a third party property company that purchased a package of permits from us. So they're a third party. Burlington Northern doesn't ask for huge fees. It's usually a \$2,500 fee, which for a 20 or 25 year agreement, you're talking \$100 a year. So, you know, the fees, these are not money makers for us. The issue for us is, can we operate our railroad safely? Can we expand our operations? What happens if this power line falls and slows our operations or stops our operations? Those are our main issues. The fees aren't an issue and so we don't...I don't think anybody will say BNSF is being unreasonable on our fees. [LB181]

SENATOR JANSSEN: And what is this deal when the guy got left, is what...you talk about maybe wanting an escalation but what is the...I'm sitting here to myself and saying, what's the big deal. You put a line underneath there. What's the insurance on that? Has any caved in? I mean, we've...coons, they say they get into them, but raccoons, but I guess we're taking care of that in another matter, but (laughter) I'm just curious what the ongoing cost would be and why you would need to charge more...20 years, to me 25 years that sounds reasonable. They dug a 15 foot hole under the line, and I'd also say that you do have an interest in it because you can't...you're serving goods and bringing goods across the state and we're using them as citizens and we're waiting to get hooked up, so it's kind of a nuisance. If nobody can live on one side of the train tracks, that certainly does apply to your business in a round about way. [LB181]

DALEN WINTERMUTE: Yeah, and that's fair. It helps us set a time frame in the future to look at maintenance issues or the plastic pipes that they're encasing these lines in. Are those deteriorating? Or is there new technology, or have we come up with new technology on the railroad with lines and things that these are interfering with? So it gives us a point in the future and we're a railroad company, 150 year long thinking, what's going to be down the road. So it gives us a point in the future to step back and pull these agreements up because if you don't have a time frame, we've got agreements that are a hundred years old that should have been looked at, should have had a vehicle to say, you know, this needs to be upgraded and the agreements didn't have any provision for that. So we want to look at it down the road, say, is there new technology, is there a better way? Can we consolidate these into some, you know, bundled corridor? And we don't even know what the technology, maybe loaning meet lines across our line in that time frame. And then these can all be made to go dormant and whenever we want to put in a double track or triple track, we don't have to worry about all these lines under us and over us. [LB181]

SENATOR STUTHMAN: Thank you very much, Mr. Wintermute. Appreciate it. Senator Louden, you have a question. [LB181]

SENATOR LOUDEN: Yes, as I was listening to your testimony, Galen, I would like to try and have you describe how is your corporate structure? Do you work for Burlington Northern? Are you a railroader or are you a corporation that goes out and gets these easements or what, how are you...? [LB181]

DALEN WINTERMUTE: I work for the railroad. I work for...it's, it's...in 2005 we shortened the Burlington Northern Santa Fe just down to BNSF so we're BNSF Railway Company now, and I'm in their real estate department. I'm a manager that handles permits and some sales and easements. [LB181]

SENATOR LOUDEN: For this division around here or the Powder River or all the way from the whole system from Fort Worth? [LB181]

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DALEN WINTERMUTE: The whole system, the whole BNSF system. [LB181]

SENATOR LOUDEN: You're stationed out of Fort Worth, then? [LB181]

DALEN WINTERMUTE: Yes, sir. [LB181]

SENATOR LOUDEN: Okay. Now when you mentioned something about as you would give these permissions to cross either under or over and you said something about your mortgages or something like that, why would you because you're just giving an easement aren't you? You don't have to go to a mortgagee to get permission to give an easement do you? [LB181]

DALEN WINTERMUTE: No, our mortgages say we can't subordinate the mortgages so the language had us warranting title and had some language that it would not, that this easement or this license would not be subject to liens. So that means that if it is not subject to it, then it's not subordinate to it and that creates an issue. [LB181]

SENATOR LOUDEN: Okay, because you're going underneath the track and I...or over and you got to be what, 18 or 20 feet or something in order to go over the track. And then I was wondering, like your federal requirements, well, that isn't that much other than the fact that somebody can't string a power line across your railroads rails or use it to generate electricity or something like that. That's about all your federal requirements require isn't it, because as far as that distance under, is that a federal requirement, you got to be 12 or 15 feet or whatever it is to go under? [LB181]

DALEN WINTERMUTE: I'm not sure what... [LB181]

SENATOR LOUDEN: Or is that a railroad requirement? [LB181]

DALEN WINTERMUTE: I'm not sure if we're piggybacking on a federal requirement or what the federal requirement would be for depth under or if they had one. They may not have one because we have one in our utility accommodation policy that specifies that. So I really can't answer your question if our depth that's required by BNSF matches the FRA or if it's more stringent. [LB181]

SENATOR LOUDEN: Yeah, and that 12 or 15 feet from the rails. It isn't from the bottom of the grade isn't it? [LB181]

DALEN WINTERMUTE: I believe it's 15...it's 10 feet under the base of the rail. [LB181]

SENATOR LOUDEN: Under the rail. [LB181]

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DALEN WINTERMUTE: Is the way our language reads. [LB181]

SENATOR LOUDEN: But if you happen to be on a 7 or 8 foot grade, so you don't have to be that deep in the ground. You don't... [LB181]

DALEN WINTERMUTE: Right. Yeah, if we're up on a deep slope, you wouldn't have...it's so that it doesn't impact the integrity of the rails. So you go below that. Yeah, if you got a real high cut, you know, and you got to go 10 feet below the base of the ground that's...you could be 30, 40, 50 feet under and we don't require that. [LB181]

SENATOR LOUDEN: Okay. And I noticed with you mentioned or in somebody's testimony here, that you're charging so much a year for each one of those crossings, it isn't a flat fee? [LB181]

DALEN WINTERMUTE: \$2,500 is one time. It's not annual. [LB181]

SENATOR LOUDEN: You don't have...you're not charging an annual fee. [LB181]

DALEN WINTERMUTE: No, sir. [LB181]

SENATOR LOUDEN: Okay. Then when they come up with the \$1,250 you'd be cutting your fees in half? [LB181]

DALEN WINTERMUTE: Yes. And trying to pay my outsource partners and that would also, if they redline it, it's still the same fee and I pay my attorneys. [LB181]

SENATOR LOUDEN: Well, that's your problem because you've got plenty of attorneys there. (Laughter) Well, some of this testimony we have here. Who is this Railroad Management Company, LLC that's supposed to be the one that they work with in order to get these easements through there? Who are they anyway with Burlington Northern? [LB181]

DALEN WINTERMUTE: It's a subsidiary of a company called Strong Capital and I think they're based out of Dallas. [LB181]

SENATOR LOUDEN: And what do they do? [LB181]

DALEN WINTERMUTE: They manage...they're, I think, a real estate company that has investments and they own a portion of...and it's the older permits that had the annual fees that they purchased and that's where they get to collect the fees on those permits. [LB181]

SENATOR LOUDEN: In other words, Burlington Northern sold a bunch of those permits

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to somebody and they're the ones that are out there collecting the fees all the time?
[LB181]

DALEN WINTERMUTE: That's Railroad Management Company, yes, sir. [LB181]

SENATOR LOUDEN: And that's what they do? But from, like say from today on then, nobody works with them. They would be working with you in order to get a crossing either above or under? [LB181]

DALEN WINTERMUTE: For the new ones, it's the one-time fee, yes, sir. [LB181]

SENATOR LOUDEN: Okay. How long is this Railroad Management been in this business because I was on an REA board, you know, several years ago and we dealt directly with the guy right there in Alliance. We didn't have to go to headquarters. It was all settled there and they sent the paperwork in and it came back and they put the line across. I thought it was like \$250 or so. [LB181]

DALEN WINTERMUTE: Was that with BNSF or the Railroad Management Company?
[LB181]

SENATOR LOUDEN: No, that was with Burlington Northern years ago. [LB181]

DALEN WINTERMUTE: Okay. We're still in north Fort Worth and the people that process the agreements, our outsource company, Jones Lang LaSalle, used to be the Staubach Company. They're on our campus in a different building. We wanted them close so we could get agreements back and forth. Bartlett and Western Engineering firm is in the same building with them. So we've got everybody close so we can process these fast and get them back and forth and that's why we can get them out in the 19 days. [LB181]

SENATOR LOUDEN: Okay. In other words, that's...and what are your prerequisites, I guess, for them to get it out in 19 days, just to agree to go 15 feet under or 20, 22 feet, whatever it is over? [LB181]

DALEN WINTERMUTE: It's 10 feet under and then there's some casing requirements that if they want to be less or if it's...and mainly that's with diameters of pipes and pipelines but as long as they meet our specs that are on, in the policy that's on our line, then Bartlett will check that and if they're in compliance, they prepare the exhibit, the exhibit A print. That goes back to Jones Lang LaSalle, so they know, hey, it meets our specs. We don't have to go to our internal engineering department in BNSF to get this really checked out. They're good enough. They're meeting our specs. We can send an agreement out. [LB181]

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SENATOR LOUDEN: Okay. Then how come this guy was testifying here he was having trouble getting across the Burlington Northern up here along the Highway 2 and places like that? Do you know what the problem was? [LB181]

DALEN WINTERMUTE: He didn't like the language in the agreement is the only thing that I can... [LB181]

SENATOR LOUDEN: What, they didn't like the \$2,500 or they didn't like the 15 feet or 12, 15 feet under? [LB181]

DALEN WINTERMUTE: It could be a combination of those. I don't believe that they really wanted it. That \$2,500 fee is their big issue. It's... [LB181]

SENATOR LOUDEN: Well, yeah, if you got one customer on the other side and you're sending him over internet service at \$60 a month, it's going to take a long time to make the \$2,500. So I'm wondering why it has to be \$2,500, I guess. Why the \$1,250 or even less than that. Because it used to be less than that and I'm wondering why that isn't still possible. I mean, just because you got...you're paying your lawyers more doesn't mean the fee should go up out here should it? (Laughter) [LB181]

DALEN WINTERMUTE: It's an administrative fee that, you know, the market value may be more, it may be less. We're probably losing money on some, but maybe make a little more on some. But when we do and...it's paperwork and the more we can standardize our forms, the easier it is for us to get agreements out to people. So the fact that we're not having to, go ourselves to people, what's this worth to find out what we...you know, should it be more than this, should it be less than this. Having that will cover our cost of having our various outsource partners process these for us. [LB181]

SENATOR LOUDEN: Okay. Then you think that there's...it's reasonable for you to have an increase in fees over a period of years as inflation or whatever goes up, something like that? [LB181]

DALEN WINTERMUTE: Yes, sir. [LB181]

SENATOR LOUDEN: Okay. Then I'll put one more question to you. I joined the railroad for about 8 miles or so when there's these lines that come over to feed your signals and they go across my property all the time and I sign those easements for nothing. Now, can I go out there and start, maybe, perhaps, getting a new fee readjusted every five years on that? [LB181]

DALEN WINTERMUTE: Absolutely. [LB181]

SENATOR LOUDEN: Okay. I'll hire you on then. (Laughter) [LB181]

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DALEN WINTERMUTE: And you're going to make me sign your form of agreement. I'm there every day and I'm between the rock and the hard place of our signal people saying, get this in, we need power, and our business and legal people saying, we can't sign that agreement. And...but, when I request power for one of our signals and I need an agreement from a utility, I'm expecting to sign their form. [LB181]

SENATOR LOUDEN: Okay. And then you'll be willing to pay an extra fee just to put it over there like these other people would be on the other side of the railroad track then? [LB181]

DALEN WINTERMUTE: If there's a cost associated in doing that, I mean, it's...we're granting it on our property so, you know, we're granting rights on our property. But if there are fees associated that you would charge somebody to bring service to them, I don't think we should be an exception. [LB181]

SENATOR LOUDEN: Well, I'm granting you rights on my property in order to get power to your railroad. [LB181]

DALEN WINTERMUTE: Oh, if we're on your property? [LB181]

SENATOR LOUDEN: Yes. That's who...I'm talking about fees for me, not fees for you. (Laughter) [LB181]

DALEN WINTERMUTE: Yeah. That's fair. You should be compensated for the use of your property. [LB181]

SENATOR LOUDEN: Okay. Good. Now I know where to start. Thank you. [LB181]

SENATOR STUTHMAN: Thank you. Any other questions? [LB181]

SENATOR HADLEY: He answered my question. I just wanted to be sure, you're not talking about a yearly maintenance fee though to these...you're saying that there is a one-time fee and we're...it's one of those negotiating what that one-time fee is, but there's not a yearly fee then after that to this... [LB181]

DALEN WINTERMUTE: No, sir. [LB181]

SENATOR HADLEY: Okay. [LB181]

DALEN WINTERMUTE: The only other fee that they would have is if they wanted to come in later and do maintenance on it, then there's that railroad protective liability insurance to protect them but... [LB181]

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SENATOR HADLEY: Sure. Okay. [LB181]

SENATOR STUTHMAN: Thank you, Senator Hadley. Dalen, I think that's all the questions. Thank you very much. [LB181]

DALEN WINTERMUTE: Whew...thank you very much. [LB181]

SENATOR HADLEY: And Texas even lost last Saturday in basketball, so just imagine if you had won. [LB181]

SENATOR STUTHMAN: Are there any other opponents? Good afternoon. [LB181]

