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Transportation and Telecommunications Committee
February 26, 2007

[LB486 LB676 LR28]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 26, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments and LR28, LB486, and LB676. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; LeRoy Louden; Mick Mines; and DiAnna Schimek. Senators absent: Dwite Pedersen.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. I am Senator Deb Fischer. I represent the 43rd District and I am chair of the committee. At this time, I would like to introduce the senators who are currently present. On my left we have Senator LeRoy Louden from Ellsworth, Nebraska; next is Senator Carol Hudkins from Malcolm; next to Senator Hudkins is Senator Mick Mines, he is from Blair, Nebraska; to my immediate left is Mrs. Pauline Bulgrin, she is the committee clerk; on my right is Mr. Dustin Vaughan, he is the committee counsel; and next we have the vice chair of the committee, Senator Arnie Stuthman from Columbus. I will be announcing the other committee members as they enter the hearing. Our pages for today are Michael Schaeffer from Lincoln; and Kristin Kallsen from Big Springs. And we will be hearing the bills in the order listed on the agenda, following our confirmation hearings. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying, in order to keep our hearing moving. Please complete the yellow sign-in sheet at the on-deck table, so it is ready to hand in when you testify. And we do have a new computerized transcription program, so it's very important that you fill out those sheets and fill them in completely. You do need to hand those to our committee clerk, Mrs. Bulgrin, before you testify. For the record, at the beginning of your testimony, please spell your last name and also your first name, if it can be spelled in different ways. Please keep your testimony concise and try not to repeat what someone has covered. If we do have a large number of people testifying, it may be necessary to place time limits on the testimony, and as chair of the committee, I will be the one to do so. If you do not want to testify but you want to voice your support or opposition to a bill, you can indicate so at the on-deck table on the sheet provided. This will be part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a yellow sign-in sheet and actually testify, even if you just state your name and position on the bill. If you do not choose to testify, you may submit comments in writing and have them read into the official record. I ask that you try and relax and not be nervous. And if you need anything while you're testifying, myself or a page will certainly be happy to provide you with that. I would also ask at this time that you turn all your cell phones off. We don't allow cell phones during our committee hearing. And I will open our confirmation hearings at this time. The first confirmation hearing is on the Nebraska Motor Vehicle Industry Licensing Board. I understand that the three appointees to that board were unable to be here today: Mr. Jack Henry, Mr.

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Toby Miller and Kelly Smith. So they are not here to go through the confirmation process. At this time I would ask if there are any supporters for any of those nominees? Good afternoon.

WILLIAM JACKSON: (Exhibits 1, 2, 3, 4, 5) Thank you, Madam Chair. My name is William S. Jackson. I'm the executive director with the Motor Vehicle Industry Licensing Board for the state of Nebraska. I'm here to support these three nominees for reappointment. They have served their first three years, and the Governor found it in his heart to go ahead and nominate them again for their second and last three-year term. The board is made up of ten members, nine of which are appointed by the Governor. The chairperson is whoever is the director of the Department of Motor Vehicles. Just to give you a little background on the first applicant, Mr. Jack Henry, represents manufacturers. He works for BonnaVilla Homes in Aurora, Nebraska. He's the president of BonnaVilla Homes Manufacturing. He's been a good board member, attended on a regular basis for the last three years. Toby Miller, from beautiful downtown Valentine, Nebraska, he's a second generation new car dealer. He represents the Third District. Very knowledgeable, he grew up cutting his teeth in the court business. He also attends on a regular basis and is very knowledgeable, and we're very fortunate to have him on the board. And the final one is Mr. Kelly Smith. He comes from North Platte, Nebraska. He's an independent auto dealer, or a used car dealer, which there are two on the board. He's been in the business for a considerable long time. He's a very honest, good car dealer and a good asset to the board. I would urge the committee to forward these names on for reappointment. If you have any questions about any of these applicants, I would be glad to answer what I can. [HENRY MILLER SMITH]

SENATOR FISCHER: Thank you, Mr. Jackson. Are there questions? Senator Mines. [HENRY MILLER SMITH]

SENATOR MINES: Thank you, Senator. Bill, these applications for all three applicants are old, in fact 2005, I believe, for Mr. Henry. [HENRY MILLER SMITH]

WILLIAM JACKSON: Um-hum. They served their first three years already, sir. [HENRY MILLER SMITH]

SENATOR MINES: I understand that. But, and I plead ignorance, I don't know about the application process, if they have to submit an application each term. But some of the recommendations on here, people are dead. [HENRY MILLER SMITH]

WILLIAM JACKSON: It changes a little bit, depending on who's running the department up there. I don't have the exact dates that...their first term has expired, but sometimes it waits until now before the confirmation hearing comes about. They serve until they're either replaced or... [HENRY MILLER SMITH]

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SENATOR MINES: Right. If we find that statutorily they have to submit new applications, would you be okay, and would you make sure that that happens? [HENRY MILLER SMITH]

