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Transportation and Telecommunications Committee
February 24, 2015

[LB192 LB317 LB644]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 24, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB644, LB317, and LB192. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Al Davis; Curt Friesen; Tommy Garrett; Beau McCoy; and John Murante. Senators absent: Les Seiler.

SENATOR SMITH: Good afternoon and welcome to the Transportation and Telecommunications Committee Hearing. I am Jim Smith from Papillion and I'm Chair of the committee. Although some of my colleagues are currently away, I'd like to make a quick introduction of the committee. To the far left, Senator Garrett will be joining us here shortly; Senator Garrett is from Bellevue. Senator Les Seiler from Hastings is absent today. We have Senator Beau McCoy from Omaha with us. Over to the far right is Senator Curt Friesen from Henderson. Senator Al Davis will be joining us a little bit later; he's introducing another bill in another committee. Senator John Murante will be joining us shortly; Senator Murante is from Gretna. And we have the Vice Chair of the committee, Senator Lydia Brasch from Bancroft. Committee staff: on my immediate right is Mike Hybl; Mike is the legal counsel for the committee. And to my left is Paul Henderson, and Paul is the committee clerk. Pages with us today: we have J.T. Beck from Centreville, Virginia; J.T. is a senior at UNL. We will be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify so that we can keep the hearing moving along. If you are testifying, please complete the sign-in sheet so it is ready to hand in to one of our pages. Once you approach the testifier table, I believe we...we have the forms back there now. For the record, at the beginning of your testimony, please both state and spell your name. And also keep your testimony concise, try not to repeat, maybe, what has already been covered in testimony. If you do not wish to testify, but want to voice your support or opposition to a bill, you can indicate so on the sheet provided on the table as you came into the room. This will be part of the official record of the hearing. If you do not choose to testify, you may submit comments in writing and have them read into the official record. Please silence all of your cell phones. We are an electronics-equipped committee. Information is provided both electronically, as well as in paper form to the committee members. So you may see committee members referencing their electronic devices during the hearing. Please be assured that your presence here today and your testimony are very important to us and is critical to the operation of our state government. We are going to begin with hearings on LB644 to be introduced by Senator Nordquist. Senator Nordquist, you are invited to open.

SENATOR NORDQUIST: Thank you, Senator Smith, and members of the Transportation Committee. I'm State Senator Jeremy Nordquist from District 7 in downtown and south Omaha here today to introduce LB644. Alternative public transportation systems, such as bus rapid

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transit and passenger rail are becoming increasingly feasible, efficient options for travelers, businesses, visitors, and day-to-day commuters. In the past ten years, ridership of these convenient options across the country has multiplied as demand has grown. A new interstate and intercity public transportation systems have been developed and implemented in both high and low population areas. Public transit systems in the Midwest are using most-advanced technologies to reduce congestion, improve air quality, increase labor productivity, foster fuel efficiency, and boost economic development. This bill seeks to ensure that Nebraska is fully examining these public transportation system options in operation at the time by reviewing the feasibility of these options for our state and planning for our transportation future, including the most cost-effective and modern systems. This bill would create the Nebraska Transit and Rail Advisory Council, or NTRAC. It will work closely with the Department of Roads to study public transit system options that are available to meet the needs of our long-term future. The bill would require them to complete a study by January 1, 2017, on the feasibility and projected costs of constructing and operating public transportation systems to meet the demands with an emphasis on the feasibility of the systems in major, existing Nebraska travel corridors and on connections to interstate passenger rail developments throughout the Midwest. The study shall examine, among other factors, demographic workforce changes, new technology, funding mechanisms, federal and state relations, service, frequency potential, ridership projections, regional and local transportation planning, public transportation system, demand, and economic development, community and environmental benefits related to interstate, intercity, and commuter passenger rail and other public transportation options. This study shall focus on developments and relevant changes since the last report. So, NTRAC, who was previously established in state law and completed a report in December of 2003. The Legislature created NTRAC in 1999, and the council was sunsetted in 2004. Essentially, we're asking for a reup of that study. There are a lot of...even though Congress is still looking at the reauthorization of federal highway funding, there remains a substantial amount of dollars invested in public transportation. And without Nebraska having a plan, and also maintaining engagement, I'll say, in regional planning operations, we really prevent ourselves from fully getting what would be deemed our fair share and what is an efficient, cost-effective fair share of federal dollars. MAP-21 has about \$10 billion every year. There's about half a billion dollars in TIGER grants, competitive TIGER grants available for public transportation options. So this is just us taking a step to revise a study now that hasn't been revised since 2003 to look at what options best suit Nebraska now and...I mean, we're looking out 40, 50 years. Thank you. [LB644]

SENATOR SMITH: Thank you, Senator Nordquist. Do we have questions? Senator McCoy. [LB644]

SENATOR McCOY: Thank you, Chairman Smith, and thank you, Senator Nordquist, for being before us today. Do you know, did any legislation come out of the 2003 study? [LB644]

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SENATOR NORDQUIST: (Exhibit 1) Not that I know of. I know there were recommendations to look at...the specific recommendation was to look at passenger...not passenger rail, the bus rapid transit express bus connection between Omaha and Lincoln. That just for some reason never got off the ground. In the report, the full...I'm having the page circulate around the executive summary. We can get you the full report, it's quite lengthy. But the...there would have required some public subsidization of that. It wouldn't have been a substantial amount, I believe it was in the hundreds of thousands of dollars a year to get that operational. But since that time, you know, in the Midwest since 2004, Amtrak ridership has doubled...more than doubled, so I think there, obviously, has been just a move overall in the utilization of public transportation since that time. So I think it's time to take a relook at this. [LB644]

SENATOR McCOY: Fine. And I actually already have a copy of the executive summary. [LB644]

SENATOR NORDQUIST: Okay. [LB644]

SENATOR McCOY: Which I appreciate you giving that...to page 2 and it's somewhat interesting to read through. On the fiscal note, obviously, as a member of the...long-time member of the Appropriations Committee, can you shed some light on where you would expect that this legislation were to advance where these funds would pull from? [LB644]

SENATOR NORDQUIST: Certainly, I would hope that working with the Department of Roads we could seek...we know there are some federal planning dollars available, probably wouldn't cover the full amount. I wouldn't want to take away from the Highway Trust Fund. I would think that if this is a long-term planning component, I think it would make sense to utilize a one-time cash reserve transfer of a few hundred thousand dollars if the committee chose to move forward with it. [LB644]

SENATOR McCOY: Thank you. And I guess my final question is, I'm sure you've seen the letter in the way of neutral testimony, I believe, from the Department of Roads... [LB644]

SENATOR NORDQUIST: Yeah. [LB644]

SENATOR McCOY: ...that expresses some concern, I guess, I would characterize it in my words, with a time line here. Do you want...would you speak to that? [LB644]

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SENATOR NORDQUIST: I'm very flexible...if they would like to have additional time, I would encourage the committee to consider that and consider giving them whatever time they feel they need. [LB644]

SENATOR McCOY: Because it appears it took quite a length of time back for the original study in the early 2000's. [LB644]

SENATOR NORDQUIST: Right. We kind of decided...you know, I want to introduce, and I kind of shortened it up thinking that it was...a lot of that...some of that base information is available, at least the structure of it. It would just be plugging in new data, so I didn't think it would take this long. But if the department feels that they need more time, I'm very comfortable with that. [LB644]

SENATOR McCOY: Thank you, Senator. [LB644]

SENATOR NORDQUIST: Yes. [LB644]

SENATOR SMITH: Additional questions from the committee? Seeing none, thank you, Senator Nordquist. [LB644]

SENATOR NORDQUIST: Thank you. [LB644]

SENATOR SMITH: Are you going to remain for closing? [LB644]

SENATOR NORDQUIST: Yes, I'll be here. [LB644]

SENATOR SMITH: Thank you. All right, we now move to proponents, those wishing to testify in support of LB644. Can I have a show of hands of those that are going to either testify as a proponent or an opponent of LB644. Okay, thank you, I appreciate that. All right, welcome. [LB644]

MILO MUMGAARD: (Exhibits 2 and 3.) Good afternoon, Senator and committee. My name is Milo Mumgaard, I'm a senior policy aid for Lincoln Mayor, Chris Beutler. And we are here today to register our strong endorsement of LB644. I provided to you today two items of some, relatively, lengthy written testimony that you can take a look at at your leisure. And also a one-pager that we use to describe what we're trying to do, at least a little bit, with respect to our passenger rail activity in Lincoln. But I'd like to just review a few basic points here today as to

why the city of Lincoln is particularly interested in LB644 and the future of passenger rail and other public transportation options. First of all, we have a strong interest because we've actually invested in this transit activity. We've recently built the Haymarket Amtrak station for several million dollars. And we are investing significantly into our public transit system, StarTran, as a future of transit in our community. You may see our new red buses in the community and so on. You may hear a little bit more about that shortly. Essentially, we are very interested in being connected to and being part of the regional build out of the passenger rail system, as well as the modern advancement in mass transit that exist today. And the one-pager that you've seen, All Aboard Lincoln, was a piece we put together this last year to demonstrate how Lincoln is definitely a railroad town. And you'll hear a lot today about railroad activity. Lincoln has both a freight and a passenger rail history and it continues. Where two of our major employers in town, BNSF, about 2,000 or so employees is very much, of course, on the freight side. On the passenger side, Kawasaki, which is about 1,600 employees is very involved in passenger rail advancements around the country, and internationally, really, as they build out the light rail and other kinds of passenger rail equipment right here in Lincoln, Nebraska. But there are several reasons and several factors that we believe argue for transit choices, passenger rail, and public transportation options that LB644 will be looking at. First of all, as the population, work force, and commuter transit in eastern Nebraska, while they're very good for the economy, as you'll see in the testimony that I've provided, a lot of detail about the expansion and what's happening and good for the state, they do raise significant transportation challenges and plans that we need to be setting for the future. And we will benefit by planning now to take advantage of the options that come down the road. Another trend that we want to have the committee be aware of and we've been paying a lot of attention to in Lincoln is the transit choices of the newer and younger and mobile consumer generations that we're dealing with today. What do they want in a transportation system. Well, they certainly want to have a high-quality infrastructure that they can get around on and get to and from where they're going. But they definitely want to have options that include a robust public transit option. And in Omaha and Lincoln and eastern Nebraska, particularly today, that is something that we're asked a lot about and how do we get there and how do we create that? We're also very involved in thinking through at the growing interconnectivity of our labor markets in both Omaha and Lincoln and eastern Nebraska and so on. And we realize that this, in order to really build that out effectively over time, we're going to need to have additional public transit options. And furthermore, the future transportation funding, which you folks are very acutely aware of, as we see a changeover in driving habits, changeover in alternative fuels, and changeover in a lot of different ways, that will reduce our reliance upon...our ability to rely upon motor fuel taxes, we need to have new ideas and new ways of doing things here in the state. So, yes, the NTRAC body did exist in the early '90s...or early part of this century, if you want to put it that way, but there's been a lot of activity since the previous study that has occurred. And while that study, which you could read at your leisure, and it's really quite interesting, because it goes into tremendous detail on the commuter rail, passenger rail, the bus express service options, and so on, in the state as it existed about 12, 15

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years ago. You'll find that the factors they've identified as being relevant to the development of public transit have actually developed quite a bit in eastern Nebraska in particular. And furthermore, in the Midwest region that we exist in, and that's why this sheet is also somewhat useful to look at, is you'll see there's a tremendous build out of the Midwest Rail...Midwest Passenger Rail System such that there's actually now a Chicago to Omaha line being built...or Chicago-Council Bluffs line being planned and partially built which here in Lincoln, we want to bring that to Lincoln. We want to bring that beyond Lincoln; we want to bring it to Hastings, we want to bring it all the way to Denver. So there are many examples to look at, many ideas to look at, many trends and issues and factors that have occurred since the last study was done that argue for this kind of a study. Now to conclude, in May of last year, the city of Lincoln hosted the Amtrak Exhibit Train here in our brand new train station. And it was a remarkable thing. We had it over two days; we had over 3,600 families that came there. It was a tribute to the past as a railroad town, as well as really a glimpse of the future. You were able to see some of the new ways in which fast, frequent, timely passenger rail is going to be possible. And we heard from these people that they wanted to see public transit be...and passenger rail in particular be an option that they see in the future. They acknowledge that this is all very much planning and thinking about our development into the future. But nevertheless, this is what they do, in fact, want to see. It was a very exciting time. So we think in Lincoln there's a game-changing moment here with respect to public transit with passenger rail, with bus express service, bus rapid transit; Omaha and Lincoln both are really aggressively moving forward on how to move people more quickly, more efficiently. And in that light, LB644 is a very strong policy move in the right direction. Thank you very much. [LB644]

SENATOR SMITH: Thank you, Mr. Mumgaard. Do we have questions from the committee? I see none, thank you. [LB644]

MILO MUMGAARD: Thank you. [LB644]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB644. Welcome. [LB644]

MATTHEW ROQUE: (Exhibits 4 and 5) Thank you. Hello. My name is Matthew Roque, that's M-a-t-t-h-e-w R-o-q-u-e. I am here to testify in support of LB644. I also have a letter from the Nebraska Chapter of the Sierra Club that I'd like to submit as well supporting this bill. Thank you, Senators Nordquist, Morfeld, and Pansing Brooks for introducing LB644. My appreciation is also extended to Senator Smith and this committee for the work they are doing on behalf of the citizens of Nebraska. I'm here today representing a group called ProRail Nebraska. This nonprofit advocacy group focuses on increased passenger rail services, as well as other public transportation options within the state. As the group focused on rail issues, we participated in

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and have studied the Nebraska transit corridor study completed for the NTRAC Council in 2003. Although a good document, it did contain several flaws that have continued to impact transportation planning to this day. One of the major flaws is its lack of any medium and long-range analysis or recommendations. The study simply analyzed the feasibility of developing commuter rail or bus systems by the year 2010. In addition to the limitations of the 2003 study imposed by the short-term planning frame work, the study did not undertake any in-depth origin and destination analysis. Commuting by University of Nebraska undergraduate and graduate students, for example, was not considered, nor was an analysis of non-work related demand considered. Based on the limited research undertaken for the study, the report concluded that it was probably not feasible to initiate rail or bus commuter service by 2010. Both the Lincoln and Omaha metropolitan areas have experienced significant growth since 2003. And this same rate of growth is expected for the next 20 to 30 years. Studies conducted by the Joselyn Castle Institute, the Nebraska Innovation Zone Commission, the Lower Platte River Corridor Alliance, the Lincoln/Lancaster Planning Commission, and the Metropolitan Area Planning Agency, among others, have projected considerable population growth and developmental activity within the Lincoln/Omaha corridor. The construction of additional traffic lanes on I-80 in the corridor between Lincoln and Omaha demonstrate the importance the state places on serving the transportation needs of this growing population. ProRail Nebraska implores our state to adequately prepare for the future transportation needs of its citizens in Lincoln, Omaha, and the areas in between. We believe the provisions of LB644 offer the state a timely opportunity to examine alternatives for developing a successful and cost-effective transportation solutions for the future. ProRail Nebraska recommends LB644 be used by the state to begin an incremental transportation planning and development strategy to take advantage of opportunities that can be implemented in the short term which will result in significant cost savings in the future. In order to accomplish these objectives we suggest detailed analysis and projections be conducted for a planning period extending 20 years or more into the future through a revitalized Nebraska transit and rail advisory council. Thank you. [LB644]

SENATOR SMITH: Thank you, Mr. Roque, for your testimony. Do we have questions from the committee? I do have a couple of questions. You mentioned in your testimony that the 2003 study did not undertake any in-depth origin and destination analysis. Can you give me a general idea as to what information would come from that that would affect the outcome of the report. [LB644]

MATTHEW ROQUE: I guess I can give you a generalization. [LB644]

SENATOR SMITH: Please. [LB644]

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MATTHEW ROQUE: Looking at the specific modes of transportation and the people that take them between the two cities of Omaha and Lincoln, more in-depth as in what are the demographics, the age constituencies, why are they making those trips? Is it for work? Is it for play? What time of day are they taking them? Those need to be looked at in more detail to fully understand if a passenger rail option is viable. [LB644]

SENATOR SMITH: All right. And then, further down that paragraph you note that the report concluded that it was probably not feasible to initiate rail or bus commuter service by 2010. Have any idea what factors they used to make those conclusions? Was it population or? [LB644]

MATTHEW ROQUE: Actually, no I don't. This was prepared by myself and one other person who wasn't able to be here. And that part was something he added. [LB644]

SENATOR SMITH: Okay. Very good. [LB644]

MATTHEW ROQUE: I apologize. [LB644]

SENATOR SMITH: That's all right. Thank you very much for your testimony. Any further questions from the committee? I see none. Thank you. [LB644]

MATTHEW ROQUE: Thank you. Here is the Sierra Club's document as well. [LB644]

SENATOR SMITH: Okay. We'll get those distributed. Thank you. [LB644]