LOLA LaCROSSE: Good afternoon, Chairman. Good afternoon, Senators. My name is Lola LaCrosse, and that's spelled L-o-l-a L-a-C-r-o-s-s-e. I'm an attorney with the firm of Mellina & Larson and we are outside counsel for BNSF in permit and license matters. Before I give my testimony, I'd like to address a couple of the items that have been raised by both the proponents and also some things that Mr. Wintermute provided in his testimony as well. One of the things that occurs is if an agreement comes in, an application comes in to JLL and it goes through the process where there is an exhibit print prepared and everything takes place and they get the agreement out in 19 days to the utility. In many cases the utility will come back with changes and that's what we were talking about earlier, about the redlining. They'll come back with changes and these changes can cover all kinds of things. They can cover the fee. They can cover whether or not they need to have insurance. They can cover whether or not they need to have their...whether they have to have flagging for example, if this is crossing over a railway. It also covers a number of other things that are really safety related, and when I begin my testimony, you can see that safety is really the key thing that the railroad is concerned about. Not only for the railroad, but for all of the others who are involved with the crossing process, the employees, the utilities, the people who are, you know, receiving the service and so forth. Also another thing to think about is when...I noticed several questions came up about outside consultants and what are they doing and are they delaying the process. It seemed to the gist of the questions. And the really, the point of the outside consultants is actually to streamline the process and make it safe for everyone. So when the application comes in and there are plans and specifications that are...or whatever document is put in place to be an engineering kind of situation, it needs to go to someone who is skilled in that area. So those are...they're locally, they're on campus, the BNSF campus. Again, also with the insurance, that's something that is...it goes again to somebody within BNSF and they look at that. If there are redline changes, in other words, somebody comes back and says, I've seen this agreement, there are terms I don't like, what can I do. Those agreements come to our firm. And what we do with those agreements is we look at each of the changes and we identify really where they would fit. So for example, if someone is asked a question about, well, I

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think the \$2,500 one-time fee is too high, then in that case I put that as a business decision and that would go to Mr. Wintermute and he would evaluate whether in this particular circumstance, whether that was justified or there was perhaps some mitigating circumstances or perhaps the fee needed to be raised because there were some other things. But generally, that would be a business kind of decision and my understanding is that the \$2,500 is basically the set amount. As Mr. Wintermute said, we don't usually go and look to see, okay, I'm going to make money on this one, we're not going to make money on that one, that way we have it across the board \$2,500. The other thing that...one of the things that was mentioned by one of the proponents was that the legislative bill provides a framework for resolving disputes and it does provide a framework, but however it provides a framework that has holes in it. It doesn't cover all of the things that the railroad should be concerned about and the crossing, the utilities crossings should be concerned about as well. So that is a concern is that the framework that's in this bill is not adequate to protect the interest of both the utility companies and the railroad. With that being said, I'd like to begin my testimony. In addition to the concern about the framework and whether or not it is adequate to really give a process in place that's fair to all concerned, the railroad is also concerned about it's right to use its right-of-way. They're concerned about safety and they're concerned about risk. For example, when you have a construction, the operation, you maintain, you repair a telecom line, that should not interfere with the right of the railroad to use its property for other things, for other operations. They can grant...the railroad should have the right to grant permits and licenses to others as well as long as those purposes do not unreasonably interfere with the crossing by the telecom company. But the LB181 is silent as to whether or not the railroad has this right. It doesn't address that issue at all. With respect to safety and risk, all of us here in this room are aware that any crossing of a railroad right-of-way inherently involves risk whether you're going over the railroad or under the railroad. Any type of interference with railroad operations arising from the construction, the operation, the maintenance, the repair of a utility installation, can result in dangerous consequences, injuries to life and limb, death to persons, damage to property. We all understand this. Yet you also know, many of the provisions that are in a license or a permit, a crossing permit are intended for the safety of all parties, not only the railroad crews and the property, the trains, and so on, operating over the tracks that are on BNSF right-of-way, but also for the safety of the employees and the contractors and agents who are constructing, operating, maintaining, and repairing a telecom line, for example, crossing underneath or over the railroad. The LB181 adversely affects the ability of railroads to keep persons and property safe. The construction, maintenance, operation of a telecom line on, over or under a railroad right-of-way means increased risk of harm to persons or property. To put it another way, if the telecom line didn't cross the right-of-way there wouldn't be an increase in risk. There would not be an increase in risk if the telecom line wasn't there, and with this thought in mind there's several specific items that are of particular concern to BNSF. For example, the legislative bill before the Senators does not contain requirements as to engineering standards or other information that must be included in a crossing application or the crossing agreement.

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The bill does not require a telecom to comply with applicable laws and with the railroad safety rules and regulations in constructing, operating, and maintaining its line. The bill also does not require a telecommunications company to provide appropriate and adequate insurance and indemnification to cover losses that may result from a telecom's or its contractor's acts or omissions when it is constructing, operating, maintaining, or repairing the telecom line. And again, for safety reasons, a telecommunication installation should not interfere with the railroad's operations, not only physical interference but also in the area of interference from the standpoint of interference with signals. Because that again, it comes right back to safety and the concerns that are of great, great import to the railroad. Overall, while BNSF has other concerns with the bills, the ones that I have noted in the last few minutes are the main ones that BNSF has concerns with. And I thank you for the opportunity to speak to you today, and for your consideration in reviewing these points brought forth in opposition to this bill. As noted by Mr. Wintermute in his comments, BNSF is working with the telecom companies. They have reached agreements with the electrical companies regarding issues that affect crossings. So it's not that the railroad is not working towards that, it's something that we think that the legislative, the legislation does not need to be put into place because there is something in place that is being worked on as time goes by. Thank you. [LB181]

SENATOR STUTHMAN: Thank you, Ms. LaCrosse. Does the committee have any questions? Senator Hadley. [LB181]

SENATOR HADLEY: Senator Suthman. Ms. LaCrosse, sitting and listening to the testimony, is this so complicated that we can't get a relatively standard agreement between the communication companies and the railroad that would have very, relatively standard language in it that we wouldn't have all the redlines and 40 percent of the agreements having to go back and forth? I guess, is this really that complicated an area of law and policy that it takes that? [LB181]

LOLA LaCROSSE: Senator, I don't think it is, because as I mentioned BNSF and I believe UP, have also reached agreements with several of the large electric utilities NPPD, SCPPD, a number of others. They've also reached an agreement on a form that would be used with the rural electric associations. So these forms can be negotiated and they can protect both the railroad and the utility companies, and that is one of the things that I think that really goes against having this legislation in place because these things can be negotiated and it's been shown by these other agreements that have been reached with the electric companies. [LB181]

SENATOR HADLEY: Just one follow-up question. I guess then the concern I have, I would hope if there can be negotiation it could be negotiation for a standard agreement rather than having to negotiate the same thing every time you have an agreement that leads to a potential citizen of Nebraska not having a telephone line for six months or a

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year while we're arguing the same thing that we argued the year before with a different telecommunications company. Does that make sense that if we're going to have something, get it standard so we don't end up having to negotiate for six months or a year over the same thing every time. [LB181]

LOLA LaCROSSE: Senator, that's a very good point. That is one of the things that BNSF wants to work towards and what has happened is when these documents come in with the changes, they are changes all over the map. So you'll see them deal with all kinds of things. They tend to go towards certain areas. For example, the fee. They also go towards issues about carrying insurance. They also go to issues about indemnification. However, BNSF has reached agreement and has negotiated the standard form that they use with NPPD. They have negotiated a standard form that they use with SCPD. And then they have a form that is recommended by David Jarecke, who I understand is counsel for the Rural Electric Associations and that one is also been negotiated and would be what I would consider a standard form. [LB181]

SENATOR STUTHMAN: Okay. Senator Fischer. [LB181]

SENATOR FISCHER: Thank you, Senator Stuthman. Thank you, Ms. LaCrosse for being here. I appreciated your comments about safety and the concern that the railroad has with safety and I don't doubt that in any way. On page 3 of the bill when you look at the first three lines there, it talks about the Federal Railroad Administration and how the commission won't interfere with that and interfere with the established industry standards and that the commission will not consider the safety, engineering or access requirements. And you had mentioned a number of times in your testimony that the bill as it was written, because of the things I just said, interfering with the Federal Railroad Administration and the established industry standards of this bill is going to interfere with the railroad's ability to keep people safe. I see just the opposite. Would you like to comment on that? [LB181]

LOLA LaCROSSE: It seems, Senator, and correct me if I'm wrong, that the way that the bill is currently constructed is that it talks about the Federal Railroad Administration and the requirements under federal law. One of the things that I understand is that the railroad's not only BNSF but the other railroads as well, have certain standards that either aren't addressed in federal law or that they are actually higher than the minimums in federal law so that they can again provide us safer. So the way I understand the federal requirements is that they are limited in a sense that they don't cover all situations, which the forms that are negotiated between the companies and the railroads usually cover those, and it also, there may be instances where the standards of the railroad are actually higher because they feel like that that's more protective of the railroad and the utility companies and the people who are receiving service. [LB181]

SENATOR FISCHER: Did I just hear you say that the agreements that you have cover

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all situations? [LB181]

LOLA LaCROSSE: I'm sorry, I don't recall. Would you clarify please? [LB181]

SENATOR FISCHER: I thought when you were talking about the agreements that your company has, I thought you said it covers all situations. [LB181]

LOLA LaCROSSE: Well, let me clarify that. What I mean by that is, if there are things in the forms that would not necessarily be addressed by federal law, the federal law is silent. For example, when a company bores under the track, if they come across material I understand is called granular material, there can be some issues about whether or not from an engineering standpoint whether they have to do something to remediate that or make it safe or may even move the location because it can't be made safe. And so for example, that's in the form as a safety issue, but it's not necessarily addressed in federal law. And I would have to go and, you know, actually find that but that's my understanding is that the forms...when I said that it covers all the situations, I meant that it covers specific situations that the railroad has identified as being, causing risks and being a safety concern. And they have tried to address these in these forms. If you look at a form from a hundred years ago, it's a page. If you look at the forms now you know they're 10 or 11 pages, but the reason that they've grown is because situations have come up and we've been left in a position where no one knows how to proceed and what we do with the forms is it gives a framework for how to proceed. [LB181]

SENATOR FISCHER: You mentioned that the telecommunications companies, when they get these easements, that in some cases they can interfere with signals, with the railroad signals. Did I hear you correctly when you said that? [LB181]

LOLA LaCROSSE: That's my understanding but I'm not an engineer. It may be more applicable for electric lines, for example. But that would be something that again would be evaluated up-front in the process when the application is made and if it appears that for some reason it's too close to a signal or if it's too close to some installation that would be interfered with by a telecommunication line, then that would be addressed typically at that stage. And again, this is my understanding as I'm not an engineer, so. [LB181]

SENATOR FISCHER: Okay. But you realize that these companies, they do have obligations and responsibilities in the state of Nebraska to serve their customers and we certainly expect them to do so. I guess I'm coming from the point of view that in some cases the railroads are hindering their duty and their responsibility to serve their customers. How would you respond to that? [LB181]

LOLA LaCROSSE: I would turn it the other direction, Senator. I believe that the

railroads are interested in getting to a resolution. However, there have been many circumstances that I've seen were we go back and forth with the utility because they just are adamant about a particular provision that they don't want to see in there. They don't want to have insurance for example, or they don't want to indemnify the railroad for things that they cause when they're on the property. They don't want to have flagging, which again is a safety issue. And again, I can't...I'm giving sort of a general picture. [LB181]

SENATOR FISCHER: What's flagging? What's flagging? [LB181]

LOLA LaCROSSE: Flagging is a protection. For example, when the initial construction of the line would occur, if it's an active rail line, then a lot of times I understand that there are...there have to be flagmen out there to make sure that any trains that are coming through there would, again, either slow down or stop, be rerouted or what the case may be. And again, I'm not a railroad person so I may have to let others speak to that. But it's my understanding that it is a safety concern that just as if you drive down the road and get to a construction area. [LB181]

SENATOR FISCHER: But that shouldn't be any big deal. That's just during the time when the lines put down, isn't it? [LB181]

LOLA LaCROSSE: And sometimes though there are protests about having flagging. [LB181]

SENATOR FISCHER: By the telecommunications companies? [LB181]

LOLA LaCROSSE: Yes, that's true. [LB181]

SENATOR FISCHER: I will check into that. What other problems do these telecommunications companies cause? [LB181]

LOLA LaCROSSE: As far as...I'm sorry. [LB181]

SENATOR FISCHER: Well, if they...you know they hassle on the flagging and what else do they, are they causing you grief over? [LB181]

LOLA LaCROSSE: The...probably a couple of other areas are in the areas of insurance and indemnification. If they want to go out there and put the line, they say, well, we're starting in the public right-of-way, were ending in the public right-of-way, we're going under your track in accordance with engineering specifications, so we shouldn't have to get insurance and we shouldn't have to indemnify you if anything goes wrong. And the concern there is that even though I understand it's a telecom line, it's going to be in a conduit, it's small, it's not like an electric line or a gas pipeline or something like that,

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and at the same time let's say that it's installed, there's no problems, in five years down the road the conduit breaks, then you're in a circumstance where maybe they can't pull it out. I believe one of the proponents mentioned that earlier. It has to go on the right of way. [LB181]

SENATOR FISCHER: So one of your conditions would be that if that line ever breaks these companies are going to be responsible for it? [LB181]

LOLA LaCROSSE: If the line breaks and it causes some sort of damage or losses. [LB181]