WILLIAM JACKSON: Yes. I know that the Governor's Office inquired if they were interested in serving again. And that was forwarded back to the Governor's Office. [HENRY MILLER SMITH]

SENATOR MINES: Thank you. Okay, thank you. [HENRY MILLER SMITH]

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

WILLIAM JACKSON: Thank you very much. [HENRY MILLER SMITH]

SENATOR FISCHER: Are there other supporters for these nominations that would like to come forward? Is there anyone here who is opposed to any of these nominations? I see none. Anyone who would like to speak in the neutral capacity on any? I see none. With that, I will close our confirmation hearing on the Nebraska Motor Vehicle Industry Licensing Board. And I will open our confirmation hearing on the Nebraska Information Technology Commission. And the first appointee we have is Linda Aerni. I see Linda is here. Would you step forward, please. Welcome. Just to let others know, please fill the yellow form out before you come up. We'll let you go this time, Linda, so good afternoon. [HENRY MILLER SMITH AERNI]

LINDA AERNI: (Exhibit 6) Thank you. Good afternoon. My name is Linda Aerni, last name is spelled A-e-r-n-i. My address is 1000 53rd Street, Columbus, Nebraska. Madam Chair, senators, I'm here at your disposal. I have served on the commission for four years. I believe in its purpose. I have watched it grow from 1997, and we've done some terrific things in the area of technology for the state of Nebraska. [AERNI]

SENATOR FISCHER: Thank you, Linda. I'd like to announce at this time we have been joined by Senator Ray Aguilar from Grand Island. Is there anyone on the committee who would like to ask a question of Linda? Senator Stuthman. [AERNI]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you, Linda, for coming today. Have you attended the meetings very regularly? [AERNI]

LINDA AERNI: Yes, Senator, I have. [AERNI]

SENATOR STUTHMAN: Do you find that this is a real interest of yours, that you want to continue on this board? [AERNI]

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LINDA AERNI: I do. I think I bring to the board some technical expertise, interest of the public, some questions and some things to consider. [AERNI]

SENATOR STUTHMAN: Because this is business that you do on the local level, too, also? Technology and... [AERNI]

LINDA AERNI: Technology is what I'm passionate about. However, my business has nothing to do with the commission as a whole. [AERNI]

SENATOR STUTHMAN: Okay. Thank you. [AERNI]

SENATOR FISCHER: Other questions? I would like to ask you, Linda, what do you see as your role on the board? What is your main duty? [AERNI]

LINDA AERNI: I think just to make sure that the state of Nebraska has all of the benefits that technology can provide, and make sure that those benefits are accessible to the common public, to make sure that we as a state utilize, not only technology, but the infrastructure and the dollars wisely. We have just initiated a new initiative, E-Health, which will give our hospitals and our public health and lots of institutions a voice in technology and infrastructure in the state. [AERNI]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you for coming down today. [AERNI]

LINDA AERNI: Thank you. [AERNI]

SENATOR FISCHER: Is there anyone here to speak in support of this nomination? I see none. Anyone in opposition? Anyone in the neutral capacity? With that, we will move on to Patrick Flanagan. Good afternoon. [AERNI]

PATRICK FLANAGAN: (Exhibit 7) Good afternoon. Kind of new at this. My name is Patrick C. Flanagan, F-l-a-n-a-g-a-n. I appreciate the opportunity to come before this board or this committee and give you my perspectives on the NITC and what I believe I can bring to that process. With the committee's indulgence, I kind of prepared a short statement so I wouldn't forget everything. [FLANAGAN]

SENATOR FISCHER: That would be wonderful, thank you. [FLANAGAN]

PATRICK FLANAGAN: If I could just do that, then I'll be happy to entertain questions. The Legislature established the NITC in 1998 with the understanding it would provide advice, strategic direction, and accountability on information technology investments in the state. Its mission is to ensure the state of Nebraska's information technology infrastructure is more accessible and responsive to the needs of its citizens while

making investments in government, education, healthcare, and other services more efficient and cost-effective. I have 35 years of experience in the information technology field. In that time, I've had the opportunity to be involved in many aspects of IT management, including planning and budgeting activities, development of strategies and tactics, acquisition and contractual activities, vendors in the marketplace, technology integration challenges, and implementing and managing information technology systems and facilities. Some of my more recent assignments have included responsibility for micro computers, including the conversion to XP, and reorganizing and implementing associated new support and services, outsourcing studies, and charge-back methodologies. I was previously appointed to the State Government Council of the NITC as a private sector member, on November 6, 2000. My experience working with that council has enlightened me to the culture and challenges the public sector faces. I believe I've been able to contribute to the progress they've achieved in promoting greater collaboration and realizing efficiencies in the services they provide. I've witnessed very positive changes in the last several years among the agencies in their willingness to work together and to see beyond their own immediate interests for the greater value of the state and its citizenry. I've been able to use my contacts in the private sector to help the council gain access to share information and ideas on dealing with many issues, such as security and privacy, disaster recovery, enterprise services and others. As a citizen I'm a strong believer in wanting our state to be among the best in delivering services, and IT is certainly a key component of that. As an employee of the private sector, I also recognize the growing importance of collaboration with the public sector entities. I have continued to serve on the council and I'm convinced it has helped me with my role on the NITC in better understanding the issues and challenges before them. I'd certainly be willing to entertain any questions. [FLANAGAN]

