

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee March 5, 2019

FRIESEN: OK. Welcome, everyone, to the Transportation Telecommunications Committee hearing. I'm Curt Friesen, the chair of the committee. I'm from District 34. A few things I'll ask, that you please silence all your cell phones and other electronic devices. We will be hearing the bills listed in the order on the agenda. Those wishing to testify on a bill should move to the front room and be ready to testify. We've got an on-deck chair up here so that you're ready to go on when the person is done in front of you if you will be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required but, if you do have a handout, we need ten copies; and one of the pages will help you if you need help. When you begin your testimony, it's very important that you clearly state and spell your first and last names for the record. And if you forget to do this, I will interrupt you and ask you to do it. We're going to use the light system. And I may vary that, depending on the bill. And that's how I-- as we move through the bills, I'm going to ask how many people want to testify. But for this first bill we'll be starting at five minutes and we-- at four minutes, then the yellow light will come on and then you have a minute to kind of wrap up. And when the red light comes on, I'd ask that you finish up. Those not wishing to testify may sign in on a pink sheet by the door to indicate their support or opposition to a bill. My staff today is: legal counsel is Tip O'Neill, to my right; committee clerk is Sally Schultz; and the pages are Alyssa and Preston. And I will let the senators introduce themselves, starting on my right.

ALBRECHT: Good afternoon. My name is Joni Albrecht. I represent District 17 in northeast Nebraska: Thurston, Wayne, and Dakota Counties.

GEIST: Hello. My name is Suzanne Geist. I represent District 25, which is the east side of Lancaster County, including Lincoln, Walton, and Waverly.

HILGERS: Mike-- oh, go ahead.

DeBOER: Hello. I'm Senator Wendy DeBoer. I'm from District 10, which is Bennington and northwest Omaha.

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HILGERS: Mike Hilgers, District 21: northwest Lincoln and Lancaster County.

CAVANAUGH: Machaela Cavanaugh, District 6: west-central Omaha, Douglas County.

FRIESEN: Senator Hughes and Senator Bostelman will probably be joining us. They might have bills in other committees, and they'll, they'll come and go during the day if they have to be somewhere else. With that we'll open the hearing on LB521.

McDONNELL: Thank you, Chairperson Friesen and members of the committee. My name is Mike McDonnell, spelled M-c-D-o-n-n-e-l-l. I represent Legislative District 5: south Omaha. Following the passage last year of LB989, I have had several groups who operate on the roads of the state come to me about the concerns around the authorization of the use of autonomous vehicles. These groups include Teamsters, transportation workers, and some public safety personnel. The bill before you, LB521 utilizes the framework of LB989 of last year and proposes changes to several aspects of that law. Recently this committee advanced Senator Geist's LB142, which made improvements to the liability sections of LB989. LB521 seeks to build upon that work. The intent of LB521 is to insert common-sense, safety-focused requirements to [INAUDIBLE] enact legislation that allows for the future operation of robot-controlled passenger and commercial vehicles that will operate upon the public roads of Nebraska. Nebraska statutes need to be changed to include the following provisions, if this legislature is to be true to its responsibility to protect the health and safety of the public. First and foremost, notwithstanding the technology, an individual human being needs to be responsible for the vehicle, no matter how it is propelled; LB521 does that. Second, under the recently enacted legislation, only railroad crossings are identified as areas that need to be anticipated in the regulation of this new technology. LB521 adds school zone crossings to that list. Third, many of the new computer applications provided for transportation services could seek to skirt basic labor laws, including employee misclassifications. LB521 demands that any of these new services adhere to all labor laws, including the laws that relate to the misclassification of workers. Finally, recently enacted law in this area gave away all the rights of the state and the political subdivisions to tax these new entities to cut, for to compensate for the changes in the infrastructure necessary to interrogate-- integrate them into the existing transportation system. Throughout the new law,

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local law enforcement are not part of the requirements for consultation and any local modifications to performance standards for the operation of a robot-controlled passenger and commercial vehicles on local roads is prohibited. LB521 would remove this prohibited, prohibition. In summary, the public policy balance that the state of Nebraska needs to create to accept innovation must not compromise public safety. Last year's legislation went beyond promoting innovation and compromise-- it compromises local control and public safety. LB521 makes important corrections to last year's legislation. I want to work with the committee to see where we all may find some common ground that balances innovation with public safety. Also, there will be five subject matter experts here to testify after me. Thank you, and I'm here to answer your questions.

FRIESEN: Thank you, Senator McDonnell. Are there any questions from the committee? Seeing none--

McDONNELL: Thank you.

FRIESEN: Proponents who wish testify in favor of LB521.

KIM QUICK: There's 12 copies there. OK. Good afternoon. Mr. Chairman, Senator Friesen, members of the committee, my name is Kim Quick, spelled K-i-m Q-u-i-c-k. I'm the president of Teamsters Local 554, serving and representing the Teamster members and their families in the state in Nebraska. The International Brotherhood of Teamsters has been the leading experts in the transportation logistics industry since 1903. The Teamsters have been involved for many years, concerning the autonomous vehicles on the national level, with the Department of Transportation and, literally, every other state in the nation considering legislation for autonomous vehicles. The Teamsters Union has many resources and experts available to assist us in protecting the public of the state of Nebraska. I'm here today to testify in support of Senator McDonnell's LB521. There are very real, very real concerns that we have with the way the current law is written regarding autonomous vehicles that is, was passed under LB989 during the last legislative session. These concerns, under the current law, present very real public safety concerns that must be addressed. LB521 is good legislation that would address our concerns regarding public safety. The ability of a local community to have the needed flexibility to adapt to technologies on our roadways and the very real balance we need to find between innovation and any public policy that would serve as a disincentive towards it being employed. LB521

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addresses our concerns by ensuring that any vehicle, regardless of the means that it is originally operated, that any vehicle has a person physically present in the vehicle to be able to take control of the vehicle, as needed, to be-- to ensure that public safety is not compromised. There are very many unknowns yet about how autonomous vehicle operations will be implemented in our state, and we need to make sure that our roadways are safe. We believe that an individual human being needs to be with the autonomous vehicles, especially a commercial vehicle when operating, and LB521 would add this requirement. Another component of LB521 that addresses safety is the addition of the school zones to the areas that are specifically mentioned, as those that an autonomous vehicle must be able to operate safely within. This is a requirement that we feel is very important to help to make sure that our communities are safe. Finally, LB521 strikes language which we believe deprives the local communities from developing their own specific rules to accommodate new technology and the ability to finance the necessary infrastructure changes that will likely be required to adapt to the integration of auto, automated vehicles within the existing transportation system. These again are the reasons why we are here today in support of LB521. We look forward to discussing and working with you on how best to integrate the new vehicle design into our existing transportation system. We are happy to meet with you to discuss our mutual interest of public safety, which we believe are furthered by Senator McDonnell's LB521. Also today, in my packet that I have included, I have provided the letter with, to you of my testimony, but also an article that just recently, from last week, of an accident that happened in Delray, Florida. It talks about here the circumstances of this situation here of a Tesla Model 3 that was being driven where, again, a driver in the crash, with the trailer of a vehicle, had died. It says the autopilot yet has not been ruled out. The investigation is still ongoing. The situation here was where a semi had pulled out from a stop sign, and the autonomous vehicle continued and drove right under the semi without stopping. And it killed the individuals in the vehicle. But anyway, this recent article from last Friday of March 1st. We'd like to thank you, Senator Friesen, and also Senator McDonnell for introduce, for introducing LB521, and for the opportunity to testify here today in support of this legislation. I would be happy to answer any questions if there are any. And thank you for this opportunity.

FRIESEN: Thank you, Mr. Quick. Any questions from the committee?
Senator Geist.

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GEIST: Yes, thank you for your testimony, Mr. Quick. And I would-- I just want to know where your thinking is when we, we are currently not in a position as a state or even technology to have fully autonomous vehicles, for instance a Level 4 or a Level 5. When that is taking place, when we are there as a state and a community, would your bill still stand, as you see it? Would you still want an individual in a fully autonomous vehicle at all times?

KIM QUICK: We want a fully autonomous?

GEIST: No. Do you want a human being--

KIM QUICK: A human being?

GEIST: --in a [INAUDIBLE]?

KIM QUICK: We believe that there should be a human being in the vehicle to take over control, yes.

GEIST: OK, thank you.

FRIESEN: Thank you, Senator Geist. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Just to follow up with what Senator Geist was talking about, I think a Level 5 vehicle has no steering apparatus whatsoever in the vehicle.

KIM QUICK: Correct.

BOSTELMAN: Has no controls whatsoever in the vehicle. So at that point I think we're going to have to address this, at some point, with you, as far as what that means and how that's going to play out because, when we get to a Level 4 and 5, a 5 has no, has no steering as it is now, no way to control that vehicle from inside of the vehicle.

KIM QUICK: All right. No, we'll be very interested in sitting down to discuss mutual interests to see how we can best work out legislation. Our primary interest is the-- just as yourselves, protecting the public.

BOSTELMAN: I appreciate it; thanks.

FRIESEN: Thank you, Senator Bostelman. Senator Albrecht.

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ALBRECHT: Thank you, Chairman Friesen. Mr. Quick, I, too, have a lot of the same concerns that you have here in this bill. But you were talking about people or interested parties who should get together and have a say in this, not only yourself, of course, but whether it be law enforcement or transportation, you know, the Department of Transportation, schools. I mean, is this something that you could see maybe an interim study of different people who should be looking at this? Or have you been a part of any type of a study with other state senators and other committees to talk about this?

KIM QUICK: No, we have not been part of a study here locally, no. But we do-- like I say, we do have experts available on our international level that can probably provide some additional information if I would request that from them. But locally, no, I've not been a part of a study at this time.

ALBRECHT: OK, thank you.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? Seeing none, thank you for your testimony.

KIM QUICK: Thank you.

MICHAEL BURGESS: Good afternoon, Chairman Friesen. My name is Michael Burgess, M-i-c-h-a-e-l B-u-r-g-e-s-s. I'm a member of the Teamsters Union and an employee for ABF Freight in Omaha, Nebraska. I'm going to speak in support of LB521. The reason is-- what's important to me about this bill, going forward, is I've 27 years of experience, probably over 2 million safe miles, from coast to coast, of driving semi tractor-trailers. And even before that, when I was a child, I traveled the roads with my father, even in the '70s when I was young. So you could say I'm a bit of an authority on what goes on out there on the highway after all these years. Whether you believe in man-made-- climate change is man-made or, or just a natural occurrence, I do believe that we know that it's happening one way or the other. And what I'm seeing in all the years I've been trucking is that we are getting weather that's coming on faster and more violent on the highways: the winds, the snow, the ice. It's always been a problem, of course, but it's getting worse and it's harder to maintain these trucks. A good driving ability to do that now is requiring even more experience and more training, and there's a lot, a lack of that out there. But I believe with an autonomous vehicle, it's, it's not going to make some of these life-and-death, split decisions out on the

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highway when, when there is so much, so much other interference. We have the, some of this technology now. We have a lane departure warnings. We have adaptive cruise, some other sensors and warnings. When the sun is too low in the sky, these cameras don't work. When there's fog, they don't work. When there's ice on the road, they don't work-- or ice on the, on the truck. Even rain stops them. So I'm curious to see-- someday I'm sure they'll improve the technology but right now it's, it's a far cry from being perfected technology. I also wanted to speak about the-- so we haven't, we have-- obviously have accidents on our roads. I mean, that's a fact of life. But if you take a human being out of these autonomous vehicles, I'm afraid that if, if you had an autonomous, fully autonomous vehicles and they were to be in an accident-- maybe it's human error on the other side-- a family, another vehicle that's not autonomous. It's there's nobody there, who's going to call that into the emergency services? Who's going to maybe pull somebody away from, from the wreckage or administer first aid? So I'm saying they-- us drivers, in and of ourselves, sometimes are, are-- we are the first responders. I've seen it happen, seen happen in Washington, D.C., a long time ago. It was a terrible accident. The two people probably would've lost their lives had it not been for the quick reaction of the driver that was in the accident with them. So I really think that just for, for-- from a first responder's standpoint, you probably want somebody in these vehicles, at least even, even if they're just there to take over if the technology fails or there is, is an accident that they may not even be involved in, just so they can stop and administer some help. And then there's the element of terrorism with hacking. We all know that systems can be hacked. My phones hacked. I'm sure everybody's [INAUDIBLE] that's ever been on Facebook has been hacked at one time or another. If you up that to somebody trying to create criminal mischief and gets ahold of one of these trucks with, with hazardous materials or some other dangerous cargo, they could put it into a-- any number of situations that could harm our-- the public. So those are my main concerns, plus-- I think I had something else written down here. Oh, if we were going to fully automate trucking, which I believe someday very well may happen and, hopefully, many years in the future, you're going to have to build some different infrastructure because you cannot have these autonomous vehicles that are interfaced with GPS, which we know we can do. But with regular people driving cars or-- and/or other vehicles that are not automated, they'd have to interface with those, for one, to make-- to anticipate what the other vehicles are going to do, because there's no way they can discount

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that, you know, the human error that somebody else makes-- it can't account for that. At least I don't see that happening yet. So I think the infrastructure would have to be totally revamped. You'd have to have a separate lane for these vehicles, which would require a tremendous amount of infrastructure investments, which I don't see that happening right now. So in conclusion, I think it would be a terrible idea. And to, and to build on what President Quick of the Teamsters said, we're trying to do the best thing for the public, not just in our own interests here. So I thank you for your time, and any questions?

FRIESEN: Thank you, Mr. Burgess. Any questions from the committee? So to your knowledge, have any of the trucks-- have you seen any of those that are being tested? Are there such a thing on the road?

MICHAEL BURGESS: I have not seen that in this state, no. I haven't seen it Wyoming either, which I travel to frequently. I haven't seen it. Now there very well may be testing going on with a person in that, that's, they're testing, but I have never seen nobody not driving in a vehicle yet.

FRIESEN: Have there been any platooning of trucks that you know of?

MICHAEL BURGESS: Not that I've seen, not in our state anyways, for sure. I know it exists, and the technology is being developed in Arizona, somewhere else, too. But anyways, I know that they're starting to do that. That was something that could be looked into as-- it's possible but you'd still want one, one human being, even with a platooning of trucks. I--

FRIESEN: Right. The way I understood it there were drivers in each vehicle, but it allowed the driver probably to rest a little or--

MICHAEL BURGESS: That's what I've read.

FRIESEN: But was just curious if you'd seen any of it or--

MICHAEL BURGESS: I have not.

FRIESEN: OK. Thank you, Mr. Burgess. Seeing no further questions--

MICHAEL BURGESS: Thank you, Chairman.

FRIESEN: Thank you for your testimony.

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CHAD OLSON: Good afternoon, Chairman Friesen and members of the Transportation Tele-- Telecommunication, Telecommunications Committee. My name is Chad Olson, C-h-a-d O-l-s-o-n. I'm representing the Transport Workers of America Local 223, in support of LB521. As a professional bus operator for the Transit Authority for the city of Omaha, it is important to us, when discussing autonomous vehicles, that we go on record supporting this legislation which will require a human physically present in autonomous vehicles and be able to take control of the vehicle in emergency situations. The humancentric parts of our job are extremely difficult to fully automate. Bus operators are often therapists, helpers to the elderly, provide customer service to disabled patrons and tourists. We are forever vigilant for terrorist threats, lost children, and possible child abductions. It is important to note that we are not against this technology, but we do more than just open and close the doors on a bus. We strongly believe that an operator must be required to serve as a resource to users of public transportation and to monitor the autonomous vehicle. There have been several instances where bus operators' human intervention saved a life of a child or endangered person. As a bus operator for almost 18 years, one incident still haunts me to this day. I was training another operator and, after giving him some advice, I noticed a man sitting next to one of my passengers. He had his arm around a young lady who couldn't have been more than 14 years old and was sitting really close to her. There were tears streaking down her cheeks and a look of sheer terror on her face. It is something I will never forget. I had her sit next to me and told her if this ever happened again to get the bus operator's attention, even if it meant standing and yelling at the top of her lungs-- excuse me, senators-- "get the hell away from me." She told me repeatedly not to have the man get off at her stop. When she went to get off at her stop, the man went to get off the stop through the back door of the bus. I told the trainee to drop the young lady off and not to open the back door. After we dropped her off, we took the man down the street for several blocks while he verbally assaulted us; and eventually we let him off. I firmly believe we stopped a potential sexual assault, and then there's no way an autonomous vehicle would be able to spot or prevent something of that magnitude. We also act as first responders to many emergencies, such as fires, flood, natural disasters, car wrecks, and crime. We are metro, mentors and role models who provide safe passage for our community. According to TRB's Transit Cooperative Research Program, TSRP [SIC] Report 163, "Strategy Guide to Enable and Promote the Use of Fixed-Route Transit by People with Disabilities," is

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designed to help transit agencies fulfill the primary goals of American with Disabilities Acts [SIC] of 1990 by making Main Street fixed-route bus and rail systems accessible to usable by individuals with disabilities. The focus of the Strategy Guide is to offer guidance on providing public services in the most integrated setting possible. In the extensive report, the U.S. Transportation Research Board concluded that people with disabilities use regular public transit far more frequently than paratransit, partly because of greater frequency and reliability of service. The report concluded that it would be very difficult to make autonomous buses comply with ADA rules. Transit plays a critical social role in our society, as evident in public transit's relations with seniors. According to the AARP, over 36 million Americans are age 65 or older. By 2030 this number will double, and one in five Americans will be 65 or older. Americans over 85 will comprise the fastest growing age group in the decades ahead. Many have disabilities requiring operators' assistance. Even a senior doesn't need physical help, consider that 28 percent of the people age 65 and older live alone and are isolated from family members and neighbors. Not only do seniors increasingly depend on public transit for mobility, but they also rely on the driver to greet them and speak a few words of concern. Often this is the only human connection a senior will have the entire day. A driverless bus may solve mobility issues but it doesn't reduce the isolation effects on our elders. Think of the impact driverless buses will have on another vulnerable population who depends on public transit: our children. According to a February 2017 report generated by the Urban Institute Student Transportation Working Group, urban education systems around the country are implementing school choice policies aimed at expanding low-income students' access to high-quality schools. However, these options are inaccessible without safe public transportation systems. Without an adult authority on the bus, surely there will be an increase of bullying, harassment, and violence among our children. Operators aren't just the authorities to our youth. They are mentors and role models who provide safe passage for their community. As the social structures for youth continue to disappear in our towns, are we in any position to lose any good paying Nebraska jobs, more mentors, and positive role models? On Wednesday, February 27, 2019, the Omaha Federation of Labor passed a resolution to protect the public safety and jobs in the age of autonomous vehicles in the Omaha metro area, and I would like to submit this for the record. We thank Senator Mike McDonnell for introducing this important legislation. We ask that you support LB521 and advance it from committee for consideration by the

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full Legislature. I would happy-- I'll be happy to answer any questions you may have. Thank you.

FRIESEN: Thank you, Mr. Olson. Any questions from the committee? Seeing none, thank you for your testimony.

CHAD OLSON: Thank you.

FRIESEN: Welcome.