MATTHEW ROQUE: Thank you. [LB644]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB644. Welcome. [LB644]

MIKE DAVIS: Thank you. My name is Mike Davis. I am the transit manager for StarTran, City of Lincoln, and I would like to go ahead and reference an article that came out in January of this year from CNN. [LB644]

SENATOR SMITH: Let me have you spell your name for us. [LB644]

MIKE DAVIS: Mike, M-i-k-e D-a-v-i-s. [LB644]

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SENATOR SMITH: Okay, thank you. [LB644]

MIKE DAVIS: The article is titled: "Everybody is Moving to Oregon." And the article states: Oregon was the top destination for people who moved out of state in 2014. It then goes on to say--for the second year in a row that Oregon tops the list. So the last two years in a row they've been the number one destination for people moving out of state. And it goes on to say--the state is popular for one of the reasons, Oregonians high-quality of life. And then the next...two paragraphs down, it goes on to state that--Portland is ahead of the curve in terms of urban planning. It was the first to build a light rail instead of a highway in 1986. And I can imagine the decision-makers, like yourself, in Oregon back 30 years ago, saying we're going to make this decision on a rail and roads not knowing the impact that that might have 30 years down the road. And now we can see, kind of, some of the fruits of that decision making being the number one place that people are moving to. And so my...again I am in support of this bill moving forward. I think it's good practice to plan for our future, to plan for a quality of life in the future for future generations to experience. And that's all I have to say today. Thank you. [LB644]

SENATOR SMITH: Thank you, Mr. Davis, for your testimony. Do we have questions from the committee? Seeing none, thank you. Supporters of LB644, continuing with proponents of LB644. Welcome. [LB644]

ROBERT KUZELKA: Good afternoon, Senator Smith, and members of the committee. My name is Robert Kuzelka, K-u-z-e-l-k-a. I live at 1935 A Street in Lincoln, Nebraska. I'm a professor emeritus in environmental studies and community and regional planning at the University of Nebraska. And I wanted to relay an experience I've had over the past two years that may lend some light about why this study should be done and perhaps some of the ways it should be done. About two years ago, a student, who is sitting in the room back here, came to me and wanted to do an environmental thesis on a rail line between Lincoln and Omaha. And I dissuaded her from doing that for a couple of reasons, because as we talked, it was clear she did not understand how cities were put together in urban patterns. And I said until that is understood, you really can't decide if you need a rail line or where you'd put a rail line or how it would work. Omaha and Lincoln have both been, in the past 20, 30 years, moved from a very concentrated city, with a downtown in each, to a very dispersed city with lots of centers and traffic patterns that correspond to that. She went ahead and did a study, a very good one, part of it was published in Prairie Fire, and I'd be happy to give your clerk a copy of that report, it was a very good thesis, I felt. She did pass and she graduated and is now doing community regional planning. She pointed out problems with the way our cities are set up now for doing something. So I would hope that this study that's going to take place with your approval, and with the Legislature's approval, will look at the patterns of the cities and how those patterns might relate to improve transit. It's clear we don't have good transit now and we don't have good movement between Lincoln and Omaha. And I would argue that the addition of another lane between the two has

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made traffic worse rather than better because you constantly see three cars neck and neck down the road with no ability to move ahead. And cities can change. Salt Lake City was a city that was laid out, smaller than Lincoln, but with very similar sorts of patterns and they decide to make a change. And they put in light rail and it's been very successful and it has started to change the pattern, the sort of expansion of land use, etcetera, that takes place without any sort of a good defined transportation system. I would hope that we would see out of this a public transit system that would take over StarTran and metro and would expand to the counties of Dodge and Cass, Washington, into Iowa, Lancaster County, perhaps Seward County. And then from that system, we would then have the basis for eventually a rail thing. That should be part of what this study takes...you know, looks at. It can be done. It's been done in other cities. So I would encourage you to pass this, to fund it, and to get on with it, because nothing is improving in our transit system and the three...the addition of lanes has not helped that much and it's not going to help in the future. Thank you. [LB644]

SENATOR SMITH: Thank you, Mr. Kuzelka. Do we have questions from the committee? Now, so this particular study, we...I think...our first thoughts go to the rail system between the cities, but you're talking about the way a city is designed affects the local distribution network. [LB644]

ROBERT KUZELKA: Right. [LB644]

SENATOR SMITH: Do you believe that Nebraska is to the point where we can...we have a population base to fund those types of intricate distribution systems that have to take place once you arrive at the destinations in the city? [LB644]

ROBERT KUZELKA: Smaller cities than the ones in Lincoln and Omaha have done this successfully. So much of our transport for both automobile and buses is based upon, you know, models that aren't effective anymore, that aren't really relevant because of what...the way we've laid our cities. But you can make changes and you can overlay a pattern of streets that would eventually bring you nodes, because rail now would be pretty ineffective because there are no nodes. I mean what would you run it from? Gateway to Crossroads? No? Running it from downtown Lincoln to downtown Omaha is not the greatest idea. Although downtown Lincoln is finally being revived, you know, through the West Haymarket. And it could become a node, but otherwise it's not really a node. And so the study has to be more than just transportation, because transportation is the way you analyze an urban pattern and then the way you make changes of the urban pattern. A lot of transportation engineers don't believe that. They will tell you, and the study that was done before probably is based somewhat on this, we only answer the needs of the public. And of course any of us that have seen Interstate 80, know that's not true, because every intersection on Interstate 80 has developed into an urban center. So that...the center came after

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the interstate; it didn't come because there was a center there. So we're looking at...we keep looking at it backwards, I think, from a transportation planning point of view and an urban pattern point of view. [LB644]

SENATOR SMITH: Okay. [LB644]

ROBERT KUZELKA: And I would hope this study would look at it a little differently. [LB644]

SENATOR SMITH: Senator Friesen. [LB644]

SENATOR FRIESEN: Thank you, Chairman Smith. Mr. Kuzelka, so if I...maybe you can clarify this, if a municipality or a city, should they start to change some of their zoning and growth pattern laws and how they're going to approach growth in the future, should we start that first or do we put the rail in first and encourage them to change their growth patterns? [LB644]

ROBERT KUZELKA: Well, I think the cities have to do some changing. And this may be the way they run their transit systems. But...and I don't think the first step is what, you know, should come out of a city like that is rail anyway. I think it's buses, public transit. And then, if the public transit connects nodes eventually, those pathways would become logical rail passes. [LB644]

SENATOR FRIESEN: Okay. [LB644]

ROBERT KUZELKA: I don't know if that answered the question. [LB644]

SENATOR FRIESEN: Yeah, I think it does. Thank you. [LB644]

SENATOR SMITH: I see no additional questions. Thank you, Mr. Kuzelka, for your testimony. [LB644]

ROBERT KUZELKA: (Exhibit 6) Would you like me to give your clerk a copy of the Prairie Fire article? [LB644]

SENATOR SMITH: That would be fantastic. Thanks. [LB644]

ROBERT KUZELKA: Okay. I'll give it to him. Thank you. [LB644]

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SENATOR SMITH: (Exhibit 7) We continue with proponents, those wishing to testify in support of LB644. I see no additional proponents. We now move to opponents, those wishing to testify in opposition to LB644, opponents. Seeing none, those wishing to testify in a neutral capacity. We do have a letter for the record in a neutral position to LB644, that is Randall Peters on behalf of the Nebraska Department of Roads. We now move to closing and we invite Senator Nordquist to close. [LB644]

SENATOR NORDQUIST: Thank you. I'm just...just say to the committee, right now, you know, we remain on the outside looking in and a lot of regional planning going on in our region among multiple states, but I think this is a piece for us to look internally and then use that information to help engage in regional planning for transportation systems in the Midwest. So I'd appreciate the committee's favorable consideration of this bill and certainly look forward to working with you. [LB644]

SENATOR SMITH: Senator Nordquist, I know you've been an active proponent of the rail system and, you know, the innovative thought and ideas to look at something like this for Nebraska and thanks for bringing the bill forward to us. [LB644]

SENATOR NORDQUIST: Yeah, thank you. [LB644]

SENATOR SMITH: That concludes the hearing on LB644. We now move to LB317 to be introduced by Senator Kintner. Welcome, Senator Kintner. [LB644]

SENATOR KINTNER: (Exhibits 1 and 2) Don't want that ringing. Mr. Chairman, members of the committee, I'm Bill Kintner, B-i-l-l K-i-n-t-n-e-r. I'm representing District...Legislative District 2, and I'm here to introduce LB317. LB317 withdraws...by the way, it's good to be here on choo-choo day. Believe it or not, I really do like trains. (Laugh) I've been fascinated with them my entire life. But, anyway, what it does, this LB317, withdraws Nebraska from the Midwest Interstate Passenger Rail Compact. And Nebraska has been in this compact for 14 years and spent \$197,650 in member dues. Even the most optimistic plans for passenger rail expansion of high-speed rail projects do not include Nebraska. The benefits of membership in Nebraska do not outweigh the estimate...or expenditure of dollars on dues. So I am proposing that we withdraw from this. Governor Ricketts did not fund this in his budget. Governor Heineman did not fund this in his budget. I think that as we look at this, we just can't put our fingers on any benefit that we've gotten from being a part of this. And I think this money is better kept in the taxpayer's pocket or at least in the Cash Reserve Fund. That's why I submit this to you. You'll see you've got two handouts. One just kind of shows you the amount of money we've spent on it. And the second one is an amendment, so it's enacted as of July 1. That's when we need to let

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them know that we are withdrawing. So that's what that amendment is for. And I'll take any questions if you have any. [LB317]

SENATOR SMITH: Thank you, Senator Kintner. Do we have questions? I see Senator Brasch has a question. [LB317]

SENATOR BRASCH: Thank you, Chairman Smith. Are you aware of any other Midwest states that have withdrawn their membership from this compact? [LB317]

SENATOR KINTNER: I do not. [LB317]

SENATOR BRASCH: Thank you. [LB317]

SENATOR SMITH: Senator Kintner, on the...are we paid up on our dues? [LB317]

SENATOR KINTNER: Yes. We are now current. We...if you noticed on there, we didn't pay for a few years. That was during the economic hard times that this state went through. And then we cut a deal with them. Instead of paying the full dues, Chairman Dubas cut a deal with them to just pay a small makeup amount, and that's the \$45,000, and we are now current. [LB317]

SENATOR SMITH: Okay. All right. Do we have any further questions? I see none. Are you going to remain for closing? [LB317]

SENATOR KINTNER: Yeah. I'll hang out. [LB317]

SENATOR SMITH: All right. Thank you. We now move to proponents, those wishing to testify in support of LB317. Supporters of LB317. Seeing none, opponents, those wishing to testify in opposition to LB317. Welcome. [LB317]

JOAN BRAY: (Exhibits 3-5) Chairman Smith and members of the committee, my name is Joan Bray, that's J-o-a-n B-r-a-y. Thank you for allowing me to speak in opposition to LB317. I am Missouri Governor Jay Nixon's designee to the Midwest Passenger Rail Commission and serve also as the commission's vice chair. And accompanying me today is Laura Kliever, the director of the commission which is based in Chicago. Laura has been with the commission since the idea for it came out of a Midwest legislative conference meeting in 1996. And I got in on the planning shortly after that and have participated as a legislative appointee during my years in the Missouri House, then the Senate, and post-term limits as a gubernatorial designee. Between the

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two of us, we'll be able to, I hope, answer any of your questions. Nebraska was one of the original three states to form the compact. The compact's purposes are: to promote development and implementation of improvements to intercity passenger rail service in the Midwest; coordinate interaction among Midwestern state's elected officials and their designees on passenger rail issues; promote development and implementation of long-range plans for higher speed passenger rail service in the Midwest and among other regions of the United States; work with the public and private sectors at the federal, state, and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote Midwestern interests regarding passenger rail; and to support efforts of transportation agencies involved in developing and implementing passenger rail service in the Midwest. Then-Governor Mike Johanns signed the compact's enabling legislation into law in 2001. Former Senator DiAnna Schimek was one of the first officers of the commission, which held its inaugural meeting during the Midwestern legislative conference annual meeting here in Lincoln in August 2001. Since that year, and I'm going to refer to it, what we do...we call it MIPRC, it's kind of a funny word, but MIPRC has worked to promote, coordinate, and support improvements to passenger rail service within its member states, among them, and nationwide. Involving its bipartisan mix of gubernatorial, legislative, and private-sector delegates from each member state, MIPRC has also been active in protecting long-distance passenger rail service--including the California Zephyr service through Nebraska--that is valuable to many Midwesterners. Nebraskans and visitors to your state are increasingly taking the train, even though currently only one round-trip per day serves Nebraska. And that one, the California Zephyr, comes through the state late at night and in the wee hours of the morning. Yet "boardings" and "sightings" at station stops in Nebraska have grown by more than 21 percent in the past ten years; 13.5 percent in the past five years. Some stations, such as Lincoln, Hastings, and Holdrege, have seen much higher growth, as you will see in the chart "Nebraska Amtrak Ridership Information," which we passed out to you. I want to note here that MIPRC has been looking at the economic impact of passenger rail suppliers to the Midwest's economy. A report will be out in the coming months. You have copies of one of the charts from that report showing Amtrak procurement in Nebraska. The economic impact of Amtrak's purchases has also grown exponentially over the past ten years from just over \$70,000 during FY 2003 to more than \$5 million in FY 2013. MIPRC strongly supports improvements to Midwestern corridor routes, each with fewer than 750 miles, envisioned under the Midwest Regional Rail Initiative and other state plans made by state departments of transportation. Federal funding for intercity passenger rail development in recent years is allowing the Midwest to make the first phases of improvements to these corridors. Segments of the Chicago to Detroit and Chicago to St. Louis routes now allow for 110-mile-per-hour service. Within the next couple of years, those lines will be fully higher speed. Improvements made on the route that my state, Missouri, supports between St. Louis and Kansas City have led to dramatic increases in on-time performance, and that led to significant increases in ridership. The Midwest Regional Rail Initiative plan envisions passenger rail service improving and increasing in Nebraska. It would allow riders to take the

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train from Omaha to Chicago in about seven hours and to Des Moines in less than two hours. Improvements to the Omaha station and developments in the area due to the increase in service are projected to bring millions of dollars more in economic impact. The Iowa DOT secured federal funding to complete a service development plan for the proposed new route between Chicago and Omaha. The plan was completed last year. The next step, when federal and state plans and funds are ready, is to start the environmental work required to begin construction and other work. This past fall, MIPRC responded to a federal call for statements of interest for multistate planning to be led by the Federal Railroad Administration. If we are selected, this process will allow the Midwest to consider a structure to coordinate ongoing regional planning, oversight, and political, and education efforts. We also propose to update the 2004 Midwest Regional Rail Initiative plan as well as consider what new and potential routes may be needed 20 and 30 years down the way. We would expect Nebraska and other Midwestern states--along with cities, MPOs, local governments, freight railroads, Amtrak, and higher education institutions--to actively participate in updating that plan. So what does this all mean for Nebraska's deciding whether to stay in the compact? Nebraska is a valued member of MIPRC. Through the compact, our Midwestern states are able to stand together as a region to promote, coordinate, and support regional improvements to passenger rail service. We are unique and advanced among the regions of the country that are looking at passenger rail service. We hope you will agree that Nebraska benefits from the education, planning, and advocacy provided and facilitated by MIPRC and that the state deserves to continue as a voice in current and future passenger rail development that will bring significant benefits to the state. Last fiscal year, after a few years of lapsing its dues payments, Nebraska brought its commission dues up to date. It has also paid its dues in full for the current fiscal year. And I want to note here parenthetically that MIPRC's dues have not risen 1 penny over its 14 years of existence, and yet the value for money has only increased with our activities, credibility, and successes. Senators Burke Harr and Brett Lindstrom were recently appointed to the commission. We hope that you will agree that rather than withdraw, now is the time for Nebraska to take advantage of its membership in the Midwest Interstate Passenger Rail Compact by participating fully with our activities. We look forward to working with all of you to that effect. Thank you very much. [LB317]

SENATOR SMITH: Thank you, Ms. Bray. Do we have questions from the committee? Ms. Bray and Ms. Kliewer, thank you for coming to Nebraska. Appreciate your testimony. So the dues that we're looking at is roughly \$15,000 per year. [LB317]

JOAN BRAY: Correct. [LB317]

SENATOR SMITH: And each of the member states, do they pay the same amount in dues? [LB317]

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JOAN BRAY: Yes. [LB317]

SENATOR SMITH: And those dues go into, I assume, the administrations happening for the council. [LB317]

JOAN BRAY: Yes, yes, yes. And the commission meets twice a year at a minimum, but it's usually twice a year and all the travel and expenses for the commissioners are paid out of the dues that they pay. We don't...there's no extra levying for, you know, to come to the meetings. And we usually make one trip a year to Washington. Again, everything is paid by the commission's budget. [LB317]

SENATOR SMITH: Okay. And so the commission is more of a...would you say more of an advocacy group for the region in the development of the transportation system? [LB317]