SENATOR FISCHER: Thank you, Mr. Flanagan. Are there questions? Senator Mines. [FLANAGAN]

SENATOR MINES: Thank you, Senator Fischer. Mr. Flanagan, I see that you served on the Infrastructure Exec Board for the Gartner Group. And the Gartner Group is very well recognized, in fact it's preeminent. Would you explain that role to the committee? [FLANAGAN]

PATRICK FLANAGAN: I belong to an...there are industry best practices groups that are made up or comprised of, in fact there are public sector groups, and there are private sector groups, collections of people in the field who will look at all various kinds of management issues, topics, get together on like a quarterly basis and prepare and share ideas, and look at best ways to become more efficient and effective. Hope that answers your question. [FLANAGAN]

SENATOR MINES: Thank you. It sure does. [FLANAGAN]

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SENATOR FISCHER: Other questions? Mr. Flanagan, what do you see as the biggest challenge of the council in the next year, two, three years? [FLANAGAN]

PATRICK FLANAGAN: Oh, next couple of years? Well, first of all, I think the momentum with the agencies in themselves, because that's ultimately where the...it's got to get down to the grass roots and that's where you got to get the buy-in. But I believe that some of the strategic issues, the...I believe Linda mentioned E-Health, that's a huge issue that affects everybody in this state. And there are going to be a lot of issues associated with getting everybody on the same page. I believe the NITC, through those councils, has an opportunity to really facilitate the discussion that really needs to occur to solve the problems, get everybody on the same page relative to how can we leverage, or how do we make available the information for the best benefit of everyone? I think that's a huge challenge and it's going to have a lot of conversation. Probably the other thing that's more of a continuity kind of nature, we've worked a lot with the state council folks, Steve Henderson, I don't know if you're aware of who Steve is, but I've worked a lot with Steve on business continuity, disaster recovery, those kinds of issues. I think those are key issues that private entities have had to deal with. Government certainly has to do the same thing. I think that's probably another big initiative in the next several years. I mean that's two out of a whole bunch, but those are two that I see. [FLANAGAN]

SENATOR FISCHER: Okay, thank you. Other questions? I see none. Thank you very much for coming today. [FLANAGAN]

PATRICK FLANAGAN: Well, thank you very much for giving me the time and the opportunity. I never got to do this before, so I...it was kind of fun. Thank you. [FLANAGAN]

SENATOR FISCHER: Glad we could make it that way for you. Is there anyone who would like to speak in support of this nomination? Anyone in opposition? Is there anyone who would like to speak in the neutral capacity? I see none. With that, we will move on to our next nominee, Mr. Lance Hedquist. Now, you are not Mr. Lance Hedquist. [FLANAGAN]

SENATOR ENGEL: We have the same hairdo. (Laughter) [HEDQUIST]

SENATOR FISCHER: Do you? Okay, well... [HEDQUIST]

SENATOR ENGEL: (Exhibits 8 and 9) Senator Fischer, Transportation Committee members, I am Senator Pat Engel, that's spelled E-n-g-e-l. I'm here today on behalf of Lance Hedquist who has been recommended for appointment to the NITC by Governor Heineman. Due to an important economic development meeting this afternoon, Mr. Hedquist is unable to attend and asked that I appear on his behalf. Which I was very

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willing to do. Lance is a lifelong resident of the state of Nebraska, and he currently serves as city administrator for the city of South Sioux City. And he's held that position for 25 years. He's also a member of the Nebraska Technology Community Council, and through these positions he has had the opportunity to study and implement technology advancement in his community, including the development of a fiber-optic network in cooperation with the school and private sector, implementing the state's first paperless city council project, followed by the state's first paperless school project, being the only city in the country to receive and implement a Department of Homeland Security Demonstration grant, establishing the state's first wireless graffiti camera program, and participating in the new NITC podcasting program. Partially due to his able leadership, South Sioux City has received several state and national awards, including the Nebraska Founders Award 2000, Nebraska Community Improvement Award E-City Project in 2000, NPPD Technology Solutions Award in 2000, Civic Community Award Paperless City, and others, basically to do with the promoting of utilizing technology. And, of course, we also received the American City Award in 2003, Nebraska Showcase Award 2003. And I have the most confidence that Mr. Hedquist can provide innovative and encourage cooperation among public and private entities to promote the wise use of technology for education, economic development, and healthcare in Nebraska. I feel that with Mr. Hedquist's experience, knowledge, and openness to innovation that he would be a valuable addition to the Information Technology Commission. I urge you to look very favorably on his recommendation for appointment. He is a person who has been involved in technology improvements from the git-go, and he's done a great service for our area and the surrounding community. So he is a...he'd be a very good person. I'd be glad to answer any questions I could in his behalf.
[HEDQUIST]