CHARLIE SCHROEDER: Good afternoon. Senator Friesen and members of the Transportation Communications Committee, my name is Charlie Schroeder, C-h-a-r-l-i-e S-c-h-r-o-e-d-e-r. I am the president of Amalgamated Transit Union-- we refer to it as ATU, much easier to say-- Local 1293, and I'm also a full-time bus driver for StarTran here in Lincoln. I'm here today to testify in support of LB521. During the last session, LB989 was introduced for the purpose to receive approval for testing of autonomous vehicles in Lincoln. This pilot project, with its limitations, I had supported with what was brought forward at that time. Unfortunately, the bill was drastically amended to a point that I and the ATU could not possibly support. And as you saw, my name was on the list of those supporting the LB989. Like I said, the original was OK to work with; the changes made it unacceptable. LB521 looks to make the changes to what was ultimately passed last session, to make this matter more agreeable for myself and with the ATU. I must say I love technology, and the more technology there is incorporated into vehicles to make them safer for the human driver, the better. There are many issues when it comes to completely autonomous vehicles. There are even more when it comes to buses. Having 14 years of experience driving for StarTran, I can give many examples of situations where only a human can manage. Basic one is downtown Lincoln: beer delivery truck stops in the Haymarket. What's the shuttle going to do when it comes up behind it-- thinking it's just a stopped vehicle, it's going to move on in a moment? Or is it going to be sitting there for a half hour? Will they realize it's there for a while and work its way around it? Example of another thing is this last week when we had slippery streets. I had a situation where I actually got off my bus to help a driver because they were stuck driving up the hill in the slick conditions. I could not get around them; I was stuck. So I went up to the driver, explained to them to back off the accelerator, back up a little bit, get out of the icy patch, and they were able to move on. Then I was able to continue on. A computer's not going to be able to help out with that. Passenger

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behavior: I've been very fortunate to not ever have to call the police for a fight on my bus, only because there's more than one time where I've stopped a fight just by calling out whoever was agitating another passenger. I've had more than one time where I had an adult getting into an altercation, you might say, with a high schooler egging him on, and where I would speak up. My voice gets pretty strong if I need it to be. And usually the adult's in there, shaking their head, trying to figure out why they got into this verbal altercation with a high schooler or a middle schooler-type thing. We are also eyes on the streets for other agencies. More than one time we've been called to look out for a vehicle, a person-- things like that. Who knows what the situation is? But we're told just to call in so we can pass on, because our vehicles, you know, we-- there's a lot of us out on the street to help out with that. Like I said, snow and ice on the streets. We-- you can't anticipate it. ABS is a wonderful thing, but on icy conditions it does no good on a bus. When you're coming [INAUDIBLE], driving down the road-- example again last week-- there are areas where the street is dry and clear, and the next moment you have an icy patch. Well, an autonomous vehicle may be able to judge-- I'm on an icy patch-- and all of a sudden it's on clear, it's thinking OK, it's thinking we can go. It's going to drive. All of a sudden you hit an icy patch. My eyes can tell there's a bad spot coming up ahead. I doubt that an autonomous vehicle will be able to tell that. Detours-- things happen. And I'm not sure how computers-- I know our system, we have where it can update and tell you where a bus is supposed to go. And I'm sure that's what it would get, saying: Hey, there's a detour. The bus needs to go around. But if something happens-- there's an accident, a fire, you name it-- the bus comes up to that situation. There's not a human on board to take mental judgment on it. It may just sit there. We're going to be able to work our way around it. Speed limits-- I'm not sure how an autonomous vehicle knows what the speed limit is, but I know one thing. There's a lot of Google Maps, things like that. It tells you what speed is. Sometimes it's not updated. And if it's relying on Google Maps, it may be going too fast or too slow. I had a situation one time where I had a regular bus passenger get on my bus every day-- very friendly-- comes out, gets on. One day he was a little slow getting out of the shelter; couldn't figure it out. He didn't say anything, get on the bus, sat down. A little while later, I realized he was kind of slumped over a little bit, and another passenger said: This guy's not doing so well. So I called [INAUDIBLE]-- sorry-- my dispatch. They sent out the fire department. We stopped and the fire department got there. His

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blood sugar was crashing, and they immediately did what they needed to do, most probably saved his life. Now an autonomous vehicle is not going to know that that regular passenger is not doing so well or call for fire department to come out. Another time had a woman who had apparently been in an accident on the interstate. People picked her up, brought her back to Lincoln, and she caught my bus-- last bus out. This is maybe 10 years ago. I'm going out and she's-- I didn't recognize her at all, and I said: Where are you trying to get to? And she told me. I didn't recognize the street intersection she was talking about. Then I realized-- I said: Where do you think you are? She thought she was in Omaha. So I called in to my supervisor. Supervisor picked her up off the bus, took her to the hospital. She had had a concussion. They contacted her family. Again, an autonomous vehicle would not be able to do that. Computer systems crash. When they do, we can keep going as a human. Autonomous vehicle is going to be stuck. Thank you for your time. Any questions?

FRIESEN: Thank you. Thank you, Mr. Schroeder, for your testimony. Any questions from the committee? Thank you. Welcome, Mr. Hughes-- Senator Hughes. Good to have you back. Any other proponents for LB521?

JOHN ROBOTHAM: Good afternoon, senators. My name is John Robotham; that's J-o-h-n R-o-b-o-t-h-a-m, and I speak today in support of LB521 in the name of promoting public safety and in the name of preserving good-paying jobs in Nebraska. The safety implications of this bill should be self-evident. An over-the-road truck may be given an electric brain, but it will never be able to have a mind. In an emergency panic situation, I do not favor having a computer making life-and-death decisions. There is also the danger of having these systems hacked and sabotaged. Only a human in control should be making these decisions. Honorable senators, I have heard many of you saying we need to promote having more good-paying jobs in Nebraska and that we need to do more to keep our young people in our state. Well, senators, these jobs are already here. They don't need a corporate tax subsidy to stay here and they are already providing many thousands of families with a decent living. This is honest work that people do with their hands and their intelligence. When I was growing up, I was taught that a bird in the hand is worth two in the bush. These jobs are very much worth preserving for the citizens of our state. LB521 may be a little bit of a gut check for some senators. They are going to have to decide if they really support good-paying jobs and keeping young people in our state. And do they support public safety on our roads? Or do some of them just like to hear themselves talk? I support

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LB521, and I encourage all senators to support LB521. And thank you for your time.

FRIESEN: Thank you for your testimony. Are there any questions from the committee? Seeing none, thank you for your testimony. Any other proponents who wish to testify? Seeing none, is there anyone who wishes to testify in opposition to LB521? Welcome.

LEIGHTON YATES: Good morning, Mr. Chairman. Members of the committee, good afternoon. My name is Leighton Yates; that's L-e-i-g-h-t-o-n, last name Yates, Y-a-t-e-s. I am the director for state government affairs for the Alliance of Automobile Manufacturers. For those of you that are not familiar, I've been here quite a few times this session. As a refresher, we're an association that represents 12 of the world's leading car and light-duty truck manufacturers. Every year they represent roughly 70 percent of all new cars sold in the United States. On behalf of the alliance, I'd like to thank you today for the opportunity to speak on autonomous vehicles. It's a technology that has great lifesaving potential, and it has placed Nebraska as a leader amongst many. I'd also like to take the chance to share our opposition to LB521. Last year LB989 was enacted into law, six-- roughly six months ago. Thanks to Governor Ricketts' and Senator Wishart's efforts, it put Nebraska at the forefront-- at the forefront of states that foster innovation and at the forefront of states that embrace new businesses and new technologies. In addition to the large majority of the Legislature, it passed with the support of my industry in auto manufacturing, technology development companies, ride-sharing companies, and many more. Alliance members believe that the existing statute provides the basic framework for automated vehicles that has been widely accepted, as well as supported, as one of the most favorable laws for AVs in the United States. To give you a brief rundown, the bill provides a basic set of definitions and terms that are common industry terms. This supports continuity across state lines. It allows for automated driving system operation on Nebraska roads. These vehicles must comply with Nebraska rules of the road, just as the high standard that North Dakota drivers are held to today. Unfortunately, LB9-- excuse me-- LB521 attempts to neuter Nebraska's current law-- Nebraska's current innovative law-- by requiring the presence of a human in any instance. This is a step in the wrong direction for the Silicon Prairie leader. Currently, current law also preempts local government regulation. This allows the state agencies to be the clearinghouse for all things AV. LB521 would remove this important piece of policy from statute. The state's ability to preempt

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localities from regulating AVs avoids a municipal-level patchwork that would create significant barriers and enforcement difficulties. It is difficult enough to maintain continuity across 50 state lines, but having a patchwork of conflicting local and state laws would be seen as a deterrent to the industry. Previously it was mentioned this was needed to be removed due to taxing, but there's no need to tax these vehicles because the states and localities are already tasked with maintaining the roads, as it is. There's no extra demands that technology developers or my members have asked of local governments or even the states as far as infrastructure goes, so I'd like to address that. Also related to preemption, this would likely delay any technology being introduced in a state, specifically in Nebraska. The current statute also allows for transportation network companies to operate their autonomous networks for the transportation of people, as well as goods, once available to the public. Coupled with other changes under this bill, Nebraska would not be able to attract new innovative pilot projects due to the box this bill would put around Nebraska's borders. Examples of pilots so far that other states are able to take advantage of are typically related to food delivery-- think of your GrubHub or Uber Eats-- or grocery and retail deliveries-- think of your Walmarts or your local grocery store. The current law also requires any person or entity to have proof of insurance or be self-insured, and it also provides accident reporting requirements. And speaking of accidents, there was a mention earlier of a Tesla crash, but I'd like to point out that the technology in Tesla vehicles currently is not considered an autonomous technology. It's highly advanced, advanced driver, driver automation systems. So these are Level 2 vehicles and below, and they wouldn't be governed by the AV law currently. Supporters of this legislation may have also told you that this is an attack on jobs, and that the current law would be the vehicle to eliminate these jobs. This is simply false and based on speculation or misinformation. While some jobs may be transitioned due to automation, there will be just as many jobs, if not more jobs, created, similar to the highly-automated aviation industry. As automation becomes more present in freight trucking, people will need to be trained and present to guide vehicles between distribution points and along open stretches of highway or even tight urban corridors. In fact, companies involved in automated freight trucking, which are large trucks or large cargo vans such as Daimler, Tesla, TuSimple, Udelv, and Embark, have all publicly expressed the expectation of a, of the presence of a human driver in these cargo vehicles. Additionally, a recent report published last year by an

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organization called SAFE debunks some of these AV job bogeyman rumors. Most jobs related to AVs will be fleet manager operation-type jobs, attendants in these vehicles, particularly public transportation, to assist the elderly or disabled passengers, as well as maintenance and support roles. And for those unable to work, autonomous vehicles also-- excuse me-- for those unable to drive and get to and from a place of work, the current law would provide the opportunity to get to and from your job, allowing you another person that's participating in your state's work force. I see my light, so I will wrap up, Mr. Chairman. The Alliance sees current AV-- Nebraska's current AV law is one that is reflexive of, reflective of the current state of AVs in our industry. We act-- we ask that this job [SIC] that is anti-innovation, antibusiness, be voted against today by this committee. And with consideration of time, I'd be happy to answer any questions, Mr. Chair.

FRIESEN: Thank you, Mr. Yates. Are there any questions from the committee? Seeing none, thank you for your testimony.

LEIGHTON YATES: Thank you, Mr. Chairman.

FRIESEN: Any other opponents? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator McDonnell. We do have one letter of support from the Nebraska State AFL-CIO, and a letter of opposition from the city of Lincoln Public Works and Utilities Department, League of Nebraska Municipalities, and Global Automakers.

McDONNELL: I supported LB989 last year. I supported the technology; I still do. But I think sometimes, when we're looking at technology, we have to look at it more as a marathon than a sprint. And right now we have serious public safety concerns. Senator Albrecht mentioned a study-- definitely. There's an old saying you start finding out how much you don't know when you start asking questions. I started asking those questions when people came to me and started bringing up some of the issues. That's why we're sitting here today with LB521. I need to work with you to improve on, I think, partially a mistake I made last year with supporting LB989. But I think we also have to take a step back. And when Mr. Yates mentioned it could delay things, yes, for public safety that's what we'd be delaying for. I believe Senator Geist, in her bill, is trying to improve, also, on what we did last year. I'm not opposed to technology and I'm not afraid of it but, also, I think we have to be very careful how we approach it and the situations we put ourselves in, and our citizens, that we are here to

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look out for their best interest. That's what I'm asking this committee. Please work with me. Please look at this; look at my bill. Look at other ideas and try to improve on what we did last year with the idea of public safety being number one. Thank you.

FRIESEN: Thank you, Senator McDonnell. Any questions from the committee? Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen and Senator McDonnell. Even in talking about this just for the state of Nebraska, you know, you've listened to your labor president and some of the colleagues that you work with. What about throughout the whole country? Because if they're going to have these and they're going to go from state to state to state, I think we really do need to take a broader look at what we're doing here and to make this the best bill possible. When it did come to the floor, I don't believe I voted for it. I mean we don't even have Internet in our rural areas, so I kept thinking how in the world can we have autonomous vehicles in the big cities but we can't even get internet to, to the rural area? So I just think we need to take a broader look to see what we're doing throughout the country and try to-- if it's coming, we want it to be the best it can be for the citizens of Nebraska. So thank you.

McDONNELL: I agree and I believe the five subject matter experts that you heard testify, they have access to that on the national level through their organizations. Thank you.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? We, we did do an LR this last fall. And there is a report out there, and it pointed out a lot of these things, so if you want to refer back to it, I'm sure it's on-line or available somewhere.

McDONNELL: Thank you.

FRIESEN: Thank you, Senator McDonnell. With that, we will close LB521. OK, with that, we'll open LB401. Welcome, Senator Quick.

QUICK: Thank you and good afternoon, Chairman Friesen and members of the Transportation and Telecommunication, Telecommunications Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I represent District 35 in Grand Island. I've introduced LB401 to reinstate Nebraska in the-- as a member of the Midwest Interstate Passenger Rail Commission, or MIPRC. MIPRC brings together Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, and Wisconsin

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in order to coordinate and advocate for passenger rail improvements. Currently Senator Lynne Walz and I are the Legislature's appointed commissioners to MIPRC. And since our appointment in 2017, we have taken an active role as advocates for passenger rail service in Nebraska. I have come to understand the, the significant role that passenger rail plays in our state and the benefits provided through our membership in MIPRC. Many of our colleagues in the Legislature have, have asked me how Nebraska benefits from being members of MIPRC. I think we benefit because it's about having a collective voice at the table and advocating for something you truly believe will benefit the state. And what I mean by collective voice is there are currently nine states working together to advocate for passenger rail service across the Midwest. One example took place in May of 2017, when President Trump proposed in his budget to cut funding to long-distance passenger rail. Laura Kliewer, the director of MIPRC, and staff provided information and talking points to each commissioner representing, represented in the compact, set up lodging and travel, put together a PowerPoint, set up presentations to be given to both Senate and House staff, set up office meetings with Senate and House representatives and, also, meetings with Amtrak officials. All commissioners were given helpful facts and information and participated in a PowerPoint presentation for staff members. At the meetings with our House and Senate members, we expressed our concerns about the budget cuts and explained to them the benefits that passenger rail provides for our state and the Midwest region. I have also attended the annual MIPRC meetings that took, that took place in Wichita, Kansas, in 2017, and Milwaukee, Wisconsin, last fall, where we received information on several different topics, including rail improvements in the fit, in the region, federal level updates for rail, and planning, and a planning study by the FRA. At last year's meeting in Washington, D.C., we met with the CEO of Amtrak, Richard Anderson, and the FRA agency executive, Ronald Batory. Richard Anderson talked about his plan to put more of their resources into shorter passenger lines between large population areas. He said he wouldn't end the long distance lines, but there had been talk about ending a portion of a line through New Mexico. This would affect the Southwest, Southwest Chief long-distance line. The Southwest, Southwest Chief runs from Chicago to Los Angeles and through Kansas. MIPRC commissioners expressed their concern about this decision, mostly those from Kansas, and how this would affect their ridership on the long-distance lines, affecting the members, membership, member states, also, of Illinois and Missouri and Kansas. This is something that could happen in Nebraska, as well. If a

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proposed plan could, could impact us, we could access the resources and weight of MIPRC commissioners to provide feedback. Another question that has been asked of me is, can we provide the same benefits without being members of MIPRC? My answer is that, is that I truly believe that if we are not members of MIPRC, as a state, we will not have the information, knowledge, and motivation to advocate for long-distance passenger rail service and passenger rail service in our region. As a commissioner, the information and support I've received from MIPRC has been vital to increase my knowledge so I can advocate for passenger rail service in our state. It's like having extra staff because they have worked so closely with us and provide valuable, valuable information. Along with MIPRC, we need to work together across departments within our state, and in cooperation with other states, to find ways to increase ridership on passenger rail. Excuse me. For example, if we could work with the Department of Transportation to look at all forms of public transportation, including buses, roads, and connect rail service to communities, it is my belief that our Nebraska Department of Transportation would benefit from attending and being represented at MIPRC meetings. With long distance passenger rail using freight lines, there is a need, need to act advocate for federal funds to maintain infrastructure. This promotes jobs for maintenance and upgrades to infrastructure and provides safe travel for, not only passengers who use the rail service, but also for our motorists who use our underpasses, viaducts, and railroad crossings every day. At our last MIPRC meeting, we had a session on applying for federal grants for passenger rail. They educated us on how to apply, when to apply, including deadlines, and about who could talk, who you could talk to for assistance. This education seemed important to me and like something that would benefit our Nebraska Department of Transportation when applying for federal grants for passenger rail. MIPRC is also a stakeholder in federal region, regional plans and advocates for Nebraska to potentially receive federal grants for passenger rail. On economic development, when employers look at moving to their, moving their business to our state, one area they look at as public transportation and if the state takes an active role in promoting and providing all forms of transportation. We are always looking at ways to grow our economy and bring more jobs to our state, and being part of MIPRC gives us that state, gives our state more tools to grow our economy. We also need to find ways to increase tourism in our state, and passenger rail adds another way to bring people, from out of state, here. In 2017, 55,693 people boarded and deboarded in Nebraska. Over the last ten-year

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period, ridership has increased by 19, 19.1 percent and, in 2016, 118,692 people passed through our state on Amtrak. In Grand Island, our Convention and Visitors Bureau director has, has informed me that people who have traveled by rail to our state come to, to events such as the crane migration. We need to do more to promote tourism in our state, and passenger rail is one way to do that. The visitors who come here spend money on lodging, food, and shopping. And while they are in our state and, and do this as-- and this adds much needed revenue. This last fall Derrick James, who is a government affairs, in government affairs with Amtrak, came to Nebraska to visit with senators, city officials, and citizens. He informed them of the benefits of an, from the investment Amtrak has made, and still makes, in Nebraska. I think the jobs and investments Amtrak has made in our state are important to protect. Derrick has presented seminar-- or sessions to us at some of our MIPRC meetings and understands how important it is that states, partners, and stakeholders have representation at these meetings. In closing, I would ask-- I would like to encourage you to vote for LB401 so we can continue our partnership at MIPRC, MIPRC to advocate for passenger rail in Nebraska and across the Midwest region. I look forward to working with the committee to find funding sources for the MIPRC dues that will not impact our state budget. I would also encourage you to ask questions of those who will testify after me. They will have valued valuable information for you. Thank you for your time and for your attention to this important issue, and I'd be happy to answer any questions.

FRIESEN: Thank you, Senator Quick. Are there any questions from the committee? Seeing none, proponents who wish to testify in favor of LB401. How many people plan on testifying on this bill? OK.

LAURA KLIEWER: Good afternoon, Chairman Friesen. Members of the Committee on Transportation and Telecommunications, my name is Laura Kliewer, L-a-u-r-a K-l-i-e-w-e-r. Thank you for allowing me to speak in support of LB401, a bill that would continue Nebraska's membership and active participation in the Midwest Interstate Passenger Rail Compact. I currently serve as the director of the Midwest Interstate Passenger Rail Commission, and I appreciate the opportunity to give you a brief history of the compact and its purposes, and provide an overview of the benefits to Nebraska of this compact commission. The Midwest Interstate Passenger Rail Compact was conceived by Midwestern state legislators in the late 1990s, through the Council of State Governments' Midwestern Legislative Conference, and was developed with input from federal and state officials, including state DOTs. Its

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purposes are: to promote development and implementation of improvements to intercity passenger rail service in the Midwest; to coordinate interaction among, among Midwestern state elected officials on passenger rail issues; to promote development and implementation of long-range plans for higher speed passenger rail service; to 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 support efforts of transportation agencies involved in developing and implementing passenger rail service in the Midwest. In short, the compact gives our Midwestern states the ability to learn from each other, collaborate, and be a united force in both supporting our states and advocating for federal support in protecting our current passenger rail system and plans for the future. In Nebraska, 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 MLC annual meeting in Lincoln in August of 2001. Involving its bipartisan mix of gubernatorial, legislative, and private sector delegates from each member state, MIPRC has been successful in protecting long-distance passenger rail service-- including the California Zephyr service through Nebraska-- that is valuable to many Midwesterners, as well as encouraging new and improved service. We, as a compact, are unique and advanced among the regions of the country that are working to plan and coordinate passenger rail service. Nebraskans and visitors to your state are increasingly using passenger rail. As Senator Quick mentioned, boardings and alightings at station stops in Nebraska have grown year by year, over the past 10 years, by 12 percent. Some stations have seen much higher growth, as you can see on the flier that you received. The economic impact of Amtrak's purchases here has also grown exponentially over the past 10 years from less than \$325,000 during FY 2007 to almost \$3.7 million in FY 2017. In addition, 24 Nebraskans were employed by Amtrak in FY 2017, adding another \$2 million to the state's economy. Today passenger rail is providing a valuable and vital transportation option to many Nebraskans and contributing significantly to your economy. And the Midwest Regional Rail Initiative Plan envisions passenger rail service improving and increasing in Nebraska, thereby increasing Nebraskans' regional connections. MIPRC is the primary coordinator and advocate of full implementation of the MWRRI, which was developed by Midwestern states, including Nebraska, and includes in its plans new service from Chicago to Omaha via Des Moines. In addition, through their commissioners

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MIPRC states share information and work together on important state and federal passenger rail developments. MIPRC regularly updates its commissioners on state, regional, and federal intercity passenger rail-related issues and often submits testimony on important federal legislation affecting the states. We've been asked to testify before Congress and to submit questions to members for use in hearings. MIPRC sponsors its commissioners Washington, D.C. legislative outreach annually to-- and we visit federal officials on Midwest passenger rail needs and activities. We meet with them individually and hold briefings for legislative staff and Nebraska's legislative appointees, as Senator Quick mentioned, has, have actively participated in our D.C. delegation over the years. We've taken a primary role in advocating for the federal government to develop an enduring collaboration with states for passenger rail development, similar to the partnership it has with states for other modes of transportation. And I see that my time is finished, so do you want me to continue?