JOAN BRAY: Absolutely. [LB317]

SENATOR SMITH: So can you point to just something specific that...some way in which Nebraska has directly benefited over the last number of years? I know I'm putting you on the spot, but... [LB317]

JOAN BRAY: Right. Well, and Laura may want to jump in to help on this, but I will tell you just the visibility of when we started going to Congress where we...you know, we were seeking a real partnership with the federal government for the states in passenger rail like we have with roads and transit and other areas, when we started going to Congress, there was not much awareness of what the needs were or the issue in the states. Now there's a...you know, there's a very high educational attainment of members and their staffs about, you know, what the issues are. And so when money became available and, you know, so the Midwest competed for funding, for passenger rail funding, we got a healthy amount. And the plans that include Omaha and anything that you might want to do in the future, you know, because the commission has been active and because the Midwest is seen as at the forefront of a regional plan, a regional system, just all of our boats have been raised because we...you know, we're seen as a group working together and again then when we've gone to compete for the money, we've done amazingly well. So I would hope that Nebraska would see itself as a beneficiary of that...of those activities and, again, with their being an actual plan to come to Omaha, it's not...you know, it's...there's a real...you're seen as part of the system because, you know, Chicago-Omaha, that's just part of our...what we talk about now. So I would hope that, you know, that that's...you see it that way. [LB317]

SENATOR SMITH: Okay. Thank you. Senator Garrett. [LB317]

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SENATOR GARRETT: Thank you, Chairman. I'm curious. Do other geographical regions have a similar commission, passenger rail commission? [LB317]

JOAN BRAY: Nothing quite like ours. [LB317]

SENATOR GARRETT: Okay. [LB317]

JOAN BRAY: Nothing quite like this. And, again, we've been at this for a long time now and when nobody else was doing it or thinking about it, there was a real sort of a vision in the Midwest to do this by the states just getting...the DOTs getting together to make this plan. Shortly after that, the Midwest legislative conference saw this role for legislators and, like I'm an appointment of the executive branch. But for, you know, the state governments beyond the DOTs to get involved, as the Chairman said, as an advocacy for the issue and for the specific plan. So... [LB317]

SENATOR GARRETT: And how many states are involved? [LB317]

LAURA KLIEWER: Pardon me? [LB317]

SENATOR GARRETT: How many states are... [LB317]

JOAN BRAY: There's nine states. Yeah. [LB317]

SENATOR GARRETT: Okay. [LB317]

LAURA KLIEWER: If I might add two things about that. Is that okay? [LB317]

SENATOR SMITH: I'm going to need you to spell your name for us so we can have it on record. [LB317]

LAURA KLIEWER: Sure. Laura Kliewer, L-a-u-r-a K-l-i-e-w-e-r. I'm the director of the Midwest Interstate Passenger Rail Commission, and thank you for allowing us to be here today. Two things I want to mention, you asked if there's any other regional. There is a northeast commission and the northeast increasingly...the northeast has quite a bit of passenger rail service and they are looked at...there's some that want to just fund the northeast. And we have been looked at in the Midwest as a shining example that, yes, passenger rail service makes sense for other regions of the country and the Federal Rail Administration...Railroad Administration is

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going to a regional system for its planning. The statement of interest that she mentioned that we put an application in for would allow the Midwest to update its plans, not only the system that it has now but for future, for 20 and 30 years from now. Other regions are doing similar things like that too. So it's not...we were kind of extraordinary when we did it, but it's where things are moving into regional planning. [LB317]

JOAN BRAY: Yeah. I think the Federal Railroad Administration is looking at...I mean we could call ourselves a model, I mean, they've gone to other parts of the country to sort of help organize this kind of thing. What we did is we did it ourself and we said, you know, we're nine states that want to do something here and we saw...there's enough going on to say let's take it to another level. [LB317]

SENATOR GARRETT: Okay. Thank you. [LB317]

SENATOR SMITH: Senator Brasch. [LB317]

SENATOR BRASCH: Thank you, Chairman Smith, and thank you for your testimony and traveling here today. I do have a question. Is...according to our notes here that there are 12 states eligible to join the Midwest, apparently our research...is that correct, there could be? [LB317]

JOAN BRAY: There could be. [LB317]

SENATOR BRASCH: Had there been 12 states or is this the... [LB317]

JOAN BRAY: We've not had 12. [LB317]

SENATOR BRASCH: How many? [LB317]

JOAN BRAY: We had...the...Ohio was a participant in the commission but has...did withdraw. [LB317]

SENATOR BRASCH: Okay. Ohio had withdrawn. [LB317]

JOAN BRAY: Right. [LB317]

SENATOR BRASCH: Okay. And otherwise you were originally ten states or you opened it to 12? I... [LB317]

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JOAN BRAY: Is it ten with North Dakota...we were ten with North Dakota? [LB317]

LAURA KLIEWER: South Dakota could be part of the commission. It doesn't have any current passenger rail service. So...but we were asked by legislators to include South Dakota. Iowa also has withdrawn from the compact. [LB317]

SENATOR BRASCH: Iowa has withdrawn as well. Okay. And then...so does every state have two representatives? [LB317]

JOAN BRAY: Four. [LB317]

SENATOR BRASCH: Oh, four. [LB317]

JOAN BRAY: There's two legislative members... [LB317]

SENATOR BRASCH: Okay. [LB317]

JOAN BRAY: ...appointed by their Legislatures, and of course in all the other states there's one senator and one rep. And then there's a Governor's designee, and then someone that represents like usually the Department of Transportation. So there's four total. [LB317]

SENATOR BRASCH: So roughly this \$140,000-plus collected from the nine is used to send the delegation to Washington, D.C., annually or are there other...? [LB317]

JOAN BRAY: Well...it covers our expenses. And we have Laura who works for the commission. She's actually part time. She works for the Midwest Legislative Conference Council of State Governments... [LB317]

SENATOR BRASCH: Okay. [LB317]

JOAN BRAY: ...and doesn't spend full time on us but a good chunk of her time. So we pay for her time and then we have the...then we pay for the expenses and other activities. Our budget is, you know, it covers what we're doing. [LB317]

SENATOR BRASCH: And what is the most recent accomplishment. You had talked about funding. Can you state one example of where your delegation went to Washington in recent history and came back with... [LB317]

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JOAN BRAY: I wish I could say that we went up there and we got a funding source, but we have been significantly involved in the Midwest being a presence and known for what we're doing in passenger rail and for, again, moving things forward within the states. And, you know, when the money became available for passenger rail and the stimulus money, what, three or four years ago, and all the applications were taken from the states, we worked with the states as individuals and in the region to advocate for getting that money brought back to where there were plans made and it would be used, you know, in a positive productive manner. [LB317]

SENATOR BRASCH: The ARRA dollars, is that what you were speak... [LB317]

JOAN BRAY: The ARRA dollars. Yeah. [LB317]

SENATOR BRASCH: Okay. Those dollars. And I guess my other questions is, so it's administrative costs and an annual D.C. advocacy trip. [LB317]

JOAN BRAY: And then a meeting within the Midwest too. [LB317]

SENATOR BRASCH: And then are the railroads beneficiaries of this organization? Do the railroads benefit? [LB317]

JOAN BRAY: We have formed a closer and closer alliance with the freight railroads. Of course, they are...you know, they carry the trains over them, and they are involved in our advocacy work now. That's a relationship that's developed and strengthened over time. And so, yes, we do have a nice working relationship. [LB317]

SENATOR BRASCH: Are they financial contributors at all? [LB317]

JOAN BRAY: Do we have any...we have sort of a friends organization, allies group. Do we have any railroads? [LB317]

LAURA KLIEWER: They have supported, like we had a meeting in Kansas City last fall, our annual meeting and several of the freight railroads contributed to the meeting (inaudible). [LB317]

SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB317]

JOAN BRAY: Thank you. [LB317]

SENATOR SMITH: Thank you, Ms. Bray. Appreciate your testimony. [LB317]

JOAN BRAY: Certainly. Thank you. Appreciate the opportunity. [LB317]

SENATOR SMITH: We continue with opponents, those wishing to testify in opposition to LB317. Welcome. [LB317]

MATTHEW ROQUE: (Exhibit 6) Thank you. Hello once again. My name is Matthew Roque, that's M-a-t-t-h-e-w R-o-q-u-e. Thank you for the opportunity to testify here today. Chairman Smith and members of this committee, I'm here representing the group ProRail Nebraska. The Midwest Interstate Passenger Rail Commission brings together state leaders from 12 states in the Midwest and the plains regions to advocate for passenger rail improvements. This organization has been instrumental in moving states forward for new or expanded passenger rail options. The planning and development of passenger rail infrastructure in the plains will occur with or without Nebraska's participation. ProRail Nebraska suggests that it would be foolish for our state to deny itself the opportunity to participate in this planning. In October 2014, the Federal Railroad Administration invited groups of states to submit statement of interest and qualifications--once again I say groups of states, that's the key--for participating in an FRA-led regional rail planning process. The SOI's received will assist the FRA in determining which regions to potentially study. In November, the MIPRC submitted an SOI on behalf of the Midwestern states, including Nebraska, for participation in an FRA-led regional rail planning process. Planning regionally facilitates the integration of rail projects with other transportation modes; promotes greater involvement by stakeholders; and identifies priorities for limited federal funding. The FRA is seeking to advance practices for regional rail planning and to further the development of regional plans. The MIPRC-led SOI proposes both long-term planning and facilitating the coordination of ongoing regional planning, oversight, and political, and educational efforts. The proposal included a process that will update the work outlined in the 2004 Midwest Regional Rail Initiative plan. The process would encompass additional states, new and potential routes, rail work already completed in the states, and studies undertaken by various groups in the Midwest. It would include a wide variety of cooperating entities--states, cities, metropolitan planning organizations, local governments, freight railroads, Amtrak, and institutions of higher education. The FRA's planning process would build on the work the Midwestern and plains states have accomplished through coordination over the past 20 years. It is expected that corridor projects be identified and prioritized and a process for their ongoing advancement will be developed. This process will include preliminary planning to environmental review to construction. Results from the multistate planning effort will give guidance to the National Rail Plan. It is critically important that Nebraska be a part of this planning process, otherwise our state will not be at the table to provide input that represents the best interests of this state. Thank you. [LB317]

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SENATOR SMITH: Thank you, Mr. Roque. Do we have questions from the committee? Senator Brasch. [LB317]

SENATOR BRASCH: Thank you, Chairman Smith, and thank you, Mr. Roque, for your testimony and coming forward. You had stated that ProRail Nebraska... [LB317]

MATTHEW ROQUE: Yes. [LB317]

SENATOR BRASCH: ...will move forward regardless of our affiliation with the organization, the Midwest compact. Has ProRail Nebraska worked directly with the Midwest conference? Is there an interaction, letter writing, communications? Are they a benefit to you currently? [LB317]

MATTHEW ROQUE: Yes, ma'am. Several of our members have gone and attended the annual or semiannual conferences. One of the persons was unable to be here today, a former employee of Union Pacific. He's gone to the conference, I believe, in Kansas City as well as Des Moines in the past years, as well as we've been in conference with Laura Kliewer with the group, MIPRC, both last year when there was a bill to...I forget the exact text of the bill now, but to...or to pay the back dues. So we've been, I would say, instrumentally involved with the MIPRC on advocating for passenger rail in the state as well as in other states surrounding us, Kansas and Iowa. [LB317]

SENATOR BRASCH: And has there been, other than the stimulus dollars, the ARRA funds that came back to every state, has there been monetary gain to your organization other than attending a conference? [LB317]

MATTHEW ROQUE: No, ma'am. [LB317]

SENATOR BRASCH: No. [LB317]

MATTHEW ROQUE: Where my group is a small advocacy group... [LB317]

SENATOR BRASCH: Okay. [LB317]

MATTHEW ROQUE: ...and...but we're feisty and we do like to talk and just be involved in the process. [LB317]

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SENATOR BRASCH: Okay. Very good. I have no other questions. [LB317]

MATTHEW ROQUE: Thank you. [LB317]

SENATOR SMITH: Further questions from the committee? Seeing none, thank you, Mr. Roque, for your testimony. [LB317]

MATTHEW ROQUE: Thank you. [LB317]

SENATOR SMITH: We continue with opponents, those wishing to testify in opposition to LB317. Welcome. [LB317]

ROBERT KUZELKA: Chairman Smith, members of the committee, I'm Robert Kuzelka, K-u-z-e-l-k-a, and again happy to perhaps provide an answer to a question that was asked earlier that I think could be answered better. First of all, you asked what does the \$15,000-a-year get us. And we're paying a cent a person roughly, 1 cent per person to take part in this organization. So it's not a lot of money. I mean, I don't know what else we do in this state that's a cent a person. I know lots of things that seem like millions a person but not a cent a person. The first thing we get out of it is we're the only state in the union without a department of transportation. Representative from Missouri that spoke has a phenomenal department of transportation with an outstanding department of railroads. We have a section of railroads and public transit within the Department of Roads which has historically dealt with railroads as far as grade crossings and not beyond that. So for a cent a person a year, we're finding out what other states are doing. We're sending people like your Chair went to a meeting, other people have gone to meetings. We're at least finding out what is happening in the world other than Nebraska because we don't have a Department of Transportation. Secondly, you've heard some talk about this Chicago-Omaha study. If we were not part of MIPRC, I would question if it wouldn't be an Omaha...or a Chicago to Council Bluffs study, which I don't think we want. We don't want everyone getting off and spending their money, having a good time in Council Bluffs when the best is across the river as we all know. So it keeps us in the ball game. Finally, the future of transportation is multimodal. In places within the MIPRC, and we've had...ProRail Nebraska has had numerous meetings about this where we've brought in people from places where they've improved rail lines, for instance, the line, the Chicago-St. Louis line. And we've heard from small communities like Urbana, Illinois, and Galesburg, like that, what has happened to those communities once they increase their rail patterns. We all know, because we're all good Nebraskans, that the history of our economic development is based upon passenger rail. If we wouldn't have had passenger rail, we would not be settled. It was the thing of the future. I would hope that 10-15 years from now this Legislature can't be blamed for holding back the economic development of the state because they denied us the right to talk to other Midwestern states who were involved in passenger rail

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activities and economic development. My hope is some day, you know, things will be changed and we'll have a strong department of railroads within our Department of Roads. But until we do, this is our only window into the future of what is a growing multimodal transportation method. Thank you. [LB317]

SENATOR SMITH: Thank you, Mr. Kuzelka. Questions from the committee? Senator Brasch. [LB317]

SENATOR BRASCH: Thank you, Chairman Smith, and thank you, Mr. Kuzelka, for clarifying the benefits that are here. You mentioned we're...are we the only state without a Department of Transportation? [LB317]

ROBERT KUZELKA: The only. [LB317]

SENATOR BRASCH: The only state. And so would you advocate that we... [LB317]

ROBERT KUZELKA: We're Nebraskans. [LB317]

SENATOR BRASCH: Should we have a department of transportation? Are they...do other states have a department of roads and a department of transportation? [LB317]

ROBERT KUZELKA: No, no, no. [LB317]

SENATOR BRASCH: No. It's... [LB317]

ROBERT KUZELKA: Almost all other states have over the years, and I would guess a majority of that has happened over the period of creation and existence of the MIPRC. [LB317]

SENATOR BRASCH: So the department of transportation would include roads... [LB317]

ROBERT KUZELKA: Oh, yes. [LB317]

SENATOR BRASCH: ...as a part of it? [LB317]

ROBERT KUZELKA: Right, right. It's multimodal. In most states it includes aeronautics, roads, rail, public transit, the whole thing. [LB317]

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SENATOR BRASCH: Okay. [LB317]

ROBERT KUZELKA: And our roads works and has improved in this area, but at least when we were...when they were actively involved; and roads, for some reason for quite a few years, has not been actively involved in MIPRC. They are aware of it. When they were actively involved, you know, they were at least learning about what was happening in other states. [LB317]

SENATOR BRASCH: Very good. And just one comment. Iowa is no longer a member of this, so they probably wouldn't stop in Council Bluffs. They'd have to go and then...I think Iowa is out of it too and so... [LB317]

ROBERT KUZELKA: Well, except that... [LB317]

SENATOR BRASCH: ...we're moving out east now with the... [LB317]

ROBERT KUZELKA: I'll backtrack. Iowa had started the...had become a partner in the Chicago-Council Bluffs-Omaha study before they withdrew. They've withdrawn, but their department of transportation is still leading the effort... [LB317]

SENATOR BRASCH: Very good. All right. [LB317]

ROBERT KUZELKA: ...and wants to work with Nebraska on it, so. [LB317]

SENATOR BRASCH: That sounds great. Thank you for your testimony. [LB317]

SENATOR SMITH: Okay. I see no further questions. Thank you, Mr. Kuzelka. [LB317]

ROBERT KUZELKA: Thank you. [LB317]

SENATOR SMITH: Remaining opponents, those testifying in opposition to LB317. [LB317]