SENATOR FISCHER: Thank you, Senator Engel. Are there questions? I see none.
[HEDQUIST]

SENATOR ENGEL: Thank you very much. [HEDQUIST]

SENATOR FISCHER: Thank you for coming in. Is there anyone else who would like to speak in support? Is there anyone who is opposed to this nomination? Is there anyone who would like to speak in the neutral capacity? I see none. With that, we will move on to our next nominee, Mr. Daniel Hoelsing. Good afternoon. [HEDQUIST]

DANIEL HOESING: (Exhibit 10) Good afternoon. Thank you for...my name is Daniel Hoelsing, H-o-e-s-i-n-g. I'm currently superintendent of three rural school districts in northeast Nebraska: Laurel-Concord, Newcastle, and Coleridge community schools. Prior to my appointment by the Governor on this board, I was appointed to the Education Enhancement Task Force, where LB208 was crafted, and worked with Senator Raikes on that bill. And my interest in distance education and in furthering electronic media to students across the state of Nebraska began probably 20 years ago.

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And when I was involved with school systems that had set up the first distance education pod in the state of Nebraska, in Broken Bow, Nebraska. I was superintendent at Ansley. It's grown from there to an interest, and not only an interest in, but also understanding the necessity for distance education and our kids to have access and equal opportunity in rural Nebraska. The three schools that I'm presently superintendent in currently have a distance education room, but have three other distance education capabilities within their systems right now to push over 30 distance education classes a day out to students in neighboring 15 other schools. I do believe that it's the great equalizer for our students. And I do believe that Network Nebraska will expand our capability to be able to reach outside of our pods right now, to be able to reach students across the state with talented teachers, in a way that is a format that is preferred by students. In a recent dissertation that I completed at the University of South Dakota, I studied 900 students for over three years in the state of South Dakota and how they enacted with distance education and found for them that distance education, when it was a blended environment, was the preferred learning over a face-to-face classroom. They were highly engaged and they had opportunity to better, more quality teachers. I see distance education for us as being a great step for us, not just for K-12, but also into higher ed. When I began teaching for Wayne State College, in their specialist programs, I would have classes from six to eight people who were studying to be superintendents. The last seven years I've been teaching the program over distance education, and we have to cut the classes off at 25 to 28 people, and these people come from all over the country, through the use of web cams., for synchronous video and communication, as well as through online instruction, which is asynchronous. Those adults now have the capability of earning and learning. And I believe that distance education for us is a way for our students to be able to really, truly become lifelong learners and for us to promote distance education. On Thursday I will be in New Orleans, I am going to be recognized as one of the finalists for the E-Schools Tech Savvy Superintendent of the Year in the country, and that's a great honor for me, but it's more of an honor for my school districts who were able to bless me with that opportunity of watching my teachers grow into being great educators. We've kind of drawn and blurred the lines between school districts, where students are students, and they're not just our students, regardless of where they sit. I think that my exposure to the Education Enhancement Task Force opened my mind to an even broader scope of how distance education and technology and electronics can impact all people, regardless of whether it's in K-12 or higher ed., but also the importance of E-Health and security. And so I'm honored to be considered for this position and am looking forward to serving in this capacity. [HOESING]

SENATOR FISCHER: Thank you, Mr. Hoelsing. [HOESING]

DANIEL HOESING: That's okay. [HOESING]

SENATOR FISCHER: Any questions? I would like to say we've been joined by Senator DiAnna Schimek from Lincoln. And you have a question? [HOESING]

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SENATOR SCHIMEK: A comment and a question that's immaterial to this whole thing. But I'd like to ask it anyway. My comment is to thank you for your very thorough explanation and presentation. But my question is, do you know Barbara Hoelsing? [HOESING]

DANIEL HOESING: I have 10 brothers and sisters, and probably 70 cousins, so Barbara Hoelsing may be in there somewhere, but I don't know. [HOESING]

SENATOR SCHIMEK: Okay, all right. Thank you. [HOESING]

DANIEL HOESING: We have a large family. [HOESING]

SENATOR SCHIMEK: She comes from your part of the country, too. [HOESING]

DANIEL HOESING: Okay. [HOESING]

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

DANIEL HOESING: Thank you. [HOESING]

SENATOR FISCHER: Is there anyone here who would like to speak in support of this nomination? Anyone in opposition? Anyone in the neutral capacity. I see none. With that, we will move on to our next nominee, Mr. Harold Huggenberger. [HOESING]

HAROLD HUGGENBERGER: (Exhibit 11) Actually, Senator, you can call me Mike, that's my middle name. The only one that calls me Harold is the IRS. (Laughter) [HUGGENBERGER]

SENATOR FISCHER: And the Chair of the Transportation Committee. (Laughter) Welcome. [HUGGENBERGER]