FRIESEN: If you could just wrap it up in the next--

LAURA KLIEWER: OK, I'm sorry. So we did work to ensure that passenger rail was included in the current federal surface transportation reauthorization legislation, the FAST Act, and we're also working to ensure that, as it is reauthorized in 2020, that we will have an active voice on behalf of the Midwest in those discussions. We've worked on that with the Federal Railroad Administration, on longer term plans for the future of intercity passenger rail in our region. We were chosen, as a region, to-- by the FRA-- to develop a 40-year vision for an integrated regional rail network and a governance model that will be used by our states. Nebraska participated in that. MIPRC is the primary stakeholder, Midwestern states are the, are the secondary; and Nebraska actively participated in that. In conclusion, Nebraska is a valued member of MIPRC, and we hope you will agree that Nebraska benefits from the education, planning, and advocacy provided and facilitated by MIPRC. We further hope you will agree that the state should continue as a voice in current and future passenger rail development that will bring significant transportation and economic benefits to the states. Thank you for your consideration, and I'm happy to answer any questions you may have, and look forward to working with all of you in the years to come.

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FRIESEN: Thank you, Miss Kliewer. Any questions from the committee? So has there, has there been any passenger rail added in the Midwest, any different runs over the past 10 years, 15 years?

LAURA KLIEWER: Yes, there have been additional frequencies added in Illinois, between Chicago and St. Lewis, Chicago and Carbondale.

FRIESEN: So they've added frequency of trains. But have they added any new routes?

LAURA KLIEWER: There have-- in the past 10 years? I don't think there's-- it's frequencies because we find that, when you add a frequency it's, it doesn't just double the amount of people taking the train. It, it more than doubles because people find the convenience of it. Chicago and St. Paul, to St. Paul, they're looking at a sacred-- second frequency. And there is new service, actually between-- it's starting between-- I mentioned Chicago and Omaha via Des Moines. Illinois has started work on Chicago to the Quad Cities. So that's the first part of that leg; and also is looking at between Chicago and Rockford and Dubuque.

FRIESEN: OK, thank you. Any other questions? Seeing none, thank you for your testimony.

DERRICK JAMES: Good aft--

FRIESEN: Welcome.

DERRICK JAMES: Good afternoon and thank you, Mr. Chairman. My name is Derrick James, D-e-r-r-i-c-k J-a-m-e-s. I'm the senior manager of government affairs for Amtrak, and I come here to speak in support of LB401. Amtrak, officially the National Railroad Passenger Corporation, is a private corporation that was created by Congress in 1970 to assume the operation of the nation's passenger train system that, under commercial sponsorship, was literally collapsing. Until the '50s, the U.S. was considered to have the best passenger train system in the U.S. [SIC] but, with changing technology and changing tastes, that ridership was diverted to other modes. And as, as public policy in Europe and Asia and peer nations led to investments and improvements in passenger rail, Americans, through their elected representatives, had Amtrak created to try to do the same here in the United States. We assume responsibility for those services run by private railroads. The U.S. DOT secretary was charged with setting up the network but, under pressure from the White House management and

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budget, chose a skeletal network to get started, which is pretty much the same network that we have seen until recently, including the one-route-a-day that we operate through Nebraska. In the first year of operation, we had 16,000 route miles with about 16 million passengers. That was the lowest point in passenger rail in U.S. history, but we've built it back from there. There was a provision in the Amtrak law that allowed state governments to contract with Amtrak to provide extra service to places that the U.S. DOT did not designate as part of that original network. So because of those relationships, Amtrak today provides double that service, 305 trains a day over-- and 32 million trips over a 21,000-mile route network. And it is mostly because of those partnerships with state governments that we've been able to dramatically increase the amount of ridership on basically the same network, with just a few, with just a few additions in miles, sort of alluding to what Ms. Kliewer talked about: adding frequencies really adds demand for service. We've got contracts with 19 state governments around the country to operate 29 train routes and half, roughly half of our 32 million trips taken on Amtrak every year are on trains that we operate only because states contract with us. The Midwestern states have been particularly active. Ms. Kliewer talked about Wisconsin, Missouri, Illinois, and Michigan-- and Amtrak, cooperate with Amtrak and each other to market a package of Midwest-themed services connecting the business centers in those states. They've determined that there is local need for additional service on certain routes, especially for folks who do not drive, and to also facilitate business travel and travel of students. The states have invested their own resources in these services to make them more market responsive and to give them a competitive edge in the travel market. Until ten years ago, consistent availability of competitive federal grants to match Amtrak investments and state investments was not available. Those states that did invest, invested their dollars, but in the lack of that federal match until recently was a contributor in sort of the long-term placement of passenger rail, kind of at the bottom in terms of usage. But that environment on the federal level has changed dramatically. Thanks to the unified voice of organizations like the Council of State Governments through MIPRC, congressional leaders throughout the Midwest and throughout the nation know that states are now demanding the flexibility to meet, to invest in transportation modes that meet local needs. Having Nebraska's voice is so important to strengthen the advocacy efforts for investments in the Midwest. And taken against-- these states of the Midwest compete, not just for investment and talent against each other, but against other regions of

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the country and across the globe. State leadership has come to view a quality transportation system that includes convenient air service, a robust rail, road network and reliable rail as critical to retaining and attracting talent. Amtrak understands that passenger rail is most competitive when it has the potential, and it has the potential to significantly add to the transportation system on regional corridors, as scoring of federal grants-- understand that. Omaha, as always, is a top-tier business and population center that figures prominently into schemes like the federal planning initiative that Miss Kliever talked about and also internal analysis that Amtrak is doing. Right here in the Midwest, we've undergone that. The federal has been undergoing that planning initiative. We've undertaken our own analysis, like I said, that considers Omaha and west-- eastern Nebraska important to be part of the Midwestern network. Today's talent that we've discovered, and as many of you know, has shown a preference for locations that provide social excitement and transportation choices that support sharing ideas and connections. There's a great and often hidden history of rural innovation. We want our homegrown talent to have access to the business services and capital markets to feed that innovation, yet be able to remain in our communities. Our land grant universities find rail to be very important. Many of our mayors consider rail as being a key competitive component in terms of attracting business. Our collective Midwestern voice has strengthened with Nebraska as part of the Midwest Interstate Passenger Rail Commission. We ask-- we hope that you would please remain with us as we chart a future of better rail connections that maximize the value of the places that we call home. Thank you, Mr. Chairman. My apologies for going over; I'm certainly willing to answer any questions.

FRIESEN: Thank you, Mr. James. Any questions from the committee?
Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Mr. James, are there going to be-- looking at the route now, are there going to be any new projected stops coming through during the daytime in Nebraska?

DERRICK JAMES: At this time, no. We are, we are doing-- the internal analysis that I talked about has not been completed and not been revealed. We do understand that having service between the hours of 6:00 a.m. and midnight is much, much preferable from a market basis than having service late at night. It remains to be seen what our

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analysis will show in terms of how we can change the network to better provide that level of service in the daytime to western Nebraska.

BOSTELMAN: OK, thank you.

FRIESEN: Thank you, Senator Bostelman. Any other questions? Senator Hilgers.

HILGERS: Mr. Chairman, thank you. Mr.-- thank you, Mr. James, for being here. You know I've had some good conversations. I appreciate the work you do on passenger rail, and I think the idea of having a robust passenger rail network that's well used is a positive one. It does seem, of late, that the progress, to the extent there has been progress on the, on the passenger rail side, it maybe has been somewhat slowed with the news in California. And even this morning I was reading in The Wall Street Journal some of Illinois' challenges in getting some of these, some progress made. And so could you just maybe give us your sense of where, what sort of tangible progress is realistic or likely or possible over the next, say, ten years?

DERRICK JAMES: Certainly. Thank you, Mr. Senator-- thank you, Senator. Yes. Granted that progress has been slow, we are kind of starting from zero, you know, within the last 10 years or so. Where we will continue to see progress is in the addition of frequencies. We have been very happy that the Congress has been consistently, over these past few years, showing faith in the investments in rail by setting aside actual capital dollars for states to tap into. The Wall Street Journal article, which I think you referred to, talked about the Chicago to St. Louis corridor. We are now seeing faster running times on that corridor. Ridership is up dramatically. There are new stations all along the route and we're kind of seeing that repeated. It's really incremental growth that we are doing and that we are sort of moving forward with in the United States, not dramatic. I always get questions about why don't we have passenger trains like in Europe. Well, the United States is different and we need to understand that, while considering the, the geography and the politics of the U.S., we'll have to move forward sort of slowly. Missouri, Minnesota-- I'm heading to St. Paul tonight, as a matter of fact, because the state is really stepping up and asking us to look at and move forward with new additional incremental service on the existing route network. So you're going to see incremental growth, not dramatic growth.

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HILGERS: Thank you, Mr. James.

FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Seeing none, thank you for your testimony.

DERRICK JAMES: Thank you, sir.

FRIESEN: Other proponents? Welcome.

BRAD MELLEMA: Brad Mellema, B-r-a-d M-e-l-l-e-m-a, executive director of Grand Island Tourism. Chairman Friesen, senators of the committee, thank you for this opportunity to talk on behalf of LB401 today. Senator Quick has been an excellent representative of the state's third largest economic engine; that is tourism. Grand Island views tourism as an important leg in diversification of our economy. We're an ag state; we're a manufacturing state. But tourism is an important component for consistency in our, in our economics. The Midwest Interstate Passenger Rail Commission brings together leaders from nine Midwest states that we've talked about in other testimonies, and it's very important that our neighbors-- neighboring states-- along with Nebraska, continue to keep a seat at the table. Passenger rail has historically provided the traveling public with a safe, comfortable, reliable, and clean form of transportation. That is, trains provide comfortable and relaxed setting where riders may work, converse, and rest during their trip. Trains use less fuel, create considerably less pollution than cars. Trains operate reliably and safely in, well, almost all weather conditions. We can appreciate that the last few weeks, for sure. I believe long-distance Amtrak lines have proven to be a vital program for rural communities in Nebraska and throughout the nation and, therefore, this warrants continued support. Amtrak lines provide a unique experience for our guests. In tourism we're marketers. We look for things that separate us from potential other communities that might be bidding for events that we're interested in. And this could create the creative destination events, such as trains, cranes, and fermented grains. Yeah, who's going to sign up for that? We actually have some media people from Chicago doing exactly that. They're riding the trains out. They're going to be experiencing the sandhill crane migration. They're going to go to a few brewpubs while they're here. So there's some really fun things that we can do from markets such as Denver, Chicago, West Coast, where people can come here. And absolutely, every time we do a bid, every time we put something down, our air service is important, obviously the, the road and trade-- automotive is important. But we always include the train

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opportunities that we have just 20 minutes down the road from us in Grand Island as a very, very important portion of what we have to offer. We do not take for granted the importance of passenger rail in Nebraska. It's important to business to have a seat at the table and, as rail service moves forward in such exciting technologies in the future as high speed rail and these types of things. Again, please do not take passenger rail for granted. It is something that we do need to continue. As I-80 continues to become more and more at capacity, alternate forms of transportation are very, very important for us to consider. And Senator Quick, in his desire to learn more and to be at the table here, is something that is valuable to us, as a state, and something that certainly is value, valuable for your consideration. So thank you, Senator Friesen and the committee, for the opportunity to testify in front today.

FRIESEN: Thank you for your testimony. Any questions from the committee? Seeing none, thank you very much.

JAMES HANNA: Chairman Friesen and honorable members of the Transportation and Telecommunications Committee, my name is James, J-a-m-e-s Hanna, H-a-n-n-a. I'm a lifelong citizen of the state of Nebraska, currently reside in the city of Columbus. I'm the volunteer representative to the Council of the Rail Passengers Association for the state of Nebraska. The Rail Passengers Association was formerly known as the National Association of Railroad Passengers and is devoted to advocating for improved rail passenger rail service throughout the United States. I also serve on the board of directors of ProRail Nebraska, which advocates for improved passenger and public transit service in Nebraska. I'm here to testify in favor of LB401, to adopt the Midwest Interstate Passenger Rail Compact. My testimony is personal and not as an official representative of any organization, but I hope on behalf of all the traveling public. Nebraska is fortunate to be on the route of the Amtrak California Zephyr, with stops in Lincoln, Omaha, Hastings, Holdrege, and McCook. This train is a very economical alternative to driving or flying, particularly since three of those cities have little or no commercial air or intercity bus service. The problem is convenience, since the Zephyr passes through the state late at night. The answer to this is to get more passenger trains running that provide daytime service to Nebraska communities and over routes that reach other populated areas of the state. Trains, like any other mode of transportation, are most valuable for the connections they provide. Frequently those connections will be outside our state, as well as inside. Nebraska's

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best opportunity to be aware of and to have an opportunity to participate in plans for expanded passenger rail service is to maintain membership in the Midwest Interstate Passenger Rail Compact and to send a full complement of representatives to the meetings. This is particularly important since the U.S. Department of Transportation provides rather limited resources to the rail industry for forecasting, planning, and engineering, compared to what is devoted to highway and air traffic, which leaves passenger rail support largely up to city, states, regional organizations like MIPRC and to Amtrak. Amtrak's ability to take a leading role in this is severely limited by lack of federal funding. So until that changes for the better, the best option is for states to band together in regional planning organizations like MIPRC. Interest in improved passenger railroad service is growing nationwide as highways get more congested and more expensive to build and maintain. Flying is realistically limited to point-to-point, large city destinations only and involves security hassles and being crammed into seats that get ever closer to the one in front. Many Americans have traveled overseas and have enjoyed fine-- riding fine trains that run at speeds over 200 miles an hour with frequent, convenient schedules, and are wondering why our country is 50 years behind the times. If Nebraska hopes to enjoy the benefits of modern passenger trains, it is important for our state government to be involved in regional planning, and the Midwest Interstate Passenger Rail Compact is our most economical way to accomplish that. Thank you for your opportunity to testify. Do you have any questions?

FRIESEN: Thank you, Mr. Hanna. Any questions from the committee? Seeing none, thank you.

JAMES HANNA: Thank you.

RICHARD SCHMELING: Good afternoon, Senator Friesen and members of the Transportation Committee. My name is Richard Schmeling, S-c-h-m-e-l-i-n-g, first name-- typical, traditional spelling-- R-i-c-h-a-r-d. I am the president of a group called Citizens for Improved Transit. I am also a member of ProRail Nebraska, but I am testifying this afternoon solely on behalf of Citizens for Improved Transit. Our organization is a citizens' action group that has been very successful in improving StarTran bus service in Lincoln. One of the frequent questions asked me is: Well, if you ride the train between Lincoln and Omaha, how do you get to final destination? And the answer is, by having good, interconnected, local bus service on both ends of the run. And I think we're seeing that; it's happening.

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An interesting thing that I think you should be aware of is that recently Amazon considered putting a reasonable, regional distribution center in Omaha. Omaha did not make the top 25 list. And the reason Amazon said they didn't was because of poor local public transportation. Things here are changing here in Nebraska. And when I grew up in Superior, Nebraska, as a young man, I couldn't wait until I got my 16th birthday behind me and got a driver's license and got a car. Back then, 92 percent of the 16-year-olds, within a year from the time they turned 16, had a driver's license and had a car of some kind. But times are changing and we have a new group of people called the millennials, and you have a handout about the millennials. And a couple of your senators on this committee arguably fall within the millennial definition. The millennials, instead of going and getting that driver's license and getting a car, only about 74 percent of them today are driving. The rest of them are using public transportation. In another life, when I used to do final summations for juries here in Lancaster County, I found that if I read a speech, I'd put the jury to sleep pretty quick. So I'm not going to read you a speech; I'm just going to talk to you. I'm going to talk to you about some things that I think are so important for this Transportation Committee. First of all, let's talk a little bit about Highway 101; that's what happens when you build roadways. And I have a, an exhibit for you which is called the "Law of Diminishing Returns." These figures are not from some railroad or public transit group. These are from the Federal Highway Administration. What they show is that, when we added a third pair of lanes between Lincoln and Omaha-- and we're doing it west of Lincoln-- we're not adding 50 percent capacity; we're only adding 40 percent. When we put the fourth pair of lanes down, we don't add much more capacity. We're down to 30 percent capacity, the fifth pair of lanes, 20 percent capacity increase and, when you get to six pair of lanes, no capacity increase. And of course, Senator Friesen can figure this out very easily because, when you go out to Henderson and you get off the interstate, where are all our exits on our rural interstates? On the right hand side of the road. So what that means is, the cars that are in the inner lanes start slowing down to work their way to the right to exit the interstate, and the cars that are coming on are entering from the right. And they're-- sometimes they accelerate pretty well and sometimes they don't. But the point is that we're going to reach a point, at least between Lincoln and Omaha, and perhaps further west, where we can't pave our way out of congestion. We need something different. Now let's take a, let's take a look at, at my second diagram here. It's very illustrative because it basically

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says that, if we start switching from highway to rail, we can handle as many people per hour on a single track, passing siding, centralized traffic control rail line between two points as we can on 18 lanes of interstate highway. So I think it's really important for us to stay in MIPRC and for the Legislature and our Governor to start doing some, some significant rail planning. One of the other testifiers said that we, we aren't doing that now. And we don't want to get to the point where we say: Oh, my gosh. We can't improve our, our flow of traffic by building more highway lanes. So let's get ahead. Let's, let's jump ahead. Let's think to the future, and let's be a part of MIPRC and let's have our transportation department move forward. Final thought--and I have just a few seconds left-- and that is, there's a safety component to all of this. There's a statistic which you'll find on my second exhibit which says riding a train or public transportation is ten times safer than driving your own automobile. I have also seen a multiplier of 17 times safer. But the study I'm aware of was a national study and says you're ten times safer. So if we want to improve our highway safety, we go to the rail mode. And my red light has come on, so if any members of the committee have questions for me, I'd be glad to try to answer them.

FRIESEN: Thank you, Mr. Schmeling. Any questions from the committee? Seeing none, thank you for your testimony.