MILO MUMGAARD: (Exhibit 7) Good afternoon, committee. My name is Milo Mumgaard, M-i-l-o M-u-m-g-a-a-r-d. I'm senior policy aid to Mayor Chris Beutler of the city of Lincoln. We have already submitted a letter in opposition to the state's withdrawal from the MIPRC for a lot of good reasons in which we've been able to utilize the services and resources of the compact over the years. I wanted to, though, address a couple of things that have come up just in the testimony today. And I think it's really important to remember the context in which we're acting

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here. Federal public transportation program funds at the federal level are a significant amount of money. In the last fiscal year, it was \$10.7 billion in fiscal year 2014 for just federal public transportation. An aspect of that is, of course, the passenger rail and Amtrak related and intercity and shorter rail lines and commuter rail provisions. The point is that the city of Lincoln is very interested in the state of Nebraska continuing to be part of the Midwest compact because the Midwest compact is our direct relationship to these federal funds. And the reality is as even though federal transportation legislation is somewhat pending right now on how much will be spent and under what programs and in what manner, there is no question that there will be a significant federal participation available to the state of Nebraska, the city of Omaha, city of Lincoln, so on and so forth into the future and we want to make sure that's clear that that's where our interest lies. And also the TIGER funds that you've also heard about which will be reauthorized as part of the federal Surface Transportation Act. That includes public transit. And over the last several years, there's been about \$500 million per year at the federal level to go to rail and transit and ports and similar kinds of projects. Certainly the state of Nebraska, the cities, are able to access those funds and have...the city of Omaha, for example, or more accurately Metro in Omaha just recently received a \$13 million TIGER grant to work on the bus rapid transit program through central Omaha. But again that's a perfect example of knowing what to do and when to do and how to do it to access the kinds of funds that are available to make public transit a reality. And Omaha Metro is in a position to do that because there were federal funds available. And there are also other federal funding sources, such as the Federal Transit Administration's new grants...New Starts program which allows bus transit systems in particular to expand their programs with federal funds beyond what they're otherwise able to do in their rate structure and so on. And Lincoln is certainly and StarTran is certainly looking at using New Starts funds to expand the services available. And how they obviously key into passenger rail and the MIPRC is because this is a mass transit system plan that's going forward. Now I would just conclude by echoing again, the Chicago to Council Bluffs rail line plan has been something that's been a very exciting element of the Midwest rail initiative, but it's one of 15 different parts of the Midwest rail initiative. There are plans that have been rolled out in the last four to six years. And this plan actually is coming to our doorstep. And it's a key question of how we get that plan to continue through Nebraska so that we can have a fast frequent rail system from Omaha to Lincoln to Hastings to McCook to Denver and so on. That's really why the MIPRC makes a lot of sense from the city of Lincoln's perspective. Thank you very much. [LB317]

SENATOR SMITH: Thank you, Mr. Mumgaard. Senator Brasch. [LB317]

SENATOR BRASCH: Thank you, Mr. Mumgaard. Do you believe that we cannot receive federal funding without membership in this organization? [LB317]

MILO MUMGAARD: The way in which we will not receive federal funding is under a law that now is needing to reauthorized. Because the state of Nebraska never done a state rail plan, we

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technically are ineligible for federal funding for passenger rail. That, of course, is a law that just expired. So whatever the new law is. So we have already could have put ourselves, unfortunately, in a bit of a box with respect to those sorts of things. The MIPRC helps to do state rail plans, helps to do things in which we are able to articulate and figure out what we need to do to be eligible for state or, excuse me, for federal funding. So as we go forward with federal service transportation somewhat up in the air about what's going to be required, it's better than a fair chance that we need the resources of the MIPRC and the other states to help us out to understand what we need to do to be fully eligible for these federal funds. [LB317]

SENATOR BRASCH: So are they working directly with municipalities or are they working with our senator members and then they are the conduit to funding and opportunities? [LB317]

MILO MUMGAARD: As they've described, they're more the advocacy and ability to express ideas and concepts that need to be and can be funded in the states and at the locals levels, including, for example, an example we've looked at a lot in Lincoln which is the normal Illinois passenger rail and bus rapid transit multimodal center--that's a lot of transit words--for basically a development that has occurred in the home of Illinois State University to take advantage of the high speed or fast rail from Chicago to St. Louis normally sits right between the two cities. And they've quadrupled the amount of ridership with the advent of this high-speed rail on those lines while simultaneously creating a local level economic development model. And so we've looked at that heavily in Lincoln as a potential model for what we could do here with UNL here in Lincoln but also being able to...the MIPRC is the way to connect all the dots. And that has been very helpful to us at the local level. [LB317]

SENATOR BRASCH: Okay. Very good. I have no other questions. Thank you. [LB317]

SENATOR SMITH: I see no further questions... [LB317]

MILO MUMGAARD: Thank you. [LB317]

SENATOR SMITH: ...thank you, Mr. Mumgaard. Remaining opponents, those wishing to testify in opposition to LB317. Welcome. [LB317]

KEN WINSTON: (Exhibit 8) Good afternoon, Senator Smith. Actually, what I'd like to do is just to offer a letter of opposition and I will put...I'll enter my name in the record. Ken Winston from the Nebraska Sierra Club. And I'd like to just offer a letter written by one of our members. [LB317]

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SENATOR SMITH: And spell. [LB317]

KEN WINSTON: My name? Oh, yes. K-e-n W-i-n-s-t-o-n, on behalf of the Nebraska Sierra Club... [LB317]

SENATOR SMITH: All right. [LB317]

KEN WINSTON: ...in opposition to LB317. [LB317]

SENATOR SMITH: Okay. [LB317]

KEN WINSTON: Also like to offer a letter of support on LB644. (See Exhibit 5, LB644) [LB317]

SENATOR SMITH: All right. Thank you, Mr. Winston. [LB317]

KEN WINSTON: Thank you. [LB317]

SENATOR SMITH: And he'll pick that up from you. [LB317]

KEN WINSTON: I'll fill it out. [LB317]

SENATOR SMITH: That was quick. [LB317]

KEN WINSTON: I try to be efficient. [LB317]

SENATOR SMITH: (Exhibit 7) Thank you. Further opponents, those wishing to testify in opposition to LB317. I see none, We now move to...oh, I do have a letter to be read into the record in opposition to LB317. Milo Mumgaard, I believe we heard from Mr. Mumgaard, on behalf of the city of Lincoln. We now go to those wishing to testify in a neutral capacity for LB317. Neutral. Senator Kintner, you're welcome to close. And just real briefly, those that will be coming before us on the next bill, you can remember to please bring ten copies of any handout that you're going to have for the committee. [LB317]

SENATOR KINTNER: Well, I guess I, once again, have proven I can get the liberals riled up. We got two liberal bureaucrats coming in from Missouri, got some from Lincoln here worried

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that their hands are going to be removed from the taxpayers' pockets. I think they've realized that we finally have gotten to the point where this Legislature has said we're not getting our money's worth, that after being in it since 2000, we've got nothing to show for it. Let me go through a couple of things. One, Ohio and Iowa left the compact. Well, what happened? Republican governors looked at it and said no, baby, we're not doing this. Lincoln is here opposing it. You couldn't find Omaha with a search warrant. This isn't even on their radar. Yes, we're paid up in dues but we paid those dues last session over the veto of the Governor who took that money out. I think that there was significant number of people that thought that that was a bad move but we didn't quite have the votes. If rail enthusiasts want to get together and talk about choo-choos, I'm all for it. But they don't have to do it, they can do it on their own time or at their own dime. They can meet as often as they want, go wherever they want, seek whatever help they want, advocate, lobby, whatever they want to do. But they can do it with their own money. There's nothing wrong with that. I don't have any problem with it. One thing I want to point out, we get out of the compact, rail service isn't going away. We don't need this group promoting development or planning for us. We're quite capable of doing our own planning and we've done it before they were ever here and will do it once they are out of our pockets. I'm actually going to do something the government doesn't do very well. I'm actually going to say, hey, this isn't working for us. Let's do something different. You know, in government nothing moves until pushed. Well, this is the push. This is the time now. We've got enough history. We've been doing this for 15 years. It's time to say, hey, it doesn't work. I want to point out that this rail compact has not protected our rail service at all. The only reason we have rail service is we happen to be in the way. We happen to be between Chicago and Denver. That's why we have rail service. If we were somewhere else, we'd be like South Dakota. We would have no rail service. And I think that we can get along just fine without it. I don't think anyone wakes up in the morning going, jeez, I wish we were more involved in that rail compact. Thank you very much. [LB317]

SENATOR SMITH: Do we have questions for Senator Kintner? Senator Kintner, I just want to clarify. The Transportation and Telecommunications Committee is very interested in hearing from all of our citizens on issues of transportation regardless of the perspectives they may have, and I believe that passenger rail system, although we can have a difference of opinion on the cost and the appropriateness for Nebraska, is a very legitimate discussion to have. So I hope that none of those that came prior to you, your closing, that have testified in opposition take your comments that their comments are not important to Nebraska or important to the committee. And particularly to those that have travelled from outside the state, I appreciate their testimony as well. It's good to have a discussion on this. I think it's very important to have. And so I don't want anyone to feel as if their opinions are not important to us. You brought up earlier, Senator Kintner, in your opening, you talked about the absence of a line item in the budget for this. That absence of a line item, do you take that as necessarily being an oversight or complete opposition? [LB317]

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SENATOR KINTNER: Complete and total and utter opposition. [LB317]

SENATOR SMITH: By the Governor? [LB317]

SENATOR KINTNER: Yes. [LB317]

SENATOR SMITH: Okay. [LB317]

SENATOR KINTNER: And it's the second Governor in a row. [LB317]

SENATOR SMITH: All right. Thank you, Senator Kintner. [LB317]

SENATOR KINTNER: And, Senator Smith, thank you for your comments. I do agree that all views are important. [LB317]

SENATOR SMITH: All right. Any further questions for Senator Kintner? I see none. Thank you, Senator Kintner. [LB317]

SENATOR KINTNER: Appreciate it. [LB317]

SENATOR SMITH: That completes our hearing on LB317. We now move to the hearing on LB192. And Senator Davis is going to open on that bill. Welcome, Senator Davis. [LB317]

SENATOR DAVIS: Good afternoon, Senator Smith and members of the Transportation Committee. I am Senator Al Davis, D-a-v-i-s. [LB192]

SENATOR SMITH: And, Senator Davis, I'm sorry, I'm going to ask you just to hold up for just a moment. There's a transition taking place behind you; I don't want you to be interrupted. [LB192]

SENATOR DAVIS: Okay. [LB192]

SENATOR SMITH: So we'll let the room transition here for just a minute. I apologize for that. Please proceed; thank you. [LB192]

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SENATOR DAVIS: (Exhibits 1-7) I am Senator Al Davis, D-a-v-i-s and I represent Legislative District 43. I'm appearing here before you today to introduce LB192. LB192 would require trains to be operated by at least two crew members when involved in the movement of freight and would authorize the Public Service Commission to enforce this requirement. LB192 exempts this requirement when engines are used in connection with hostler services or utility employees. I am offering AM477 which will also exclude remote control engines from the two-person requirement as these are also covered by the federal railroad administration regulations. Some years ago, the federal government required rail companies to develop positive train control, a technology that gives the rail industry the ability to control trains remotely from different locations and distant ones. With the evolution of the PTC, rail companies are now considering plans to reduce their labor force to one individual. This is inherently a risky development for public safety in Nebraska, particularly in light of the hazardous types of freight that are being hauled through our state and the dependence on rail to transport them. Our highway infrastructure is not as heavily developed as in other states, so public safety officials rely heavily on one or two ways to move through Nebraska communities. I have handed out to you a 2005 map showing the tonnage of freight crossing the country. A cursory examination of this map shows you how much freight moves through our state and how congested our rail lines are, not just in the eastern part of Nebraska, but across the entire state. This isn't just coal freight, but hazardous material such as ethanol, anhydrous, ammonia, benzene, Bakken oil, and other inherently dangerous chemicals. According to the Public Service Commission in 2012, over 511 million tons of freight in Nebraska originated, terminated, or passed through the state putting us second out of the 50 states behind only Wyoming. Trains are currently operated with two individuals, an engineer and a conductor. The engineer is responsible for the operation of the engine; the conductor is responsible for the train itself. The conductor is the individual who sets switches, sets brakes, evaluates problems, brakes the train at a crossing, etcetera. Both men are highly trained to perform their respective jobs and both are a necessary component of railroad operation. I became aware that the rail industry was considering elimination of the conductor position after reading about a proposed discussion between rail employees and the BNSF last August in my local paper. The BNSF proposed a contractual agreement to the SMART union leadership which would have included one-person crews, master conductors, and lifetime employment opportunities either as master conductors or as drivers for the common carrier vans. The contract negotiations took place behind closed doors between the two entities, but the agreement was ultimately rejected by a union vote of 80 percent to 20 percent with 69 percent of eligible union members voting. I have handed out copies of a news article about this vote and testifiers following me will provide further information on the reasons so many union members oppose one-person crews. So why should Nebraska enact legislation which requires trains to carry two men. This is an issue of public safety and good public policy. The BNSF proposal eliminated the conductor position on the train, but remember what the conductor is charged to do: managed all elements of the train which are not connected to the engine. Anytime there is a problem with the train itself, it is the conductor who troubleshoots the damage and assess the

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repairs that need to be made. The engineer must remain with the engine so he is unable to assist the conductor in his work. Often the conductor must walk to the back of the train to assess a problem, carry a knuckle if a train has been separated, etcetera. If the problem can't be repaired, the conductor will break the train at a crossing to allow vehicles to move across. This is of primary importance in considering whether to advance the bill. Without a conductor on the train to assess damage and with the engineer unable to leave the motor, the engineer will contact a master conductor to assess and repair problems. One can assume that the master conductor will be on call at all times to be available to assess damage, but it is extremely likely that the crossings may be blocked for lengthy periods of time waiting for the master conductor to arrive, assess the problem, and either fix or break the train. In large parts of Nebraska, the heavy rail traffic already blocks crossings for a significant period of time. In the Sandhills, which make up over one-fourth the land mass of the state of Nebraska and the high plains west of Alliance, there are few available crossings for public safety officials to use. There is usually only one crossing in town for EMTs, fire, and police to use. A derailment near that location could result in the train blocking that crossing for a lengthy period of time keeping rescue personnel bottled up on one side of the tracks while fires burn on the opposite side, all the time waiting for the arrival of the master conductor to break the train. Unfortunately, this scenario isn't as likely...as it isn't as unlikely to occur as you might imagine. My own town had a massive coal derailment very near the only crossing which splits the community several years ago. Derailments happen every day in this country. Most occur in the country, but many also occur in our towns and villages. I don't think Nebraska wants to take that kind of risk. I have provided some news articles about derailments which have resulted in the evacuations, fires, and the like to show you what a derailment could mean to our communities. There is federal legislation being discussed to mandate the trains retain two crew members, but I don't think Nebraska should wait on the federal government to make rules. With Nebraska's huge rail industry, our own situation is much different than the many other states in which the industry has only a minor presences. As such, we need to have a far higher standard because there is much more at risk in this area where congestion is heavy and where so much freight travels through our state. Those testifying behind me will share their personal observations about why we need two men operating each train. Thank you very much. I would be happy to take any questions, although testifiers following me will provide more information on the current practices and the need for the bill. [LB192]

SENATOR SMITH: Thank you, Senator Davis. Do we have questions for Senator Davis? I see none at this time. Will you be here to close? [LB192]

SENATOR DAVIS: I will. [LB192]

SENATOR SMITH: All right. Thank you. I'm going to ask real quickly, those...how many do we have that will be testifying either in opposition or as a proponent or opponent. All right, we have a number of hands up, so I'm...just to make certain...in fairness that everyone gets a chance in a

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relatively short period of time, before the afternoon is over, that we can hear from everyone, so we're going to go to the light system and use the light system for five minutes. What that means is, the green light will be on for four minutes and then will go to an amber light for one minute. And after the red light comes on, if you please wrap it up and close it up, I'd appreciate it. We are now going to proponents, those wishing to testify in support of LB192. Welcome. [LB192]

PAT PFEIFER: (Exhibit 8) Thank you, Mr. Chairman and senators. My name is Pat Pfeifer, P-a-t P-f-e-i-f-e-r. Unfortunately, I only had ten copies, so I don't have to read my own writing. It's kind of unique that we have a green, yellow, red light system here, we'll see how many engineers and trainmen run over that red light there. [LB192]

SENATOR SMITH: Just makes you feel like at home. [LB192]