HAROLD HUGGENBERGER: Yeah. We can probably keep this fairly short. I happen to...let's just say I agree with everything that's been said so far by the other commissioners. And if it helps at all, Lance Hedquist and I graduated from high school together. So I've known Lance for a long, long time, probably since we were about in the fifth grade. I'm relatively new to the world of government and the NITC. I was appointed last spring. I've only attended four meetings, so I'm still on a learning curve. One of the things that I tried to do is attend the council meetings, the separate council meetings, as many as possible each month. And I've found that helps me learn a great deal about the workings, all the workings and projects that are going on underneath the NITC. As far as my background, like Mr. Flanagan, I've been in the IT world for 35 years. I started out in the days, I'll date myself, and there's people in this room who won't know what I'm

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talking about, where we actually programmed computers with punch cards. And now I'm in the world and I spent a big majority of those 35 years working for three Fortune 500 companies in the Omaha area, specifically Mutual of Omaha, Northwestern Bell, US West/Quest, and then ConAgra for a short time period. The company I'm with today is Great Plains Communications, a local telephone provider in the state here. And my responsibilities over the last seven years is to build their business Internet, or their Internet business unit. We provide a variety of broadband services to a large number of communities across the state. And the one thing that I've noticed as a result of being involved with that side of Great Plains businesses is the incredible growth in demand for broadband based services in our state. And it doesn't matter whether you're living in Winnetoon, or Imperial, or Chadron, you pick a town and the demand is there for that type of service. And my viewpoint for the NITC is to in any way possible determine the best way to deploy things like the E-Health project that Mrs. Aerni mentioned, the pod casting project that's underway now, and anything else related to what I'd call IP-based services, because I really believe that's what's going to keep our statewide economy strong. I always liken it to, you know, back in the 1800's, you get a railroad built through your town, your town is going to be successful. And any way, shape, or form that we can bring IP related services where there is video data, voice, you pick a topic area into our communities, and then they're going to remain strong and hopefully grow. From my background and my experiences, that's where I feel I bring some skill sets to the council over the next four years and being involved with my current appointment term.
[HUGGENBERGER]

SENATOR FISCHER: Thank you. Are there questions? Senator Mines.
[HUGGENBERGER]

SENATOR MINES: Thank you, Senator Fischer. Mike, nice to have you here today. Great Plains Communications serves rural Nebraska. Do you know how many ISP customers you might have? [HUGGENBERGER]

HAROLD HUGGENBERGER: We have a little over 11,000 right now.
[HUGGENBERGER]

SENATOR MINES: Okay. And you are familiar with ISP needs and usage in metropolitan areas as well? [HUGGENBERGER]

HAROLD HUGGENBERGER: Um-hum, very much so. [HUGGENBERGER]

SENATOR MINES: Do you see a difference between ISP wants and needs in rural Nebraska? [HUGGENBERGER]

HAROLD HUGGENBERGER: You know, not really, not hardly at all. You know, being a rural provider we have some challenges with costs. But within the last year we've taken

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a number of steps to go a long ways towards trying to offer services that are as comparable as possible to those providers in the big towns, such as Cox, and Quest, and some of those larger carriers because our customers are literally demanding it, and they're very cognizant of what the people in the bigger communities have and they want that, too, as much as they can get it. [HUGGENBERGER]

SENATOR MINES: And what role would you say NITC plays in this, any?
[HUGGENBERGER]

HAROLD HUGGENBERGER: Not directly, no. [HUGGENBERGER]

SENATOR MINES: Right. [HUGGENBERGER]

HAROLD HUGGENBERGER: Other than, you know, with the role that we'll play in education and, once again, the health side, people are going to see how the Internet is a benefit there. And I think there will be a trickle down effect to all parts of the community. [HUGGENBERGER]

SENATOR MINES: All right, thank you. [HUGGENBERGER]

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

SENATOR STUTHMAN: Thank you, Senator Fischer. And I just wanted to make a comment, you know, to you for personally coming down and testifying and making your appearance. [HUGGENBERGER]

HAROLD HUGGENBERGER: Um-hum. [HUGGENBERGER]

SENATOR STUTHMAN: And I want to echo that to all the other ones that came down. To me when an individual comes down, you know, for an appointment, it shows that you do have an interest. And I think that's very, very important. So thank you, and all of the rest that did come down on a personal...thank you. [HUGGENBERGER]

HAROLD HUGGENBERGER: Okay. It's our pleasure. [HUGGENBERGER]

SENATOR FISCHER: Other questions? Mr. Huggenberger, I'm wondering you feel the...do you feel that the state has an obligation in making sure that all communities in Nebraska have the necessary infrastructure for economic development? You alluded to that. [HUGGENBERGER]

HAROLD HUGGENBERGER: Not directly, no. I would prefer that come from the private side as far as some of the infrastructure capabilities. [HUGGENBERGER]

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SENATOR FISCHER: Do you believe that the private side, private industry would make such a commitment, not just to all the cities in the state, but to many rural areas also that are unincorporated? [HUGGENBERGER]