MATTHEW ROQUE: Thank you and good afternoon. My name is Matthew Roque, M-a-t-t-h-e-w R-o-q-u-e. First, thank you to Senator Quick and the nine additional senators for introducing LB401. Their dedication to public transportation and foresight into participating in the planning that must precede those transportation options is a testament to them. My appreciation is also extended to Senator Friesen and to the rest of this committee for their work on behalf of the citizens of Nebraska. I am here today representing ProRail Nebraska, a nonprofit advocacy group focused on increased passenger rail services, as well as other tran, public transportation needs within the state. Our members hail from all across Nebraska. They're from 29 different legislative districts, including those of Senator Bostelman, Cavanaugh, Geist, and Friesen on this committee. We also have members from 15 states other than Nebraska. These are usually people who have lived in Nebraska at one time or another and are still supportive of passenger rail within the state. At its inception, Nebraska was a founding member of the Midwest Interstate Passenger Rail Compact. Nebraska took this bold step because members of the Legislature recognized there were benefits to cooperating with other states. The MIPRC provides a source for

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regional passenger rail planning, as well as multistate information sharing and contacts. It is a forum for discussion and planning possible rail projects with neighboring states which have similar rail needs and challenges. As discussions about membership in the MIPRC have occurred, there have been some myths about our participation that I would like to dispel. Myth number one: Nebraska receives no tangible benefit from being a member in the MIPRC. The fact is that MIPRC has an annual meeting each year, along with another legislative day on the Hill where members travel to Washington, D.C., and meet with our congressional delegation. The costs for these trips to include travel, lodging, and food is completely covered by the MIPRC. The MIPRC allows both delegates and both alternatives, all four members to travel to these events. Assuming a cost of \$800 per person per trip, if all four members travel to both events, there would be a direct benefit of \$6,400 received back to the state of Nebraska. Myth number two: the Nebraska Department of Transportation already works on railroad issues. Fact: Within the Nebraska Department of Transportation, passenger rail initiatives currently receive little or no attention. The Federal Railroad Administration is the agency which provides guidance on how states should plan for rail-related projects. According to the FRA Web site, current federal legislation specifies that a state-approved rail plan be submitted every four years for acceptance by the FRA. The current Nebraska state rail plan was completed in 2003. It does not contain any information on current or future passenger rail initiatives. Of the 50 plans available on the FRA Web site, only one state had a plan older than Nebraska. Myth number three: Federal funds will come to Nebraska even if Nebraska is not a member of the MIPRC. Fact: Many FRA grant opportunities require applicants to be a part of regional or multistate coalitions. Myth number four: Iowa withdrew its membership from the MIPRC, so Nebraska being a member is pointless. Fact: Because of a change in governors several years ago, Iowa decided to withdraw from the MIPRC. Because of this, their participation in, in MIPRC activities has been limited. The benefit Iowa has over Nebraska in this respect is their rail planning is done by an independent, quasi-governmental agency rather than a department answerable to the governor. This has allowed rail planning activities to continue regardless of the shortsightedness of elected officials. Myth number five: The dues of \$15,000 per year are too expensive. Fact: I don't know what an appropriate cost would be for the benefits we receive for the MI, from the MIPRC. I do know that dividing the total annual dues by 1,929,268, which is the U.S. Census projected population of Nebraska, brings the per-person cost to less

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than one penny. I must deviate from the materials in front of you a little bit here. According to the state of Nebraska Budget Status Summary for fiscal year 2018, we spent over, we spent about \$26.4 million in a category entitled "Dues and Subscription Expenses." I do not know what this account covers, but I know it's not magazine subscriptions. \$26.4 million is a large sum. Magazine subscriptions is a separate account and, for that same fiscal year, \$22,202 was spent on it. If we do not readopt the Midwest Interstate Passenger Rail Compact, we'll be sitting on the outside looking in. All of you have sat on boards of various organizations. I'm sure you recognize the importance of having a seat at the table, of being a part of the discussion. Decisions are made by those who show up. If we allow ourselves to be removed from the MIPRC, we will no longer have a seat at the table. Please vote to advance LB401 from your committee. Thank you.

FRIESEN: Thank you, Mr. Roque. Any questions from the committee? Seeing none, thank you for your testimony.

MATTHEW ROQUE: Thank you.

ROGER FIGARD: Good afternoon, Chairman Friesen and distinguished members of the Transportation and Telecommunications Committee. I'm Roger Figard, R-o-g-e-r F-i-g-a-r-d, and I'm the executive director for the City of Lincoln Lancaster County Railroad Transportation Safety District. I also work regularly with the FRA, FHWA, and the Nebraska DOT. I also have more than one job. Several weeks ago I was here to testify on LB82, as the chairman of the Board of Public Roads Classifications and Standards. I saw LB82 passed yesterday morning; thank you all for that. On behalf of the RTSD board, I appreciate the opportunity to come before the committee and testify in support of a bill that supports and furthers the mission and purpose of the RTSD. The RTSD was created by legislative statute in 1971, LB919, and, and its purpose was to reduce conflicts, improve safety between trains, vehicles, bikes, and pedestrians. The city of Lincoln and Lancaster County went together and formed their RTSD in 1971. Since that time, the RTSD in this area has supported projects and activities that have closed over 100 at-grade railroad crossings, has built dozens of overpasses, and has improved or repaired several hundreds of crossings in Lincoln and Lancaster County, all of this work for the purpose of reducing conflicts, improving safety and travel for all of us. I see LB401 as a continuation of that similar effort, but more directly related to passenger rail. In its mission, the commission says: to

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promote the growth and development of state and regional passenger rail, and to create a modern, clean, efficient transportation network. I wish they had included the word "and safe" in that description, but I'm sure that was intended and meant. Nebraska now is a state with the Department of Transportation and has an opportunity with LB401 to consider, to increase its consideration of passenger rail as a viable and additional option for travelers in and through our state. Many will and have said we don't have enough people in our state to make passenger rail, and certainly high-speed passenger rail, cost-effective and realistic-- maybe not so much today, but certainly someday. We need to be planning and thinking ahead for all those opportunities. Nothing in the proposed LB401 requires Nebraska or any other entity to appropriate or spend money on a specific rail project. But for an extremely modest investment of \$15.000 a year, only asks us to coordinate, cooperate, and communicate about the possibilities and plan to the future and not miss opportunities for improvements to passenger rail and increase the safety of those operations. If the op-- if the RTSD has an opportunity, through LB401, to participate and engage in long-range planning, it can make better use of our own local tax dollars on our projects and larger rail consolidation, relocation, or reconstruction projects. It also brings the ability to apply for federal grants and federal funds for these local projects. The RTSD is currently working with BNSF on the possibility of improving the safety, service, and route of the Amtrak line heading southwest out of Lincoln. The bottom line is that a coordinated effort by a greater group always brings better results than individual plans done in isolation. Passenger rail needs to be considered and furthered as an important future piece of our transportation system. Thank you for allowing me to address this committee, and thank you for your consideration and positive supportive of LB401.

FRIESEN: Thank you, Mr. Figard. Any questions from the committee? Seeing none, thank you for your testimony.

MICHAEL O'HARA: Chairman Friesen and members of the Transportation and Telecommunications Committee, I'm Michael O'Hara, M-i-c-h-a-e-l O-'-H-a-r-a. I'm a registered lobbyist for the Nebraska Sierra Club, and I'm appearing there. I have a handout, and it comes from one of our members that is a railroader and goes into some detail. I'll offer some additional comments. One of the mantras of Nebraska politics is local control, and a compact is a U.S. Constitution-created method of doing local control, when you have a issue that doesn't affect the entire U.S., but only a few states. And so if you're into local

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control, then you should be in the compact. On the back of a handout, there's a map showing what areas are covered by the compact. And you've heard the expression, "have a seat at the table." Iowa can play the game of not taking a seat at the table as long as Nebraska, at the end of the road that goes through Iowa, does have a seat at the table. But we can't trust Iowa, who's not at the table, to protect our interests. And so if you want to have Nebraska's interests protected, you just have to recognize Iowa is going to "free-ride" on us. And we have to show up in order to have this system recognize our needs. If you have any questions, be more than glad to answer them.

FRIESEN: Thank you, Mr. O'Hara. Any questions from the committee? Seeing none, thank you for your testimony.

MICHAEL O'HARA: Thank you.

FRIESEN: Any other proponents wish to testify? Seeing none, opponents. Are there any opponents who wish to testify on LB401? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Quick. We do have letters of support from: city of Lincoln, Nebraska Public Works and Utilities Department; League of Nebraska Municipalities; and the Sierra Club, Nebraska Chapter. Letters of opposition from: S. Wayne Smith, Lincoln, Nebraska; Kathy Wilmot, Beaver City, Nebraska; Nancy Carr, Lincoln, Nebraska; Ron and Lynnette Nash, Lincoln Nebraska; Doug Kagan, Nebraska Taxpayers for Freedom. Senator Quick, you are willing to close.

QUICK: Thank you, Chairman Friesen and members of the committee. I think you've heard from testifiers today how important this is to our state to be part of this compact. And you know, I look at it-- when I go to these meetings, I-- there are members from other states who have DOT, as represented from their state, as well as their governors' appointees. And I listen to someone like Roger Figard, from the, from Lincoln here. And I believe he would be someone that would be a great appointee from, from Nebraska. He would be beneficial, not only just from members hearing what he has to say, but from getting information back from the MIPRC itself. I would love to see our Nebraska Department of Transportation at these meetings. I think it would be beneficial to them, as well. And I'd love to work with them on, on some of these issues to try to make sure Nebraska has that seat at the table. I know you all want to see something physically, physical happen in Nebraska like maybe change rail times to-- through some of our stations. I will tell you that it's, it's more than that. It's

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bigger than that because we've got to get the-- we have to get the lines here first. So working as part of that regional compact is how we do that. Bringing that line to the Quad Cities and working with other states to make sure that line gets here, comes across Iowa. And if we're not at the table, it may be a dead, dead line or, you know, it ends up at Council Bluffs and not in Omaha. We want to make sure it comes to Nebraska, to Omaha, not end up in Iowa in Council Bluffs. So I think that's important to us, as well. You know, we need to increase, increase rider, ridership, bringing that-- you know, making sure that a line would get here, would increase ridership throughout our state and across our state. I would also say that working on the, working with the committee to look at funding sources, I would work with the committee to look at funding sources. I know that, within this bill, that it has a cash fund, if that's something we need to look at to try to address that issue. There are some that have expressed interest in maybe donating to that cash fund. I would love to see it put in within our Department of Transportation committee's budget, but I-- or the Department of Trans, Transportation budget, but I, I'm sure that's a long shot. I've also talked to the railroads about putting it within their infrastructure bill that they have-- or the-- not bill but their infrastructure fund that they have for upgrading overpasses, railroad crossings, and those things. I think it would fit right in with that. And, and they're already-- I believe they have representatives there, too, as well. And it's only \$15,000. So it's \$15,000 per year, and I think it's well worth the money and we get a lot back from it. And I've gotten a lot back from it. Being part of that, being a commissioner on there has, has-- I've worked really hard on that. I've gone to all the meetings. I've taken part, I've participated. I've talked to our House and Senate representatives, I've talked to their staff. I've taken part in, in the, in their presentations, and I've learned a great deal about passenger rail across the country. And just for Senator Hilgers, because he sent me a note and I had this in my last year's presentation, but I will tell you if you're not at the table, then you're probably on the menu. So with that, I will close [LAUGHTER]. Thank you.

FRIESEN: Thank you, Senator Quick. Are there questions from the committee? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you, Senator Quick. I appreciate you adding that to this year's testimony. Speaking of last year's testimony, I know or recall from last year, the funding mechanism, as originally proposed, was through the General Fund. Given

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the budget circumstances last session, if I recall correctly, it was amended such that the funds could come through private donations. Could you just speak brief-- if I'm, if I have that incorrectly, please correct me-- but if--could you speak briefly as to how you sort of intend to navigate that funding side this session?

QUICK: Yeah, yeah. And so we had to go back. We went back to the original language to just get us back in the compact. And I've talked to Senator Friesen a little bit about it and, you know, if we can find a funding source to work with to make this bill work, I would be willing to sit down at the table and, and work on that, whether it's, you know, that cash fund is already there. I mean, it can be donated to now but, without having this bill already in place, I don't want anybody to put money into something that, you know, that's not there right now. So I would, you know, I would like to look at any options that we think that there might be. And maybe there's other options that-- maybe those other cash funds we can attach it to that relate to rail. So--

HILGERS: Thank you, Senator Quick.

QUICK: Yeah.

FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Seeing none, thank you, Senator Quick.

QUICK: Thank you.

FRIESEN: That will close the hearing on LB401. Could I have a show of hands of how many people who plan on testifying on this bill? So I'm going to, I will leave the time to five minutes, but I'd ask that you not repeat yourself and, if somebody's already said what you're going to say, you can come up, make it short. Let's not, not abuse the five-minute rule. Otherwise I might shorten it up. But we'll leave it at five; try not to repeat yourself. Senator Brandt, welcome. We'll open the hearing on LB611.

BRANDT: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. I am Senator Tom Brandt, T-o-m B-r-a-n-d-t, and I represent Legislative District 32. I'm appearing here to, here before you today to introduce LB611. LB611 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. Our state has nearly

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3,500 miles of rail. This isn't just coal freight, but hazardous materials, 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 set switches, sets brakes, evaluates problems, and slows the train at a crossing, etcetera. Both people are highly trained to perform their respective jobs, and both are a necessary component of railroad operation. So why should Nebraska enact legislation which requires trains to carry two people? This is an issue of public safety and good public policy. Anytime there is a problem with the train itself, it is the conductor who troubleshoots the damage and assesses the 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 cannot 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 our rural and small communities there is usually only one crossing in town for EMTs, fire, and police to use. A stoppage for any reason 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. Derailments and equipment failures happen every day in this country. Most occur in the country but many occur in our towns and villages. I don't think Nebraska wants to take that kind of risk. There is federal legislation being discussed to mandate the trains retain two crew members, but I don't

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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 presence. As such, we need to have a far higher standard because there is much more risk in this area where congestion is heavy and where so much freight travels through our state. I have passed out AM537. On page 2, line 5, after "employees" insert "or the movement of any train or light engine when used to load or unload freight while such train or light engine is switched off a main line." Thank you, Chairman Friesen and committee members. This will conclude my introduction to LB611. 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. Thank you.

FRIESEN: Thank you, Senator Brandt. Senator Bostelman.

BOSTELMAN: Yep. Thank you, Senator Friesen. Senator Brandt, I got a question for you on paragraph, on your page 2, on Section 2. In there it says any person who willfully violates this section shall be fined. Are-- you're talking about the individual or the company? How's that going to be--

BRANDT: The company, Public Service Commission.

BOSTELMAN: But this-- no. Well, my question is any person, so if a person is working and their company requires them to carry out that responsibility, and that being one person, are you saying then they need, then that person needs to be fined and they need the-- and they're-- because they're-- I guess I'm, I guess I'm not quite understanding this--

BRANDT: It is a little cloudy.

BOSTELMAN: --because if, if, if they're required by the company to do work--

BRANDT: Um-hum.

BOSTELMAN: --OK, but yet we're going to fine the person because they did the work which they're required to do by the company. Is that what you're saying?

BRANDT: Hmm.

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BOSTELMAN: I guess I'm, I'm-- just something that might need--

BRANDT: It's--

BOSTELMAN: --to be worked on.

BRANDT: It's actually the company. It, it needs to be fixed.

BOSTELMAN: OK. OK. Thanks. I just [INAUDIBLE] this [INAUDIBLE] things.

FRIESEN: Thank you, Senator Bostelman. Any other questions? Senator Geist.

GEIST: Yes. Thank you, Senator Brandt. I was just going to ask if you would enlighten us exactly what the amendment does.

BRANDT: What the amendment does is-- and I'll use my hometown of Plymouth as an example-- we've got a sidetrack there where we load one grain train a week. We'll load 50 grain trains a year there. And we have our own engine. When you go through the small towns you see these small switch engines. When that freight is on that sidetrack and it takes us 15 hours to load a grain shuttle, that allows those organizations just to have one person on that switch engine because, typically, that engine is stop and go, you know. It does not ever go on the main line. They're on their own, they're on their own rail; they have their own engine.

GEIST: OK, thank you.

BRANDT: So it, it exempts the co-ops basically.

GEIST: Thank you.

FRIESEN: Thank you, Senator Geist. Any other questions from the committee? Seeing none, thank you.

BRANDT: Thank you.

FRIESEN: Proponents. Welcome.

BOB BORGESON: Good afternoon, Senator Freeman-- Friesen and members of the committee. My name's Bob Borgeson, B-o-b B-o-r-g-e-s-o-n. I'm the state legislative director for the International Association of Sheet Metal, Air, Rail, Transportation Workers union; we're called SMART. Our, my office is located at 3333 South 24th Street in Omaha. Our

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members work on Union Pacific, BNSF, and Nebraska Central Railroads here in Nebraska. We operate the trains across Nebraska, from Morrill to Omaha and McCook to South Sioux City. We are here today to support LB611. We want to thank Senator Brandt for introducing this important public safety bill. We in SMART conducted a statewide poll in late October of last year. I provided a packet to everyone. The results of that poll are included. This survey, like others that we have done in the past, has a-- shows a tremendous amount of public support for requiring two people on all freight trains. The public sees this for what it is-- a public safety issue. Presently there are two people working as a team on 98 percent of all freight trains in Nebraska. This bill would not result in additional operating expense to the railroad. This merely maintains the status quo of the railroad operating trains today. This bill is needed because of the rail industry's attempt to automate the cab of the trains we run. This is demonstrated by a failed collective bargaining agreement a few years ago on BNSF that our members turned down by 80 percent, with 80 percent voting against it. Our packet includes a Railway Age article wherein BNSF's CEO, Matt Rose, states that he would have, should have tried harder to achieve automation in the cab. The packet I have provided has a breakdown of our poll, as well as a compilation of numerous polls we've done on the subject across the country. Seventy-seven percent of our fellow Nebraskans say they would vote for a, vote on a statewide measure to require a two-person crew if they had a chance, while a mere 9 percent would vote against it. This is very telling. We certainly do not want a repeat of the tragedy in 2013 of the single-person operation that led to the cat, catastrophe at Lac-Megantic, Quebec. The folks coming after me are the hardworking professionals who operate the trains every day in Nebraska. They are the real rail professionals. The railroads say there is no data showing two-person crews are safer than one, than a single crew or no crew. These folks will give vivid examples of how a two-person crew-- person, [INAUDIBLE] crew is a safer operation. This legislation has been introduced in 20 states this year. It has passed both houses in Colorado and has gone to the governor. In this packet is a map of the states where it's been introduced; and that's in the packet, as well. In conclusion, I would ask you to vote to send LB611 to the floor of the Unicameral. Let's have a debate there on this important public safety bill. Thank you for your service to Nebraska, and I would be happy to answer any questions.

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FRIESEN: Thank you, Mr. Borgeson. Any questions from the committee?
Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen. And thank you, Mr. Borgeson,
for being here. In Senator Brandt's opening, he talked about two men
when there's freight. Is there ever a time when there's not freight
that there would only be one driver and not two?

BOB BORGESON: Well, if there's work to do that we're like setting up
an elevator or either, either setting it up or picking up cars, and
then the conductor has to leave, where he has to leave the cab to go
throw a switch, has to inspect the train sometimes. But the train's--
then the train's stopped while he's inspecting--

ALBRECHT: So currently there's always been two men on a train?

BOB BORGESON: That's status-- right now we have two people on every
train in-- yes.

ALBRECHT: OK. So if they went across country with a load, didn't--

BOB BORGESON: Can't quite hear you, Senator.

ALBRECHT: If they went across country and did not have a load, and
were going to come back two states and, and they don't have anything
on the train that they're carrying, would that constitute two men? Or
could just one person bring the train back to the next destination
when they load more freight? I guess I, I would like to understand a
little bit more and, whether you can answer it or somebody else, but I
just--

BOB BORGESON: OK.

ALBRECHT: I'm wondering.

BOB BORGESON: If you're asking if the-- we want two people on every
train. That's--

ALBRECHT: All the time.

BOB BORGESON: Yes.

ALBRECHT: Whenever it's [INAUDIBLE].

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BOB BORGESON: On pass, on freight trains.

ALBRECHT: Freight only. OK. Do the Amtrak trains have two people all the time?

BOB BORGESON: Well, the pass-- they have a crew. I don't-- there's not always two people in the cab, but there is a working crew on-- somewhere in the body of the train.

ALBRECHT: OK, thank you.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Borgeson, for--

BOB BORGESON: Yes, sir.

HILGERS: --being here. I appreciate your testimony, also appreciate the time you spent giving us information and helping us understand the issue. I certainly understand the merits of having two people, a two-man crew. I get the safety aspect of it all. One question I had, if maybe we could just put it on the record. It's a topic that you and I have discussed before, which is the question of whether or not the state has the authority to mandate two-man crew under federal preemption, the idea of federal preemption which is, in other words, interstate commerce. This is the, this is the National Train Network-- Rail Network. And this is really a federal issue versus a state issue. Could you speak to that, please?

BOB BORGESON: I can. And I, and I-- for issue, our, our Washington attorney's legal opinion on that-- Larry Mann is a renowned safety expert and he furnished a brief on that. And he believes they are. It's, it's been federal-- or it's been state law in several other states. So that would tell me that it would be OK.

HILGERS: Did you--

BOB BORGESON: I'm not a lawyer. I got my law degree on the lead at Gibson Yard, so--

HILGERS: Did you say-- I may have misheard you-- but did you say that your, the attorney in D.C. had done a brief or an analysis of this?

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BOB BORGESON: Yes, in [INAUDIBLE]--

HILGERS: Could you, could you [inaudible]?

BOB BORGESON: You should have got it; I, I e-mailed it.

HILGERS: Oh, you e-mailed it; I'm sorry, I got it.

BOB BORGESON: I did.

HILGERS: It's on the--

BOB BORGESON: I can get you another copy, though, if you'd like.

HILGERS: No, I think it's-- I have it if it's in my e-mail. Thank you.

BOB BORGESON: OK.

FRIESEN: Thank you, Senator Hilgers. Any other questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairman Friesen. And I'm sorry I missed Senator Brandt's opening because this is the last bill of my first committee as a senator, so very excited to be here today. Mr. Borgeson, I see in your testimony you said that 98 percent of all freight trains in Nebraska operate with two men--

BOB BORGESON: Yes.