PAT PFEIFER: There you go. LB192, it's about safety, that's all it is. It's the same...there's going to be a version of this bill introduced in every statehouse that my organization has a state chairman. It's not just about the safety of our membership, it's also about the public safety. Now you're going to hear a lot of things today about comparisons between the class 1 railroads and short lines. In my little homework that I gave you guys, there is a list of all the railroads, short line railroads in Nebraska, Kansas, and Iowa that come into this state. The Union Pacific or Burlington Northern, to make a comparison between them and a short-line railroad is like comparing a 747 and a crop duster. Outside of moving freight cars with a locomotive, there's nothing else they have in common. So, you're also probably going to hear about the safety records. And all these railroads are safe. And through arbitration they have removed six to five to four to three to two. But they won't tell you that they've never taken less than two people off the head of a train. So that's very important for us; it's very important for the public. And other testifiers up here that's going to expand on that and their testimonies are included in that handout for you. It's the same bill that's being thrown around in Washington, D.C. This country is in dire need of protection, that's it. They're not going to tell you about the fatigue issues. The problems with class 1 railroads is not having one too many persons on a train, it's about having unpredictable and sleep issues for their train crews. We can't schedule trains, we try. We try and get different programs to make it more predictable, but so far none of that is working. So when we go forward with this, one thing I'm going to tell you, I'm here representing my members, and I'm also a father; I'm also a grandfather, I even got a couple of ex-wives that go across these tracks every day and I want to make sure that there are two sets of eyes that's going to alert somebody that either a car is stuck on a crossing...just like we seen out in California this morning. If you haven't seen that news out there, another passenger train derailed from hitting a car...or a semi that was parked on the crossing. This is purely about safety. If it was collective bargaining, like they may argue...the railroads may argue, but that question should have been answered with a vote tally of the Burlington Northern proposed agreement. Now if it's collective bargaining, and every person in the state that has a risk to themselves should be party to that. So

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through my career, and I am an operating engineer, I've had the pleasure of giving Mr. Jim Young a train ride. And I actually went back and had a conversation with him. And I did bring up the issue of crew consist and stuff like...through out discussions about what their plans were. And his answer to me was, crew consist is going to be a matter of public opinion. I think he is a very smart man, but I think every senator in every district is represented through you and the full house out there has a train crossing and they have trains that go through their districts. And I believe it's only fair for just not you but every senator up here to have a say so whether this is a collective bargaining issue or whether this is public safety. And I thank Senator Davis for introducing this, very, very important bill, and I urge you to pass it through the committee for a full debate. (Inaudible). [LB192]

SENATOR SMITH: Thank you, Mr. Pfeifer. Senator Garrett. [LB192]

SENATOR GARRETT: Thank you, Chairman Smith. Thank you for your testimony. A couple of quick questions. I'm interested in the fatigue issue. How long are you allowed to be at the controls of a train before you're required to go on rest? [LB192]

PAT PFEIFER: I can operate a train for up to 12 hours. But that don't mean I'm going to be taken off a train after 12 hours or dependent on either having a contract carrier come get us off a train. We can't just leave a train willy-nilly anywhere we want; we have to have that train protected whether they allow us to tie it down, secure the train. So in my lifetime, I've actually be on a train for 23, 24 hours. [LB192]

SENATOR GARRETT: If there's just one guy in the cab of the locomotive, what do you do when you have to go to the bathroom? [LB192]

PAT PFEIFER: Well, actually, you'd have...by the rules you have to stop your train. And I...you know, I'm getting older, I can't really plan ahead, so if I've got to stop a train, I'm going to stop a train regardless whether I've got a road crossing or whatever. But, yeah, we have to stop the train. [LB192]

SENATOR GARRETT: And I don't...from what I understand, my limited knowledge of the railroad, your profitability is determined by your average mile per hour on the train. So if you're stopping the train to... [LB192]

PAT PFEIFER: Well, not so much my profitability, profitability of the railroad. [LB192]

SENATOR GARRETT: The company, right. [LB192]

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PAT PFEIFER: Yeah. [LB192]

SENATOR GARRETT: Right. Right. Interesting. [LB192]

PAT PFEIFER: Although I am part of the 401(k) so we hope they do good. [LB192]

SENATOR GARRETT: What's...is there a leading cause of accidents, when we have derailments, you know, a lot of times in the aviation industry they say it's pilot error? Is it...is the leading cause a engineer of the train or is it the rails or...? [LB192]

PAT PFEIFER: Well, I can tell you...and you may hear about an accident in Red Oak Iowa. There was a crew that went on duty in this town, and I believe 3:45 in the morning or 3:15 in the morning, and at 6:45, I believe, in Red Oak, Iowa, they ran into the back of a train and they both perished. And when you look at the NTSB reports, accident reports, the leading cause for most of these is fatigue. Now they've only been on duty three hours, four hours at this point. And they may have had the legal rest off, and there's times when I have 20 hours off, if you (inaudible) home terminal. But in order to (inaudible) there's only so many times you can go to bed and try and get your rest and make sure that you are rested. But for most of the accidents, yeah, they're fatigue issues. And the fatigue issues aren't going to go away by removing one person off a train. [LB192]

SENATOR GARRETT: With the current two person in the cab, are one of you allowed to sleep while the other one... [LB192]

PAT PFEIFER: I believe both railroads have a napping policy if you're stopped. One person has to stay awake to guard the train; the other person, if you were stopped and (inaudible) out of the way, the other person can take a nap. [LB192]

SENATOR GARRETT: But not while the train is moving? [LB192]

PAT PFEIFER: No. [LB192]

SENATOR GARRETT: Okay. [LB192]

PAT PFEIFER: Unfortunately sometimes it's not...every engineer and every trainman understands the dangers. And yet somehow there's...some heads just nod. They just...they're hypnotized through the middle of the night with the rocking of the trains or...they don't fall

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asleep on purpose. It's very unpredictable...you know, it's seven days a week, 24 hours a day, 365 days a year, you never know when you're going to go to work. And to the railroads' credit, I know that both BNSF and the UP both tried...or both explored some kind of crew scheduling, but that's usually at your home terminal. Okay, so if you take a train and tie it at a...other than home terminal, there's no guarantee in getting you back. But when you have your start today at noon, and 72 hours you've got another start at your home terminal at noon, there's no guarantee they're going to get you back there in order to get your proper rest (inaudible). [LB192]

SENATOR GARRETT: One last question, are your trains all remotely monitored by a control station and can they be controlled remotely if the headquarters notices that you're too fast or whatever? Are they able to... [LB192]

PAT PFEIFER: I got a feeling they can. But no, they have different fuel management systems which is a precursor to the pilot train control and they will operate themselves as far as push a button and it will adjust the throttle. But it's a green light system. That means that that train has got nothing in front of it. That train is not going to go through crossings; it's not going to slow down if you see something out there. It's not going to stop the train if there's a car...you know, it's a green light system so there's times where no matter how automated it is or how good the technology is, it still takes a person to control it. [LB192]

SENATOR GARRETT: Thank you. [LB192]

PAT PFEIFER: You bet. [LB192]

SENATOR SMITH: Senator Friesen. [LB192]

SENATOR FRIESEN: Thank you, Chairman Smith. Mr. Pfeifer, in my area, I mean, we see trains quite often, I don't know for whatever reason they're stopped; maybe a derailment down the line or something, but then they split for the roads usually and then they'll park there. So if you were a one-man crew, how would this process work and how often do trains have to stop unexpectedly because of conditions or whatever? [LB192]

PAT PFEIFER: They...I can't make a trip without having or seeing a train that either has a mechanical problem, they got wheels that are running hot, they go into emergency, the air disappears so that sets off (inaudible). For me, if I was a one-man crew, well, first thing I'd have to do is I would have to go tie down the locomotive and a certain amount of cars, depending on either securement chart or just...our estimate is how much is going to hold it, but I would walk back up to the locomotive and I would release the brakes, the air brakes to make sure they're

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going to hold, and I would set the brakes up. And I would walk back to wherever I needed to either fix my train or...and if I had to cut a crossing, I would have to tie a certain amount of handbrakes, walk clear to the front and release those handbrakes that I previously tied, release the air to make sure that that's going to hold. Then tie down the head end again, walk clear back, pull the pin, walk back to the head end, undo the brakes, and pull the train forward. That's...you know, it's such a specialized job of what the conductors do as opposed to what I do as an engineer. Now, when I...you look at Lac-Megantic, that was a one-man crew. I'm not going to tell you that two men on that crew would have stopped that. But two men is what it takes with the FRA regulations as far as trains (inaudible) now. One person cannot do it correctly. And to have a master conductor, which in your handout there's a master conductor duties, there's no guarantee he's going to be at that location where I need him. He may be 20 miles away; he may be assisting another train. So in my opinion, safely to do it the right way, one man can't do it. And again, that's what this bill is all about, safety. [LB192]

SENATOR FRIESEN: Okay, thank you. [LB192]

SENATOR SMITH: Mr. Pfeifer, are one-man crews in use today for freight carriers in Nebraska? [LB192]

PAT PFEIFER: Not that I...I do believe like Nebraska Central, I've seen...they have a conductor in a vehicle that will shadow the train. But the one thing to remember is, Nebraska Central...and all these short lines are usually just abandoned train... [LB192]

SENATOR SMITH: Aside from the short line, are you aware of any single-man crews, or single-person crews? [LB192]

PAT PFEIFER: No. No, even the remote control crews that they talk about, you know, you have one man on one end of the train and then have another man on the other end, they have to protect the movement on both sides. And they have a remote box which they pass control back and forth between them. [LB192]

SENATOR SMITH: Okay. All right. So on a remote, when it's in the yard and some switching is taking place, there's that remote in use. [LB192]

PAT PFEIFER: Yeah. [LB192]

SENATOR SMITH: But other than that, on a routine basis, it's no fewer than two persons on a train. [LB192]

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PAT PFEIFER: That's correct. [LB192]

SENATOR SMITH: Okay. Why is that the case? Why are we not seeing single-person crews currently? [LB192]

PAT PFEIFER: Well, before now, I think, the thing that opened the discussion is the mandate of positive train control through Rail Safe Improvement Act in 2008. And I understand that this is going to cost the railroads a bunch of money. [LB192]

SENATOR SMITH: A positive train to control is not really in effect today. I mean, we have not seen that perfected to the point, is that correct? [LB192]

PAT PFEIFER: No, and I think through the last...and I've been up in Washington trying to fight for...it should be installed by this year in the AAR...American Associates for Railroads (sic-- Association of American Railroads) has consistently tried to get it postponed indefinitely. And it does, it takes a lot of money. It's pretty expensive technology; it's pretty important technology and we are, as far as my organization, we are fighting for it every day because it's just one safety layer that will stop. [LB192]

SENATOR SMITH: I understand. And so I was just trying to get a clarification because I don't want the general public that may be viewing on Closed Caption or here to misunderstand what we're talking about. The bill that is before us is to prevent the use of one person, but we're not seeing that in use today in Nebraska. [LB192]

PAT PFEIFER: Absolutely. [LB192]

SENATOR SMITH: Okay. [LB192]

PAT PFEIFER: And, you know, our goal with getting Senator Davis to introduce this, it wasn't just to put a limit on the railroads. We also want commonsense limits on any labor organization that's going to leverage their member safety for a few extra dollars. [LB192]

SENATOR SMITH: Okay. Thank you, Mr. Pfeifer, appreciate your testimony. And we will move to the next proponent... [LB192]

PAT PFEIFER: Thank you very much. [LB192]

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SENATOR SMITH: ...wishing to testify in support of LB192. Welcome. [LB192]

ERIK WOOD: Good afternoon, Chairman Smith, senators. My name is Erik Wood. I'm the first vice chairman for the BLET, Nebraska state legislative board. The legislative board... [LB192]

SENATOR SMITH: And please spell your name for us. [LB192]

ERIK WOOD: Oh, I'm sorry. Erik, E-r-i-k W-o-o-d. Our legislative board represents about 1,100 engineers and trainmen in the state of Nebraska. I am a full-time engineer for BNSF, 20 years of service. I'm here to support LB192. The statement I have prepared here is in the folder that Mr. Pfeifer gave you, and quite a bit of the information and questions you just asked is in that, so I'm just going to skim over this so we're not going over the same material. As Senator Davis and Mr. Pfeifer brought up, positive train control did come from the Railway Safety Act and it's mandated the railroads to install train-crash prevention safety systems. The law was passed in 2008. It does need to be completed by December 31 of this year. However, it is very unlikely this is going to happen. All of the freight and commuter railroads are working as fast as possible to acquire, equip, install, test the complex and still-evolving technology, it's untested. As of right now in the state of Nebraska, we have no positive train control systems active. They've had a lot of issues. They've tried it out at the Lincoln club here on the street. It was on the Lincoln to Hastings to McCook to Denver line. They had to suspend it. They had a lot of problems. The federal railroad administration and the American Association of Railroads have acknowledged that this isn't going to be successfully completed. They've asked repeatedly for a three-year PTC deadline extension. It's been turned down. The BLET, my organization has always and will always support any kind of technology or safety initiative that will protect our members or the public. To be clear, PTC is a significant upgrade and an overlay on existing signal and train control technology. It will save lives and reduce accidents. But one of the flaws of the system is it protects our crews for high-speed events, head-ons, rear-ends. It does not protect us from the low-speed events like they talked about Red Oak, Iowa. To explain this, the low-speed events is something the train has to enter within restricted speed limits, but you essentially override the system to follow closer to a train ahead of you. Once you do that, you are on manual. Fatigue could set in and you could have another potential accident or derailment. It's usually at speeds below 22 miles an hour that this could happen. PTC would not have prevented the event at Red Oak, Iowa, if that would have had it on that line. Some of the duties of the second crew member that's operating in the cab next to me, among others, is monitoring that left side of the train. When I operate the locomotive engine going down the tracks, I cannot get out of the chair. I'm there in the chair on the right side until I stop. Any kind of events as far as equipment failures, possible grade crossing accidents on that side I would not even be aware of it. I've had two crossing grade accidents in my career. One was a semi loaded with gravel, a full feed dump truck. It hit me in my second motor and I didn't even feel it; straight on. So if there was an event on that side, I would not be aware of it. Something else I want to bring up is a lot of times that

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second crew member is the first-aid responders to any kind of grade-crossing accidents. They're the ones that help break the cross and let emergency personnel across; they're the ones that render first aid. I guess what I'd like to see is you guys at least let this come out of committee and let everybody debate it on the floor. With all the derailments we've had lately, and with the crude oil coming through the state, I just think it would be a good debate. That's all I have. Thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Wood, for your testimony. We have questions from the committee. Senator McCoy. [LB192]

SENATOR McCOY: Thank you, Chairman Smith, and thank you, Mr. Wood, for being here today. You know, probably all of us, I think, on the committee as we've sifted through the news stories and the e-mails and the calls on this as I think all of us are trying to do our due diligence on legislation do, one of the things that jumped out at me, and I apologize, I missed the first couple of...or the very brief introduction of the bill, so maybe it was touched on, but I don't think it was. Obviously, in years past, decades past, the trains crews were significantly larger--four, five, I think, if you go back 30, 40 years. But it appears in the federal railroad administration, there's a lot fewer accidents today than what there was then as far as numbers go. That just jumped out at me in reading through everything in this bill. What do you think that's attributable to? Is that...is there safety measures...what...I'm trying to draw a correlation as, obviously, public safety is something all of us care about. [LB192]

ERIK WOOD: Well, yeah. Thankfully, we are a lot safer than we were in the '70s and '80s. There's a lot...there's a big stress for safety measures and safety programs. I know that from when I hired out till now, we really watch after each other. We did before, but it's been driven into really kind of coeducate your coworkers as far as safety. For a reason why we became safer is I think we just start to educate our members. Does that answers your question? [LB192]

SENATOR McCOY: I think so. I just...to me it's startling when you look at the...such a major decrease in numbers of accidents and as train crew size have gone down, I don't know if that's directly related or not. [LB192]

ERIK WOOD: There is a lot of... [LB192]

SENATOR McCOY: There's a lot of other factors that go into that. But clearly there is something going on out there in connection to the numbers. [LB192]

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ERIK WOOD: There used to be a lot of policies that have changed. Trainmen used to be able to get on and off moving equipment at certain speeds. Lots of times those trainmen would slip and miss the ladder and slide under the locomotive or the train car and have a severe injury, amputation. A lot of guys getting on and off blew their knees out, rolled their ankles, I mean, things like that...practices like that have changed. Guys are really not allowed to ride cars in certain situations that they used to be. I mean, when I hired on as a switchman, I used to get on a car and the engineer would kick the car and the conductor would pull the pin and I'd go down by myself on a car to tie a brake, free rolling, and we don't do things like that anymore. That probably would be a big part of it. [LB192]

SENATOR McCOY: That's helpful. Thank you. Thank you, Mr. Wood, I appreciate it. [LB192]

ERIK WOOD: Yeah. [LB192]

SENATOR SMITH: Okay. Thank you, Mr. Wood, for your testimony. [LB192]

ERIK WOOD: Thank you. [LB192]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB192. Welcome. [LB192]