SENATOR FISCHER: If it ever breaks. I'm talking 50 years down the road. Do these telecommunication companies have to have insurance for an act that may occur 50 years in the future? [LB181]

LOLA LaCROSSE: It depends on the circumstances. During the initial construction I understand that there's railroad protective insurance in place, which is again geared towards the fact that there are people on the right-of-way who are, you know, digging under the tracks or boring under the tracks. And as far as the annual insurance is concerned, it is not at that level if it's required. It is a much lower, it would be a lower standard. [LB181]

SENATOR FISCHER: Do you have the TransCanada pipeline going under any of your tracks? [LB181]

LOLA LaCROSSE: Yes. [LB181]

SENATOR FISCHER: Is that a big deal? [LB181]

LOLA LaCROSSE: Yes, that's been something that's been a lot of different... [LB181]

SENATOR FISCHER: That's a big deal, right? [LB181]

LOLA LaCROSSE: It's huge. Yes, huge. Lot of licenses, lot of crossings. [LB181]

SENATOR FISCHER: And you've been able to reach agreements with them? [LB181]

LOLA LaCROSSE: Yes, we have. Very recently, probably within the last 3, 4 months. [LB181]

SENATOR FISCHER: Okay. Thank you. [LB181]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you, Ms. LaCrosse. Any

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other questions? [LB181]

SENATOR HADLEY: Just one quick question. It's a very dumb question. Is there any...does the railroad own to the center of the earth on this, you know, right-of-way? How far down does the railroad own? I mean, I'm asking that because I don't know. [LB181]

LOLA LaCROSSE: Well, you know, actually Senator, I don't think I've ever considered that question. (Laugh) [LB181]

SENATOR HADLEY: Well, I just wondered. Can they ever go deep enough that it's not considered... [LB181]

LOLA LaCROSSE: I couldn't answer that because I'm just not sure if there's an engineering issue about where it would have to be or if they really do own to the center of the earth. [LB181]

SENATOR HADLEY: Okay. I was just curious. Later on, on my own property how far down I own. [LB181]

SENATOR FISCHER: Half way to China. [LB181]

SENATOR HADLEY: Half way to China. Okay. Thank you. [LB181]

SENATOR STUTHMAN: Thank you, Ms. LaCrosse. Any other opponents? Good afternoon, Brenda. [LB181]

BRENDA MAINWARING: Good afternoon. My name is Brenda Mainwaring, B-r-e-n-d-a M-a-i-n-w-a-r-i-n-g. I'm director of public affairs for Union Pacific for Iowa and Nebraska. I will be brief. I'm here to testify in opposition to the bill. Clearly, there are some problems with, between telecommunication companies and railroads being able to reach agreement on getting crossings that are necessary in the public interest. Based on, for example, Mr. Thompson's testimony and some conversations we've had with proponents of this bill, we understand that most people are relatively satisfied with Union Pacific's processes. Having said that, there are...we do agree with some of the issues that have been raised by BNSF in their previous testimony. But I do want to address a couple of quick issues that came up as questions. Senator Fischer, you had asked about federal obligations. The Code of Federal Regulations requires us to maintain track safety and structural integrity. And the way we do that is to require these extensive drawings. One of the proponents of the bill had said sometimes terms are problematic in the extent of the drawings. The reason we require those drawings is because we have to know exactly what the plan is. They can get too close to signals. We have to know where the signals are. They can be close to bridges, all sorts of things

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that we need to review before anything can go underneath the tracks. So there are plans that we have to review as part of our Code of Federal Regulations. Trains also, you know, you're talking 18,000 tons and there's some rock and roll action there. There's some vibration that can be caused. It's not simply digging a tunnel underneath the track at some level. It's consideration to how much weight travels on the line, how many trains travel on the line. A lot of issues that go into evaluating whether or not the specifications that the company has given us will work for the particular track they want to go under. And in terms of cost, Senator Campbell you had kind of a question about what are the costs, how do those work. You know we have to review those engineering drawings. We have to ensure signal safety so there's not going to be any interruption of signals, especially at railroad crossings obviously. We have to inspect the work. We have to look for other under track structures. There's a lot of fiber running alongside our tracks, certainly in the state of Nebraska, and so we have to make sure we know exactly where those are. We have to review our existing track structure, and then we have to make sure that we now know where that telecom goes under our tracks. We have to change all of our maps, so there are expenses for the railroad. Union Pacific has come up with a fairly standardized process that seems to be working for both parties. We think that demonstrates that it's possible. We think that demonstrates that action of the Legislature is not necessary, but clearly there needs to be some attention to the matter. And to whatever extent Union Pacific can help with that negotiation process, we would be very eager to help in any way that we can. But we are opposed to passing this legislation just because of all the issues that have been raised about trying to standardize a process that is not inherently standard. And I'll take any questions. [LB181]

SENATOR STUTHMAN: Okay. Thank you. Are there any questions from the committee? Senator Gay. [LB181]

SENATOR GAY: Thank you, Senator Stuthman. Now the \$1,200, I think, cost is that no flexibility I don't think unless you go petition for...what's your average cost for these things if there is one? Because it sounds like there is no average. [LB181]

BRENDA MAINWARING: Actually we do have. We have a...Union Pacific's minimum standard is \$1,500. And that's typical of most as I have been told that's typical of our charges for most telecom crossings. Now it may go up in certain metropolitan areas or with certain complexities. It may be higher, but the basic minimum standard which applies to most cases is \$1,500. [LB181]

SENATOR GAY: Thank you. [LB181]

SENATOR STUTHMAN: Thank you. Senator Fischer. [LB181]

SENATOR FISCHER: Thank you, Senator Stuthman. Thank you, Ms. Mainwaring for

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being here. That \$1,500 is that across all the states you serve or here in Nebraska?
[LB181]

BRENDA MAINWARING: My understanding is that's our standard across our states.
[LB181]

SENATOR FISCHER: Okay. And you were at the meeting we had this summer,
correct? [LB181]

BRENDA MAINWARING: Yes, I was. [LB181]

SENATOR FISCHER: And you received the drafts that my legal counsel sent out, is that
correct? [LB181]

BRENDA MAINWARING: Yes, we did. [LB181]

SENATOR FISCHER: Did you respond to those drafts? [LB181]

BRENDA MAINWARING: Yes, we did. [LB181]

SENATOR FISCHER: Were your suggestions incorporated into the bill? [LB181]

BRENDA MAINWARING: Yeah, most of them were. I think that you gave considerations
to some of our concerns, yes. [LB181]

SENATOR FISCHER: Okay. Thank you. [LB181]

SENATOR STUTHMAN: Senator Campbell. [LB181]

SENATOR CAMPBELL: I just want to clarify. Thank you, Senator Stuthman. When you
say that the average is \$1,500 is that also on an annualized basis? [LB181]

BRENDA MAINWARING: No, we do not have an annual charge, and we do not have a
management company. [LB181]

SENATOR CAMPBELL: And you have no management. [LB181]

BRENDA MAINWARING: We do not. [LB181]

SENATOR CAMPBELL: Thank you. [LB181]

SENATOR STUTHMAN: Senator Hadley, you have a question? [LB181]

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SENATOR HADLEY: Yes, thank you for being here. Just kind of the question I asked last time, you know, again, while this may be complicated, do you think it is possible to get to a situation where you do have a relatively similar agreement that covers most of the issues whether it's insurance, indemnification, cost, so that we're not spending six months or a year for someone to get service while we go back and forth arguing about the same things that we might have argued about two months ago at another crossing. [LB181]

BRENDA MAINWARING: We have a relatively standard agreement that seems to be satisfactory to most people. It's something that we've come up with so it is possible to find an agreement that is livable or I think as Mr. Thompson said, he said, generally workable, as I recall, very workable. So yeah, it's possible to come up with an agreement. Our concern is that any legislation not limit our ability to make sure that we've met all of the safety standards because each time there's a different situation. That they allow us to recoup the costs that I've kind of outlined. Those are the ways we have costs. So if it can...there can be a standardized agreement, I believe that we have done effectively and it's adequate enough for both parties that I believe we don't get very many changes coming back. That's my understanding. But when it goes into the situation of legislation, then trying to make sure that we still have the ability to modify for any particular situation in terms of special requirements or special costs, then it becomes a little more difficult to standardize it. [LB181]

SENATOR STUTHMAN: Thank you. Senator Fischer has one more question. [LB181]

SENATOR FISCHER: One more. If we would get into more detail in this law in order to get this standardized agreement, would you support that or would you rather let this be more open for the Public Service Commission to handle it, if I give you those two choices. [LB181]

BRENDA MAINWARING: My initial reaction to that not being an attorney and not being directly involved with this is that the more you try to get every detail correct, the more likely it is that we'll miss a detail. And so I think that making sure that there's room for...we are in opposition to having this at all, but making sure that there's room for the railroads to meet all of their safety needs. There are...the standards, it's not necessarily a federal standard. There's the AREMA, which is essentially the National Association of Railroad Engineers and they meet to determine what appropriate minimum safety standards are appropriate for any kind of installation like this. Typically, Union Pacific and many other railroads in their own ways go beyond those basic minimum standards and we want to be able to do that so that we meet our own safety standards. As long as at the end of the day we have the ability to make sure that we continue to implement the safety standards, the insurance requirements, and the basic costs that we need to, to cover these things, I think it's better not to try to legislate every single detail. And I reserve the right to change my opinion if my lawyer tells me to do so. (Laughter)

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[LB181]

SENATOR FISCHER: Thank you. Duly noted. Duly noted. [LB181]

SENATOR STUTHMAN: Thank you. Are there any other questions from the committee?
Senator Hadley. [LB181]

SENATOR HADLEY: One real quick question. Have you run across this problem. The
UP handles a lot of states and a lot of our rural states. Is this...have you heard of this
kind of concern in other, you know, Wyoming, Montana, Idaho, and such as that?
[LB181]

BRENDA MAINWARING: Sure. You know, Union Pacific is a big east-west railroad and
so I don't...you can't go north-south very far in Nebraska without having to go across the
Union Pacific. So clearly, crossings are necessary. And there's always an issue of how
do you get across. [LB181]

SENATOR HADLEY: Whether it's Nebraska or Idaho or Wyoming or...thank you.
[LB181]

SENATOR STUTHMAN: Thank you, Senator Hadley. [LB181]

BRENDA MAINWARING: Thank you. [LB181]

SENATOR STUTHMAN: Thank you, Brenda. Are there any other testifiers in the
opponents? Are there any testifiers in the neutral position? Good afternoon, Jill. [LB181]

JILL BECKER: Good afternoon. Good afternoon, Senator Fischer and members of the
Transportation Committee. My name is Jill Becker, J-i-l-l B-e-c-k-e-r. I'm appearing
before you today as a registered lobbyist on behalf of Black Hills Energy. I'm appearing
before you today in a neutral capacity specifically because this bill does not address
natural gas utilities which Black Hills Energy is. However, several of the Senators have
raised the issue of focusing on a standard agreement, and as a jurisdictional utility we
are, in fact, regulated by the Public Service Commission. So if the committee is
interested in developing a standard agreement, we would like the opportunity to work
with the committee and committee counsel in including jurisdictional natural gas utilities
perhaps as part of this. And I just bring that to the committee's attention. This bill
specifically deals with the utilities that typically go underground. I know your next bill
covers the utility that typically goes above ground. And I just wanted to, on the record,
relay our interest in working with the committee if you so choose to move in that
direction. I'd be happy to answer any questions that you may have. [LB181]

SENATOR STUTHMAN: Does the committee have any questions for Ms. Becker?

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Seeing none, thank you for your testimony. [LB181]

JILL BECKER: Thank you. [LB181]

SENATOR STUTHMAN: Any other testifiers in the neutral position? Senator Fischer, you want to close? Senator Fischer waives the closing. That will end the hearing on LB181, and I will turn it back over to Senator Fischer. [LB181]

SENATOR FISCHER: Thank you, Vice Chair Stuthman. I will open the hearing on LB217 and Senator Louden would you give us your opening, please. [LB217]

SENATOR LOUDEN: Thank you, Senator Fischer and members of the committee. I'm LeRoy Louden, that's spelled L-o-u-d-e-n, and I represent the 49th Legislative District. Today I bring before you LB217, a measure that establishes a standard crossing fee for the placement of wires across a railroad right-of-way. I introduce this bill on behalf of the Nebraska Rural Electric Association, an organization that represents rural energy providers throughout the state. The NREA supports actions that will prevent unreasonable demands by railroads as a condition of obtaining a railroad crossing agreement. If passed, power providers would be further protected from unwarranted demands by railroad companies, including costly litigation threats. LB217 would assure a fair and expeditious process for the construction of power lines over rail lines. In the event that special circumstances exist where the standard rate may not be appropriate, LB217 would allow either party to petition the other for greater relief. In this event, the two parties would be allowed to come together to agree on modifications which may be needed. LB217 would provide in statute a one-time standard crossing fee of \$1,250 for an electrical entity placing a wire across a railroad right-of-way. No other fees or charges may be assessed or reimbursed the railroad unless otherwise agreed to by both parties. LB217 would prohibit contract language that would excuse the railroad from liability for any loss or damage resulting from negligence. This would protect the power infrastructure by holding railroads accountable for any damages that may cause wire...cause to wires crossing the railroad right-of-way. And LB217 would prohibit a railroad from requiring an electrical entity to purchase insurance unless the railroad proves a history of risk or liability on the part of the entity. This would protect power entities from the cost of providing excessive insurance for employees while working in the railroad right-of-way. There will be others that will testify after me that may be able to answer any questions that you may have regarding this bill. I thank you for your consideration of LB217 and would ask that you advance this bill to General File. With that, I would answer any questions if need be. [LB217]

SENATOR FISCHER: Thank you, Senator Louden. Are there any questions? I see none. Thank you very much. Could I ask how many people are here to speak in support of the bill, if you'd raise your hands. I see two. Those in opposition? One, two, three. Any neutral? Okay. We will begin with the proponents then, please. Good afternoon.