CAVANAUGH: --currently, and this would not be an additional cost to the rails. It's maintaining what is currently done.

BOB BORGESON: Well, there's no-- wouldn't, wouldn't be an additional cost because that's what they're doing now.

CAVANAUGH: So the purpose of this is to put it in state statute that this is how we operate safely.

BOB BORGESON: It is, because they would like to go to less than two people.

CAVANAUGH: OK. So currently it's not in state statute and Senator Brandt's bill would put it in state statute because of the safety concerns of declining the number of rail workers on a train. Correct? I may-- am I sounding circular?

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BOB BORGESON: Yeah, I'm not sure I understood that question.

CAVANAUGH: OK, sorry. So the purpose of this bill today is to make sure that it's in state statute that we must maintain two individuals on the train at all times, and the reason that you, you are here today is because of the safety concerns. And that's why you want-- I'm asking is that why you want it in state statute.

BOB BORGESON: Yes, and it's not just Nebraska; we've introduced it in several states.

CAVANAUGH: OK. Thank you.

FRIESEN: Thank you, Senator Cavanaugh. Senator DeBoer.

DeBOER: Thank you, Mr. Borgeson for being here today and for your testimony. Maybe I missed this, but could you tell me what there, if there are two people on the train, do they have different jobs on the train?

BOB BORGESON: Yes, they work as a team. But when the engineer runs the train, the conductor is in charge of other various things as he, he-- if there's work to do at a station, that's the guy that gets--or man or woman, we have both on, on the railroad-- and they'll go out, and that conductor goes out and throws the switch or does inspections of other trains as they come by if they're stopped in a siding. And they have different job functions.

DeBOER: Have they both been trained? So the conductor-- let's say that the engineer becomes unwell for some reason.

BOB BORGESON: Yes.

DeBOER: Can the conductor safely stop the train, --

BOB BORGESON: Yes.

DeBOER: --that sort of thing? There's training for that in place?

BOB BORGESON: Yes.

DeBOER: OK.

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BOB BORGESON: And I think you'll hear some examples of that from the folks after me.

DeBOER: OK. All right, thank you.

BOB BORGESON: Thank you.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? My question, I guess, is, is: Why should we mandate how a business is run? We-- obviously now we've just passed a law to let autonomous vehicles run up and down our highways with nobody in there, and they can kind of go off the tracks, you might say. So why is, why is it that we should be mandating how a business operates if they can show that they could do it safely? Obviously there's federal laws that will preempt it someday maybe, but why is it that we should be involved in this issue?

BOB BORGESON: Thanks for the question, Senator. And I think it's the operating safety part is the part that I would answer, that it can't be done as safely as it is with a two-person crew. There's-- and folks behind me we'll have examples of this. But there's just certain things that one person can't do. It's in the public's interest. And I think that's not what-- I think that's the role of government is to look out for the public interests; and I think that's what this is.

FRIESEN: So are you--is it more of the public safety or the safety of the crew?

BOB BORGESON: It would be both.

FRIESEN: So I mean if it is a true--

BOB BORGESON: People are running trains. You know, you run--

FRIESEN: If it's a--

BOB BORGESON: --directional and--

FRIESEN: --true safety issue, though-- I mean, I don't know of too many companies that don't care about their employees. But I mean I [LAUGHTER]. There is, there's-- you know, I-- from that aspect we, we have trucks running up and down the highway where we don't put two men in a cab. Again, I just-- I'm struggling, I guess, with why we're involved in a-- what you'd call, maybe, a business decision. Or they

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have to meet safety requirements and things like that, so I mean, if-- are there any requirements that they have to have them right now? Or why is it that all trains have them now and yet you want it mandated?

BOB BORGESON: Right. OK, OK. Well, there is a collective bargaining agreement that establishes what's working in the cab now; however, that-- I don't think the state-- I think the state has a right to protect the, the public in-- Mr. Stilmock and I here make a deal between the two of us and if that's not in the public's interest, that's what the Legislature would step in and solve, I think.

FRIESEN: OK.

BOB BORGESON: You know how he is.

FRIESEN: Thank, thank you, Mr. Borgeson. Seeing no other questions, thank you for your testimony.

BOB BORGESON: Thank you.

JERRY STILMOCK: Thank you. Mr. Chair, members of the committee, 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, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of Senator Brandt's bill. Here's the reason why: we think it's a safety issue. The over 7,500 men and ladies that serve as volunteer fire and rescue personnel throughout the state believe that it's important. It's important when a train has to be broken down. It's important for safety reasons. It's important when the unforeseen circumstances occur. I thought back, with Senator Hughes on, as part of the committee, 2011 in Benkelman. Amtrak train going through derailed. Nobody anticipated that happening. The engineer didn't, the conductor didn't. The people running the, the crane that was dismantling a grain elevator nearby the track, they thought they were safe. It didn't turn out to be safe. When an event occurs that nobody anticipated, we believe it's best to have two, two-people crew, where there'd be a two-people crew to, to be able to assist in those situations when an event does happen, when the unforeseen event does occur. And for those reasons we support this legislation. Thank you.

FRIESEN: Thank you, Mr. Stilmock. Any questions from the committee? Senator Bostelman.

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BOSTELMAN: Thank you, Mr. Chairman. Mr. Stilmock, do you know through the firefighters, how many accidents you may respond to that deal with trains?

JERRY STILMOCK: I don't. The only, the only anecdotal part is when, when something does happen, you know, it's reported. And I think, in the past five years, there have probably been two or three incidents where, because of blockage that, that there was an event, a medical or fire event on the other side, the wrong side of the tracks, if you will. But I don't have any specific data, Senator.

BOSTELMAN: OK, thank you.

JERRY STILMOCK: Yes sir. You're welcome.

FRIESEN: Thank you, Senator Bostelman. Any other questions? Seeing none, thank you.

JERRY STILMOCK: Thank you, senators.

DANNY CROCKER: Good afternoon. My name is Danny Crocker, D-a-n-n-y C-r-o-c-k-e-r. I'm a locomotive engineer of Burlington Northern Santa Fe Railway. I have been employed by BNSF and its predecessors for almost 41 years, 39 of those as a locomotive engineer. I would first like to thank the chairman and this committee for affording me an opportunity to testify on behalf of LB611. This is an important bill that deals with not only the safety of the crews operating our trains in this state, but also with public safety throughout the state. You may possibly hear testimony from both the BNSF and Union Pacific spokespersons, persons that this bill is unnecessary and that neither railroad has any plans at this time to implement any changes to crew size and, even if they did, the Legislature should not stand in the way of a business to remain competitive and profitable. I'm not here to argue that these railroads should be regulated so that they lose competitiveness with any other transportation industry. However, the Legislature should not abandon their responsibility to the public safety in this state. It has been put forth by some that you cannot put a price on safety. However, being realistic we know that this is not the case. In developing the state budget for the next fiscal term, I'm sure that the Senators before me wish that there were more funds available to address many areas of public safety, whether highway, rural fire departments, school safety, etcetera. This bill does not impose undue hardship on the carriers, in my opinion. I have earned a

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good living while working for BNSF, and I am also a shareholder. I do not want to see economic harm befall either of these great railroads. I do not think that either of these corporations will come to this body for approval of their plans in the future should conditions change from what their testimony might be today. As anyone who has driven across Nebraska knows, there are county roads every mile as the state is laid out in sections of 640 acres, which is one square mile. Some of these roads, these roads are highways and some are minimum-maintenance roads. In any instance, the public is dependent on the ability to cross the railroad tracks as expeditiously as possible. There are locations in the mainly eastern part of the state that have more over- and underpasses to enable vehicular traffic to travel unimpeded. However, there are numerous smaller towns without these accesses. The average coal train operating on the BNSF is over 7,000 feet in length. I might be wrong, but I don't believe that BNSF came before this body to ask for public hearings before making the decision, in 2018, to double the length of some trains to over 14,000 feet. That's almost three miles of train. Even in the current operating environment, if a train experiences issues, the time that it takes for a crew member to walk six miles means that a public crossing might be blocked for a minimum of 90 minutes. While BNSF does have responders to assist in emergent, emergency repairs, oftentimes these responders are hours away or are involved in insisting other trains. Hopefully, if you or a loved one is experiencing a heart attack or a stroke, where lost time can mean more permanent brain damage, you never encounter one of these blocked crossings. This is just taking into account the public crossings; there are more private, private crossings by far. While these are often overlooked in the public safety discussions, I'm not sure that, in our agricultural based economy, that they should be. What happens if a farmer or rancher experiences an accident and needs to have medical access to their location? Currently, with the crew size that we have and cell phone technology, it is possible to contact a train crew through the dispatcher so that crossings may be cut to allow access, whether public or private crossings. I suppose one solution to this problem will be to just eliminate all at-grade crossings. However, we all live in the real world and understand that, even if we could work toward that goal, it would not happen in the near future. Before I move on from grade crossings, we need to discuss what happens if there is an at-grade accident. With the current two-man crew, the engineer stays in the locomotive cab, in case the train needs to be moved to allow first responders access to the accident site. The conductor is

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responsible to check on any victims and to make sure that the train is not damaged. I have been involved in 11 such events in my railroad career, including two suicides by train. The U.S. Department of Transportation Volpe Center, in conjunction with the FRA, has been looking into suicides by train since 2011. The findings so far are very disturbing. Not only are the victims, their families, and friends impacted, but the railroad workers, as well. So far the data suggests that the suicide rate is underreported. Next I would like to talk about another type of accident, and that would be derailments. Derailments can be caused by a number of factors, or combination thereof, including: train handling, track defects, and equipment malfunctions. The overall safety of the railroads has improved dramatically since I started working for the railroad. Much of that improvement is due to advanced technology to detect track equipment defects where a derailment can occur. I'll just move on. In summation, I would like to reiterate that I'm not looking to put burdensome regulations on the railroad industry. This bill would merely continue the current operating practices that have allowed the American railroad industry to make record profits. According to the Association of American Railroads' October 2018 report titled "Overview of America's Freight Railroads," freight railroads operating in the United States form an integrated, nearly 140,000 mile system that earned close to \$74 billion in revenue in 2017, and that provides the world's safest, most productive, and lowest cost freight rail service. This was with all of the Class 1 railroads operating with a two-person crew. I'd like to, once again, thank the committee for allowing me an opportunity to testify on LB611, this important deal, dealing, this important bill dealing with public safety. I'll now be happy to answer any questions that you may have.

FRIESEN: Thank you, Mr. Crocker. Are there any questions from the committee? Senator DeBoer.

DeBOER: Could you sort of run through for me, since this is very outside of my field of expertise--

DANNY CROCKER: Sure.

DeBOER: --some of the-- as an-- you were an engineer or a con--

DANNY CROCKER: Correct. No, I'm an engineer.

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DeBOER: As an engineer, what sort of manual or secondary, you know, to some computer system in case that goes down, safety obligations do you have when you're running the train? What--

DANNY CROCKER: OK.

DeBOER: So a flavor.

DANNY CROCKER: Sure.

DeBOER: Maybe not all of them, but a flavor.

DANNY CROCKER: All right. So as I'm operating a train, we have one main safety device that will stop the train if I become incapacitated, besides just the conductor being able to stop the train. It's called an alerter. It's an electronic device that is timed that, if I don't respond within, depending on train speed, every so often-- 15 seconds to, up to a minute-- depending on the faster you go, obviously, it will allow the brakes to be set and the train stopped. So that, that is the main point now under-- we are also in the process of developing Positive Train Control. I'm sure that anybody that has been paying attention to the railroad industry understands that is another system that, once fully implemented, will be able to stop the train if the train crew does not respond appropriately to signals, slow orders, etcetera. So that's a coming technology.

DeBOER: Are there other, other sorts of safety concerns besides just stopping the train? I mean, can other things go wrong besides the train not stopping when it should?

DANNY CROCKER: Oh yeah, absolutely. Like I was talking about with derailments, you can have broken track, you can have broken equipment. You can have wheels that just crack and fall apart, especially this time of year. If you have wide fluctuations in temperature extremes, you can have rail that just will break or, you know, separate. I guess the way that the rail is laid out these days, it's continuous rail and it gets stretched. And then you have the extreme cold. It basically makes it very tensile. And when you get a flat spot on a wheel, it's like hitting it with a hammer and it breaks the rail. And therefore, it will allow for a derailment. Like I said, technology has improved tremendously. They can do more track inspections, they can use drones, they can use everything else. And it's gotten a lot safer, but you still can't eliminate everything.

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DeBOER: OK. And then I know Senator Friesen mentioned that semitrucks, when they're driving on the--

DANNY CROCKER: Um-hum.

DeBOER: --the, the interstate, they, they don't, they don't require a second driver. So I'm trying to kind of imagine a comparison in my head--

DANNY CROCKER: OK.

DeBOER: --that said it--

DANNY CROCKER: Think of a 7,000-foot-long semitruck.

DeBOER: Yeah, I can't do that {LAUGHTER}. That's really long. Yeah. So when you-- sometimes I see there's like the, the back part of the, the part of the truck that they carry the cargo in--

DANNY CROCKER: Sure.

DeBOER: --goes on the trains. Like--

DANNY CROCKER: Um-hum.

DeBOER: -- about how, about how many semitrucks would you say that is?

DANNY CROCKER: We can put two semitrailers on a single railroad car.

DeBOER: OK.

DANNY CROCKER: And, therefore, we can run up to, replace as many as 140 trucks on a single railroad train.

DeBOER: OK, good. That's what I wanted to be able to kind of set up in my head.

DANNY CROCKER: Kind of, yeah, put something to mind. OK.

DeBOER: Yes. Thank you very much.

DANNY CROCKER: You're welcome.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? Seeing none, thank you for your testimony.

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DANNY CROCKER: Thank you.

ADAM HAUSMAN: Good afternoon. My name is Adam Hausman, A-d-a-m H-a-u-s-m-a-n. Safety-- that's one of the first words I heard when I reported from my first day with BNSF, a company that prides itself on making sure crews are safe, meticulously learning and memorizing the deadly decisions that we can make while working and to make sure that I make it home to my family safe. I have a wonderful family. I love each and every one of these in this picture: my wife, my two sons, and my daughter, who I, who I'm absolutely wrapped around her little finger. I look at these guys every time I leave for a trip and tell them I'll see them in a couple days. A couple years ago, I hugged my wife and my daughter and told my sons that I will see them when I get back from a trip from Kansas City. It was a late night call and, as my conductor and I approached St. Joseph, Missouri, I began to feel really ill. Terrible pain on my side, I became sweaty, vomiting out the side window. I didn't know what was happening. Was I having a heart attack? Was it my appendix? I had no idea. It was thanks to my conductor, my second set of eyes, my, my person that I rely on to take control of the emergent situation, to call a dispatcher, to call the ambulance, and to call my wife. I often wonder, had I been alone on that train and that situation just slightly different, what would have been the outcome? Luckily enough, I was conscious and was able to tell my conductor to call the dispatcher, to call my wife, and to guide the ambulance to our location. Luckily, things worked out that time. I often think, had I been alone and a more serious medical issue would arise, how would I, how would that have played out? I likely would have not been able to control my train in that situation. It could turn out way worse and involve more people. As I mentioned earlier, this was a late night call. This was a rail route that has no schedule, which yes, we all understood that when we signed up for this job. However, many of these crews are fatigued, overworked with hours of service, which is a safety issue in itself. Some days, getting called right back to work after 12 hours of rest, often working daylight hours for a few days and then having to adjust to work nights for the next leg of the work week. Our bodies have no schedule. Having another person to visit with and to stay focused during those long hours through the day and night, I rely on to, to do my job safely. BNSF will sell Positive Train Control as a foolproof, fail proof system, but we all know that we should never rely on technology, especially when we're hauling 19,000 tons through some of the towns that you guys live may live in, which goes right by high schools,

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baseball fields, malls, parking lots, and arenas, just to name a few. Positive Train Control is a good tool; however, it should never replace a human body in the locomotive cab. I thank you for your time, and please support LB611. And I'll take any questions.

FRIESEN: Thank you, Mr. Hausman. Senator DeBoer.

DeBOER: Just a quick one for you.

ADAM HAUSMAN: Yep.

DeBOER: About how many hours is a typical shift for you all?

ADAM HAUSMAN: FRA regulates that we can only control a train for 12 hours, but there are several times where they don't have a van, or there's other issues arise, we might be on there up to 16, 18, and sometimes 24 hours, you know, if bad weather.

DeBOER: OK, thank you.

FRIESEN: Thank you, Senator DeBoer. Any other questions? Seeing none, thank you for your testimony.

ADAM HAUSMAN: Thank you.

PAT PFEIFER: All right. I only got ten copies. Can they cheat off one?

ALYSSA LUND: [INAUDIBLE].

PAT PFEIFER: I'll sign this one later for Senator Friesen.

FRIESEN: Welcome.

PAT PFEIFER: Senator Friesen-- Mr. Chairman, senators, my name is Pat Pfeifer, P-a-t P-f-e-i-f-e-r, and I hope you guys ask me the same questions after I'm done here. I'm going to try and clear a couple of them up. You asked earlier why the state should get in. It's because you are endowed that power by federal law. The Rail Safety Improvement Act gave the authority, statutory authority to regulate railroad safety and preemption. There's four states that have a two-man crew bill. And the fifth state-- that's Colorado-- it's sitting on their desk. This has been tested in court: Burlington Northern in Wisconsin. Their state supreme court upheld their state's authority to have two men on a train. So this is a true safety bill. As a senator, you guys have a unique privilege to protect the citizens of the state. The 135

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semis we take off on one train, it's probably about 300-400 semis on a train. When I first hired out, 30 years ago with the Union Pacific, the average train was 6,000 feet long. We're running them 16,000 feet out of North Platte now. And they do have some of the most god-awful chemicals that could blow up a town. Chlorine-- you know, you go back through the history of the rail industry and we're safe. Trust me, we are safer than we ever were, but we still have derailments. There was three of them in Fremont last month. There was one today just west of North Platte. Derailments happen all the time. If I'm the sole person on that train, I just hope somebody finds out before I-- you know, I have nothing to do. I can't go respond to that. I've also had a medical issue where I've been pulled off a train. I had a little TIA; I don't know what the heck that was. But I did have a conductor that wasn't certified, that could stop that train for me. We have medical issues all the time out here. The public safety is the most important part of this along with the safety of our crews. We have enabled these carriers to make record profits, \$7.3 billion last year for the UP, \$7.2 billion for the BN--might be mixed around. They're making a tremendous amount of profits. They don't care whether your crossings are blocked; they care about moving freight. That's it. I'm not saying they're bad people but they don't-- the opponents that are going to get up here are going to bed every night. They don't know what our, our lives is. They have a business plan they're going to present to you and say we don't have no plan to take a person out of a train. Yes, they do. I don't think automated trucks are a good idea either, but that's a different bill. You know it's-- this is a serious safety concern for us, being first responders for the public. I've been so fortunate. I've never hit nobody in a crossing for 30 years. I've stopped my train when I seen a car accident off the side and been a first responder for them. If some of these other testifiers you're going to get, they've hit more than one person. I can't see a car on the other side of my cab. My conductor can't see a broken wheel on my side of the cab. Positive Train Control, all of that technology that's been put on here is so-- task overload for us. It's hard to concentrate, looking out the front window. That's what we're always taught, too. But that's how technology is changing this. This is a true safety bill. There's 19 other senate-- or 19 cosponsors-- for this bill. Every senator here has a road crossing, a railroad crossing in your district. I think-- I'm urging you to get this out of committee and have a debate on the floor. At least have that debate. Allow everybody to have that, that say so. This is not collective bargaining. If it was true collective bargaining, every stakeholder

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would be at that table bargaining this. Railroads will depend on a favorable PEB to mandate a reduction in crew size. We never gave up the job; it was taken through, taken from us through a public law board. It didn't enhance our safety. Technology fails, and every one of these systems that they're putting in for automation, they're going to use to take a person off a train. It's dependent on GPS, and that's one of-- probably the most vulnerable system we have in this country. The terrorist attacks that was talked about earlier with automated vehicles, just think if that was a train. If you took and commanded a train somehow through technology and overrode a system, just think of the chemicals that are going to blow up your town-- you know, Graniteville, South Carolina, Lac-Megantic in Ontario-- it keeps going on and on and on. We're just asking for some help to protect us so we can protect the public. So I did include the notes of Lawrence Mann-- or Larry Mann, their counsel-- that that'll answer all your questions about preemption, about Interstate Commerce Commission, whether it's undue burden on a carrier. So you get you have the answers there. I would have plagiarized that and made myself look more intelligent, but--

FRIESEN: Thank you, Mr. Pfeifer. Any questions from the committee?
Senator DeBoer.