BOB BORGESON: (Exhibits 9 and 10) Good afternoon, Chairman Smith and members of the committee. My name is Bob Borgeson, B-o-b B-o-r-g-e-s-o-n. We have quite a few people who have come a...driven quite a number of hours to get here to visit with you today to give you examples of why two people are needed on a train. In February...this first week of February, we did a...SMART Transportation Division did a poll, we commissioned a poll, a survey, to field the general public. It was a statewide poll. Gentlemen, I'll pass it around here. The public is overwhelmingly in favor of two people on a train. The questions that we were asked varied from: Are you worried about derailments? Which initially, when they were told...they told the responders, the respondents say 83 percent were not...80...not worried about derailments at all. However, when they were asked how many people were on a train that traveled the state of Nebraska, the majority of them said three, four, or more. They were then told by the questioner that actually there were two people on a train in Nebraska, on most trains, 99 percent of the trains. And their...that...their response then they became much more interested and worried about derailments then. We asked various questions on the...we can see from the survey here, that 94 percent found a convincing argument that having two people on a crew allows each person to supervise and communicate with the other. The reason we did the survey was...we actually did one in October of...the middle part of October of last year, because of the Burlington Northern contract that was voted down by the membership. The...initially...the poll in October was...asked

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about HR3040 which is a federal bill that was introduced in the last Congress by two members from Maine following the unfortunate incident of a one-person crew in Canada where they killed 47 people and did billions of dollars of damage. That fortunately, that was a bipartisan bill, it had 80-some sponsors and it died with the last Congress, it didn't get a hearing. So, we polled on that to see what the general public felt about that. And now that we've introduced, thanks to Senator Davis, LB192, we...that were polled on two people. And we did it statewide. The poll last October was just in the second congressional district. So there's...I don't want to take up all your time; there's a number of people waiting to speak after me. I will answer any questions and thank you for having us. [LB192]

SENATOR SMITH: Thank you, Mr. Borgeson. Do we have questions from the committee? Seeing none, thank you. [LB192]

BOB BORGESON: Thank you. [LB192]

SENATOR SMITH: Continuing with proponents of LB192. [LB192]

JEFF VOGT: Chairman Smith and senators of the Telecommunications and Transportation Committee, my name is Jeff Vogt, J-e-f V-o-g-t. I'm a dues-paying member of the Brotherhood of Locomotive Engineers and Trainmen, local division 98 in Lincoln, Nebraska. And I'm an officer of the local and the Nebraska state legislative board. As a railroad employee of 38-plus years, I'm employed as a locomotive engineer since 1990. I've seen a lot changes to the operation, both inside and outside the cab of the locomotive. When I first started, we sometimes worked with five train crew members, yet these days we will depart with as few as two or three. While it's my responsibility to operate the train, it is the conductor's job to manage it. Under current federal railway administration regulations and with my railroad operating rules, one person on a crew would be able to inspect their train when it breaks in two, but they would not be able to put the train back together. And it is also possible for one person to repair cars that become defective in route, but they would be leaving crossings blocked for extended periods of time account the lack of manpower to cut these crossings. Operating a locomotive backwards by myself may be a safety concern. The conductor working inside the cab is another set of eyes and ears assisting me with speed restriction compliance, whistle regulations, and as a welcome voice at sunrise when the circadian rhythm is trying to close my eyes. Railroad operating crews suffer from fatigue and work irregular schedules. I was reminded by an article posted on the [Nebraska Watchdog](#) by J. Jordan that even with two crew members who are still working in a dangerous workplace. Mr. Jordan mentioned the train accident near Red Oak, Iowa, in 2011 when a train rear ended a stopped train after they, the crew, fell asleep while moving. I personally knew both employees. And the NTSB found, due to fatigue, the crew members fell asleep prior to the impact and both crew members were killed. National Transportation Safety Board chairman,

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Deborah Hersman, said in a quote: Once again, the investigation draws attention to the dangers of human fatigue. The human body is not designed to work irregular schedules; humans are fallible and make mistakes. I know that having other crew members has made my job safer, making the train operation safer also. I personally have had two car/train impact accidents in my 38-year career. The most recent was a non-injury accident and the conductor I was with had two months of service. After taking care of the train, he was able to access the vehicle driver and assess his medical needs, radio that information to me to address with the medical responders. We have all seen the national headlines recently with the SUV crossing accident in Valhalla, New York. According to Operation Lifesaver, Incorporated, in 2013, there were over 2,000 accidents that occurred at a crossing with more than 200 people killed nationwide. That averages out to a person hit or killed every three hours. In 2012, the United States Department of Transportation issued a report on rail trespasser fatalities. Over 1,000 deaths occurred on the national railway system. Categories include walking and sleeping on or between rails, suicide, and foul play. Because of the design of the locomotive cab, my vision as an engineer does not allow me to see all the area in front and the side of the train. The Canadian government issued an emergency order banning one-person crews on trains carrying hazardous cargo, such as crude oil, after the Montreal, Maine and Atlantic Railway runaway train wreck in July of 2013 which killed 47. In the U.S., HR3040, the Safe Freight Act was introduced in 2013 requiring two crew members on every train. The bill was referred to the subcommittee on railroads, pipelines and hazardous materials. The volume of crude oil carried by rail increased 20-fold between 2008 and 2013. The railroads and the FRA have issued safety bulletins regarding high-threat urban areas and require the trains to slow down when traveling through these areas when carrying certain hazardous materials. I'd like to close with a quote from Anthony Fox, Secretary of Transportation, he said: "Safety is our highest priority and we are committed to taking the necessary steps to assure the safety of those who work on the railroads and shippers, and the residents and the communities along the shipping routes. The proposed rule making on crew size is the latest effort in our comprehensive study to ensure that crude oil is transported as safely as possible." And also a quote from Joseph Szabo, the head of the FRA, which currently has been replaced. "We believe that safety is enhanced with the use of multiple person crews. Safety dictates that you never allow a single point of failure ensuring trains are adequately staffed for the type of service operated is critically important to ensure safety. Thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Vogt. Do we have questions from the committee? I see none. Thank you. Next proponent of LB192. Welcome. [LB192]

DANNY CROCKER: Thank you. Chairman Smith, honored senators, my name is Danny Crocker, D-a-n-n-y C-r-o-c-k-e-r. I'm a locomotive engineer with BNSF Railway. I have been with the railroad for 36 years and an engineer for 35 years. I've operated both passenger and freight trains during my career. I am president of the Brotherhood of Locomotive Engineers and Trainmen, local division 98 in Lincoln, Nebraska. I'm also a full-time facilitator for the Lincoln

Behavior Accident Prevention Process at BNSF. During my time with the railroad, I've seen many changes to the railroad industry that have increased both efficiency and safety. However, the one constant has been the two members in the controlling cab of a locomotive while traversing road territory. I've been involved in numerous events that demonstrate the contribution to not only railroad employee safety, but that of the general public as well when there are two crew members. With the change to the locomotive cab design, known as the North American Cab, the engineer's actual viewpoint is 75 to 100 feet in front of the locomotive. Anything closer than that cannot be physically seen. I was operating a high-speed freight train eastbound through Hastings, Nebraska, when both the conductor and I noticed a couple of young boys approaching the at-grade crossing riding on one bike. The boy who was standing up pedalling chose to stop the bike while the one who was riding on the seat chose to jump off the bike and decided to try to cross in front of the train on foot. The train was traveling at 60 miles per mile at that time. At 60 miles per hour, you travel 88 feet every second. I could not see the boy when he crossed in front of the train and had to ask the conductor if he had made it across on his side of the tracks. Without the conductor to verify that the boy had survived, I would have been left not knowing how to proceed...do I stop? And without someone to go back and check, still not be sure of the outcome. Or do I proceed and hope that everything was okay and wait for something on the local news to inform me that it wasn't? There was also the time when I had an individual commit suicide by standing on the tracks in front of my train. By the time I realized that the individual was not going to move, it was too late to change the outcome. We were miles from the nearest town and without the conductor to go back, once we stopped, to render what aid he could, I again would have been left not knowing what was happening and waiting for the emergency responders to show up. Also, once the responders did show up, that they would be able to reach the individual without having to separate the train. The conductor was able to not only direct the emergency responders to where they needed to be, but also to separate the train for access to the individual. I've been involved in a derailment that resulted in a leaking tank car at Oakland, Nebraska. Due to the conductor being on the train, he was able to inform first responders what they were handling so that they could make an informed plan on dealing with this accident. There is also value in having another crew member to discuss situations with when things don't appear to be normal. I was operating a train on double track approaching Seward, Nebraska, when both the conductor and I noticed headlights pointing in our direction on the opposite track. This is not an unusual occurrence due to on-track maintenance. However, because of the time and location of the headlights, this didn't feel right. After discussion with each other, we reduced speed as we approached the vehicle. When we got close to the vehicle, a person was walking in our direction waving his arms and wanting our train to stop. Because we had approached reducing our speed, we were able to stop quickly. While we were unable to avoid colliding with the pickup that was fouling our track, the collision was at a very low speed and the damage to the vehicle was minimal with no damage to the locomotive. If I hadn't had another person to discuss the situation with, I can't say with certainty that I would have made the same decision and been able to recognize that something was amiss. These are just a few examples from a long railroad

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career where the value of an additional set of eyes, ears, and mind are essential in the safe operation of moving freight and passengers through our state. Thank you for this opportunity to share my experiences and passion for safety. [LB192]

SENATOR SMITH: Thank you, Mr. Crocker, for your testimony. Do we have questions for Mr. Crocker? See none, thank you. [LB192]

DANNY CROCKER: Thank you. [LB192]

SENATOR SMITH: Next proponent of LB192, proponent. Welcome. [LB192]

KEVIN POTTHOFF: Good afternoon, Senator Smith and fellow senators. My name is Kevin Potthoff, K-e-v-i-n P-o-t-t-h-o-f-f. I'm employed by Burlington Northern Sante Fe out of McCook, Nebraska. Started my career in 1975; was promoted to engineer in 1978. This coming May I will be with the railroad roughly 40 years. I've seen many, many changes through these, roughly, four decades. Started out with as many as five crew members on the crew. Of those crew members that are now absent, two were from the rear end of the train. So we have had two-person crews on the head end my entire career at a minimum. We've kind of explored the actual day on the train, actually out there doing the work and talking about the safety of that operation. I'd like to kind of convey the information to you about how we get there. We just went through a very increased amount of business that was not projected. It was projected that the increase in business would happen a year later. The manpower issues were at a minimum due to a refusal of the company to retain people when the economic downturn started. Now we're in a hiring frenzy. So it was predicted a year ago...it was stated a year ago that, roughly, the present amount of seniority that is present today with the average employee is 15 years. It is predicted that within three to five years it will be five years. These individuals will not have went through the old-time railroading where you learn to survive out there. There were times when I was called unaware in the middle of the night that to get over the road I would physically make myself ill to stay awake. And the process of doing that was drinking a cup of coffee, eating an apple, and drinking a bottle of grapefruit juice. So you can imagine the discomfort that I had, but I did stay awake. Those things do take a toll on you after awhile. I presently do not work the road simply because I don't have to. I work a yard job simply because I don't have to go to the road. It's a great decrease in pay, but it's...I figure the way I could survive to get to retirement. I'm presently 57 years old, so got a little ways to go yet. What I'd like to expound on you is that this new generation of railroaders hasn't a clue of what it has taken us to figure out how to survive out here. They're thrown into situations with a lot of technology. I don't think they understand why it's there. But one of the points I'd like to make is that a young promoted engineer that would not be presently working as an engineer would be sent back to work as a conductor or a brakeman. If that individual would be on a brakeman's board, he's also a promoted engineer, and if need be, he

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would be called to go to work. So if you could imagine a promoted engineer as a brakeman protecting the brakeman's board, supplementing the conductor's board, supplementing the engineer's board, trying to figure out when the heck he's going to work. Lineups are, for the most part, atrocious trains that were predicted don't run. Power is not available is a lot of times the excuse. Well, if they know power is not available, why is the train on the lineup? I like to categorize what some of these young, inexperienced individuals go through. It isn't 24/7, it's 25/8. They have to be rested on a moment's notice. Any time that they're at home trying to get their rest, they need to be rested for a fictitious lineup multiple times. It also happens to experienced engineers, but a guy that has a somewhat predicted schedule of going a particular direction can, at times, figure out things a lot better on when he's going. One other point I'd like to bring out is that up until recently, a whistle was not defined. It was a rule, but it was defined by the federal government. An engineer with all the technology that is blocking his view of the other side of the cab depends on the conductor to be his eyes on that side. Roughly between McCook and Lincoln, there are over 300 crossings that he's required to blow the whistle for. And that isn't just blowing the whistle, it's a prescribed whistle of a minimum of 15 seconds and a maximum of 20 seconds with a prescribed sequence. Along with track work, along with meeting trains, along with Amtrak dictating the movement of traffic in the wee hours of the morning on our lines, it's very, very difficult. Two people in a crew is a minimum. I'm very thankful that I have survived my occupation as an engineer. I've been involved in fatalities. They're very trying. I hope at some point in time I can pass my experience on to younger people, but with your help we can secure safety. Thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Potthoff. Questions from the committee? See none, congratulations on your upcoming 40 years as well. [LB192]

KEVIN POTTHOFF: Thank you very much. [LB192]

SENATOR SMITH: Next proponent of LB192. Welcome. [LB192]

RENEE FELBER: Hello. My name is Renee Felber, R-e-n-e-e F-e-l-b-e-r. I'm a conductor for the BNSF out of McCook, Nebraska. I haven't had a long career yet, but I've seen a lot in my year and a half and I'd like to share some of my experiences. One major thing is, I was...got called off an extra board, so I don't know what time going to work at all. It was last summer. I got called to pick up a train. And I had to set some cars out in McCook and then move it on west. I happened to know...or see a wheel that was broken on a hazmat tank car. This train had come all the way from Lincoln to Indianola, inspected, passed with a broken wheel. If I had not caught it and set it out in McCook, it could have caused a derailment; it could have caused deaths, could have been a huge issue. But I'm a conductor, I'm trained to look for those detailed things, just by passing. It's in my practice. Engineers, it's not...they're worried about 20 other things. It's not in

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their common-day practice to look for those things, just like in our everyday duties, we do roll-by inspections of other trains passing us by. We're trained to look for those things. Our engineers stay on the motor. They have to make sure the train is secure. Also, not too long ago, I was picking up an oil train; that's about 17,000 tons, coming east, I was going west from McCook, but I was coming east toward McCook and our train went into emergency, unknown reasons. You know, this train is full of hazmat. I, as soon as it happened, you know, we had to stop the train, secure it. I, as the conductor, have to inspect it. Found nothing wrong with it; our dispatcher told us to keep going. Well, this happened multiple times, our train kept going into emergency. You know, I'm trained, but I don't know all the mechanical issues. And our dispatcher kept us...keep going, keep going, keep going. Well finally, we ran out of hours. We couldn't get this train moved across the road. We have crossings blocked and we're in the middle of nowhere. Took hours before my relief, another crew, came to relieve me. Then they had to inspect it further because you never know with hazmat. And they still had to wait hours for a mechanical to come and inspect it, because after three emergencies on a hazmat train, we have another mechanical inspection that has to come out and do it, but that takes hours. So, you know, we always need that on-site person. We could have a leak, we could have something stuck under the train, anything. Do we want someone there all the time to verify or do we want to wait hours? I also am a firm believer on the safety briefings. I get reminded all the time by my coworkers, be safe, take it slow, pay attention. They've helped me stay awake. I've been on the other side of the road where I thought I wasn't going to get called till the next morning and all of a sudden I'm getting called. The train wasn't even on the lineup. Thank goodness I had someone to talk to all night, otherwise I would have fallen asleep. I've also kept my engineer awake. Did they bring gum? Did they bring tea to stay awake? No, but I happened to have one in my lunch box. You know, after 11 hours you need something. We also make sure about is the other person alert, are they capable of working? Are they sick and they just need a paycheck so they're coming to work anyway? We need that other person to keep us on check. I guess that's all. Thank you. [LB192]

SENATOR SMITH: Thank you, Ms. Felber. I see no questions from the committee. Thank you. Next proponent of LB192. Welcome. [LB192]

SHAWN VARNER: Senator Smith, committee, Shawn Varner, S-h-a-w-n V-a-r-n-e-r. I'm out of Alliance, Nebraska; conductor. Currently working Alliance to Ravenna. I'd like to share some of my experiences, why we need two people on a train. When I first started out on the operating side, I worked the Butte Sub which is west out of Alliance quite a bit. Twelve-thirty in the morning we get to Rumford, South Dakota, which in the middle of nowhere. I knew in my paperwork we had a slow order approaching. At this point in my career, I know...I knew enough where certain things should be happening or shouldn't be happening. And our yellow flag goes by. I announce the yellow flag to the engineer and nothing is happening. I glance over at him and he's just a blank stare out the window and I'm...excuse me, we got a slow order coming up here, and brought him back into the cab and he sits there and gets us slowed down for the slow order.