[LB217]

DAVID JARECKE: (Exhibit 3) Good afternoon, Senator Fischer and members of the committee. Thank you for your time. I'm David Jarecke, D-a-v-i-d, last name is J-a-r-e-c-k-e. Probably not a good sign if the railroad knows your name but to get to the point as to testimony in support of LB217, I'm here on behalf of the Nebraska Rural Electric Association. I serve as regulatory counsel for that association. I'm also here on behalf of Custer Public Power District which has an extensive amount of railroad lines, particularly Burlington Northern Santa Fe across the boundaries of its district. My testimony, and much of what you may hear right now and I want to be as brief as possible, will be redundant in many respects to LB181. The language is certainly very similar. The missing piece, as you will notice, is that I did not incorporate terms for a hearing process before the Public Service Commission. And to get to the heart of that question first, as I assume many of you are wondering, simply put if, in fact, the Legislature were to adopt LB217, it is my opinion that the hearing process will be moot. The items of concern, indemnification, cost, and insurance, if those are in fact set by statute or prohibited by statute, then in fact the contracts will be little delay in terms of the parts that are most of concern at least to the electric utilities and therefore, it will force the railroads to adopt a form that will essentially be satisfactory to the electric utilities. The electric utilities, of course, also have the authority to condemn and if in fact necessary, obviously could utilize that authority. So for that reason did not feel it necessary to proceed with the Public Service Commission. In addition to one other substantial reason, the time factor is of great concern. Certainly, we want to negotiate and move on with these license agreements as quickly as possible, but in many instances the construction window is quite limited, your summer months. And so if we need to get across a line and get new service to a particular individual, particularly, maybe it's a smaller service converting a diesel well to an electric well, is a good example, it happens frequently. We don't have time to negotiate. That line needs to be constructed. It needs to be put in...with the case of irrigation, obviously, that farmer wants that irrigation well now, not 60 days from now. So for that reason the window for negotiating through the Public Service Commission is also not particularly useful. Mr. Carstenson, and I know Senator Fischer wasn't necessarily here for all that testimony, did an excellent job of explaining with respect to LB181 many of the concerns that are equally shared by the electric utilities. So I don't want to repeat his testimony, but many instances...I'll touch upon, I think, the things that were of concern. I think what we heard in a nutshell from representatives of Burlington Northern is, they don't want us there. And I understand they don't want us there, but I think it's rather necessary that we be there, in our case, to provide electrical power. So we need to cross these lines. In our case, we are crossing, in all instances at least that I'm involved with, above ground. So we're not talking about boring under the tracks. So now it's a question of if we're going to...and of course, we're going to be subject to the National Electric Safety Code, so questions or concerns of safety with respect to this bill I don't think are at all relevant. All the electric lines, of course, will be built to safety specifications. There is no concern

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with any of the members that I represent that they want to shortcut any of those safety concerns. So the concerns then again go back to, one of cost, first and foremost. Obviously, we want to see that fee be reasonable whether \$1,250 is the reasonable number or \$1,500 as Union Pacific has it or some greater number. I certainly understand the number is debatable. But at some point it needs to be reasonable and in many instances we find the cost...in with the contracts that have been provided to you, you'll see that the cost most recently requested by Burlington Northern was, I believe \$5,000 in those two contracts, one of which was simply proposed last week to the next testifier from Butler Public Power District. So we see an escalation of those costs that we don't think are reasonable, In terms of extending services to a single customer, we see a cost that is prohibitive. When it comes to insurance and indemnification, I've highlighted a couple provisions of those contracts that I want you to look at your opportunity because the language is so onerous. Admittedly that the contracts I've brought before you are from Burlington Northern Santa Fe and I say they're onerous because they are asking the public power districts or the cooperatives that are serving this state to indemnify the railroad even if it's the railroad's negligence that caused the problem. As an attorney, I find that completely unacceptable. And yes, I have negotiated stridently to get many of these terms removed and admittedly with Burlington Northern I've had some success. But the conglomerate of BN Santa Fe is challenging enough that I don't see consistency with the agreements that are sent to the 30 some districts across Nebraska. In many instances I see cooperation and agreement for the terms I've negotiated and yet again, as recently as last Friday with Butler County Public Power District, I see terms that I thought we had negotiated out back in an agreement being proposed and demanded to be signed. So there's been some failure in those negotiations and that frustration has led to the request for legislation. Union Pacific has frankly not been a problem. The Union Pacific agreement would be an excellent example that could be utilized as an efficient crossing agreement. Burlington Northern's again, as you will see, is much more onerous than that of UP's. The short lines of this Nebraska Kansas Colorado which runs across the southern part of Nebraska, essentially through the Republican River Valley, in fact may be your worst actor. And I realize it's easy to say when they're not here today, but their counsel has admitted to me that they do see these fees as a source of revenue. And that's why they want to increase and continue, in their case, collect annualized fees. That again is simply not something acceptable to the electric utilities and certainly not something that your ratepayers are going to be very satisfied with. So it's for these reasons that we have introduced LB217. Again, when we're talking about electric utilities, I want to be clear on a couple of things, although I'm certainly not an engineer either. The poles will not be constructed and generally are not constructed on the railroads property. They're going to be constructed on either side of that corridor and so now, we just have electric wires. In many cases, it's either going to be three or four lines that are strung across the tracks, again at the appropriate height to satisfy the National Electric Safety Code. So it's the occupying that limited air space is what we're doing in many instances or essentially in all instances, unless we're actually serving the railroad. And I also bring

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that up because, of course, we do have to enter the railroad space to serve their electric switches, their electric signals, and of course do that. So there are times that we're coming into their space at their request and other times when we simply have to cross it to get to some other customer. The other irony I find in today's hearing in this testimony is, no other property owner in the state of Nebraska that I'm aware of, and I represent many districts, has a property owner that says, before you enter you're going to sign this agreement or before you cross our property you're going to sign this agreement. Ted Turner doesn't ask for this. Nobody else asks for this. We're working with the TransCanada pipeline in terms of what they're doing. Nobody says you're going to cross this first. You're going to separately indemnify us. You're going to buy separate and greater insurance than anywhere else. That is an onerous and additional cost that simply, we do not think is reasonable or necessary. So again for these reasons, I would ask you to support LB217 and would open up to any questions. [LB217]

SENATOR FISCHER: Thank you, Mr. Jarecke. Are there questions? Senator Louden. [LB217]

SENATOR LOUDEN: You say that the Union Pacific has an agreement that would be a good model? How far from LB217 is it in its wording and that sort of thing? [LB217]

DAVID JARECKE: (Exhibit 4) The...I believe it is a good model. I believe, and again speaking from my experience with these districts over the past 10-15 years, I have not had a single complaint with respect to the Union Pacific Railroad agreement. The agreement does contain a cost of \$1,500, which again is generally rather acceptable. It has insurance requirements that are less onerous than what you'll see in the Burlington Northern agreement and to my recollection, and I don't have one in front of me, has none of the indemnification requirements that the Burlington agreement includes. [LB217]

SENATOR LOUDEN: Okay. Thank you. [LB217]

SENATOR FISCHER: Other questions? Senator Hadley. [LB217]

SENATOR HADLEY: Thank you, Senator. Just a quick question. Have you ever had the problems of trying to run a line and its taken six months, a year, year and a half, to work through the agreement to get the line across? [LB217]

DAVID JARECKE: Yes, Senator, the most recent one and I believe the Custer Public Power contract that's in front of you is a prime example of that. A new cell tower was sought to be constructed in Senator Fischer's district and we could not negotiate an acceptable contract and it took months and months to finally remove some of the highlighted terms before I could get agreement on that and before the cell tower could be constructed and obviously bring new services to the members of that part of the

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state. So that is not an unusual circumstance. [LB217]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB217]

DAVID JARECKE: Thank you. [LB217]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB217]

GARY WESTPHAL: Madam Chair, committee members, my name is Gary Westphal. I'm the CEO of Butler Power District and I'm representing the 35 members of the National Institute of the Nebraska Rural Electric Association in Butler. I am also a registered professional engineer in Nebraska, so if the questions aren't too tough, I can answer those. [LB217]

SENATOR FISCHER: Could you spell your last name? [LB217]

GARY WESTPHAL: Westphal, W-e-s-t-p-h-a-l, Gary, G-a-r-y. [LB217]

SENATOR FISCHER: Thank you. [LB217]

GARY WESTPHAL: I'm here to support LB217. I just have a few comments. Certainly, as you drive across the rural Nebraska you can't go very far without seeing power lines and rail lines and both of them bring lots of value to Nebraska. And because there are so many power lines, and most of the ones I'm talking about are distribution lines which are rather small, generally a couple of lines. You see them all over the Sandhills, two wires that go to irrigation wells and to farm houses. And from time to time we need to cross rail lines and I would think that because there are 35 districts in the state, co-ops and PPDs that there would be a standard agreement that would be pretty easy to enter into. Again as Mr. Jarecke said, we all follow the National Electric Safety Code and I would think that an agreement would have a fairly decent fee. Presently the fees can vary anywhere from \$1,000 to thousands of dollars, and we get easements from many of our landowners because they are customers and owners of us. They're sometimes free, sometimes we pay a little bit, but this seems to be a little more costly than most. Another issue has to do with the term, the term of the agreement that Burlington likes to use, the 25-year agreement. We invest many dollars into these power lines and expect them to last 50 or more years and we really think it could be a challenge to revisit these every 25 years. So we'd like to see them be perpetual. All of our other agreements are perpetual. And if there are issues that come up from time to time as will, we'll deal with those issues and make sure that everybody is treated well. The liability issue that Mr. Jarecke brought up, I agree with that. It can be very onerous, seems to be very costly. Yes, we do get insurance. Like most districts in the state we get insurance from the same entity because of the hazards involved in our work, but it seems like what Burlington Northern asks us to do is very costly. And then the last issue I'd like to talk

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about is the termination agreement in there, the termination term in their agreement. Upon 30-days notice they can require us to vacate, they can terminate the agreement, and we really think that is unreasonable. We think there certainly ought to be lots of just cause, for example if we're not living by the agreement. So we'd like to have...again, we'd like to have something that's standard and not onerous. So I'm happy to answer any questions. [LB217]

SENATOR FISCHER: Thank you, Mr. Westphal. Are there questions? Senator Stuthman. [LB217]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you, Mr. Westphal, for your testimony. How many times would you say that you would put in an application in your power district, Butler County Power District that you would cross the railroad? Say in a year or once a month, or... [LB217]

GARY WESTPHAL: Well, we probably don't cross them nowadays more than, maybe once every other year. Most of our lines are built. We are building a new line presently to serve TransCanada and as we go north from that we will have to work with Burlington Northern on that. So we don't do it as often as we used to. [LB217]

SENATOR STUTHMAN: Okay. Thank you. [LB217]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB217]

GARY WESTPHAL: Thank you. [LB217]

SENATOR FISCHER: Any other proponents? Other proponents to the legislation? Shirley, I thought you were coming up. Are there opponents to the legislation? Welcome. [LB217]

BRENDA MAINWARING: Thank you. Brenda Mainwaring, B-r-e-n-d-a M-a-i-n-w-a-r-i-n-g, director of public affairs for Union Pacific, Nebraska and Iowa. I am here to testify in opposition to LB217. Obviously, it's got some similarities to LB181 but this bill removes a lot of the rights that are in place for the railroad in LB181 and in a situation that we, in a lot of ways, consider more hazardous. My appreciation of Mr. Jarecke for his comments about Union Pacific's program, our policy. And again, to whatever extent we can share our information with others and help find a good negotiation, we will be more than happy to do that. But I do want to address a couple of issues. The National Electric Standards, Safety Standards, were mentioned by both of the proponents and I have every confidence that those are entirely appropriate for safe electrical action, but I don't think they were written for railroads or for the crossing of electrical over railroads. And at the risk of being simplistic, railroad tracks conduct electricity. And the conduction of that electricity is critical to safe operation of trains. It's

that conduction of electricity that tells us when a train is on the track, that completes the circuit, that tells us where the train is, it tells us when the signals need to operate that allows us to communicate appropriately with our train. All of our operations are based on the safe transmission of electricity through the tracks. And when other electrical systems are placed near the tracks, they can produce electrical and magnetic fields that can cause interfering voltage and currents that degrade our communications and signals equipment. That poses a hazard not just to the railroad but to the public, both at railroad crossings and with our ability to safely operate the railroad. As we all remember from...well, the wind outside right now, and ice storms and other storms that we've had in recent memory, anything that goes overhead can come crashing down. And when electrical wires come down on our tracks, it interferes, obviously, with our ability to run trains, not simply because there's electrical wire but because it can short out our systems, because it can require repair to our systems. And because if we don't know exactly what's happened, we can't necessarily...we know when there's a shortage, a short on the track, but it requires a lot of work for us to figure out how to correct an electrical problem. Briefly on the insurance, I have one of our experts here sitting back with me who explains that we do have some indemnification within our policy. And one of the reasons we do that is because if it weren't for this electrical entity wanting to cross the track, we would not have any liability at all. And so they're introducing the liability to us. We spend a lot of time training our workers about the hazards of operating along the railroad right-of-way. And for a nontrained individual, they can injure themselves if they haven't had appropriate training about the hazards of working along a railroad track, and that can be called liability because of their lack of knowledge. So it leaves it up to a judge then to define what liability. And any sort of...even attempt to fight that sort of liability would far exceed our standard fee. Regarding the requirement that an agreement...that we have an agreement in place prior to access, I would argue that our dangers are frequently a lot more life threatening than other typical landowners. And briefly in terms of the insurance requirement, my understanding is that the typical commercial general liability policy specifically excludes coverage for anyone working within 50 feet of the railroad property. So in order for us to make sure that people are properly covered, the railroad insurance requirement eliminates any potential gaps that might exist in the general liability policy. So overhead electrical wires are entirely different, cause us entirely different problems than telecom and so it's an entirely different kind of conversation. We are more than happy to use our policies in anyway that might help come to terms for others. We certainly understand there's a problem. We certainly understand electrical wires have to cross the railroad tracks and we want to make sure that we can do that in a way that satisfies everybody. I think that Union Pacific has found a method that's working for most people as we've heard, and we'd like to continue to be able to do that without additional legislation. [LB217]