DeBOER: Just one question for you.

PAT PFEIFER: Good.

DeBOER: You mentioned that the trains are 16,000 feet long. What kind of distance does it take to stop a train from when you say I see an obstacle, I need to stop the train,--

PAT PFEIFER: Well, it--

DeBOER: -- until you actually get stopped?

PAT PFEIFER: --definitely depends on your speed, but a 16,000 foot-- probably two and a half miles.

DeBOER: Wow. Thank you.

FRIESEN: Thank you, Senator DeBoer. Senator Hilgers.

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HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Pfeifer, for being here, and I assume this is the legal memo--

PAT PFEIFER: That's correct.

HILGERS: --Mr. Borgeson was referencing. I thought I--

PAT PFEIFER: Yes, it is.

HILGERS: --saw you nodding in the background when I asked him about it.

PAT PFEIFER: Yeah.

HILGERS: Thank you for providing this. I'm just briefly looking at it. I won't, I won't go in any significant detail on the legal memo, as I understand you're just providing it and--

PAT PFEIFER: Yeah, it's got--

HILGERS: --didn't draft it. So I--

PAT PFEIFER: It's got a lot of "lawyerese" in there that I'm not familiar with.

HILGERS: My understanding, as I'm looking at this, that you reference the Wisconsin case and I believe that it appears to be this Burlington Northern and Santa, Santa Fe Railway Co. v. Doyle--

PAT PFEIFER: Yeah.

HILGERS: --decision from the 7th Circuit in 1999, and I think, in that one, it was dealing with a specific-- the idea being that state law could have-- and it looks like the issue in that case was state law could be prevent, preempted by 45 U.S.C. 797j. I'm not asking you what that is; I'm just putting it into the record since this memo won't--

PAT PFEIFER: I'd give you the wrong answer anyway.

HILGERS: The one question I have, and I will probably ask the question of the opponents when they come up-- in the intervening 20 years since that decision was handed down in 1999, are there any regulations, or is there anything, or a federal statute, statutory law that might bear

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on this particular question that you're aware of, understanding again, you didn't write the memo?

PAT PFEIFER: You know, I guess the Federal Rail Safety Act of 2000 mandated that an engineer be federally certified. When they rewrote that law in 2008, I think they recognized that, that other crew member had to be federally certified. So I think the question-- and taking-- they know that we have different responsibilities and they knew that they had to certify both of them through training and background checks and everything like that. As far as any other laws that have-- no. I don't know if any that's, that's-- would've impacted that. I do know that the law is on the books in California, West Virginia, Arizona, soon to be Colorado, and coming to this state, hopefully.

HILGERS: I, I-- and I will just say, and I'll ask again, I'll ask the opponents, and I'm going to do my research on this particular question, as well. I do seem to recall-- and maybe Senator DeBoer read the same case in law school nearly 20 years ago-- I think it was a dormant-commerce-clause case that said states couldn't regulate the size of the, the size of rail, the tracks themselves. And so I'm not saying that that, that case is dispositive of this particular question. It's just that's what is raising the question in my mind, is that--

PAT PFEIFER: Yeah. And that, that dealt with a two-man crew, with the two-person on a train. Am I correct, what we're saying?

HILGERS: This is the--

PAT PFEIFER: You're-- are you talking about the train [INAUDIBLE]?

HILGERS: No. My point is, it's really not-- it's more of a comment for the record--

PAT PFEIFER: Oh, OK.

HILGERS: --and for proponents and opponents of the bill, just to understand my thinking, which is I know in other-- I think, in other contexts at least-- it may, it may not directly be on point-- but my, my memory is that there is some case law that exists that says states are limited in what they can do when they regulate the railways. Now whether that applies here-- I'm not saying that that's the case.

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PAT PFEIFER: Well, that--

HILGERS: I'm just saying that that's my memory, and that's the
[INAUDIBLE].

PAT PFEIFER: OK, that, that being said, there is no rule-- there is no federal rule on the number-- so there's no federal preemption. I don't care what the opponents get up here and say, there's no preemption because there's no rule. States should have the right that that-- the 2008 Rail Safety Improvement Act endowed the states to have a safety
[INAUDIBLE]--

HILGERS: Well, and that--

PAT PFEIFER: --get this right-- above and beyond what, what was addressed in the Rail Safety Improvement Act.

HILGERS: No, I understand, and I will, I will-- less a question and more just a statement that that's the issue that I'm struggling with; and I'll continue to research. And thank you for--

PAT PFEIFER: Oh, you're--

HILGERS: --supplying the memo. Thank you.

PAT PFEIFER: --more than welcome.

FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Seeing none, thank you for your testimony.

PAT PFEIFER: Thank you.

FRIESEN: Other proponents.

JOSEPH BUELT: Good afternoon. My name is Joseph Buel, J-o-s-e-p-h; last name is spelled B-u-e-l-t. I am a locomotive engineer with Union Pacific Railroad. I'm also a legislative representative for SMART TD Union, SMART Transportation Division, Mr. Borgeson's organization. I've worked for Union Pacific Railroad for 14 years, started out as a switchman in the Council Bluffs yard, worked for several years as a conductor or a brakeman. Recently I've been working steadily as an engineer for about the last five years. In this weather like this, I enjoy being a warm cab and feel really bad for those young men out there doing all the work, young men and women doing the work out, in this terrible weather. And per the, the chairman's wishes, I won't

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reiterate a lot of information. The crossing accidents are definitely an issue. I cannot imagine being on the head end of a train after hitting a car and not knowing the condition or the suffering of the people behind me that may be a mile back, you know, and not being able to respond and help them, and then waiting for first responders at that point. It is vital that we have a second crew member that is able respond there, direct first responders to the scene, give them vital information, and relay information to me so I can assist the first responders if I need to move the train or do something in those issues. So moving on from that, the ever increasing length of trains is also an issue. I-- on November 7th of the-- or excuse me-- February 7th of this year, boarded a train at North Platte, Nebraska, 14,000-some odd feet long, as Mr. Pfeifer indicated. That train-- my conductor did some math-- that was just short of 1,500 feet, short of three miles long. Travelling east-- we were east of Grand Island, Nebraska, when the dispatcher came on the radio and asked us, in somewhat of a panic, if there was any place we could park that train without blocking crossings. And my first answer was: No, I can't think of any. Luckily, my conductor did a little thinking, and the one place that we could clear, by a mere 700 feet, was along the rail yard there in Columbus, Nebraska. The reason we had to park that train was the derailment that Mr. Pfeifer spoke about, and that, that train was parked in that location for over 24 hours, had a, you know-- and it, and it was in cold conditions. If we would have had to cut crossings, that conductor would have had to go back, you know, by foot over bad walking conditions, endangering himself to cut crossings to provide safety for the public in that area, to-- for any first responders that needed to come. If we leave train in those conditions like that, the first responders have miles to go out of their way to reach any, any residents of your counties that may be having medical issues. One other issue that was touched on by another testimony is just the fatigue in the railroad industry. It's, it's-- we've been trying to address it with the carriers, but it is continuous. I myself just finished the month of February. I worked over 203 hours, on duty, at the railroad. In a normal 40, 40-an-hour week job, that's five weeks in the shortest month of the year. That doesn't include the time I spent out of town in North Platte or away-from-home stations. There are a lot of tired individuals climbing up on engines-- day in, day out-- in this country. It needs to be addressed. Having that second person there to assess my well-being, to assess the well-being of the other crew member, the alertness of the crew member to respond to ever changing conditions, ever changing weather conditions, any emergency

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situations that may arise, any directives from the dispatchers that we may need to change the route or change our, our plan of action, I think is vital. So the idea of me climbing up on a train in the middle of night, facing the possibility of a 12-hour shift by myself is just-- defies logic in the, if you're looking at safety issues. I really appreciate the committee taking time to hear this important public safety issue, and I'd be glad to answer any questions you have.

FRIESEN: Thank you for your testimony. Any questions from the committee? Seeing none, thank you for your testimony.

JOSEPH BUELT: Thank you.

BRYAN COLE: Good afternoon. Bryan Cole, B-r-y-a-n C-o-l-e. Thanks for the opportunity to testify today. I'm a 15-year employee of BNSF, a trainman the entire time. Nothing can compare with having a trained human at the controls in an emergency-- nothing. Making decisions and enacting safety protocols on site and in real time is the most effective way to avert disaster. And every safety protocol railroads have is predicated on having two crew members working together as an expert team. Cross-checking and backing each other up is what we do. To surrender this tried and true method of safety, in the name of increased profits, flies in the face of logic. In my view this bill is written for two reasons: to protect the public and to protect train crew members. I'd like to talk for a couple of minutes about each of them. A freight train can be a dangerous beast, not just because of its size, but because of what it may be carrying. It may be hauling anything from lumber to spent nuclear rods to anhydrous ammonia, and anything from ethanol to surplus military equipment. Much of the cargo in any given train car could be toxic, corrosive, or even explosive. And we travel through many Nebraska communities on a daily basis. How do you suppose the citizens of those communities would react if they found out railroads were allowed to run a train, loaded with thousands of tons of chlorine gas, through their community with only one man in charge of it? Now how about if he were on his 11th hour of duty and he'd been without sleep for 32 hours? Now how about if he was distracted by a sick child he was away from and he'd run out of coffee 60 miles ago? Is this someone who should be running an inhalation hazard train through your neighborhood? Second reason for this bill is to protect those of us who operate the trains. Along with traveling through locally inhabited cities and towns, rail tracks traverse hundreds of miles of open, empty territory. And while it's often beautiful, it's also often uninhabited. What happens to that single

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crew member when she is alone in the cab, miles from another person, and suffers a heart attack? Will the onboard computer be able to render first aid? Will it hold her hand while she suffers? No. What it will do is provide a location for first responders to come and collect her body. Is that the best we can do for her? Opponents to this legislation are going to cite technological advances, including positive train, train control, which you've heard a lot about. They contend these are an adequate replacement for a second set of eyes in a locomotive. And while I applaud the efforts of innovators to improve rail safety, I question the logic of using these enhancements as replacements. Would it not make more sense to use these enhancements as a supplement? Or would opponents to this legislation have us believe that a computer server, located thousands of miles away, has a better grasp of an, of an emergency situation than a trained professional with a human brain who is on site? Innovation is awesome but, in this case, it still has its limits. A close relative of the railroad industry is the airline industry. A Google search will quickly lead you to understand how complex and advanced automatic piloting features have become. A commercial jet can pretty much take off and land by itself, not to mention the ease in which they cruise through the sky on autopilot. Why then does the airline industry require two, and sometimes even three, crew members in the cockpit? Of course the answer is obvious. Passengers, shareholders, and the public have realized the safety importance of a second trained crew member, not for when things run smoothly, but for when the unexpected occurs. Another Google search will give you several examples of how that second individual averted disaster when the captain was incapacitated. Thankfully, federal regulations required that second crew member in the cockpit. This particular regulatory philosophy should translate directly to the rail industry. We need to require two people in the cab. By following established procedures and communicating as a well-trained team, two men in a locomotive cabin ensure every day that millions of tons of freight travel through our cities and across our rural areas. But more importantly, they are able to assess criteria and act to avoid, avoid catastrophe when extraordinary circumstances occur. A remotely located computer server does not have that advantage. An often quoted adage on the railroad is: Our rule book is written in blood. That means our safety protocols were designed and implemented because someone was injured or killed. Currently this reactive approach has produced the best safety record in the history of railroading, but people had to die to achieve it.

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FRIESEN: Please wrap up, please.

BRYAN COLE: I would ask this body not to follow this method. Be proactive. Help ensure the safety of the public, along with protecting the railroad crew members who provide this safety. Require a two-man crew to run in our state. Thank you for your time.

FRIESEN: Thank you.

BRYAN COLE: Any questions, if you have them.

FRIESEN: Any questions from the committee? Seeing none, thank you for your testimony.

CRYSTAL RHOADES: I'm Commissioner Crystal Rhoades, R-h-o-a-d-e-s, District 2 of the Nebraska Public Service Commission. You will hear from a colleague of mine on this bill later in a neutral capacity. However, I thought it was important to speak in support of it. The commission is going to testify that the costs of implementing the bill would be about \$180,000-- excuse me, \$188,000. This would advocate for a proactive approach by hiring a full-time position with additional responsibilities that would exceed the scope of this bill. And while that is an ideal solution, especially given the department is already short a track inspector, it is not necessary for the implementation of this bill. There is absolutely nothing in the current bill that would suggest that the only way to go about implementing this law would be that the commission hire additional staff to proactively monitor whether or not the trains are being dispatched with two rail employees. Rather, the commission could take complaints from trainmen if a violation were reported to the commission and follow our usual protocol of opening an investigation and holding a hearing, which would largely be the work of the attorney for the Transportation Department and not the work of boots on the ground, because, at that point, it's really about collecting documents and information records. I am sensitive to the fact that our current rail employee is overworked, and this new legislation could potentially lead to additional work. However, I don't expect it to be a substantial amount of work unless this rule is, the law is routinely violated. In 2011, the commission-- since 2011, has been denied funding for a track inspector, even though the commission's State Rail Safety Participation Program is in statute, and it does state clearly that the commission shall enforce several federal railroad safety standards, including track safety standards that are set forth in 49

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CFR Part 213. Currently the commission employs one inspector that enforces equipment safety standards and set forth the remaining federal standards required to be enforced under 75-401. However, it has been several years since the commission has an appropriation to fill the track inspector position and perform the statutory, the statutory duties of the area of rail safety. Track condition is a primary factor in a number of rail incidents across the country-- the country-- and, according to the FRA, track and infrastructure failure is the second leading cause of train derailment. And an increase, of course, in rail tonnage has accelerated the rate of track deterioration. It's important that this committee understand that the decrease in inspections has resulted in an increase in derailments, according to the FRA. When these derailments occur, it's really critical to have two men on a train. Often the first responders at these events are volunteer fire and rescue, who may have limited training and equipment as they begin cleanup on the sites. Having two men on the train is critical to communicating with those first responders about the cargo, the condition of the train, and the railroad's response. It would be incredibly dangerous for those local first responders to try to respond to an emergency in the event that the lone operator was incapacitated and no information could be provided to those first responders. Having two men on a train is also critical if there's a medical emergency or some other unforeseen emergency or even just a need for one of those men to go to the bathroom during their 12-hour shift. If someone has a heart attack, an allergic reaction, or any other medical emergency, there needs to be another person on that train with them, not only for the operators, but for the safety of the public. The commission routinely gets complaints of blocked crossings. In the event that a train needs to be decoupled in an emergency, that would be nearly impossible if there's only one man on the train, which could result in substantial collateral damage to property and life if a train blocked first responders from a house where someone was in a fire or needed medical, medical care. I've heard arguments today about autonomous vehicles being the same and, if there isn't a need for a driver, it would stand to reason that it wouldn't be necessary to have two men on a train. I disagree. If a vehicle crashes on a busy highway, there are dozens of people that can stop and render aid. If a, if someone is injured and a result of a train incident, there's no guarantee that there will be anywhere, anyone anywhere near them that can render aid. Having two men on a train is a matter of public safety, not only for the men on

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that train but for the general public. I do hope that this committee will support this legislation.

FRIESEN: Thank you. Are you representing the Public Service Commission or yourself?

CRYSTAL RHOADES: I am representing the people of District 2 for the Public Service Commission.

FRIESEN: Thank you. Any questions from the committee? Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen. OK, I just have a couple of quick questions. Derailments in Nebraska-- how many are there this year that you have, the Public Service Commission has been aware of?

CRYSTAL RHOADES: There isn't any data available for the current year. The data that we have is dated-- I asked about this this morning. We had 346 derailments between 2011 and 2017. I don't have the numbers for 2017 or 2018, but I'm certainly happy to get those for you and provide them to the committee.

ALBRECHT: Thank you. And how many cases, other cases of complaints from these folks that we're hearing from today do you have or are you aware of?

CRYSTAL RHOADES: I'm aware of at least two dozen complaints just in Cass County. And I get the calls from Cass County even though that's not my district, because my family lives in Cass County. But there are complaints statewide, and I'd be happy to ask the commission how many they've received in total.

ALBRECHT: I would like to get that information if at all possible.

CRYSTAL RHOADES: Sure.

ALBRECHT: Thank you.

FRIESEN: Thank you, Senator Albrecht. Seeing no other questions, thank you for your testimony. Any other proponents? How many do we have left? OK.

TROY MERRITT: Senators, my name is Troy Merritt, T-r-o-y M-e-r-r-i-t-t. I, I'm a legislative rep for Local 286 out of North Platte, Nebraska, as well as a 19-year conductor with Union Pacific

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Railroad, also a nine-year veteran in the United States Navy. Over my career as a railroad conductor, I've seen the size of trains go from 4,000 or 5,000 feet long, or approximately, approximately a mile, to over 15,000 feet long, or three miles long, some with tonnages over 20,000 tons. Railroads would like to make them even longer if the government didn't have a rule against it. In the course of a day, one certified conductor and one certified engineer will take a train over several hundred miles. We must have a general knowledge of our specific territory, FRA rules, as well as these reference materials, and logs while traveling down the rail. First of all, we have: a rule book of 703 pages; instructions for handling hazardous material, 55 pages; a 2016 U.S. Department of Transportation Emergency Response Guidebook of 400 pages, which breaks down each of the hazardous materials that we will haul; special-- System Special Instructions of 145 pages; North Platte area timetable, 47 pages; Council Bluffs area timetable, 27 pages which relate to our specific subdivisions that we're working on. We must be familiar with: the present day's train list-- the train manifest, placement of cars, hazardous material, tonnage, length, and power requirements; complete all work on train work order-- cars to be set out or cars to be picked up, and hazardous material for the FRA specifications, as well as tonnage placement in train; we must go through issued track warrants for our train subdivision to be traveled, making sure that we are, they are strictly complied with, which is our speed restrictions, rail and tripping hazards, wide dimensions loads, and as well as maintenance; we must have knowledge of special-- system-- general orders, superintendent bulletins, subdivision general orders, which are daily change, change, daily changes of our normal rulebook; maintain a northern region job briefing checklist; and log the whole day's events in a, in our conductor job report, which is all our signals that we pass. We must do all communications in, with our, with-- the dispatcher and maintenance of way foreman's-- encountered during the tour of duty and, of course, log all that on our conductor report and job, job briefing checklist. At the present time, strict rules ensure that the conductor alone makes these communications so that the engineer can keep his eyes on the track. Federally mandated rules are so, so vast and coupled with improperly manned boards, inability to sleep at the drop of a hat, and general stresses of life can affect the safe operation of railroads. In my Seabee battalion, nothing was done on an individual capacity. We made all our, all of our movements as a fire team, squad, platoon, or even a battalion because of, after all, there is safety in numbers. First responders don't act alone to emergency

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calls. Even our government-- federal government-- has three branches in order to have a set of checks, checks and balances, to make sure that the job is done correctly. It's simply unsafe for one employee to do all these things that are entailed in getting a train over the road. When talking about safety, two minds are better than one, two sets of eyes and ears are better than one. It is common sense if the-- this is common sense. If the railroads want to take yet another member off the train, it's all about profits, not safety. Thank you for your time and consideration for this important legislative bill. It's a matter of safety for all Nebraskans. Thank you.

FRIESEN: Thank you for your testimony. Any questions from the committee? Seeing none, thank you for testimony.

TROY MERRITT: Thank you.

LaVERNE GORDON: Good afternoon, senators. My name is LaVerne Gordon, L-a-V-e-r-n-e G-o-r-d-o-n. Senator-- or Chairman Friesen and members of the committee, thank you for allowing me to lend my support in favor of LB611. I support this legislation as I feel it is important in the interest of safety. As was asked earlier by one of the senators, is this a safety bill for the employees or is it a safety bill for the general public? In my opinion, it goes both ways. And just as a couple of examples, I'd like to share with you there was an fellow engineer out of Lincoln that works for BNSF, like I do, that became incapacitated on a run and, only because he had a conductor with him, was he able to get the medical help that he, he needed. They got him to the hospital. He was-- they saved his life. He was off work for nearly two years but, because of that second crew member being on that train, he's back to work today. The other example I have, or I'd like to share with you, is in my 25 years as an engineer, that I've been involved in seven crossing accidents, with one fatality as a result. In every one of those instances, the second crew member that was with me, the conductor, he was the first responder to that accident. He was able to-- while I was able to secure the train and call for emergency services, he was able to assess the scene, was able to render aid to those involved. He was also able to relay information to me so that we could get the information to our dispatcher so that the proper emergency services could be brought out. And without two people on the train, the only option I would have had was, would be to sit there until some emergency responders arrived. Technology can only go so far in the event of an emergency, like the, like what I described. A single crew member would not have the ability to assess

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the situation, secure the train, and notify all emergency responders in a timely manner. And with that, I ask for your support of LB611. Thank you.