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And that's one instance. Another, I got to go, 2011, down to the Raton Sub, La Junta, Colorado. I went down there, a mercenary, in which you borrow out to another division to...they're having manpower shortage. We pull into the siting at Hoehne, Colorado, it's a 10-mile-an-hour siting. We're there to wait on Amtrak's Southwest Chief and they come pull up beside us. We get authority to leave the siting. And my engineer, he just starts going for whatever he can get out of our train. And I had to remind him, you know, this is a 10-mile-an-hour siting, we need to stay within that operating parameter, and, oh, I didn't realize that, he said, thanks for reminding me, and got it back down to the prescribed speed. Had I not caught it and got him slowed down, we could have tore up the track, we could have torn up the switch, and nobody would have ever known about it. And with Amtrak sitting right there beside us, that's, you know, however many people Amtrak carries, you know, that could have involved a major catastrophe. And I'm not without foul myself. Working the Sandhills sub here two trips ago, I'm doing paperwork, we just climbed on the train, trying to get all my stuff planned out, where slow orders were and how many tons our train is, and I knew there was a yellow flag just outside of yard limits. And I looked up, seen it, called it out, but I miscalled it for a different slow order, and my engineer, Shawn, this is for this slow order, not that one. And I looked; oh, yeah, you're correct. And then helped bring me back into where we were at and what we were doing in our progression of slow orders. Another instance, 2:00 A.M., we're near Mullen headed east to Ravenna. I knew when I laid out my paperwork we had a 25-mile-an-hour slow order coming up. We're going down the track; I have it marked off on our signal sheet--we keep track of the signals, where this milepost was. The milepost came and went and there was no yellow flag, it had fallen down. And I got a hold and told my engineer, I said--yellow flag is gone, we do have this slow order coming up. And he's--oh, yes, and got it slowed back down and ready to go through the slow order at the prescribed speed. These are just examples of why we need two people on these trains. You throw in, you know, hazmat, stuff like that, I mean, you blow a slow order at a significant amount of speed and don't catch it, it's a major catastrophe that's going to happen. Hopefully it won't happen in town, but it could. And that's why two people need to be on all trains at all times. Thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Varner. I see no questions from the committee. Thank you for your testimony, appreciate it. [LB192]

SHAWN VARNER: Thank you. [LB192]

SENATOR SMITH: Next proponent of LB192. Welcome. [LB192]

JON JOHNSON: Thank you. [LB192]

SENATOR SMITH: Looks like you have a guest with you today. [LB192]

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JON JOHNSON: Yes. My name is Jon Johnson, J-o-n J-o-h-n-s-o-n. And my, I guess, my student today is Abbie,(phonetic) my daughter. We worked out a deal to have the school let her come up here. [LB192]

SENATOR SMITH: It's a good experience, welcome. [LB192]

JON JOHNSON: To give you a little background of me real quick, engineer for BNSF Railway and then with BNSF for ten years. I am president of the SMART Local Committee 226 (sic) out of McCook, Nebraska. Last year, I was the messenger for 626 to bring the one-man crew proposal back to our local and present it. I know that was brought up here, I'll base a little bit on that. The major thing when I presented this proposal to our Local 626 was what was the safety? How can we have safety with just one person on the head end? Mainly for having two eyes versus one set of eyes. Granted in this proposal, there was a roaming conductor as a master conductor. It was never presented where, what his territory would be, his mileage to cover. It could have been 200 miles; it could have been 10 miles. That was never discussed in that proposal. Those are just technicalities. I don't want to get into that. I guess the biggest thing here I want to present on that part is that I feel that it didn't pass because of the questions I was asked every time I presented this proposal to our local was--where is the safety? Why don't we have two people on the head end? With that...that's just the first part. And then Mr. McCoy...Senator McCoy brought up about the increase in safety...I guess the decrease in injuries over the last several years. At one point in time, we did have five people on the crew. And as Mr. Potthoff has presented, that we always had several people on the head end. Being part of the Local 626, I participate in the safety program that BNSF has--tremendous safety program. Our safety program in McCook is extremely strong. I feel this is our decrease in life. We have less injuries, incidences is because we have four guys out of McCook always presenting safety material to our members. We have roughly 80 conductors, 80 engineers, 160 just trainmen in McCook, Nebraska, that are working on average. We present safety material to them twice a month. There's an answer to some of the decline in incidences that we've had. I sat in a meeting in Denver, Colorado, just last month where they presented decline in safety and patted us on the back and that was from company officials. With that, we...when once you put one person in the leading locomotive, you are limiting the job of what needs to be for two people down to one person. And I got a little explanation, I'm not going to bore you with railroad stuff, I just...what I'd like to say, as an engineer, when I go to work it's 12 hours, we're going to work 12 hours, that's what we plan on working. And that shift will start at any time during the day. We're a 24/7, 365-day craft. So I'm going to put this in you guys' perspective. Say that you guys get up at 5:00 in the morning and get ready to go to a meeting, early meeting. You drive two hours to get to that meeting, sit through the meeting all day long. You go home; you have to drive another two hours to get home. Now in that process when you're driving home, have you ever had the experience that part where you're driving through a town and you don't remember going through that town. Now if you had your wife or a sibling with you, or someone else, even a coworker with you,

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when you're driving through that town and you guys are chatting about the meeting before, you're going to realize, yeah, I went through that town. It's just alertness. You don't get in that zone. You don't get the tunnel vision as we talk about. That second person is there to keep you alert; it's there to keep conversation going. He's there to help you with safety issues. As you all know it, the "mom effect" when you hit the brakes you always put the arm out. That's always what I consider my conductor to be. He's that guy that's always putting his arm out for me, saying, hey, we need to be alert, we're on a...we're going through, as Shawn said, a slow order, something like that. And I see my time is up. So thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Johnson. Do we have questions? I see none. Thank you for your testimony. Next proponent of LB192. Welcome. [LB192]

RODNEY VLCEK: Thank you. Good late afternoon, Senator Smith, and members of the Transportation and Telecommunications Committee. My name is Rodney Vlcek, spelled R-o-d-n-e-y V-l-c-e-k, and I'm president, secretary/treasurer of the Nebraska State AFL/CIO. First we want to thank Senator Davis for introducing LB192, along with six of your colleagues that cosponsored LB192. We've heard some pretty powerful and poignant testimony from individuals who experience their life-type things as a railway engineer and conductor so I won't go into that. One thing I do want to talk about, to be very brief, is the two-man survey that was commissioned by Director Borgeson on behalf of SMART. On page 6, question 8, it really jumped out at me that 8 out of 10 Nebraskans support two-man crews. Eight out of 10 of your colleagues support two-man crews for public safety reasons. And with that I think that's very, very important in the state of Nebraska for public safety. So with that, on behalf of the 25,000 working men and woman of the Nebraska state AFL/CIO I encourage you to approve and move forward LB192. And with that I'll take any questions if you have any. [LB192]

SENATOR SMITH: Thank you, Mr. Vlcek. Do we have questions from the committee? I see none. [LB192]

RODNEY VLCEK: Thank you. [LB192]

SENATOR SMITH: Thank you. Next proponent of LB192. [LB192]

JERRY STILMOCK: Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, Nebraska State Voluntary Firefighters Association and the Nebraska Fire Chiefs Association simply to say that we support LB192. We believe it's important to maintain at least two-man and women crews. And representing the first responders that make up over 85 percent of first responders in Nebraska, we believe it's important to maintain that. Thank you, Senators. [LB192]

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SENATOR SMITH: Thank you, Mr. Stilmock. Any questions? [LB192]

JERRY STILMOCK: Thank you. [LB192]

SENATOR SMITH: Thank you. Next proponent...proponent of LB192. Welcome. [LB192]

JASON MEYERS: Thank you, Chairman Smith, other senators. My name is Jason Meyers, J-a-s-o-n M-e-y-e-r-s. I'm a BNSF employee out of McCook, Nebraska. I'll give you a brief history of myself. A member of the SMART Transportation Division, Local 626 out of McCook. I'm local chairman. I'm also very actively involved and committed to the safety program at McCook. Just piggybacking on Jon Johnson's comments a moment ago about our safety program in McCook. We recently celebrated on February 20th this year one year injury free in the McCook yard, in McCook Terminal Proper. One year injury free doesn't sound like a big accomplishment, but in our industry it really is. I started with BNSF in 2006 as a conductor. I enjoyed five years in that craft; decided it was time to challenge myself and took the opportunity to take promotion to engineer in 2011. Out of McCook, we primarily work between Denver, Colorado, and Lincoln, Nebraska, and places in between. They told us when we started this job that we were going to be paid for our inconvenience, not necessarily the work we do. In the nine years I've been there, there's been a lot of changes; not anywhere near what some of the senior people that have talked here today, I don't call them senior people, but more experienced people have talked today. Our tours of duty, when we go on duty, we're limited to working 12-hour shifts operating a train. When I started out, we were making the same runs, getting on and off in 6 to 8 hours. Now you figure on going to work for 12. The traffic has increased. We have very unpredictable schedules. We're on call 24/7; like Kevin said, 25/8. Long-standing joke in my house, at my home with my wife, she wants to know when I'm going to work and I tell her--an hour and a half after the phone rings. That's my best guess. There are a lot of existing hazards in our workplace with the hazmat; hauling more and more crude oil every day. The ethanol we handle, the ag chemical, the anhydrous ammonia, the chlorine. Just some specifics: the McCook line, Hastings line between McCook and Lincoln, Nebraska, is where I've been working primarily; 230 miles of track, roughly, between McCook and Lincoln. On that track we go through 29 communities, 33 different stations, and 9 different counties in the state of Nebraska. Along that line are three ethanol plants, numerous feed lots, fertilizer plants, and elevators, not to mention all the rural population that's out there. I apologize if these numbers aren't a hundred percent accurate, but roughing some numbers together with the 2003 census, the communities that we traverse between McCook and Lincoln, Nebraska, those 29 communities come up with 60,884 people. That's 3.2 percent of the population of the state of Nebraska as of that 2013 census number. From the FRA Web site, there's 4,977 public grade crossings in the state of Nebraska. I challenged myself on a trip home the other night to count and between McCook and Lincoln there are 307 total. Two hundred and thirteen of those we're required to whistle, protect the public, and have bells or gates or cross bucks to protect the public. Ninety-four of those

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crossings have no protection other than a stop sign and our eyes. Again, 307 crossings just a small portion of the entire track that's throughout the state of Nebraska, but does represent what is personal and important to me. Public safety is a huge part of this, not only from our jobs and our perspective and our opinions. Cab visibility has been addressed earlier today and with this PTC mandate, this positive train control, a lot of these locomotives when they're built weren't built equipped for this technology. And so they're retrofitting them, so our line of visibility sitting on the right side of the cab I want to say is a 90 degree visibility. There's a blind spot on the right front corner. You can see pretty good to your right, your visibility is 90 degrees. And a lot of these retrofits, the PTC screens are on top of the console, right in the middle of that 90 degrees cutting your visibility that much further, where a set of eyes on the other side of the cab would help that tremendously. I guess we learned way back in grade school about checks and balances. Without checks there's no balances; without balances there's no checks. The conductor and the engineer are check and balance each other on the head end of the train. They're that second set of eyes, that second set of ears, thinking about things that are going on and reminding each other what's going on. I guess I'll liken us working together in the cab to those of an operating room. Most of all, people understand the general principle and what goes on in the operating room, but you don't know all the specifics or procedures that go on. Nurses, doctors, surgeons, anesthesiologist, and etcetera, all have specific duties and can assist or temporarily fill in for one another. But until you put yourself or a member of your family or one of your care...loved ones...cared for loved ones on that operating table, are you willing to let them work alone or substitute for each other in those duties? I guess that's where we get to the one-man crew. Thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Meyers. Senator Brasch has a question for you. [LB192]

SENATOR BRASCH: Thank you, Mr. Myers. And I'll be brief here. Every person that's come here talks about the 12-hour shift and 8 days a week, 25 hours, but we have a union representative here. Was that agreed to by the union to do 12-hour shifts? [LB192]

JASON MEYERS: To the best of my knowledge, the FRA has mandated that we can't work more than 12 hours on a tour of duty. After that 12 hours we're required to have 11.5 hours of rest...10 hours undisturbed, they cannot call you and tell you to come back to work for 10 hours. But where we're at, we get an hour and a half call so if you complete your tour at noon, they could have you on duty at 11:30, 23:30 that night. Other places get a two-hour call so goes to a 12 hours off time scenario. [LB192]

SENATOR BRASCH: And can you turn down a shift? I mean, is it mandatory...some people choose to work the 12 hours in their occupation, so they're only working three days or three and a half days a week. Do you have that option or is it... [LB192]

JASON MEYERS: A majority of our work is what they call trip rates. You are paid X-amount for working X-amount of miles from A to B. I work from McCook to Lincoln; I get a set amount. It doesn't matter if I work four hours a day or if I work 12 hours a day. You don't go on overtime until you, what they call "run off the miles," it's a mileage factor. How many miles are on your trip divided by 16.25 and at that point in time you go on overtime. So there's no incentive to work over 12 hours. A lot of guys like the overtime. My overtime starts for me when I tie up short, when I get done with my day short. I figure myself on an hourly rate instead of a trip rate. If I have a 6-hour day, I've had a great day. If I had a 12-hour day, I broke even. It's not up to us whether or not we work 12 or 6. I mean, I'm kind of liken it to what Jon said in your drive home. Get in your car to drive across the state, drive from Lincoln to McCook. Get in your car; you can't have the radio on, you can't talk to anyone. You can't stop and take a nap unless they tell you you can. Every once in awhile we can't have our cell phone on, but every once in a while, in this instance, your cell phone ring and they'll tell you to pull over and stop and wait for something. You don't know what. When they tell you to go, you go again. If you run out of 12 hours before you get from Lincoln to McCook or McCook to Lincoln, you wait for somebody to come and get you. You're not sure when they're going to get there, but they're coming. They promise you they're coming. Do that alone. [LB192]

SENATOR BRASCH: I believe the two-person check and balance sounds very safe. What I question is, even four people if you're working 8 days a week, 25 hours, you're going to get tired. [LB192]

JASON MEYERS: Right. Right. [LB192]

SENATOR BRASCH: So surely there's a rest period as you had mentioned that... [LB192]

JASON MEYERS: You do have opportunities to take time off. What we call...it's "laying"... "layoff" is our term... [LB192]

SENATOR BRASCH: Okay. [LB192]

JASON MEYERS: Which when I told my wife when I first hired out that I was laid off, she said--oh, my god, what did you do? It's a different terminology as you've heard today from all the rails in the room. You are allowed to take time off. It's hard to get the carrier to approve it. It's hard to get them to okay it and say without...you can get it, but you have to sometimes jump through hoops to get it. And you can also only take so much time off with the policy that's in effect. I don't want to get off too far off topic. But 75 percent of the time you have to be available to them. And if you exceed that 25 percent, then you're subject to discipline. [LB192]

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SENATOR BRASCH: Very good. I have no other questions. You answered...I was just curious. [LB192]

JASON MEYERS: I encourage you guys to inform yourselves. I know the rail industry is something that's Greek to a lot of people. Ask a lot of questions; get out there and experience it. But please bring this out of committee and give us a chance to help ourselves. [LB192]

SENATOR BRASCH: Very good, thank you. [LB192]

JASON MEYERS: Thank you. [LB192]

SENATOR SMITH: (Exhibits 11 and 12) Thank you for your testimony, Mr. Meyers. Next proponent of LB192...remaining supporters of LB192. Seeing none, we do have a couple of letters to read into the record in support of LB192. We have Reuben Reisig on behalf of Local 257, and Larry Dix on behalf of the Nebraska Association of County Officials. We now move to opponents, those wishing to testify in opposition to LB192. Welcome. [LB192]