SENATOR FISCHER: Thank you, Ms. Mainwaring. Are there questions? Senator Loudon. [LB217]

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SENATOR LOUDEN: Yes, thank you for your testimony, Brenda. I was kind of curious about, when you talk about the power lines running some, well, power, or you know, you can get to power from them, those locomotives are AC aren't they? [LB217]

BRENDA MAINWARING: Oh, now you're going to get into engineering. (Laughter) [LB217]

SENATOR LOUDEN: Well, I was going to say it's AC current on locomotives, it's AC current on your power lines, and then does Union Pacific run any power lines parallel with the railroad track to service some of their signals? [LB217]

BRENDA MAINWARING: Absolutely we run, but we adjust our electricity and the currents and the voltages and all those things to accommodate the kind of currents and voltages that we have to use in our track. [LB217]

SENATOR LOUDEN: They're not 7,200 volt that runs... [LB217]

BRENDA MAINWARING: You know, all I know to exhaust my knowledge of physics is that we make adjustments so that we can run our current. [LB217]

SENATOR LOUDEN: Okay. I've not been along Union Pacific but the Burlington Northern has 7,200 power lines running all up and down their tracks all over the place and that's the reason I was wondering why you would be getting any polarization from the other power lines or why that would affect your equipment anymore than what's already going on. Now is that in your contract that they can't run power lines parallel with your railroad track? [LB217]

BRENDA MAINWARING: I don't mean to imply that they cannot run power lines. What I intend to say is that we need to be able to specify certain mechanisms and certain, perhaps, distance from a signal or certain distances from a control point, things that from an electrical standpoint on our tracks are important for us that they not be interfered with, with any sort of current. Or, you know, the likelihood of a surge or something that could happen that could cause us electrical problems will cause a significant problem for us. But certainly there are electrical wires. We have a lot of electrical agreements and so we're able to come to terms that work. But we need to be able to come to terms that work and using the national standards for electric doesn't necessarily accommodate the needs of the railroad. We need to be able to accommodate the needs of the railroad. [LB217]

SENATOR LOUDEN: Okay. And you run your train, your signal with microwave? [LB217]

BRENDA MAINWARING: We use microwave communication, but railroads operate in

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blocks and those blocks have electric current from one end to the other. A train when it enters that block completes the circuit. If we have interference with the completion of that circuit, we have a problem. [LB217]

SENATOR LOUDEN: But I mean your microwave towers and stuff, I was just wondering how you, if you were concerned about interference between your microwave towers or something. [LB217]

BRENDA MAINWARING: I'm sure that whatever accommodation needs to be made has been made so that we don't have any interference. [LB217]

SENATOR LOUDEN: Okay. Thank you. [LB217]

SENATOR FISCHER: Are there other questions? I see none. Thank you very much. [LB217]

BRENDA MAINWARING: Thank you. [LB217]

SENATOR FISCHER: Next opponent, please. Welcome. [LB217]

DALEN WINTERMUTE: Hello again. Instead of just regurgitating... [LB217]

SENATOR FISCHER: I need you to state your name and spell it, please. [LB217]

DALEN WINTERMUTE: Oh, I'm sorry. My name is Dalen Wintermute, that's D-a-l-e-n W-i-n-t-e-r-m-u-t-e. I'm the manager of Land Revenue Management for BNSF Railway Company and I'm here to discuss Nebraska LB217. I'll end a lot of my concerns earlier with the telecom bill, those are about the same but since our meeting in August and around that time we had worked out an agreement with NPPD. So that's in place. And we also have worked out agreements with Seward County Public Power District, South Central Power District, and surprisingly, we had worked out an agreement with the Rural Electric Associations through Mr. Jarecke. He sent a letter to his REA saying, use this form that the railroad has worked out with I believe it's the Seward County form and just start using that. And so I sent a note to JLL, our service provider, saying, use this form. So I'm a little perplexed as to why now that we've worked out within the last year, suddenly it's no good. And it takes me back a few years ago to NPPD. We had worked out an agreement through our law departments and yet within a matter of a couple years, they're back saying, no, we don't like that and we want you to...we want to renegotiate. So you know, we're sitting here today, I'm hearing that agreement that was worked out within the last six months to a year no longer is any good. How do the railroads know we're not going to be back here in another six months or a year? We thought there would not be an electric bill, and if there was, it surely wouldn't have involved Burlington Northern or BNSF because we've worked diligently to work out

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these over the last year and didn't see a problem. [LB217]

SENATOR FISCHER: Okay. Thank you very much. Are there any questions? Senator Louden. [LB217]

SENATOR LOUDEN: Yes, well they gave us a, copies of your agreement with Butler Public Power and also with Custer Public Power and is it in there that it's only going to be for a period of 25 years, is that what your agreement was before? [LB217]

DALEN WINTERMUTE: I can't recall the terms of the agreements. I just know that the agreements were acceptable to us and acceptable to the REAs. [LB217]

SENATOR LOUDEN: At that time? Okay. I was wondering if this was one they signed because they also...well, one of them was for...let's see, one of them is for what, \$2,500 and the other is \$2,514. I don't know what the \$14 was. Somebody have to buy a pop or something? And that's what I was curious between the two agreements, you know, they was, they was that much difference in there what that was all about. And then I was wondering about in here the multimillion dollar insurance that they had to have. And is that in your agreements now when you sign those with people? [LB217]

DALEN WINTERMUTE: Yes, sir. [LB217]

SENATOR LOUDEN: And you intend to keep them in there. I mean, is that a deal breaker if that isn't in there that they have to have a single minimum limit of \$2,000,000 or aggregate limit of \$4,000,000 of insurance, that's got to be in your agreement or else it's no go? [LB217]

DALEN WINTERMUTE: That's our standard insurance language, yes. And for electric lines that's what we think is appropriate. We have some agreements that have \$5,000,000,\$10,000,000. I think those are our pipelines, natural gas, things like that. So it's kind of based on the risks that we have in these agreements. [LB217]

SENATOR LOUDEN: Now is that a separate insurance from what, the one that they already carry because most of these companies already carry a huge amount of... [LB217]

DALEN WINTERMUTE: No, that's...if they carry that amount then they're covered. [LB217]

SENATOR LOUDEN: Okay. Now their insurance that they're already covering it with. [LB217]

DALEN WINTERMUTE: Right. Their general liability, auto, that covers that. The only

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additional insurance is during the construction or maintenance. That's that railroad protective liability. That covers them while it's being installed, covers that additional risk while it's being put in or where they go back in to do some maintenance on it. [LB217]

SENATOR LOUDEN: Because it says that the licensee, you know, shall procure and maintain during the life of the agreement and that was mentioned those amounts of insurance and this sounded like you had to have that up and beyond the rest of their insurance. This was just a construction insurance. That's what I'm wondering if you require construction insurance or if their general liability insurance would cover this. [LB217]

DALEN WINTERMUTE: Their general should cover it. We just want to see their agreement every year. [LB217]

SENATOR LOUDEN: Okay. Thank you. [LB217]

SENATOR FISCHER: Other questions? Senator Hadley. [LB217]

SENATOR HADLEY: Senator Fischer. Just one quick question. Am I correct, Mr. Wintermute, that you now have an agreement with NPPD that covers crossing of Burlington Northern any place in the state that NPPD has territory and is crossing your lines or your track, is that correct? [LB217]

DALEN WINTERMUTE: Yes, sir. [LB217]

SENATOR HADLEY: Okay. And it's been negotiated and your concern is that it changed over a couple of years, but it is...you're not sitting down and renegotiating every time they want to cross your tracks? [LB217]

DALEN WINTERMUTE: Yes, sir. It's a standard form every time they apply now. That's the form that we fill out and send it in for execution, yes. [LB217]

SENATOR FISCHER: Other questions? I see none. Thank you. Appreciate you coming. Hope you've enjoyed Nebraska. [LB217]

DALEN WINTERMUTE: Thank you. I always do. [LB217]

SENATOR FISCHER: Good. Other opponents? I believe this is our last opponent on this bill and when we conclude this bill, we are going to take a 5 minute break. Good afternoon. [LB217]

LOLA LaCROSSE: Good afternoon. My name is Lola LaCrosse, which is spelled L-o-l-a L-a-C-r-o-s-s-e. I'm an attorney with Mellina & Larson and we represent BNSF Railway

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in matters regarding permit and crossings. I'm giving testimony in opposition to LB217 amending Nebraska Statute 70-306 and I have a statement that I'd like to go forward with. But however before I do, I have a follow on to some of the things that were raised earlier. It was my understanding that there had been an agreement worked out with the Rural Electric Associations. I have a letter dated April 22, 2008, from Mr. Jarecke to the assistant managers of the Nebraska Rural Electric Association saying that this is the form that was worked out with Burlington Northern and that, sign this agreement and send it in. And so the fact that he mentioned that there's now the need for legislation to deal with this issue is a complete surprise to me. So that is something that if Custer Public Power District and Butler Public Power District had been sent the incorrect form, then this is something that can certainly be worked out. But I don't think it's necessary to have legislation in place to go ahead and basically take the place of a form which we thought was negotiated. So that is a concern. With respect to my statement, some of the things we were concerned about earlier still are the case, the safety, the right to use the railroads right-of-way for its purposes. One of the things that's new in this bill, however, is the history of the risk as being a criteria for deciding whether or not insurance should be acquired. That seems to me to be putting the cart before the horse. Regardless of what a history is on safety, if something happens there needs to be some sort of recourse in place. So that is something that I think that is in the bill that doesn't seem to really be appropriate for this kind of situation. It doesn't seem to address the real concern which is, what happens if there's an accident or a line comes down because of an ice storm. How does that get handled, how does that...how do those losses get compensated and the insurance, I would think, would be key to that. I appreciate also the comments from the representative from Union Pacific. I would say for the most part that those are the sentiments of BNSF Railway as well that we would like to breach out workable forms. And in fact we thought we had with these different entities and we think that the legislation that's presented in LB217 is not necessary and is certainly something that would limit the abilities of the parties to work out that standard agreement. Thank you for your time. [LB217]

SENATOR FISCHER: Thank you, Ms. LaCrosse. Are there questions? Senator Louden. [LB217]

SENATOR LOUDEN: Yes, one question I'd have is in this, these forms that, where there's in there they can terminate that lease in 30 days. Is that somewhat...what's your reasoning behind that? [LB217]

LOLA LaCROSSE: The termination of the agreement in 30 days, the way I understand it is that there may be circumstances where the railroad needs to terminate for some reason and they either need to have it relocated or they need to terminate it because of something that has to do with railroad operations, because it is their corridor. One of the things that has come up though, is that within these agreements that have been negotiated with the power districts to...it's my understanding that they do not have that

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30-day terminal provision. I would have to double-check to verify that, but I do know for example that the agreement that was worked out for the REAs has a perpetual term and I don't believe it has a 30-day termination provision. [LB217]

SENATOR LOUDEN: Okay. Thank you. [LB217]

SENATOR FISCHER: Other questions? Senator Hadley. [LB217]

SENATOR HADLEY: Thank you, Senator Fischer. Just one quick question, Ms. LaCrosse. Burlington Northern obviously operates in a lot of states also. Is this a common problem across the states at Burlington Northern negotiating contracts with either electrical companies or communication companies in crossing of your right-of-way? [LB217]

LOLA LaCROSSE: There are similar concerns, but I would say that and for the most part we've been able to reach agreement without having to have a statewide standard form or legislation in place. And that is something, for whatever reason, Nebraska has been more of a...has had more concerns with this area and has apparently thought that legislation might be the right approach. But you are correct, that these forms are used throughout the BNSF system and since they are used throughout the system, they have some generalities that when people ask for changes, then they're evaluated in light of the circumstances and the location and the types of uses. So that again is something that BNSF is willing, as we've demonstrated, to work with putting together forms that are workable for all the parties concerned. [LB217]

SENATOR HADLEY Thank you. [LB217]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB217]