FRIESEN: Thank you, Mr. Gordon. Any questions from the committee? Senator DeBoer.

DeBOER: Thank you very much for your testimony. And again, this is a little outside of my area of expertise. And I've heard this a couple of times so maybe you can help me understand it. You say that if there's only one person on the train at one of these accidents, then there's no one to be a first responder.

LaVERNE GORDON: Correct.

DeBOER: And so here's my question-- maybe this is totally obvious. Why not? What, what is it that what is it that you have to do on the train that prevents you from assessing the situation outside?

LaVERNE GORDON: As an engineer, my first responsibility is to maintain the security of that train and with the, without another crew member there, there would be no way to do that at the locomotives and be able to go back and respond to the situation that occurred.

DeBOER: So OK. Again, this is going to be really obvious to you. What are you doing to secure the locomotive? What does that entail?

LaVERNE GORDON: Well, I guess it's probably more about making sure that you're in contact with, with the dispatchers and getting the proper people to the location, and--

DeBOER: OK, so you're coordinating with the--

LaVERNE GORDON: Correct.

DeBOER: --dispatch and, you know, that sort of thing, but you're not actually manipulating the train in any way.

LaVERNE GORDON: Well, in the event that the emergency services couldn't get to that person because the train was--

DeBOER: Got it.

LaVERNE GORDON: --blocking a crossing, then that conductor could break that, crossing it into, to where the emergency services could get

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through. If the only person on the train was a locomotive engineer, and he was able to go back there, then he still couldn't help the emergency services get to that train because there's no way for him to break the train and operate the train at the same time.

DeBOER: Got it. Thanks.

LaVERNE GORDON: Thank you.

FRIESEN: Thank you, Senator DeBoer. Other questions from the committee? Seeing none, thank you for your testimony.

LaVERNE GORDON: Thank you.

MATT BADE: My name is Matt Bade, M-a-t-t B-a-d-e. Mr. Chairman, members of the committee, I'd like to address a couple of things I have issues with-- or I guess not really issues with, but more to explain. As far as one of you asked about the semis and why they don't have to have two drivers, semis have things to keep them alert, I guess you would say. They have the radio that they can listen to, they can talk to people on their cell phones with their Bluetooth headsets. We don't have the capabilities of any of that. It's against the law for us to have our cell phones on while the train's moving, and it-- we cannot have radios going for music or anything like that. So that's one big thing that the semis have above us. Also, they go-- I believe that's 10 hours-- and we go 12 hours, so we have a two-hour-longer shift than they do. My little town of Bartley, Nebraska, we have one crossing in the whole town. The next crossing is six miles to the east-- or to the west-- or seven miles to the east, the only way to get across the railroad tracks to get to the other side because we are right along the Republican River. So in the evidence-- or the event of a, an accident or something, where they need to get across the--emergency services need to get across tracks, that's just an example of why it's such a big deal for a conductor to be on the train. I know you guys have heard the same thing over and over, but I was just trying to give you another example of why that's such a big deal because, you know, you're talking 20 minutes for them to get around because then they've got to take gravel roads all the way back to the other side. Another thing that I don't think has been really brought up is, I know sleep has-- but the way our job works is, we're on call 24/7 which I'm sure you guys understand. But the way it works is we have a board, and you start at the bottom of the board and you work your way up to the top. Well, you could be three or four times

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from the top, so you're three or four times out and then, all of a sudden, the first three guys in front of you lay off, which means they lay off-- they take the day off-- sick, whatever-- and then, all of a sudden, you were standing to go on a train at noon the next day, and you're getting called at 11:00 at night to go to work. There's no way to function, in any capacity, to be safe without another crew member there, because you have somebody to visit with, you have somebody talk with. Like the guy stated before, if you have a radio or something, you know, yeah, it would help. Another one is-- just to give you a better idea of how much we can haul versus like a semi, four semis of grain fit into one hopper, which is one of our cars, our grain cars. A typical grain train is 110 cars long, so technically we can actually move 410-- or 440 semis versus 1. That's why it's so imperative that we have two people because, when we do have that issue, whatever it be, you've got somebody there with you. And honestly, my biggest thing is someone there in the middle of the night for me to talk to you, because, I mean, try sitting in a, so try sitting in your chair for 12 hours, not talking to anybody, not doing nothing, just sitting there and being awake and alert the whole time. It's impossible without someone else there. That's about-- honestly, it's, it's about all I got, so thank you.

FRIESEN: Thank you. Any questions from the committee? Seeing none, thank you for your testimony. Any other proponents? Seeing none, who wishes to testify in opposition? Welcome.

ROD DOERR: Thank you. Good afternoon, Mr. Chairman and members of the committee. My name is Rod Doerr; Rod R-o-d, Doerr D-o-e-r-r. I'm the vice president and chief safety officer for Union Pacific Railroad. I'm here today to respectfully express opposition to LB611. Thank you for this opportunity to speak about safety. Safety is Union Pacific's number one priority. As a company we continuously look for innovative approaches to enhance safety of our employees, the communities, and the customers we serve. We invest significant resources in training, research and development, and public education, all with the goal of increasing safety awareness and improving safety. For decades railroads and their labor partners have negotiated and maintained collective bargaining agreements regarding appropriate crew size, as well as many other work conditions and rules. Since the 1980s, key safety indicators have improved across the board even as crew size has decreased from five persons to two. Union Pacific, now 156 years old, can show no correlation between crew size and safety improvement-- none. There is no objective data supporting two-person crews are safer

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than one-person crews. The FRA-- that's our Federal Railway Administration that is our safety regulator in the rail industry-- has acknowledged there is no safety justification for mandating crew size, after it spent several years examining this issue. In fact, the FRA intends to release the publication regarding crew size later this year. Additionally, in 2016, the National Transportation Safety Board, the NTSB-- its chairman, Christopher Hart, recently testified that, based on our limited experience in this and other modes, we don't find that two-person train crews offer a safety benefit. Historically safety and technology improvements have been the primary catalysts for negotiations related to crew size. As a result of these improvements, rail labor and rail management have agreed to reduce crew size from as many as five to, as I said, two persons across most of our operating territories. There were achieved-- these were achieved without compromising safety in any meaningful way. There's been declines in employee injuries, train accidents, and grade crossing collisions. These reductions are 79 percent over this time period. Hazardous material accidents are down 91 percent. In every category and metric used to measure safety outcomes, Union Pacific, Union Pacific is proud to have achieved exceptional safety records in what is already the safest industry for ground freight transportation. According the U.S. Bureau of Labor Statistics, railroads have lower employee injury rates than most other modes of transportation and major industry groups. That includes your grocery store. In fact, Union Pacific, for the fourth consecutive year, is the safest railroad in the U.S., as measured by our federal regulator, the FRA. As proud as we are, we will not be satisfied until we reach the target of zero accidents, injuries, or fatalities regarding our employees, pedestrians, drivers, and our trains. Risk-based safety programs such as our RIM program-- RIM stands for risk, identification, and mitigation-- informs as we-- informs our work going forward as we comp, comp, complement different work practices. The Federal Railway Administration and our labor organizations will accept nothing less. Final point: Frankly, it is in the industry's best interest to advance safety for our employees, shippers, and communities, as the liabilities for this industry are simply too great. Please consider allowing the forces already within the industry-- organized labor and multiple regulators-- to continue to demand ever improved safety results. Installing a law that upsets these forces may have unintended consequences that we, as we strive to remain a relevant mode of transportation for this nation. In light of the interstate nature of rail transportation, the FRA's role in regulating railroad safety, lack of evidence demonstrating multiperson

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crews are safer than single-person crews, potential negative impact of minimum, minimum crew size legislation on superior technology improvements, and the historic role of collective bargaining to address these issues, state, states should not attempt to legislate in this space. Again, safety can only be advanced in this industry by its people, its experts, developing new processes and technologies to advance safety. For these reasons, I respectfully request a "no" vote on LB611. I'm happy to answer any questions that the chairman will allow.

FRIESEN: Thank you, Mr. Doerr. Questions from the committee? Senator DeBoer.

DeBOER: Thank you for your testimony today.

ROD DOERR: Yes, Senator.

DeBOER: Are there places currently in the U.S. where there are trains that are being run by only one person?

ROD DOERR: Yes.

DeBOER: OK. How frequent is that? Where? What, what kind of places? Is that small, is that isolated? Is it large?

ROD DOERR: It's fairly isolated, mainly in yard operations where the risk is minor or pretty minimum, and several short lines have one-person crew consists.

DeBOER: OK. You mentioned a study maybe that the FRA was going to release, you said later this year, that said that there is no safety reason for the size of the crew to be-- how do you have preliminary information about that study?

ROD DOERR: There is a process in the rail industry referred to as RSAC, the Rail Advocacy Safety Group [SIC]. We work together with the FRA in Washington, D.C., on a regular basis. We work together to try to bring our data, as individual carriers, to this group, and the FRA is part of that process. They looked at regulating. In fact, there is a notice of public rulemaking on the books as we speak, to regulate in this space, because no data could be developed to prove the benefit crew size may have on safety. They are actually withdrawing, in this

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space, that document, or the withdrawal of, of the proposed rulemaking is in front of DOT as we speak.

DeBOER: OK. One of the reasons I'm asking you this, sort of in the order I did, is because I'm just trying to understand how you would conduct a study about the relative safety between a two-person crew and a one-person crew if there isn't a one-person crew control group, so-- [APPLAUSE].

FRIESEN: Hey, be quiet please. I will not allow any clapping.

DeBOER: Sorry.

FRIESEN: Don't do that again, please.

ROD DOERR: Yes, Senator.

DeBOER: So how would that work?

ROD DOERR: So looking back over a long period of time when there were five people on these trains, and looking at the safety incidents during those period of times, there is no correlation. So the, the correlation here with the limited amount of data we have with one-person crews-- because they do exist-- again, no correlation could be made, not in the data set that was looked at nationally.

DeBOER: OK. So it is a little, arguably, tricky to measure that particular difference because going from a five-person crew to a four-person crew is, I think, understandably different than going from a two-person to a one-person crew.

ROD DOERR: Absolutely. And that said, the statisticians have moved into this space and they can't make a statistically meaningful conclusion.

DeBOER: OK. And you said-- and I didn't get this-- somehow we missed a couple of pages of your testimony-- somehow, I don't know. It didn't-- or I did anyway; mine went from "Union" to "accidents" and I don't think that is what you meant. But you said somewhere we don't find a two-person train crew offers a safety benefit. Someone specifically said that.

ROD DOERR: Christopher Hart with the NTSB, chairman at the time.

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DeBOER: OK. So how would you respond to the kinds of concerns that you've heard here today about if there is a derailment? There's one person in the train-- I very clumsily asked what they were doing-- and then there's someone who can respond to other parts of the train. How do you respond to those safety concerns?

ROD DOERR: Absolutely. Having spent a fair amount of time in the operating department, I can't take anything away from the group that's gone before. I've seen these incidents; they're real. What they are saying is true. Now that said, there's a fundamental assumption in every statement that's been made, and that presumes that we will simply take somebody out of the cabin in today's state. That doesn't say that this industry is looking towards technology improvements. So this is all about a future state. I still have to prove to the FRA that whatever we do either holds the line on safety or improves it. So the likelihood that we could just simply take someone out of the cab without some type of technology advance to replace what that person does, that's a future conversation. A case in point: I had the opportunity to, to go to Australia where much of this technology is being tested. Now while their rail operation is vastly different than ours in the United States, I've seen technology on those trains that, heretofore, I've never seen before. The point here is technology needs to advance before this country- or certainly my company-- would ever contemplate some kind of negotiated reduction in crew consist. I hope that answered the question.

DeBOER: Yes, it did; thank you. All right, thank you very much.

ROD DOERR: Thank you.

GEIST: Any additional questions on the committee? Yes.

CAVANAUGH: Thank you, Vice Chairwoman. Thank you for being here today and testifying for us. You mentioned-- I don't know if I'm going to get it right-- the RSAC. When was the last time they met?

ROD DOERR: I'm going to tell you in December. I might be off on that by a month.

CAVANAUGH: OK.

ROD DOERR: But again, we regularly meet and talk on various safety topics.

CAVANAUGH: What does "regularly meet" mean?

ROD DOERR: At least twice a year, if not four, four times a year.

CAVANAUGH: OK. And you, you talked about it and you have a chart that you've decreased accidents and additionally gone down from five to two.

ROD DOERR: Correct.

CAVANAUGH: What do you account for in being able to decrease incidences?

ROD DOERR: In my world of safety it's people, process, and physical plant. So our people are better trained, we have better processes and rules-- those who have testified earlier spoke about that rule book-- and our physical plant has vastly improved-- track, rail, rolling stock, and that technology that we keep talking about to advance safety.

CAVANAUGH: So I'm looking at this chart, and I, I see a natural slope happening. And as technology and processes improve, one would expect that. What happened in 2005? There is a spike-- pretty, pretty considerable spike.

ROD DOERR: I can't attest to that spike. I'm sorry; I don't know. You've caught me flat-footed.

CAVANAUGH: OK. Is that something that you could find out and get to us?

ROD DOERR: Absolutely.

CAVANAUGH: That would be appreciated; thank you. So we've heard from several testifiers today about the physical demands of this job. The last testifier before you, he talked about how many at-- we'll say units-- you can, they can transport at once. You talked about the need to stay competitive. It sounds to me if you can save, if you can send 440 equivalents of a semitruck in one shipment, you are very competitive to the trucking industry and need two-- that would be two employees versus 440. So it seems like you can also do it at a much more affordable human resource cost. So my concern, as far as your competitiveness and your business model, is the safety of those individuals. I don't want somebody operating a semitruck or a train or

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on a person without having adequate sleep and breaks and having somebody else checking that; we're talking about lives here. And so I guess I'm just very confused as to why it is so important to the train industry to eliminate the second person.

ROD DOERR: We currently have no plan to eliminate the second person. We are looking for the opportunity to continue to advance technology that may allow us to reverse, to remove persons in the future. There is no current plan.

CAVANAUGH: So if right now there's no current plan and we're not technologically at this place--

ROD DOERR: Correct.

CAVANAUGH: --then why are you here in opposition?

ROD DOERR: Because once the state moves into this place and limits our ability to invest in this area, then there is no longer a need to work in this space and, I don't think, from a competitiveness. Not only the carrier-- we, Union Pacific, or other railroads-- but the better we are at moving freight makes this nation better to compete worldwide. And that is really why we're here.

CAVANAUGH: But this bill doesn't say you can't move forward in innovation. This bill doesn't say that you can't invest resources in technology. This bill just says that today, with the current technology that you have, this is the requirement for safe transport. So again, I'm confused as to why you're in opposition. If you, if you believe and you agree that it is safer to have two than one in the current state of affairs, and we're not there technologically, why are you opposed to it being in state statute that this is what is safe?

ROD DOERR: Fair. The other reason that we would oppose this is we're trying to run a network and, as a pat, as, as states build patchwork laws that we have to comply with, you can understand how difficult that will be as we move a train from Nebraska to Wyoming or to Iowa, etcetera, with each state having a different law. We're trying to keep the, the operating field, that which we have to manage, consistent across our vast network. And that's another reason that we're here.

CAVANAUGH: So. to that argument, wouldn't maintaining a best practice, no matter which state you're in, be the right course of action? And

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from what I'm hearing from you, and from everyone that came in, in support, is that the best practice is two, not one?

ROD DOERR: In today's state?

CAVANAUGH: Yes, in today's state.

ROD DOERR: In the future state, it may be fewer, and--

CAVANAUGH: But we're--

ROD DOERR: --that's why we don't--

CAVANAUGH: But we're talking about today; we're not talking about the future. We're talking about what is right for the technology that we have right now, not for the technology that we may or may not come to have.

ROD DOERR: Yeah.

CAVANAUGH: And for today's technology, you would concede that this is the right course of action for your business and for your employees.

ROD DOERR: What I'd ask you to consider is not to move into the collective bargaining arena that have been so effective inside this industry.

CAVANAUGH: I'm not trying to move into any arena. I'm just trying to make sure that the people that work, the people in my district that work for your company, are safe. That's all I'm trying to do. And there's quite a few of them.

ROD DOERR: And we're united on that front; we want safety as well.

CAVANAUGH: So again, I guess, I am, I am flummoxed as to why you're here in opposition, but I will let my colleagues ask their questions. Thank you.

ROD DOERR: Thank you.

FRIESEN: Thank you, Senator Cavanaugh. Senator Hilgers.

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HILGERS: Thank you, Mr. Chairman. Just briefly-- I wanted to make sure I got your comment on the record-- a little earlier you mentioned a rulemaking.

ROD DOERR: Um-hum.

HILGERS: Could you just describe what the rulemaking, as initially proposed, did?

ROD DOERR: The rulemaking, in essence, said that we would maintain two persons on our crews. Again, looking at all of the data--

HILGERS: Hold on. What-- just-- well, I'll tell you I'm going to ask you a series of questions, so--

ROD DOERR: Yes.

HILGERS: So the rulemaking was to mandate, at the federal level, through regulation, a two-man crew, correct?

ROD DOERR: Correct.

HILGERS: And that was a proposed rulemaking that was put forward for comment, the comment period, the notice and comment period?

ROD DOERR: That's correct.

HILGERS: And then at sometime in the future there was a study, or at least the analysis of the data. And it-- was that analysis the same one that you were dialoguing with Senator DeBoer about?

ROD DOERR: Yes.

HILGERS: And after that analysis was complete, the proposed rule has been withdrawn. Is that right?

ROD DOERR: That's correct.

HILGERS: Is there any further update or any further activity, on the rulemaking side, that you fore-- either see or foresee?

ROD DOERR: I hope I'm answering your question-- yes, in that now that the rulemaking has been determined, that the FRA has determined there is no safety basis to advance this regulation, now they have to basically undo the notice of proposed rulemaking; that has been done.

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The FRA has written that documentation and forwarded it on to DOT. The secretary has to, the secretary of DOT has to sign it and issue that. That is where we stand in the process currently.

HILGERS: Perfect, thank you. I know you're not an attorney. At least you didn't say you're an attorney. Maybe--

ROD DOERR: I am no attorney.

HILGERS: I appreciate that very much and so if you can't answer this question or don't feel comfortable, I certainly understand. But I've been asking the supporters of the bill--

ROD DOERR: Yes.

HILGERS: --on the preemption question. So the question I'll ask you, as it relates to the rulemaking and the withdrawal of the rule process, is there anything in there that you're aware of that impacts-- or this preemption question that we've been talking about?

ROD DOERR: Yes. Of course we have our own attorneys, and they've written their own briefs. I have recently read one of those briefs, and we take a position that this area is preempted by multiple acts-- federal acts. Those that I can recall from the brief is the Interstate Commerce Act, the Railway Safety Act, the Interstate Commerce Commission Termination Act, and then just most recently with the FRA occupying the field and choosing to withdraw, we believe that there is a patchwork that clearly established an exemption at the federal level for states to move into this space.

HILGERS: Thank you. Is that a brief or some-- those papers, would you be able to provide that to the committee?

ROD DOERR: Yes.

HILGERS: Thank you very much.

ROD DOERR: Thank you.

FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Seeing none, thank you for your testimony.

ROD DOERR: Thank you.

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ROCKY WEBER: Good afternoon, Mr. Chairman and members of the committee. My name is Rocky Weber, R-o-c-k-y W-e-b-e-r. I'm the president of the Nebraska Cooperative Council. I'm here today on behalf of our members, in opposition to LB611, but with the caveat that Senator Brandt's AM537, if that were adopted, we would then be in a neutral position on this bill. Many of our members have shuttle train loading facilities. The railroads deliver the 110-car shuttle trains to our facilities, at which point we have crews that take over and have 15 hours in which to load those trains. So we have a crew come in, and that could come in at anytime during the day or night. Oftentimes we are in overtime for those crews, and we have one person who conducts the locomotive, and we have the remainder of the crew that are opening hopper doors, closing hopper doors, running the augers, making sure the train gets loaded on time. As drafted, we think LB611 is too broad in its definitions and includes those activities which are off the main line. And we have, we do not take a position on what's going on on the main lines with regard to the number of crew members or anything else. But we think that if this language were interpreted to be so broad as to cover our activities for our shuttle train loaders, this would require us to have two people sitting on that locomotive, which is moving incrementally to load each car as you go through that process, which would not be economically feasible and actually put a burden on the cooperatives to, to, for additional staffing and things of that nature. And so we appreciate-- immediately when the bill was introduced, I contacted Senator Brandt's office and I also talked to Bob from SMART. We appreciate both of their willingness to work with us on language which amends LB611. Senator Brandt introduced that to you today as AM537, and I would urge the committee not to advance LB611 without including the language of AM537 in that. Thank you.