JEFF DAVIS: (Exhibit 13) Mr. Chairman, members of the committee, Jeff Davis, here on behalf of BNSF Railway. Ladies and gentlemen, every one of the concerns that you heard expressed by Mr. Wood and his colleagues is a legitimate concern. I want you to know that BNSF Railway is committed to safety. The safety of our employees; the safety of our neighbors; the safety of our communities that we live and work in. Despite record volumes, the last three years have been the safest in the history of the railroad industry. Safer than the days when we had three-man crews; safer than the days when we had five- or six-man crews. You see more accidents on television and in the newspaper today because now just about every train accident is captured on tape or by photograph and instantly hits the Internet. What they don't tell you is that 99.999 percent of our trains carrying hazardous materials arrive safely without incident. So when you see these accidents, know that you're only hearing about the one train accident out of every hundred thousand trains in North America, not the other 99,999 that reach their destination safely. Ninety-nine thousand, nine hundred and ninety-nine sounds like a great number, but when people's lives are at stake, it's still not the best percentage we can get. At BNSF, we believe that every rail accident is preventable; zero accidents is our goal. We identify risks, plan for safety first, design safety into our equipment, as well as our procedures and are prepared in case we have to respond to an accident. Since 2004, we've reduced the number of reportable rail equipment incidents by 50 percent to 1.89 incidents per million train miles traveled. But that's not zero and we're going to keep marching until we get there. If you have questions about BNSF's safety record, I'm happy to answer them. But I need to address the merits of Senator Davis' bill. One: BNSF didn't just go to SMART-TD General Committee on Adjustment 001 and say, hey, have we got a deal for you. They approached us. And I want to read you a quote from

the Railway Workers United Web site: Without any input or feedback from the rank and file, without any consultation with the local unions, without issuing one single update or bulletin, the general committee...that's the general committee, that's not the railroad, goes up and offers us up, completely out of the blue, a tentative agreement. I don't blame the employees for being angry. One of SMART-TD's bargaining units negotiated a deal that their own employees hated. But don't make the railroads the scapegoats because the union leaders that were elected to represent these employees didn't do a good job. Two: we are currently in negotiations with SMART-TD and we are not even putting this issue on the collective bargaining table. Two-man crews are in our collective bargaining agreements and we have to negotiate with the unions on this issue. We cannot unilaterally change our contracts, and we are not putting this issue on the table, so if you do nothing, the status quo stays the same...two-men in a cab. Three: on April 9, 2014, the Federal Railroad Administration issued a proposed rule requiring two-person crews on crude oil trains and establishing minimum crew size standards for most mainline freight and passenger operations. The notice of proposed rule making covering this issue is projected to be published on August 28, 2015, with comments due on November 27, 2015. So once that federal regulation is promulgated, it will supersede any state law or regulation in this area. In conclusion, technology has helped make railroading safer than it's every been: better equipment design, better materials, better signaling, better communications for employees, modern wayside detectors, testing equipment. Safer than we had with three-man crews; safer than we had with five- or six-man crews. I can't tell you what technology will be invented ten years from now, but I can tell you this, we'll work with the elected representatives of our employees to implement in a way to make the railroads safe for everyone. Thank you. [LB192]

SENATOR SMITH: Thank you, Mr. Davis. Do we have questions from the committee? You know, and maybe, in your testimony you helped to explain one of the question I had written down, and this was from Mr. Johnson, and I think he was talking about his Local 626, there was a proposal for a one-person...is that the same thing we're talking about here? He had gone back with a proposal for a one person? [LB192]

JEFF DAVIS: Yes, yes. [LB192]

SENATOR SMITH: That's what we're referring to here? [LB192]

JEFF DAVIS: Yes, yes. [LB192]

SENATOR SMITH: And that came from... [LB192]

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JEFF DAVIS: It used to be UTU General Committee on Adjustment 001, I'm not a union member so I don't exactly understand all this nomenclature very well, but it's my understanding they actually came to us, Senator. [LB192]

SENATOR SMITH: Okay. [LB192]

JEFF DAVIS: And they certainly worked on that proposal and took it back to their members. Now I can't help it that they did not consult with their members in any way, did not talk to them in any way. You know, I can understand why they're upset. [LB192]

SENATOR SMITH: And I'm going to ask you a question I had asked Mr. Pfeifer at the beginning. [LB192]

JEFF DAVIS: Um-hum. [LB192]

SENATOR SMITH: Any...are we using two-person crews outside the...I know there's short line and there's some remotes being used, but on a...as a routine, are we using two-person crews anywhere...I mean, one-person crews, anything less than two-person in Nebraska? [LB192]

JEFF DAVIS: No, I believe all the...I believe all the class 1s have it in their collective bargaining agreements that they use two-man crews. [LB192]

SENATOR SMITH: Okay. All right. Thank you, appreciate it. Any further questions from the committee? I see none. Thank you. Next opponent of LB192. Welcome. [LB192]

MIKE PHILLIPS: (Exhibit 14) Thank you. Good afternoon, my name is Mike Phillips, M-i-k-e P-h-i-l-l-i-p-s. I am here this afternoon to testify on behalf of the Union Pacific Railroad where I work as general director of labor relations. My job responsibilities include negotiating, interpreting and administrating the collective bargaining agreements with our train and engine service employees, including the BLET and SMART. Union Pacific is opposing the legislative bill to mandate crew size because it will unnecessarily and unreasonably interfere with the ability of railroad management and union leaders to fully bargain over the best and safest crew size for each assignment in Nebraska. And to be clear, very clear on this, and contrary to what some misleading media have reported, Union Pacific is not here to ask you for one-person crews. We're opposing the legislation so that safe operating practices and technology make single-person crews viable in the future, we're not foreclosed from that option here in Nebraska. So for decades, train crew size has been addressed through the collective bargaining process set forth in the federal Railway Labor Act. The Railway Labor Act was an agreement between rail labor and

rail management, very unique labor law. Congress itself adopted it establishing a code of conduct and a process by which labor and management agreed to exert every reasonable effort to make and maintain agreements on matters important to both sides, including crew size. State legislation that attempts to alter terms of collective bargaining agreements would harm the collective bargaining process and would permanently undermine the principle of labor and management cooperation underpins the Railway Labor Act. Historically, safety and technology improvements have been the primary catalyst for negotiations related to crew size. As a result of these improvements, rail labor and rail management have agreed to reductions in crew size from as many as five people in the 1980s to two persons on most territories operating today. Changing from coal burning to diesel locomotives eliminated the need for firemen in the cab, end-of-train devices eliminated the need for cabooses and reduced the number of crew members needed at the end of a train. And remote-control locomotives have eliminated the need for engineers on many yard jobs. And these were achieved without compromise to safety as witnessed by the safety statistics you've heard today so far. Rail employee injury, train accident at grade crossing, collisions rates are down by 79 percent or more. Hazardous material accident rates are down 91 percent. And according to U.S. Bureau of Labor Statistics data, railroads have lower employee injury rates than all other modes of transportation such as trucks, barges, and airlines. Railroads are safer than most other major industry groups including retail stores. So rail labor and rail management have a proven track record of successful resolution of issues relating to crew size through local collective bargaining agreements. These collective bargaining agreements also address the amount and type of work performed, compensation, and other working conditions that address crew safety. Established by agreement, the appropriate crew size also provides the parties with flexibility to address needs that arise from advancements in technology, design and planning in a timely manner. Crew-size agreements have been and absent legislative interference will continue to be negotiated by representatives of both rail management and labor, the parties who know and understand the details of railroad operations, including various safety requirements and ramifications. It may be of interest to consider a few comparable scenarios as well. Trucks haul on our public roadways many of the same commodities also transported by rail, yet the trucking industry is not required to have two-person crews. Similarly, commuter trains throughout the nation, including Amtrak trains operating in Nebraska operate thousands of passenger miles daily with one person in the cab. This practice is even more widespread for passenger trains in Europe. The safety record for this practice is excellent and dates back to the '70s. In fact, when comparing the safety record of U.S. and European single and multiple-person crew operations, single-person crews were as safe as multiple-person crews. While the majority of Union Pacific's operations currently use two-person crews, Union Pacific and other railroads currently operate a number of single-person crews, but safety records suggest these operations are safe and there is no need to increase crew size. The FRA is fully aware of these assignments and monitors the operations and through its safety...Railroad Safety Advisory Committee, it's working with stakeholders and appropriate crew sizes currently being address at the federal level. So we have a long history of investing capital and implementing technology, operating practices,

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equipment, and infrastructure improvements to enhance safety and productivity, we need to be able to remain flexible to incorporate the most current safety strategies and technological advancements in our operations. One great example is the Positive Train Control that we've talked about today. So LB192's mandate of a two-person crew would interfere with our...the ability of railroads and unions to determine the best and safest crew size for each assignment. Compelling a particular crew size without consideration of the working conditions and available technology could put Nebraska's industries at a competitive disadvantage with other states due to possible additional transportation costs. Can I have just about 30 more seconds [LB192]

SENATOR SMITH: Please...go ahead. [LB192]

MIKE PHILLIPS: Okay. Technology, operating practices, and track and equipment improvements, plus billions of dollars invested by railroads, including Union Pacific, have improved safety and have resulted in corresponding crew-size reductions. When technology advancements have helped to establish a viable foundation for reconsidering appropriate crew size, then rail management and rail labor will negotiate accordingly. We don't believe that time is here yet, but when it does come we don't want it to be hindered by state regulation that would impede us from doing so. So I would urge you to vote against LB192. If you have any questions I'd be glad to answer them. [LB192]

SENATOR SMITH: Thank you, Mr. Phillips. Senator Brasch. [LB192]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Mr. Phillips, for your testimony. I was curious because I...when you mentioned truck drivers I was thinking that truck drivers, I believe, are limited to 10-hour days. They log their days. [LB192]

MIKE PHILLIPS: There are similar federal time requirements similar to... [LB192]

SENATOR BRASCH: Yes, but no more than 10 and they have so much time that they can...and they have rest stops and then they have to pull off into different stations for weight and etcetera, so I...and they have a sleeper cab for the people who go cross country and things like that. Do railroads make sleeping accommodations and rest periods and things like that? [LB192]

MIKE PHILLIPS: Most of our crews go from one point to another without stopping to sleep on that run, when they get to the end of their run, if it's a type of run where you go from a one...your home terminal to an away-from-home terminal, we provide lodging pursuant to our collective bargaining agreements, (inaudible) facilities. And then the crews get their rest there and then return home. During the...a trip, I think Mr. Pfeifer mentioned there were some napping policies,

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at least...I'm not familiar with BNSF's, but the Union Pacific's does allow for, in certain circumstances, but not when the train is moving. It would be limited circumstances where a train is (inaudible) and it's tied down. There's no risk of something happening with only one person being awake. [LB192]

SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB192]

SENATOR SMITH: I see no further questions. Thank you, Mr. Phillips, for your testimony. [LB192]

MIKE PHILLIPS: Okay, thank you for your time. [LB192]

SENATOR SMITH: Like to continue with opponents, those wishing to testify in opposition to LB192. Welcome. [LB192]

KELLI O'BRIEN: Thank you. My name is Kelli O'Brien, K-e-l-l-i, O'Brien, O-apostrophe-B-r-i-e-n. I represent Union Pacific Railroad. I'm public affairs for Iowa and Nebraska and I'm here to oppose LB192. And what I'd like to just reemphasize is that Union Pacific Railroad has never asked for a one-person crew. And we are awaiting the Federal Railroad Administration's rule-making process, as Mr. Davis with BNSF spoke of. So this is an issue that's going to be taken up at the federal level. And what I would ask of you is not to address this at a state level because it will interfere with our ability with interstate commerce to effectively run through Nebraska and then have to stop and make varying demands within this. So this is something that I feel not only should be collectively bargained, but we should await what the Federal Railroad Administration has posed, has actually been studying since last year. And so that is coming. It's just that I think there is some, maybe, impatience at waiting at what that will come out with. So that's the emphasis of what I have. But I also wanted to just make a comment that we as a railroad, safety is very important to our entire operations. We are very proud of our employees and want them to go home safely every day. And so they are our asset. We want them to be healthy and also be able to get rest, have some work/life...balance is a tough word, but work/life integration. And I just wanted to make sure that, you know, that technology improving our performance and also just making safety initiatives more stringent have helped us over the course of time. So that...I'll yield the rest of my time. In case you have any questions, I'll entertain those. [LB192]

SENATOR SMITH: Thank you, Ms. O'Brien. Questions from the committee? Now you said that you have not requested single-person crews. [LB192]

KELLI O'BRIEN: No. [LB192]

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SENATOR SMITH: You do not currently use single-person crews in Nebraska. [LB192]

KELLI O'BRIEN: No. No. No. This is...Mr. Davis handled that extremely well of how that came to pass through another carrier. So I have no comment further. But, no, we have no plans to do so. [LB192]

SENATOR SMITH: All right. Thank you. [LB192]

KELLI O'BRIEN: Thank you. [LB192]

SENATOR SMITH: Appreciate your testimony. [LB192]

KELLI O'BRIEN: Sure. [LB192]

SENATOR SMITH: We continue with opponents, those wishing to testify in opposition to LB192. Seeing no additional opponents, we move to neutral testimony, those wishing to testify in a neutral capacity on LB192. Seeing none, Senator Davis, you're invited to close. [LB192]

SENATOR DAVIS: Thank you, Chairman Smith. I'll try to keep it brief. I think we heard a lot of good discussion here today from both parties. But the first thing I want to say is, I'm not trying to interfere with the collective bargaining agreement which might take place between the railroads and the unions. But when I find out in my local paper that there's a discussion about moving to one-man trains, and that it is at the negotiation level, I get kind of alarmed because of where I live in a part of the state where there are very few crossings. And when I hear about the proposal to have master conductors, but without any idea where these master conductors are going to be located, how far they're going to be from this crossings; how long it's going to take them to break a train if that has to happen, I get alarmed and so should you as members of the Transportation Committee, and so should the people of the state of Nebraska because our public safety officials rely on public highways to get to and from disasters, it's just a fact of life. If a train is blocking a crossing somewhere and there is no master conductor coming within a few minutes, it could be an hour, it could be two hours, and if you've got a fire on one side of the tracks, or if you've got an emergency, an accident of some kind, you don't have any time to waste. So I think it's a public safety issue, first and foremost. That's why I introduced the bill. You know, a few years ago the rail systems came into this committee, I think, and encouraged them to close a lot of these rural crossings for safety reasons. I don't know what transpired with that, but that's an example of the railroads telling state government, you know, there's something here that's unsafe, you need to address it. Well, I'm trying to do the same thing, saying--I think this is an unsafe practice of what we're looking at here. So you heard a little bit of discussion about scheduling and I appreciate

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your questions, Senator Brasch, on that. When I got elected to the Legislature and we moved to Lincoln, my brother-in-law was living with us at the time and he works for the Burlington Railroad, so I'm very familiar with his schedule. And it's erratic, and you never know when you're going to go to work. And you do have that allotted time off, but it could be that you get back at 3:00 in the morning and at 1:00 in the afternoon you're called and you need to be there and then it might be at 7:30 the next morning. It's an erratic lifestyle and difficult, you know, without a...without a...I'm a nighttime sleeper, I can't imagine having a schedule that's just so erratic. So I think most of those people are always tired, always stressed, that's certainly the impression that I've had from a whole lot of people that I know that work for the railroad. It's not an easy life. We know that Nebraska is one of the heaviest-used...the railroad system is one of the heaviest...most heavily used in the country. We should be in the forefront in terms of leading for safety. Now I recognize the railroads have done a fabulous job of safety over the years. I give them tremendous amount of credit. The union people and the rail systems themselves have worked really hard to take care of the kind of injury issues that rail industry used to have. Back in the '50s and '60s we knew lots of people who had lots of bad injuries from rail jobs. But this is not an issue of that safety issue; it's an issue of public safety. And I was gone part of the time, so I don't know if anybody touched on the accident in Quebec. I think that is a wake-up call for anybody in the rail industry and interstate...in government. If the brakes didn't get set properly and it was a one-man person on that train and the train rolls back down the hill 18 miles and kills 50-some people, that's a serious concern of mine and it should be of yours. There are just a couple other things I'm going to talk about and I think positive train controls is a good tool and some of the devices that are in those cabs are great for safety. But, you know, there are parts of the state that are not equipped with positive train control and I think some of those tracks go through your district, Senator Brasch. So, you know, obviously, in that particular area, even if they were to go to a one-man system in the rest of the state, they would not be able to do that in your district. But a few weeks ago on 60 Minutes, Lesley Stahl was doing this piece about cars which are somehow, sort of manipulated and can be seized by someone else. And so you're driving along in your car and you end up without any ability to put your brakes on, manage it or not. And as far fetched as it sounds, hackers are always working to try to interfere with mechanical processes and see what they can do. I don't...do we hope that would never happen with the rails, but, you know, it's something to think about. With two people it's just going to be safer for everybody, for the employees of the railroad, and for the people on the highway, and for the people who live in the country, and people who live in small towns. And with that I would urge you to pass the bill and let's have full debate on the floor. [LB192]

SENATOR SMITH: Thank you, Senator Davis. Do we have questions from the committee? Senator Davis, at the beginning of your closing, you referred to an article. Is that the same situation that was described by Mr. Johnson from Local 626 and then Mr. Davis? [LB192]

SENATOR DAVIS: You know, I was out of the room. I'll refer to what, Senator Smith? [LB192]

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SENATOR SMITH: That situation, was that the...was that related to the same situation that those two gentlemen were referring to where there was a discussion of a negotiation of a single person? [LB192]

SENATOR DAVIS: Well, I was out of the room for part of that testimony, so I really can't speak to that. When I became aware of it, it was an article in the Alliance Times Herald, and the discussion was that the union representatives were going to meet with the railroad to discuss the use of a one-man train. And that would have been around the first of August of this last year. [LB192]

SENATOR SMITH: And that was related to BNSF? [LB192]

SENATOR DAVIS: Yes. [LB192]

SENATOR SMITH: Okay. I think we're probably talking about the same situation. And both of those gentlemen talked about that. All right. [LB192]

SENATOR DAVIS: Thank you. [LB192]

SENATOR DAVIS: I guess that was all the questions I had. I don't see any further questions. Thank you, Senator Davis, for closing on LB192. And that ends the hearing on LB192 and the hearings for the day. [LB192]