LOLA LaCROSSE Thank you. [LB217]

SENATOR FISCHER Other opponents to the bill? Any other opponents? Anyone wishing to testify in a neutral capacity? I see none. Senator Louden, would you like to close? Senator Louden waives closing. With that I will close the hearing on LB217 and we will take a short recess. [LB217]

RECESS []

SENATOR FISCHER: Welcome to the Transportation and Telecommunications Committee. I will open the hearing on LB245, and Senator Dubas is here. Thank you very much for your patience while we took a break, and I need to welcome you. [LB245]

SENATOR DUBAS: Thank you very much. And no problem for that break. I know it gets

to be a long afternoon for everybody, need to stretch your legs. So Chairwoman Fischer and members of the Transportation Committee, my name is Senator Annette Dubas, D-u-b-a-s, and I represent the 34th Legislative District. Nebraska is home to the world's busiest rail corridor, especially between Seward and Kearney, and therefore many rural areas experience blocked crossings by trains at a standstill on a frequent basis. This legislation that I am introducing today was drafted after a model used in Arkansas and as a result of an interim hearing that took place in Grand Island and Broken Bow in 2007. The model legislation creates an administrative process that the Department of Roads would implement. There would be an administrative hearing to determine a fine of \$500 to \$1,000 if the railroad company--not the employees but the company--allows a train to block a public crossing for longer than 10 minutes without good cause. Extenuating circumstances required by federal regulations would not be a violation. LB245 provides an administrative penalty and procedure for unlawfully obstructing a public railroad crossing for longer than 10 minutes with a train that is at a complete standstill. This legislation gives the Department of Roads the authority to investigate matters pertaining to the operation and movement of railroad trains with the state including the obstruction of any public highway, road, street, or other railroad crossing or public property by a standing train. The Department of Roads will be responsible for adopting and promulgating necessary rules and regs and issue orders concerning permissible standing time for trains. Through an administrative process, the department will determine whether the obstruction was unlawful and without good cause. If the department finds a railroad to be unlawfully blocking the crossing, an administrative fine may be imposed of not less than \$500 and no more than \$1,000 per violation of the prescribed time period. In 2007, one of the bills I introduced dealt with fines for blocked railroad crossings. It was an issue that was brought to my attention during my campaign. The only thing I knew at that time about blocked railroad crossings was that there was a great deal of frustration from law enforcement and the public. That frustration still exists, but I will admit to a better understanding of the issues from both perspectives. And for the record, I would like to thank the personnel from Union Pacific and Burlington Northern Santa Fe for their quick response to problems whenever I have called. There also is a working group of law enforcement and emergency personnel and railroad representatives who met to try and address better ways to communicate known crossings that were blocked or undergoing work. I think we have all discovered that good communications and public relations go a long way to building trust and cooperation. And even though I better understand the challenges facing our rail industry today, I still have an obligation to my constituents. Blocked railroad crossings cost the railroads, and I understand that. But they also cost the general public with public safety concerns being paramount. So with that I would be happy to try to answer any questions. And I know there are some people behind me who have some issues to testify about. [LB245]

SENATOR FISCHER: Thank you, Senator Dubas. Are there questions? I see none; thank you very much. If I could ask how many people are here to speak in support of

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the bill, if you would raise your hands? Five. And how many in opposition to the bill? Four, five, six, seven maybe. Okay. I would ask the first proponent to step forward if you...first proponent, please? And if you would please try and be concise in your testimony I would appreciate it. [LB245]

JON EDWARDS: Good afternoon, Senators. [LB245]

SENATOR FISCHER: Good afternoon. [LB245]

JON EDWARDS: My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I am assistant legal counsel at Nebraska Association of County Officials. And we are here today in support of LB245, and I think there will be some testimony today as to specifics regarding this issue and the problems that are posed out there within the state as it pertains to crossings and those problems with extended blocked crossing times. I would say just as a general matter that this issue has been up several times in the past few years. It seems like maybe this policy that is being proposed here today might be a more broad, less heavy-handed way to maybe try to deal with this. We understand that it does...maybe it creates a new...it kind of shifts some of the responsibility to other places within the state, and there may be some concerns and issues with that. But certainly it does provide an avenue for the parties, the interested parties, to try to work out their differences from the beginning before we bring in any authority into the situation. So I just...overall I think that this might be a proposal broad enough under which we might be able to reach some sort of agreement on this issue for all parties involved. So I think with that I'll just...I'll end there, answer any questions, and allow the other testifiers to bring their specifics. [LB245]

SENATOR FISCHER: Thank you, Mr. Edwards. Are there questions? I see none. Thank you very much. [LB245]

JON EDWARDS: Thanks. [LB245]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB245]

MICHEAL DWYER: Good afternoon, Senators, and thank you for your time and the opportunity to present. I am Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, I am a volunteer firefighter from Arlington, Nebraska. I have been on our department for 25 years and I am here to testify in support of LB245. I will keep my comments brief; I have no written testimony and will simply act as a resource if you have any questions with specifics to response. Very briefly, we have an 87 mile, approximately 87-mile square district, and I believe that in that district there are six crossings there. I believe UP is the railroad. There's two of those that our only access to the properties on the other side of that track is across...obviously across the tracks. There is no other opportunities to get in there. So I think you can understand whether it is a heart attack or a house fire, that the time is

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critical and our ability to respond quickly across those tracks is of the essence. And certainly LB245 would give us the opportunity to (inaudible) expediate that. That's the end of my testimony and certainly I will take any questions. [LB245]

SENATOR FISCHER: Thank you, Mr. Dwyer. Questions? Senator Campbell. [LB245]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Dwyer, in your experience as a volunteer firefighter have you ever come upon a time in which you have an emergency and you don't have to describe it, but just how many times in your career have you seen this happen? [LB245]

MICHEAL DWYER: Yeah, I dug deep into the archives and to my knowledge in 25 years I can only remember three times. I would preface that answer with the statement that our relationship with Union Pacific has been great. Generally the communication overall is excellent. However, there have been three times in which we just simply could not get across the tracks at least in that particular area. If you can imagine a 45-foot fire truck and a 30-foot wide lane, once we reach the point that we can't get across, trying to back that thing up and turn around is a dance to say the least. But to answer your question directly, I can only remember three times in 25 years where it has been an issue. [LB245]

SENATOR CAMPBELL: Thank you, sir. [LB245]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB245]

SENATOR STUTHMAN: Thank you, Senator Fischer. Mr. Dwyer, have you ever worked anything out with the railroad as far as the minute you get the call, and you know where it's at and there happens to be a train there or a possibility of a train, to notify UP that, you know, we're going to have to get across this and if at all possible keep it open or make sure it is open in about a certain period of time? [LB245]

MICHEAL DWYER: Great question. I know of no formal agreement or an attempt to reach a formal agreement. I can tell you that generally speaking if we have any kind of an issue on the tracks, whether it's a crossing that's down, guard arm, or whether it is something more germane, a grass fire for instance, along the tracks. Generally speaking, that communication between our dispatch and UP, once we let them know that we are headed that direction and we need to get across, generally has been very, very good. But I would also tell you that that process takes a significant amount of time. And in a practical sense where the rubber meets the road, if you will, many times we don't know of that conflict until we approach the intersection, discover that it is blocked, kind of figure out what our options are, call dispatch, dispatch reaches UP's--in our case--dispatch, relays the information to the train or to the...whoever is in charge of that particular scene, and then they have to make the decision about how they're going to

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proceed and get it moved and all that stuff. And that takes critical time. I hope that answers your question. [LB245]

SENATOR STUTHMAN: It does but the thing that I'm...that I would like to see is the fact that you have certain crossings that you identified that that's the only route to get into those...that property. [LB245]

MICHEAL DWYER: Correct. [LB245]

SENATOR STUTHMAN: You know, I think, you know, couldn't there be something, an agreement with UP, you know, stated now ready. Say, you know, if we get a call to that such-and-such a problem and we have to cross crossing number 4216, and the minute you get the call from the property owner, you could immediately call them and they are aware of that situation on that crossing. That, you know, hopefully they could make provisions that they're not...they could slow up a little bit or speed up a little bit, and that would take care of the part of you get there and say, oh, my gosh. The train is here. And then a call is too late. [LB245]

MICHEAL DWYER: And your question is well-put and very valid. In trying to answer this in a rubber meets the road practical sense, I know that typically when it's 2:00 in the morning and these things go off and dispatch and our responders are trying to struggle through exactly where that call is. I know in our case it is a decision making process to figure out exactly not only where the call is but what route we might take to be most effective. Sometimes that is more of a process than it is a hard and fast rule. Could something like that be worked out? Perhaps. Is it, does it have it's own set of challenges? Perhaps. The only thing I would add just for clarification is even when there is a particular intersection that isn't blocked, I can think of two for instance, that if there is one, we know it as Marshall Nursery Road or County Road 15 in Washington County, that if that particular, that is the main north-south access for us going south into the southern part of our district, if that intersection is blocked it's a--please don't quote me on exactly figures--but it is a three or four mile trip around that guy to try to get back. I can remember a specific call and the call turned out fine but it was a young gentleman right across the tracks, and as we approached the tracks we could see the house and couldn't get to it without going roughly four or five miles around to literally come about 60 or 70 yards. [LB245]

SENATOR STUTHMAN: Okay. Thank you for your answer. [LB245]

MICHEAL DWYER: Thank you. [LB245]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here today. [LB245]

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MICHEAL DWYER: Thank you. [LB245]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB245]

LEON CEDERLIND: (Exhibit 5) Good afternoon, Senator Fischer and committee members. My name is Leon Cederlind, L-e-o-n C-e-d-e-r-l-i-n-d. In the interest of time I will not repeat what I have put into written form, but just make a few brief statements. First of all, I am not in favor of levying fines to the railroads but they must have reasonable accountability to someone besides themselves. For instance, I happen to live between a main highway I need to have access to and my farm home. I have been told by the railroad that, well, I can just drive around those blocked crossings. Well, yes, I can drive north when I want to go south and go out of my way to get around them, except when the road is under water to the north as it has been several times due to high rain the last few years. And except when all east-west roads in my area are impassable due to snow, I have experienced situations when the only way in and out of my home is impassable, even with a 4-wheel drive vehicle, except via one road crossing, which has a train parked on it. My biggest concern is with emergency vehicle response time as the previous testimony covered. I feel that LB245 will force the railroads to address the problems they cause the citizens and to be considerate of others' needs in addition to their own. Thank you. [LB245]

SENATOR FISCHER: Thank you, Mr. Cederlind. Are there questions? It's nice to see you again. You were at the hearing in Grand Island that we had, I believe? [LB245]

LEON CEDERLIND: Yes. [LB245]

SENATOR FISCHER: So thank you for being here today. I appreciate it. Next proponent, please. Good afternoon. [LB245]

GARY KRUMLAND: Senator Fischer, members of the committee, my name is Gary Krumland, K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in appearing in support of LB245. Just want to mention that over the meetings that you have heard about, the railroads have been generally cooperative, giving phone numbers of who to call when a train is blocked, and I've been working with the local governments in those areas. We do think, however, that it is a good idea to have a more formal process in those situations where agreements can't be reached and LB245 does create a good process to do that. With that I will just...carry on and take any questions if anybody has any. [LB245]

SENATOR FISCHER: Are there questions? I have one, Mr. Krumland. Are you an attorney? [LB245]

GARY KRUMLAND: Yes. [LB245]

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SENATOR FISCHER: Do you see a problem with the bill and with past law, past court cases I guess you could say, that have upheld the railroad's ability to operate and set the speed and set the length of trains because of their, well, because of their involvement with interstate commerce for one reason. There's other reasons, too, but that's one reason. [LB245]

GARY KRUMLAND: Well, and I guess I can't tell you how LB245 fits into that. I know that there are some cases that have said because of interstate commerce...there are some local governments anyway, that are limited in what kind of regulation they can do on railroads so. [LB245]

SENATOR FISCHER: Most states have very little regulation they can do on railroads. Would you agree with that? [LB245]

GARY KRUMLAND: Um-hum. Yes, yes. I would agree. [LB245]

SENATOR FISCHER: On the...do you know Senator Dubas mentioned the Arkansas model? Do you know what that bill was? [LB245]

GARY KRUMLAND: No, I'm not familiar with that. [LB245]

SENATOR FISCHER: Okay. Thank you very much. [LB245]

GARY KRUMLAND: Um-hum. [LB245]

SENATOR FISCHER: Other questions? I see none. Thank you. [LB245]

GARY KRUMLAND: Um-hum. [LB245]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB245]

JERRY STILMOCK: Thank you, Senator. Good afternoon, senators. My name is Jerry, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, a lobbyist on behalf of the Nebraska State Volunteer Firefighters Association representing about 7,300 men and ladies serving as volunteer fire and volunteer rescue throughout the state of Nebraska. We are testifying in support of LB245. Senator Dubas mentioned, and I would like to bring the committee up to date, especially those that are new to the committee, at a previous legislative hearing on...in 2007, there was a suggestion to perhaps open up that communication with the interested parties away from the railroads...other than the railroads and the railroads to bring those groups together. We did that and I am happy to report that we had a great amount of interest. We met in November of 2007. We met in March of 2008. And based upon those two meetings we sent out a protocol to be followed. The protocol basically