HAROLD HUGGENBERGER: Speaking from my own personal experiences, any of...you might even call it a revolution, but any evolution like this takes time and it takes funding. And there's only so many dollars at any given budget period or time period to put forth towards building an infrastructure out. But I can also tell you that when I look back where we were five years ago, to where we are today, once again under my viewpoint of the world, that we've come a very long ways. We went from a 256 K broadband service offering to a 3 megabit service offering in four years. So we are already aware of and realize that in five years or ten years you're looking at 10, 15, 20 megabit capabilities. And so how do you get there? How do you fund it? And what's the conversion path to make that happen? [HUGGENBERGER]

SENATOR FISCHER: Do you believe this commission has a role in the discussions concerning those issues? [HUGGENBERGER]

HAROLD HUGGENBERGER: Well, I know there are several members of the commission who are involved in those discussions outside of the commission. But I think we can help set direction and expectations for that. [HUGGENBERGER]

SENATOR FISCHER: Okay. [HUGGENBERGER]

HAROLD HUGGENBERGER: I definitely think there's some power to be wielded there. [HUGGENBERGER]

SENATOR FISCHER: Okay, thank you. Other questions? I see none. Thank you very much. [HUGGENBERGER]

HAROLD HUGGENBERGER: Okay, thank you. [HUGGENBERGER]

SENATOR FISCHER: Is there anyone here to speak in support of this nomination? Anyone in opposition? Anyone in the neutral capacity? I see none. With that, we will move on to our last nominee, Doug Kristensen. And he was not able to be here today, but I see someone walking forward. Good afternoon. [HUGGENBERGER]

BRENDA DECKER: (Exhibits 12 and 13) Good afternoon, Senator Fischer. Members of the committee, my name is Brenda Decker. I'm the chief information officer for the state of Nebraska, and as such we chair the Nebraska Information Technology Commission, we staff that commission. Commissioner Kristensen could not be here this afternoon. He is the representative on the commission that represents higher education. He is the chancellor at University of Nebraska at Kearney. And along with the commissioners you

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have gotten to hear from today, he is well qualified for the commission and has participated since his appointment in 2006. With that, I'd be happy to answer any questions about the NITC or any of the commissioners. [KRISTENSEN]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Oh, Senator Schimek does have one. [KRISTENSEN]

SENATOR SCHIMEK: I just wanted...thank you, Madam Chair. I just wanted to suggest that you tell Chancellor Kristensen that we just peppered you with questions, and some... [KRISTENSEN]

BRENDA DECKER: I will be happy to do that. [KRISTENSEN]

SENATOR SCHIMEK: And some...and you're really worried about his reappointment. Okay? (Laugh) [KRISTENSEN]

BRENDA DECKER: I'll be happy to do that, Senator. (Laugh) Thank you. [KRISTENSEN]

SENATOR FISCHER: Other questions? Thank you very much for coming in. [KRISTENSEN]

BRENDA DECKER: You bet. [KRISTENSEN]

SENATOR FISCHER: Is there anyone to speak in support of this nomination? Anyone in opposition? Anyone in the neutral capacity? I see none. I would like to thank all of the nominees who came in today. We appreciate you making the trip, and it gives us a chance to better know you and see who you are. We also received letters from those who could not be here today for one reason or another, and I appreciate all of you taking the time to do that. Thank you very much. With that, I will close the confirmation hearings. Senator Stuthman, would you like to chair the committee, while I introduce our first resolution?

SENATOR STUTHMAN: Okay. Thank you, Senator Fischer. We will now open on LR28, introduced by Senator Fischer. Good afternoon, Senator Fischer.

SENATOR FISCHER: Good afternoon. Good afternoon to the members of the Transportation and Telecommunications Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District in the Nebraska Legislature. LR28 urges Congress to repeal the REAL ID Act. On May 11, 2005, Congress passed the REAL ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act. The REAL ID provisions of the bill were attached after the House of Representatives already