FRIESEN: Thank you, Mr. Weber. Any questions from the committee?
Seeing none--

ROCKY WEBER: Thank you.

FRIESEN: --thank you for your testimony. Other opponents?

JEFF DAVIS: Mr. Chairman, members of the committee, Jeff Davis, Esquire, J-e-f-f D-a-v-i-s, on behalf of BNSF Railway. Ladies and gentlemen, the concerns expressed by our employees here today are real. I want each and every one of you to know that BNSF Railway is committed to their safety, to the safety of all our employees, as well

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as the safety of our neighbors and the communities we work in. We moved a record amount of freight last year and, despite those record volumes, the last few years have been the safest years in railroad history. Since 1980, when train crews had five members, railroads have reduced their employee injury rates, the number of train accidents, and the number of grade crossing collisions by 80 percent. Since 2004, we've reduced the number of reportable rail equipment incidences by 50 percent. Last year we averaged less than one employee injury per 200,000 hours worked. We take safety very seriously, we analyze every accident, every incident, because we want each and every one of our employees going home at the end of the shift. If you're truly concerned about safety, there's one more fact you need to know: Human error is the number one cause of train accidents. Fifty percent of BNSF train accidents are caused by human error. Rigid enforcement of the rules, as well as technology and infrastructure spending, has made railroading safer. Semi-automatic couplers, air brakes, end-of-train devices, remote control belt packs have made these tasks safer and redundant, safer than when we had three-person crews, safer than when we had five-person crews. This year alone we're going to spend \$140 million in Nebraska, upgrading our infrastructure. This bill is not about safety. The FRA has studied this issue. They've taken more than 1,600 comments on the issue. There is no evidence that two people on a train is any safer than one, but I can provide you, I believe, with some information from a California PUC study where they concluded that two men in the cab might actually be a detriment. More than 100 railroads around the world, including Amtrak, shortlines, commuter railroads all over North America, already operate with one crew member in the cab. There's a spelling error here. I left out some words in my testimony, but they have great safety records and they handle all of the concerns you've heard described today on a daily basis. This is the fifth year we've appeared in front of this committee. Nothing's changed. We still have two crew members on every train, and we still have a signed contract with the union, requiring two crew members on every train. In fact, we have some that require three crew members for certain movements. This is a collective bargaining issue. Our contracts just don't say how many people are on the train. They spell out how those duties are performed and they do not expire. We cannot unilaterally change collective bargaining agreements. We have reduced the size of crews on our railroad at least three times in the last 50 years. Every time unions proposed legislation, each and every time we ended up negotiating agreements with our unions. This is a federal issue. The FRA has taken jurisdiction, and LB611 is preempted; and I

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will let you inquire of me about that. Better equipment, better materials, better design, better signalling, better communications equipment, modern wayside detectors have all made railroading safer than it's ever been. My colleagues' desire to make the world safer and to protect the jobs of people is admirable. And I want you to know one more thing. We didn't just offer up an agreement to SMART TD; they came to us. Randy Knutson, local general chairman, came to us. And that's why, when they approached us about having one person on the train, we offered them raises, a regular work schedule, and a guaranteed job until retirement. We oppose this bill because we don't know what the transportation industry is going to look like in five or ten years. This bill does impair our right to contract with our union and puts the future of the entire rail industry at risk, an industry that employs almost 11,000 people in Nebraska, with an average salary and benefits of \$125,000. We don't want to go the way of the telegraph or the typewriter. Ladies and gentlemen, I cannot predict the future, but I can say this. We are committed to working with our employees to meet the needs of our customers in a way that promotes safety for everyone. Thank you.

FRIESEN: Thank you, Mr. Davis. Senator DeBoer.

DeBOER: I was kind of struck by this line, that you said the bill would impair our contract negotiations and put the future of the railroad industry at risk. Could you expand a little bit on what you mean by "impair your contract negotiations?" I've been kind of wondering about this as you hear a little bit about this here and there. How would the requirement that there be a two-person crew affect your contract negotiations?

JEFF DAVIS: Well, it would prohibit us from negotiating with our union on that issue someday, if the issue, if the issue ever comes up. I mean it's already, it's-- obviously it already came up once. I mean-- so yeah, I mean we can't negotiate a contract that violates state law.

DeBOER: Right. So you're saying that in the future, when you might want to, when you have the technology, go down to a one. So it doesn't really affect you right now. It's just you're looking down towards the future. Is that right?

JEFF DAVIS: That is, that is, that is correct. I mean, my crystal ball is broken. I mean, I have no idea what the future holds. But, I mean,

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that's our whole point is we don't want to have our hands tied. I mean--

DeBOER: OK. All right; thank you.

FRIESEN: Thank you, Senator DeBoer. Senator Cavanaugh.

CAVANAUGH: Thank you, Chairman. Thank you for being here and for your testimony. So your crystal ball is broken and--

JEFF DAVIS: Yes, ma'am.

CAVANAUGH: --yet you're here, testifying for something that you have no idea if it's going to happen or not. So you're testifying against the safety of the people that work for your company because, in the future-- an unknown time, an unknown date-- you may have different technology that may require this law being changed which, by the way, the people sitting up here and our colleagues, that's what we're paid that wonderful \$12,000 a year to do, is to make sure that laws are organic and changing. So I'm, I'm flummoxed, just as I was with the last gentleman, as to why you're here.

JEFF DAVIS: Well, Senator, I don't know that, that I can help you on that point except to say--

CAVANAUGH: Could you try?

JEFF DAVIS: --that we support safety. Technology has made railroading safer. It's [INAUDIBLE]. We have had this discussion dating back 40 or 50 years, ever since-- you know, we took the, we took the firemen off, we took the brakemen off, and we have this conversation every time. And obviously, I wasn't around for some of those conversations because I'm not that old, but I mean, once again, you know, I can't tell you what technology is going to be invented in the next five or ten years. They-- there are auto manufacturers that are out there manufacturing cars that don't have steering wheels that I think somebody may have alluded to earlier today. So it's like, you know, I don't-- I, I can't say. But that's the reason why we just want to be free to work this out when and if that day comes.

CAVANAUGH: But this law wouldn't preclude you from doing that.

JEFF DAVIS: Yes, it would.

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CAVANAUGH: It--no. It would require you, until that day comes, to operate under this law. And when the day comes that something changes, then you come to this body, this governing body, whoever they are at that time, and you have that conversation. But for the meantime, we [INAUDIBLE]--

JEFF DAVIS: And, and Senator, with all, with all, with all due respect, you know, when that time comes, you know, you may or may not be inclined, and we will have these same discussions then that we're having right now. And there will be people saying absolutely not, no. You know this is safety--

CAVANAUGH: Well, I don't think you have a--

JEFF DAVIS: And it was like-- I'm saying that, you know, we've proven our safety record here, and every year we're getting better. And give us the opportunity to do this, and we cannot do this without Mr. Borgeson and his union's support. We cannot do it.

CAVANAUGH: OK, I'm going to move on to my next question. So in, in 2000, you moved to the-- from the three-person crew to the two-person crew. And somewhere-- I can't quite tell from this graph--

JEFF DAVIS: Um-hum.

CAVANAUGH: --there is a spike in incidences, in safety incidences.

JEFF DAVIS: Right.

CAVANAUGH: And, and really, when you moved to the, from the three-person to the two-person crew, there wasn't a dramatic drop. We didn't see a dramatic drop in safety. It kind of started to plateau at that point which would, statistically-- and the statistics are a little difficult to read here--

JEFF DAVIS: Um-hum.

CAVANAUGH: --but one can extrapolate that, statistically, this is saying that the two-person crew, the three- to two-person crew is about the sweet spot for staffing of these, as far as safety goes, based on the graph that you're giving me here. So again, I have the concern and I-- if you or the other gentleman could get us that

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information as to what happened, why there was that spike, because that spike is, is statistically significant--

JEFF DAVIS: OK.

CAVANAUGH: --and very visual, visual on here.

JEFF DAVIS: I will, I will go, I will go back and do a little research on that issue, but I'm going to go ahead and speculate, which--

CAVANAUGH: You might not want to do that.

JEFF DAVIS: But I'm going to go ahead and do it anyway. 2006 was our record year for freight prior to 2018.

CAVANAUGH: This looks like it's around 2004.

JEFF DAVIS: OK. Well, 2000, you know-- the years 2004, 2005, 2006 were in my, my understanding, sort of boom years for railroading, so there were, was lots more freight being moved. And because you had more freight being moved, that could be, that could be the answer. But I will endeavour to get you a more definitive answer on that.

CAVANAUGH: And just my final question. You mentioned that currently 50 percent of accidents are caused by human error. What are the other 50 percent of accidents?

JEFF DAVIS: Let's see. I actually didn't bring that sheet up here with me, but I can, I can provide that to you fairly quickly after the hearing and I can write it--

CAVANAUGH: That would be terrific; thank you.

JEFF DAVIS: to the entire committee.

FRIESEN: Thank you, Senator Cavanaugh. Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Davis, for your testimony. I just want to tie off the preemption thread because you added some additional information in your testimony here. I want to make sure it gets on the record. So you have provided what I believe is the case that was referred to in--

JEFF DAVIS: Right.

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HILGERS: Mr. Pfeifer's testimony, the Wisconsin 7th Circuit decision.

JEFF DAVIS: Right.

HILGERS: And at least in this analysis that you've provided, just to summarize and make sure I have this correct, that was in 1999.

JEFF DAVIS: Yep.

HILGERS: The court noted-- again, according to this, the research you have here, the court noted that it could be preempted down the road if the FRA made a, state, made a decision in this space. Whether, what that decision actually was may not be relevant, but whether the FRA actually made a decision in that space-- is that right? Sort of just taking this logically, step by step, but I have a couple--

JEFF DAVIS: Right, right. So basically-- let's, let's-- if you will allow me, Senator, let me just back up here. So 1997, Wisconsin passes a law. BNSF and other railroads file a lawsuit-- 1999, that lawsuit works its way up to the 7th Circuit Court of Appeals. And what the court did was they said: OK, the part of the statute that governs, you know, what they call over the road, you know, is over, you know, over, you know-- transportation over the road, freight over the road is not, is not preempted because the FRA did not get there. But with regard to hostling and utility service, they cited where the FRA had made specific rulings and specific findings in those cases. Therefore, those cases were preempted and that's why, in this bill-- I think it's lines 3 through 5-- you have a preemption or you're exempting hostling and utility services.

HILGERS: OK, can I stop you there for [INAUDIBLE]? Oh, go ahead; finish your [INAUDIBLE].

JEFF DAVIS: And so then, then you, then you, you know, basically you get to the, to the opinion where they say: OK, you know, there's lots of different ways that the FRA can consider these things. Final decision can include informal decisions for preemption. The important thing is that the FRA considered a subject matter and made a decision regarding it. The particular form of the decision is not dispositive. So you had a 2016 notice of proposed--

HILGERS: Hold on, hold on. Let me stop you. Let me just stop you, Mr. Davis, just to make sure I have the clean record.

JEFF DAVIS: OK.

HILGERS: So can you give me that-- you looked like you're reading from the case, but if you were, give me the page site so I can refer to what you just read.

JEFF DAVIS: Sure. It's on page 5 of my handout, the bottom of page, bottom left-hand column of page 5, top right-hand column of page 5-- right there.

HILGERS: OK. And so, so that's-- so in other words, in 1999, there wasn't, there, there was some limited FRA action on something that doesn't, that wasn't--it's not in front of us today, right?

JEFF DAVIS: Correct.

HILGERS: And then that FRA action that was recognized in the Wisconsin-- or the 7th Circuit decision, is itself sort of recognized in the bill, in LB611, right now, right?

JEFF DAVIS: Yes, that is correct.

HILGERS: OK. And then the argument that you're making today is the F-- the rulemaking that we discussed with the previous testifier, the rulemaking--

JEFF DAVIS: Yes.

HILGERS: --where there was a rule proposed but then it was withdrawn--

JEFF DAVIS: Yes.

HILGERS: --that that, with the withdrawal of the rulemaking is, itself, sort of an affirmative action by a federal regulatory authority--

JEFF DAVIS: Yes.

HILGERS: --that operates in this space.

JEFF DAVIS: Yes.

HILGERS: And that action, even though it's, it's not enough-- it's an affirmative action even though it doesn't--

JEFF DAVIS: Right.

HILGERS: --require [INAUDIBLE].

JEFF DAVIS: It's, it's called, it's called the doctrine of negative preemption.

HILGERS: And that is--

JEFF DAVIS: Yeah.

HILGERS: Because of that withdrawal--

JEFF DAVIS: Right.

HILGERS: --that is what preempts the state here. That's the argument?

JEFF DAVIS: Yes.

HILGERS: OK.

JEFF DAVIS: Yes. In, in addition to all of the other Interstate Commerce Termination Act, ICTA, and all those and all those other things, but I feel like this is, this is the strongest argument. This is the one that's most on point and, you know, here it's, you know, it's-- this case has obviously been cited by the proponents of this bill. And it's like, well, there's been a substantial change in circumstances, that being the FRA issued a notice of proposed rulemaking, they took more than 1,600 comments, they considered the issue-- on point.

HILGERS: All right. Thank you very much, Mr. Davis.

FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Looking into the future with the debate we've had these past couple of years on autonomous vehicles and trucks, is that going to have any impact on the railroad industry when those finally, maybe down in the next 10 years, that industry proves itself?

JEFF DAVIS: Absolutely. It could, I mean, because for one thing, if you can-- I mean, if you can take the driver out, you could extend your-- possibly extend the payload length, you can get more pounds. I mean, you can pick out the sleeper, you can, you know, get more pounds on the same truck. At the same time, you can use the platooning technology which, you know, legislation is, is floating around out

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there in multiple states on platooning. So what you could see in the future are truck trains.

FRIESEN: So in my mind, if, if I can see a truck autonomously running down the highway with nobody in it--

JEFF DAVIS: Um-hum.

FRIESEN: --I can sure wrap my head around the idea of a train without a crew. I mean, autonomous technology is going to change everything we do when it finally comes.

JEFF DAVIS: Right. And Boeing's working on a flying car. And is it practical? I don't know, but I mean, people are working on all sorts of stuff out there.

FRIESEN: Thank you. Seeing no other questions, thank you for your testimony.

JEFF DAVIS: Thank you.

FRIESEN: Any other opponents to LB611?

JEFF DAVIS: Mr. Chairman, real quick-- if I can go back to my chair I can grab, I think, one graph and I could respond to Senator--

FRIESEN: You want to hand it to the page?

JEFF DAVIS: Yep.

FRIESEN: Any other opponents to LB611? Seeing none, is there anyone who wishes to testify in a neutral capacity?

MARY RIDDER: Good afternoon. Chairman Friesen, members of the committee, I'm Mary Ridder, M-a-r-y R-i-d-d-e-r. I am the current chair of the Nebraska Public Service Commission. I represent the 5th District, which is Holt County to Hall County and west. I'm here today to testify on LB611, in a neutral capacity, on behalf of the commission. And the purpose of my testimony is to provide information strictly. The commission receives its authority to enforce certain railroad safety standards pursuant to Nebraska Statute Section 75-401, including enforcing federal standards for track safety, freight cars and locomotive safety, railroad safety appliance standards, glazing materials, and brake systems. The commission currently has one Motive Power and Equipment, or MP&E, inspector certified by the FRA to

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conduct inspections of freight rail equipment that runs through the entire state and inspects for all noted federal standards except track safety. The commission does not currently employ an inspector for its safety rail, State Rail Safety Program though we have the statutory duty to enforce federal standards for track safety. That position has gone unfulfilled for eight years and, thus, we are not inspecting Nebraska's tracks. In other states with two-person crew requirements, an Operational Practices, or OP, inspector conducts compliance checks. This inspector ensures compliance with federal operational rules and practices for: 1) alcohol and drug programs; 2) hours of service; 3) locomotive engineer certification standards; 4) occupational safety conditions and reporting;) and 5) employee training and qualification. Those OP inspectors work with rail crews and their records in the course of conducting their inspections, and checking for two-person crew compliance would fall in the same vein of operational practices. Our MP&E inspector is not OP-certified. He would not be able to perform the additional compliance checks, and it would take him away from his critical work of ensuring equipment safety. LB611 would require the commission to enforce a statutory requirement that freight trains and light engines be operated with at least a two-person crew. The commission's fiscal note for this bill indicated there would be no fiscal impact absent an amendment to Section 75-401. Please let me explain this further. The commission would have no fiscal impact from LB611 as written. In order to perform the duties of the bill as written, the commission would use a reactive enforcement approach. Under this approach, we would take action only upon the report to the commission of noncompliance by a railroad employee or other person with knowledge of the violation. We would evaluate current staffing levels and duties to determine how the workload would be handled; initially we don't know. An amendment to Section 75-401 would create a path for the commission to take a proactive enforcement approach to ensure compliance with the two-person crew requirement. This approach would mirror the practice of other states to have an inspector complete compliance inspections of railroad documents, among other duties. In order to follow the proactive approach, approach: 1) the commission would need to hire an OP inspector; and 2) Section 75-401 would need to be amended to grant the commission the authority to enforce the federal operational practices that would round out the inspector's duties. The statutory amendment allowing the addition of an OP inspector would require an amendment to the original fiscal note submitted for this bill, which currently says \$0, but it would amend it to say the cost of salary, benefits, and a state vehicle-- we

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estimate these costs would be \$98,000 for the first year, due to the vehicle purchase, and around \$90,000 for year two. Any changes to benefit, benefits election will have an impact on that dollar amount, as well. That concludes my testimony. I'll try to answer any of your questions.

FRIESEN: Thank you, Commissioner Ridder. Any questions from the committee? Seeing none--

MARY RIDDER: OK.

FRIESEN: --thank you for your testimony.

MARY RIDDER: You're welcome.

FRIESEN: Any others who wish to testify in a neutral capacity? seeing none, Senator Brandt. We do have letters of support from: the Nebraska Association of County Officials; Michael Helmink, president, IAM Local 602; David Brennan, president of the IBEW Local 1517; Casey Bryan, Ceresco; Jacob Hubble, Nebraska; Zach Hough; Terry G.; Justin Ethofer and Terry Ethofer; Jose Costillo; and one letter in opposition: Nebraska Chamber of Commerce and Industry. Senator Brandt.

BRANDT: For the sake of the committee, let me keep this short. I got a thumbs-up over there. First I'd like to address a few questions that were asked. Senator Friesen, you asked: Why should we mandate how a business runs if they can show that they can operate safely? You also mentioned autonomous cars. I admittedly do not know much about autonomous cars, but I believe that an autonomous train, meaning no human driver, would be bad policy and just plain dangerous. A system failure with that much tonnage, moving that fast, without someone there who can recognize that failure, makes me very uneasy. I think it is a base function of our government to provide simple protections for our citizens, and I believe this is what this bill does. Senator Bostelman, thank you for pointing out on the "person," and we would look at striking the word "person" and inserting the word "company," and that should fix the problem. And we'll get back to you on that to make sure that that works. The opponents of LB611 stated that this is a labor negotiation issue. I think the Reference Committee got it right when they referenced this bill to this committee and not Business and Labor. This is about safety. Whether it is rail employees, citizens, EMT, or fire services. I have real concerns when the Legislature gets a fiscal note that is \$0, and then the agency

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comes in and testifies in the neutral capacity and says this will cost us something other than what was submitted in the fiscal note. Today we had the Public Service Commission come in and do just that. I ask that the committee look at the official fiscal note attached to this bill. My office will be in contact with the PSC as to why they decided to submit a fiscal note for \$0 and then testified differently. This bill does not require any kind of inspection by the PSC. Some states have implemented the requirement and some have not; we are not. Any questions?

FRIESEN: Thank you, Senator Brandt. Senator Geist.

GEIST: Would you expound on what you were just saying, that you're not requiring inspections? Is that what you meant?

BRANDT: No. Well, we got a fiscal note of \$0, and currently we have two-man train crews in Nebraska. And the PSC just stated that they haven't had that inspector for eight years. So what gives?

GEIST: OK, thank you.

FRIESEN: Thank you, Senator Geist. Seeing no other questions--

BRANDT: OK, thank you.

FRIESEN: --thank you. With that, we'll close the hearing on LB611. We'll close the hearings for the day.