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is...there were three areas to identify. When the railroads knew there was going to be a grade outage, grade crossing outage, that that did not seem to be an issue because the railroad companies were notifying the entities involved, public safety particularly, ahead of time. The second area was...areas that were unanticipated, the grade crossing. It wasn't known that the grade crossing was going to occur and there was also a belief in the second category that the crossing would be out for more than one hour. And the third area is frankly where the crossing involved a city or village street or roadway, not a state highway. We came to, I think, a good agreement, a good arrangement...not an agreement, an arrangement, a protocol, if you will, for the second example, and that was if an outage was going to occur for more than one hour, that the railroads were going to notify the 911 dispatch. We have a group, a 911 dispatch. We targeted something that was 24 hours a day that is frequently familiar with giving directions and so forth to emergency personnel, and we thought that that would be the best way to go and everybody walked away from the table, so to say, and with an understanding. We had to tie in, because we did not have representatives of Douglas County, Lancaster County and Sarpy County. I sent communications to those three county's dispatch centers letting them know that this was discussed. The railroads were ready to go May 1, 2008, and so I think everybody felt pretty good about the communication. And I have sent notice out to the people that were on the committee, it involved sheriff's departments, it involved sheriffs actually of the departments. The sheriffs were kind enough to show up, 911 dispatch, managers in the March of 2008 meeting as well as volunteer fire and rescue personnel. There was only one incident that I am aware of, a gentleman from Brule in Keith County just outside of Ogallala, that he had an unfortunate experience. I would like to share that quickly with the committee. I know that he was on the phone quickly with the UP representative and if I have said her last name incorrectly, Brenda Mainwaring, I apologize Brenda, but--because I know she's in the room--but the incident went something like this. The fire chief of Brule, let me paint...let me take a step back. The Brule...one accesses Brule from the interstate off of a spur that has exit and entrance ramps on highway...Interstate 80. South of the village of Brule is a grade crossing that crosses that particular spur into Brule. Monday morning at 7:55 the fire chief, who happens to work in the town of Brule, saw signage going up to barricades to block the crossing and he knew, you know, something was going to happen obviously. So he saw the person from the sign company, followed them into a coop at the village and the gentleman proceeded to make a phone call to 911 so that 911 would be notifying the chief who was standing in the same room, followed him in because of the coincidence of bumping into the gentleman. So it didn't actually work in that situation. The grade was down for 8 1/2 hours, the chief was fit to be tied, I think. He would have been here today, but they had sleeting rain in Brule, and he chose not to travel in so I asked him to give me an account that I could share with you all. He was on the phone quickly with Ms. Mainwaring and, through repeated phone calls, I think they worked out some arrangement. And I invite her to share those rather than me perhaps misstate them if she is so inclined. I think overall we had an agreement in place, an arrangement, that's the only reported incident. I have asked others to report to me if

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there were other known incidents. To that, I did not receive any responses. Senators, if I may, I had a chance to review the Arkansas legislation, I read the decision, the decision was not by court of law, it was by the Highway Commission for the state of Arkansas, similar to what we would equate to the Department of Roads. Because it was an administrative procedure, it was not in a court of law. That seemed to impact the Arkansas decision in one respect as I read it. The issue of preemption, I took great interest. I mean I am reading away at 10:00 at night and it kept me awake because I was interested in the topic. But the particular Arkansas commission discussed and looked and said, look, if federal law is...preempts any state law on the two areas of length of a train and speed of a train, then let's measure that against what is in Arkansas. And the Arkansas Highway Commission ruled that the length of a train and the speed of a train were irrelevant for the purposes of reviewing the Arkansas statute. It had to do with a stopped train. A stopped train is not a moving train, and Arkansas at least dealt with that preemption argument and dealt with it in a manner that, for whatever circumstances Union Pacific eventually as I read through, I understood that the Union Pacific accepted the penalty administered by the highway commission and paid it. I don't want to walk away from this table thinking that the railroads are not trying. I think they are but I don't make the decisions of what we do. My client, the association, they have a position to stay involved with this as Senator Dubas has stressed her intention to stay involved with this issue, and for those reasons I am back here today saying that we have talked, we have gotten along it seems like. We hit a bump in Brule and we, at least my association, will continue to watch throughout the state and try to bring in any information that we feel will be helpful to the senators. Thank you. [LB245]

SENATOR FISCHER: Thank you, Mr. Stilmock. Questions? Senator Stuthman. [LB245]

SENATOR STUTHMAN: Thank you, Senator Fischer. Mr. Stilmock, in that situation in Brule, Brule population had no idea they was going to close that one. There was no notification whatsoever? [LB245]

JERRY STILMOCK: No, sir. No, sir. [LB245]

SENATOR STUTHMAN: And you're sure of that? [LB245]

JERRY STILMOCK: I'm sure in terms of what the chief of the fire department told me. I mean I'm sure that he told me it was 5 minutes before 8:00, the grade crossing was closed at 8 a.m., 5 minutes later. [LB245]

SENATOR STUTHMAN: Okay. Thank you. [LB245]

JERRY STILMOCK: Yes, sir. [LB245]

SENATOR FISCHER: Other questions? Mr. Stilmock, under current statute, do the

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railroads have to tell anybody they are going to close a crossing? [LB245]

JERRY STILMOCK: No. There's a piece in...no, there isn't. Not under statute. There's a piece in Department of Roads regulations. Department of Roads regulations and then it applies to state highways only. There's an element of county roads, city...municipality roads that are not recited in the regulation, and...but nothing in state statutes, yes, in terms of regulation for the state highways. [LB245]

SENATOR FISCHER: I would say because of Senator Dubas' tenacity on this subject that we have been able to see the communication open up and the railroads are contacting people now. You mentioned that Brule is really the only incident that you have heard of? [LB245]

JERRY STILMOCK: Yes. [LB245]

SENATOR FISCHER: I think that's a positive sign, wouldn't you agree? [LB245]

JERRY STILMOCK: You know, and I do, and I am glad you asked that question because I don't want to give the appearance of a whiner or that, ah-ha, gotcha...you know one, ahh, you know. That's not how we are going to get along. And so that's why I preface everything that I did send a dispatch out, I have not heard anything and other than the chief from Brule, that is the only known incident that I am aware of since we put the protocol out May 1...effective May 1, 2008. [LB245]

SENATOR FISCHER: Okay, good. Thank you. [LB245]

JERRY STILMOCK: Okay. [LB245]

SENATOR FISCHER: Are there questions? I see none. Thank you very much. [LB245]

JERRY STILMOCK: Okay. Thank you. [LB245]

SENATOR FISCHER: Other proponents, please. Are there other proponents? I see no other proponents. Those wishing to testify in opposition please step forward. Good afternoon. [LB245]

DAN FITZGERALD: Good afternoon, Senator Fischer and distinguished guests, my name is Dan Fitzgerald, D-a-n F-i-t-z-g-e-r-a-l-d. I am an employee of Burlington Northern Santa Fe, general director of transportation for the Nebraska Division testifying in opposition to LB245. Just a couple of concerns as I peruse the bill here this morning and during the proceedings today. Obviously the railroad, Burlington Northern Santa Fe is sincerely committed to maintaining good will with the citizens of the community in which we serve. Obviously we are attempting to do the right thing for the right reason

and understand blocked crossings are our concern, to the communities that we serve, and most importantly, to public safety. I think over the last 10 years I have been involved in similar forms in the state of Oklahoma a bit. Over the last 10 years the company has gone to great lengths to resolve these issues. However, at times, maintaining crossings, open and clear crossings is continually...I mean the volume environment in which we have been operating in the last several years is cumbersome at best. The state of Nebraska for Burlington Northern Santa Fe is a coal and agricultural corridor. We are operating up to 70-75 trains a day on the Ravenna subdivision, or from Lincoln...between Lincoln, Nebraska, and Ravenna, Nebraska. Seventy-five trains a day across that line segment equates to a train every 20 minutes. We can have situations arise, I understand the language in the bill says without good cause or extenuating circumstances, but clearly we can have mechanical issues, nature, service failures with our track structure that impact the train that can backlog traffic on that subdivision for 15 to 20 miles. And at times we are blocking crossings in excess of 10 minutes. Our operating employees, operating officers, dispatching environment, network operations center, is very much aware of what the restrictions are, what the expectations are relative to our own operating rules in clearing public crossings. So as I look at the bill as it is currently proposed, a couple of concerns that I have relative to cars that are transit or are parked or stored, is the language in the proposed legislation relative to cutting the crossing or ensuring that there is an adequate sight distance. Somewhat of a subjective...subject to interpretation. We actually have operating rules to address such occurrences and clearly the...as I have indicated, the 10-minute rule is actually an operating rule as well on Burlington Northern Santa Fe. And most of our operating rules, many of our operating rules are actually derived from a code of federal regulation which we refer to today in this forum. So I ask...my takeaway as your takeaway I would like to think is, is that we as a concerned member of the community want to maintain that good will, the focus on public safety, and maintain the...our good standing. Any questions? [LB245]

SENATOR FISCHER: Thank you very much Mr. Fitzgerald. Are there questions?
Senator Hadley. [LB245]

SENATOR HADLEY: Senator Fischer. Quickly, just what is your operating policy if a train is stopped for...over a grade? [LB245]

DAN FITZGERALD: We have operating rules. Our operating rules are specific in that regard that says no more than 10 minutes. Obviously if there's extenuating circumstances, we are going to take immediate action to free that crossing, whether it is proceeding and/or taking action to cut. At times it does become difficult under...difficult operating conditions. We have trains, coal trains out here operating between 120 and 150 cars. That's train lengths varying between 6,500 and 8,300 feet. So when we do make a decision to cut a crossing, as an example, we may have to dispatch a rapid response team from a specific location or dispatch an operating employee, the

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conductor in this case, to walk back to the effected crossing to cut. Obviously 10 minutes is not likely to happen in this regard. So it is really a function of planning ahead not to block in reacting to circumstances that are unplanned for. [LB245]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Louden. [LB245]

SENATOR LOUDEN: When you say your operating procedure is 10 minutes, now that's just for public crossing that isn't for grade crossing is it? [LB245]

DAN FITZGERALD: Well, it...the rule doesn't distinguish. Public or private, it's blocked crossings for 10 minutes so. [LB245]

SENATOR LOUDEN: Then how come once in awhile those train men tell they don't have to break that because it isn't a public crossing. They can sit there for as long as they want. [LB245]

DAN FITZGERALD: We're continually working with our operating employees and making their development a priority. [LB245]

SENATOR LOUDEN: Okay. Thank you. [LB245]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB245]

DAN FITZGERALD: Thank you. [LB245]

SENATOR FISCHER: Next opponent, please. Good afternoon. [LB245]

ROBERTO MUNGUIA: (Exhibit 6) Good afternoon, Senator Fischer, members of the committee. My name is Roberto, R-o-b-e-r-t-o, Munguia, M-u-n-g-u-i-a. I am director of government affairs for the BNSF Railway. I am here to give testimony in opposition of LB245. I have prepared a written statement that I would like to read and make part of the record. As several members of this committee may recall, this is my third time before this group giving testimony in opposition to legislation dealing with provisions that would try to impact train speeds and their movements. In 2007, it was LB676, which dealt with this issue, and last year there was LB1069. As some of you recall both those bills were indefinitely postponed by this committee during the 2008 legislative session. Contrary to what you may hear out on the streets, the issue of railroads blocking crossings is not ignored at BNSF. We are constantly making our supervisors and train crews aware of the sensitivity of this issue and we are trying to minimize as much as possible any blocked crossings. For those citizens we have blocked at a crossing for an excess amount of time, I personally apologize for the inconvenience we have caused them and or their family members. As Mr. Stilmock remarked here earlier, as a result of the two previous blocked crossing bills, a railroad crossing discussion group was formed