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passed the bill, thus the REAL ID Act was never considered in any hearing and was not the subject of a separate vote in either House of Congress. The constitutionality of the act also has questions with respect to state sovereignty afforded by the Tenth Amendment. This act creates national standards for the issuance of state driver's licenses and identification cards. The act establishes certain procedures and requirements that must be met by the states by May 11, 2008, if state issued IDs are to be accepted as valid identification by the federal government. It is assumed that no American citizen will be allowed access to federal buildings, such as post offices, or federal courthouses, be able to open a checking account at a local bank, or be able to fly on a commercial airline without a compliant identification card in hand. These standards will alter long-standing state laws, regulations, and practices governing the qualifications for and the production and issuance of IDs in every state. Nebraska is no exception. A substantial investment will be required by the state to meet the objectives of the REAL ID Act and all of the approximately 1.3 million Nebraska identification cardholders will feel this impact. Congress has estimated that the implementation of the act will be approximately \$100 million for the entire nation. A recent study had a much different figure. The study conducted by the National Governors Association, the American Association of Motor Vehicle Administrators, and NCSL concluded that REAL ID will cost more than \$11 billion dollars over five years, and have a major impact on services to the public. The DMV has estimated that about \$26 million of that will be Nebraska's burden to bear. To date, Congress has appropriated \$40 million to help with the implementation of REAL ID. There are approximately 22 states taking some kind of legislative action in the form of a resolution or bill that relates to the implementation of the REAL ID Act. Most states have introduced resolutions similar to LR28 that urges Congress to repeal the REAL ID. Other states would like to study its impact or delay implementation. The state of Maine has gone so far as to refuse to implement REAL ID. There has been some discussion about repealing or delaying REAL ID at the national level. A bill in the House would repeal the REAL ID driver's license requirements and implement a negotiated rule-making process for interested parties. A separate bill in the Senate would delay implementation of REAL ID to ensure necessary systems are operational. The bill also establishes a committee of state officials and other interested parties to review the draft, DHS regulations, and to submit recommendations for changes. Both of these bills were introduced in mid-February, and no action has been taken to date. Currently, the Department of Homeland Security is working on regulations that will help define just exactly what states must do to comply. Even though Congress has mandated that all states have the REAL ID system in place by May of 2008, DHS has yet to provide the regulations necessary to implement these drastic changes. There has been speculation that the rules could be out some time later this week. Due to the delay of the DHS rules, no one can say for certain what REAL ID entails. However, even the most optimistic outlook has severe consequences on how Nebraska issues its identification cards. LR28 states the Legislature's opposition with respect to the REAL ID Act. Essentially, that act intrudes upon the states' sovereign power, that it mandates an unfunded national ID, and that it threatens the privacy of every driver's license and

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ID holder in the United States. Thank you. And if you have any questions, I would be happy to try and answer them. [LR28]

SENATOR STUTHMAN: Thank you, Senator Fischer. Does the committee have any questions? Senator Schimek. [LR28]

SENATOR SCHIMEK: Yes. Thank you, Mr. Chairman. Senator Fischer, you know, you and I have talked about this. And I congratulate you for introducing this and for giving a very thorough explanation of the reasons that we need to consider this. It reminds me somewhat of the rush to do a national overhaul of our whole election system. And like REAL ID, that was an imposition on states of something mandated at the federal level without a really good examination of what it would entail, what it would cost, and that kind of thing. Now the federal government did come through with some money on that, which was nice, but they're not going to continue to give money to keep the system updated. The problem with that has been, of course, that there were flaws in some of the systems that states did adopt. And if nothing else, I think this needs to be slowed down. But I really think that what it's setting out to accomplish is not worth \$11 billion. And that's just my comment. If you'd like to comment, to my comment, fine; if not, why I just wanted to get that into the record. [LR28]

SENATOR FISCHER: Thank you, Senator Schimek. And I appreciate your support on this resolution. I would question, once again this is a mandate from the federal government. The federal government currently has a system of passports. Is the federal government saying that a United States passport isn't secure, and therefore we're going to push this onto the states and have the states handle this? There's a lot of questions to it. Senator Hagel was here last week, and he feels the date will be pushed back. We haven't seen that yet. I don't think pushing back the date is the answer to the problem. [LR28]

SENATOR SCHIMEK: I agree. [LR28]

SENATOR STUTHMAN: Thank you. Any other questions? Senator Louden. [LR28]

SENATOR LOUDEN: Yes. Thank you, Senator Stuthman. Senator Fischer, what's the difference between this and what we have now in the state of Nebraska as far as using our driver's licenses for identification? [LR28]

SENATOR FISCHER: Director Neth, with the Department of Motor Vehicles, can explain this much better than I'm going to attempt to do so at this time. She was not able to be here today. And I don't believe we have anyone from the department here. They're all out of town at meetings. The problem is that we don't know what the rules and regulations are currently for the REAL ID. In conversations with the director, it seems as though we are going to have to overhaul our entire system that we use to issue driver's

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licenses. Just the product itself will not comply, because these are going to have to be identification cards that are consistent across the United States. So in Nebraska, our Nebraska driver's license, the way it looks now will not be able to comply. There's going to be special papers, special everything on how these forms are made, that they think the federal government will make each state purchase. Another problem then we have in Nebraska are the number of locations where you can get a driver's license right now. And there are problems, the director feels again, I don't want to quote her too much on this, but the problems on all the locations that we have there are going to be security measures that are required. So I anticipate that we'll have to close some of those locations where you can currently get a driver's license just because of the cost of the machines and equipment that you have to have to produce them, these new cards, but also the security measures that are going to have to be in place at these locations to protect that equipment, because it's framed as a homeland security issue also. [LR28]

SENATOR LOUDEN: Okay. [LR28]

SENATOR FISCHER: So that's why our driver's license card won't qualify. [LR28]

SENATOR LOUDEN: Then you tell me more it's a matter of implementation rather than an invasion on privacy? Is that what you're telling me? [LR28]

SENATOR FISCHER: I take it as an invasion of privacy also, because this will be a national data base. And who knows who will have access to it? I assume that there will be some agency in every state that can access the data base of another state, if need be. [LR28]