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consisting of members of the law enforcement, Nebraska State Volunteer Firefighters Association, the Union Pacific Railroad, and the BNSF Railway. At those meetings we all openly talked about blocked crossing issues and jointly tried to come up with solutions to deal with those problems. All parties worked cooperatively, and as a result, one of the fruits of our meetings was the adoption of the practice described by Mr. Stilmock. And I won't be redundant and repeat that process but we are working cooperatively with this group and with the citizens and the issue of blocked crossings and we intend to do that in the future. You heard testimony from Mr. Cederlind. There are a few things that he did fail to mention that I think is important to make this committee aware of. He didn't tell you that the trainmaster for that particular area, a fellow by the name of Mr. Zerfas and I personally met with him at the J Road crossing back in 2007 to deal with and talk about this particular issue. During the roughly one hour we were there at that crossing, the crossing was not blocked and only two vehicles crossed it. He also didn't mention that there are three crossings within one mile of his house. One of those crossings, Murphy Road, is protected by flashers and gates. He didn't tell you that you can...he can literally look out his window and see which of the three crossings may be blocked and if J Road crossing is blocked, he can either take a left or a right out of his driveway and use one of the crossings that isn't blocked. He also didn't mention that Trainmaster Zerfas has personally called Mr. Cederlind when we had to block J Road from an unforeseen operational issue. Trainmaster Zerfas did this purely as a courtesy to him so he could take an alternate route if he had to get to Highway 34. We are very sensitive to the issue concerning J Road and are trying to work cooperatively in minimizing the blockage of that particular crossing. And I personally want to apologize to Mr. Cederlind for the times that we may have caused an inconvenience to him due to a blocked crossing. As to the bill itself, LB245, it has the Department of Roads be given authority to adopt and promulgate all necessary rules and regulations and issue orders concerning permissible standing time for trains, provides for fines to railroads found blocking the crossing for more than 10 minutes without good cause. It goes on to say in part the department shall investigate as it deems necessary or is requested by state, county, or municipal officials in matters pertaining to the operation and movement of railroad trains within the state. I ask this committee to carefully review this bill because the plain language of LB245 applies exclusively to railroad operations and tries to regulate the speed and movement of trains which are in direct conflict with regulations and orders established by the Federal Railroad Safety Authorization Act, FRSA of 1970. Congress enacted FRSA to promote safety in every area of railroad operation and reduce railroad related accidents and incidents. The FRSA explicitly directed the secretary of transportation to develop and implement regulations and issue orders on all railroad safety to include problems at grade crossings. In my handout, exhibit number 1 is a copy of a January 2005, excuse me, a January 25, 2008, opinion from the Illinois Supreme Court Docket Number 103543, the city of Mundelein v. Wisconsin Central Railroad. This case is right on point with the issue we are discussing here today. In this case, Wisconsin Central Railroad was issued a citation for violating an ordinance enacted by the village of Mundelein,

prohibiting obstruction of railroad highway grade crossings for more than ten minutes. Following a bench trial, the trial court found the railroad guilty of violating the ordinance and imposed a fine of \$14,000 plus costs. The appellate court reversed the trial court's judgment and vacated the fine holding that the village's ordinance is preempted by Federal Railroad Safety Authorization Act. The Illinois Supreme Court agreed that the village's ordinance is preempted by the FRSA and affirmed the judgment of the appellate court. This is just one of many cases dealing with the issue of federal preemption. Also as part of the handouts I gave you, exhibit number 2 is a copy of a June 17, 2005, opinion from the attorney general of Texas who also concluded that their state statute prohibiting crossings blocked for more than 10 minutes regulates train's speed and lengths and are matters regulated by the federal law and therefore the statute is preempted by the FRSA. In closing, I just want to repeat that we are well aware of the blocked crossing issue. We are trying to minimize this problem and work cooperatively with our neighbors in this effort. I appreciate Senator Dubas' concern about this issue, but we are working to try to minimize it as much as possible. And there's my testimony. [LB245]

SENATOR FISCHER: Thank you, Mr. Munguia. Are there questions? Senator Hadley. [LB245]

SENATOR HADLEY: Senator Fischer, thank you. Just one...I am sorry. Senator Campbell says I always start by saying one short question. One long, no. (Laughter) Burlington Northern now has a policy that 10 minutes is their desired time that they would hopefully take action because of a blocked crossing. If we institute a law, it seems to me that we have to have some...enough of a penalty in there that Burlington Northern would want to either change their operating procedures or do something differently. Could you...if we were to pass this bill and assuming the court challenges were all met and everything, do you see Burlington Northern changing it's operating policies? Or maybe that's not a fair question, but... [LB245]

ROBERTO MUNGUIA: Well, I guess I will probably repeat myself here. The 10-minute crossing bill, or a crossing restriction you're talking about is an operating rule that we have, and we try to adhere to that as much as possible. There are extenuating circumstances that may cause us to be there for longer than 10 minutes. We're doing what we can to adhere to that 10-minute restriction. As...I guess the bottom line is I think you have the attention...these bills have the attention of all the railroads here in the state, and I don't think we need, well, from our perspective, need legislation to keep us...keep our trains moving. I mean, bottom line is that's what we want to do, keep the trains moving. We don't want them stopped, particularly at crossings. But that does happen, and unfortunately when you have miles of track and any little hiccup will cause a ripple effect across...you might have a problem in Ravenna that may ripple clear out here to Lincoln because of the number of trains on that particular track. A long answer to your question. [LB245]

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SENATOR FISCHER: Other questions? I see none. Thank you Mr. Munguia. Next opponent, please. Good afternoon. [LB245]

JOHN CRAIG: (Exhibit 7) Good afternoon, Senator. Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. My circulation is returning to my backside, so thank you. (Laughter) My name is John Craig and I am the director of the Nebraska Department of Roads. I am here today to speak in opposition to LB245. LB245 places new regulatory duties on the Department of Roads. In general, the department is not a regulatory agency. Under the provisions of this legislation, the department would be required to investigate, issue orders, hold hearings, and penalize railroads if trains obstruct public road crossings. While these regulatory duties are common in many other agencies, this would, for the most part, be new territory for the Department of Roads. This bill may also place the Department of Roads in conflict with federal law, as has already been stated several times. The Federal Railroad Safety Act of 1970 preempts all state law and state regulations that conflict with federal statutes. It is admittedly unclear whether or not state and local governments can regulate blocked intersections. No federal law governs blocked intersections but state and local laws are preempted when they interfere with other federal railroad safety requirements and laws. The Federal Railroad Administration states the courts across the nation are still attempting to sort this issue out. At present, the Department of Roads proceeds informally when it receives a complaint concerning blockage at a public crossing from a public agency. Our own rail division will investigate, talk to the parties involved, including the railroad, and in most cases they have been able to either resolve the situation or at least get a reasonable answer as to what occurred. While we understand the frustration of citizens who are effected by blocked crossings, and of that I think there is no doubt, we are opposed to the new duties placed on the department by this legislation. I would be happy to answer any questions at this time. [LB245]

SENATOR FISCHER: Thank you, Director Craig. Are there questions? [LB245]

JOHN CRAIG: And if I could get the page to handout my testimony. [LB245]

SENATOR FISCHER: I see no questions. Thank you very much. [LB245]

JOHN CRAIG: Thank you. [LB245]

SENATOR FISCHER: Next opponent, please. Good afternoon. [LB245]

BRENDA MAINWARING: (Exhibit 8) Good afternoon. My name is Brenda Mainwaring, B-r-e-n-d-a M-a-i-n-w-a-r-i-n-g, director of Public Affairs for Union Pacific for Iowa and Nebraska, and I am here to testify in opposition to LB245. Let me address Brule first. Mr. Stilmock's description of the situation was accurate. As with most new policies,

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sometimes there are hiccups and our contractor, who is...part of their duties are to call and notify the 911, failed to do so. And so fortunately the situation with Brule allowed us to make a correction so that we can help the contractor understand the importance of making those 911 calls in a timely fashion, and we have not had any problems since then. And I did talk to the fire chief, Cecil, first thing that morning and I think we had the issue resolved very quickly. So I believe that he is relatively satisfied with how that was handled. Our position on legislation that seeks to exercise state control over where and when a train can stop remains the same as it has been in previous sessions. We believe this is an issue that's addressed at the federal level since it involves our ability to carry out interstate transportation of freight. We have adopted the policy guidelines outlined by the Federal Railroad Administration with regard to blocked crossings. I have put some of those up there on the table. The Federal Railroad Administration suggests that the best way to solve blocked crossing problems is for the railroad and communities to work together on solutions, and we are very actively trying to do that. For example, Brule having my phone number and calling me and getting the situation resolved; that's the best way to get these problems resolved. Hopefully that white paper describes a little bit about how the Federal Railroad Administration feels about blocked crossings. I think it is a pretty good summary of the federal position on it. We do intend to continue our outreach to communities and individuals who have been troubled with blocked crossings, and we think we have made great improvement. We plan to continue that progress, but we are in opposition to this bill because we think it is not appropriate for the state to try to monitor where we can and cannot stop. Thank you. [LB245]

SENATOR FISCHER: Thank you, Ms. Mainwaring. Are there questions? Senator Hadley. [LB245]

SENATOR HADLEY: Definitely, thank you. Do Union Pacific's policy, operating policy on blocking a crossing, is there a time limit and then there is the expectation the train will be broken and the block at that crossing open? [LB245]

BRENDA MAINWARING: As I believe our standard is similar to BNSF, wherein if a train is stopped, which means it is not moving at all, we're not doing any building, or, you know, it's not being yarded, there's nothing happening, it's just stopped. Then at ten minutes it should be broken. The fact is, we don't stop trains unless we have to. One of our critical measures for how we decide whether or not we are successful at what we are doing is how fast our speed is. When we stop a train, it's not moving fast enough to contribute to our miles per hour. And so we don't stop trains unless we have to. Not to say it doesn't happen, it does happen and when it does happen we want to make sure we are working with the community to see if it's something that happened on a one-time basis, like the incident in Brule, or if it's a problem we need to look at, we need to figure out and resolve. [LB245]

SENATOR FISCHER: Thank you. Senator Stuthman. [LB245]

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SENATOR STUTHMAN: Thank you, Senator Fischer. Ms. Mainwaring, first of all I want to thank you for testifying. And also I want to thank you for your cooperation in our community. You know, in Columbus we have...we only have one viaduct; they have torn the whole viaduct down. We have 20,000 vehicles traveling that viaduct. We got railroad construction in town, building a third line. And we have, through communications with the Department of Roads, with the railroad, and with the fire department, the rescue squads, not only from our community, but communities around and working with communications with every event that is taking place. And I think, you know, you're notifying the public when these crossings are going to be closed and that issue. So would you feel that this could be...should be handled through communications or through legislation? [LB245]

BRENDA MAINWARING: You know, we're using, internally, Columbus as sort of a poster child to say this is the right way to do things, that's the way we want to handle things. Thinking it out well in advance of that kind of a problem, working with the community, with all the facets of the community, making sure we are out in front of it, and being ready to deal with problems as they may come up. So yes, communications. [LB245]

SENATOR STUTHMAN: Okay. Thank you. [LB245]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB245]

BRENDA MAINWARING: Thank you. [LB245]

SENATOR FISCHER: Next opponent, please? Good afternoon. [LB245]

ROBERT ANDERSEN: (Exhibit 9) Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Robert Andersen, Robert R-o-b-e-r-t Andersen A-n-d-e-r-s-e-n. I appear before you today in behalf of the Nebraska Cooperative Council. We are a trade association of agricultural cooperatives throughout the state. I come before you today with a little different perspective concerning this issue from what the other opponents have presented to you from the railroads and from the Department of Roads. I come to you, before you as a representative of the cooperative community in which the load out of grain is a very essential and imperative part of our operations. In this day and age we have a lot of unit car trains, a hundred unit car trains that are brought into our facilities there and we need to load those things out. Usually it takes 15 to 18 hours. The issue before you today is one that Senator Dubas had introduced last year, and I compliment her on her interest in this issue. She shows a great deal of sensitivity to the issue out there. I too like to think that we as a cooperative system are showing a degree of sensitivity also because one of the things that we have been trying to do to encourage our local cooperatives out

there and that is to be sure to try to find some type of communications to the community for those people that might be coming into a rural community letting them know that the road is blocked because there is a load out of grain taking place here so that they can divert and things of this manner in terms of getting to that community there. What concerns us a little bit more in particular about this particular bill is that the bill uses a language in there, and it defines any person owning or operating a railroad train. Well, we don't own and do we operate a railroad train? I would suspect that if there is a problem there with the blockage, that the community is going to look to us as the load out that's blocking that rather than the railroad at that particular point in time. And as you look in terms of the bill on page 6, it uses there on lines 12, about good cause. It then goes on to define there some of the aspects of what constitutes good cause but it does not, it does not include the load out of grain for these local elevators across our state here. So another concern of ours is that in here it talks about in terms of the promulgation of the regulations and it talks about who will all be involved in there. But it doesn't cite those people that are using unit car trains that are loading that out in terms of the movement of grain. So if this is to go forward here and actually base this upon our position, we hope it doesn't but if it does, we would encourage that this thing be amended to consider the input of those load out facilities in the promulgation of the rules and regulations. I know in the interest of time and my clock says it's 5:00, and I know there's people behind me. Senator Fischer, I would welcome any questions on behalf...that the committee may have of me at this time. [LB245]

SENATOR FISCHER: Thank you, Mr. Andersen. Are there questions? I see none. Thank you very much. [LB245]

ROBERT ANDERSEN: Thank you. [LB245]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? Anyone wishing to testify in the neutral capacity? I see none. Senator Dubas, would you like to close? [LB245]

SENATOR DUBAS: I will make my closing as brief as possible. Thirty-two other states have a fine on the books, and we, too, currently have a fine; it's \$100. We just don't have a method in place to enforce that fine. Arkansas, when we did our research and looked at what Arkansas is doing, what caught our attention was that there was a process in place, there was an administrative process in place. It didn't necessarily deal with speed or length, it was just a process to address the blocked crossing. I think the testifiers brought out the communication and the work that the different groups have done to address concerns, and it is working. Yes, there's some issues. I know there was an issue in Aurora this summer, just getting the kinks worked out but once everybody knew who they were supposed to contact, we were able to resolve that issue. So again, I do really appreciate the work that the railroads are attempting to do to build that communication and trust. This legislation would simply create an administrative process

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that does not currently exist. It would give the Department of Roads the authority to charge the fine, and to hold the railroad, not the employees, responsible. As rail traffic continues to increase, I see this as a problem that will not diminish but likely grow. So I hope that we can continue in the cooperative manner that we have to date in working on the best way to resolve these issues for the communities as well as the railroads. So I thank you. [LB245]

SENATOR FISCHER: Thank you, Senator Dubas. With that I will close the hearing on LB245 and close the hearing for the day. Thank you all very much. [LB245]

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Disposition of Bills:

LB181 - Placed on General File with amendments.

LB217 - Held in committee.

LB245 - Held in committee.

Chairperson

Committee Clerk