SENATOR LOUDEN: Well, at the present time, your driver's license number is more or less...just as well be tattooed on your forehead, because you get the same number wherever you go to get a different driver's license. And that's the reason I'm wondering what the difference is? If it's a matter of the cost of implementation, or if it's going to be something to invade our privacy, or keep track of us? Because they already are on that part. And that's what I'm wondering, if it's more or less a cost of everybody having to have the same kind of a piece of paper or not, or if this was really a different kind of way that they were going to do business, I guess? Thank you. [LR28]

SENATOR FISCHER: I think it's both. [LR28]

SENATOR STUTHMAN: (Exhibits 1 and 2) Okay. Thank you. Any other questions from the committee? If not, thank you, Senator Fischer. I would like to see a show of hands of how many want to testify on this legislative resolution? We have one. Okay. Come forward, please. First...and then I would like to also read into the record, we have letters of support from Susan Smith from Omaha; and from Mark Kavulak from Bellevue, and I'd like to have that entered into the record of support. Good afternoon. [LR28]

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LAUREL MARSH: (Exhibit 3) Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here today from ACLU Nebraska in support of LR28. And I am asking that a short briefing paper on the effects of the act be distributed. I will not read this word-for-word, which will probably be a joy to you, so you don't have to worry about listening to every word. But I hope you take a moment and scan the answers. I think it does have some information there on the privacy aspects that Senator Loudon just asked about. There are seven basic concerns that ACLU Nebraska has about this bill, and they're pretty much identified in the briefing paper. One of the things that I want to show you is that I have here a grocery store card. And on the back of the grocery store card is a metallic strip. And if this is scanned into the grocery store cash register then they can tell that I'm Laurel Marsh, they can tell what my purchases are, they can tell the location of those purchases, and they can tell the quantity or type of purchase that I might make. This will help them to identify their loss leader at different points in time and maybe some in-store sales at other points in time. And I give this information freely and voluntarily because I want the discounts that may be offered to me. I think it's a lot different to have a driver's license that comports to what would basically be a national identification system. And the uses of information that's put into that system may not be consistent with the uses that I would give freely and voluntarily through the use of my grocery store card. That is my personal choice. We do not believe that it will be effective against terrorism. We do not believe...we do believe that it will be a nightmare for state governments. The state of Nebraska would be asked to totally restructure its driver's license system. And we have recently restructured our driver's license system. We are at the fifth year of a five-year phase-in plan for driver's licenses. And we spent...we've recently spent several million dollars on the system that we now have. And we would be asked to spend several million more dollars in a new system. The higher fees, the longer lines, and the bureaucracy involved in the new system would be very disgruntling to all the citizens who are asked to go forth and get new driver's licenses and to the staff and employees of the state of Nebraska who are asked to do the type of work. It's kind of your basic no win proposition. We do think that a national data base that can be accessed from multiple points would create increased security and identity theft risks. If the grocery store's security system is compromised, they're going to be able to tell that I don't really care whether or not I get a store brand green bean or a name brand green bean. But if the state of Nebraska or a federal data base that has both my birth date, my Social Security and other private information in it is compromised, and these things do happen, then my identity could be used to secure loans that I know nothing about. And I really don't want that to happen. I think that it will be used by marketers to do the things that marketers enjoy doing, and that it will be...that the data base would, over time, be exploited by private industry. And our last objection is that we think that the purpose and use of the data base by the federal government itself would expand over time, in much the same way as the purpose and use of the Social Security number has changed since the point in time that our Social Security system was implemented. I would be pleased to answer questions. But I think that the strongest thing I can say is that driver's licenses

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should be used to ensure that drivers know the rules of the road, and that they have proper insurance, not to create a national identification card that would be used to track personal data and to expand the serious risk of identity theft. If you have any questions, I'd be pleased to try to answer them. [LR28]

SENATOR STUTHMAN: Thank you, Laurel. First of all, I want to make it clear on the record that you're testifying in opposition. [LR28]

LAUREL MARSH: Oh no, we're testifying in favor of... [LR28]

SENATOR STUTHMAN: Of the app...okay, okay. [LR28]

LAUREL MARSH: ...of LR28. [LR28]

SENATOR STUTHMAN: Okay, you're an opponent, proponent. [LR28]

LAUREL MARSH: We are a proponent. I'm sorry, yes. [LR28]

SENATOR STUTHMAN: Proponent, proponent, yes, because I failed to ask that at the original. So, okay. Thank you. [LR28]

LAUREL MARSH: We're in favor of the LR. [LR28]

SENATOR STUTHMAN: Wanted to clarify that to start with. Okay. Do any of the committee members have any questions? Senator Mines. [LR28]

SENATOR MINES: Thank you, Senator Stuthman. Laurel, thanks for being here today. Much of your testimony is supposition. Much of what you said is we believe, we think as to whether marketers will have access to the data base, whether it will be corrupted. I mean, much of it is suppositional. Let's just set the premise aside that perhaps the REAL ID issue will be more secure than you might suppose, I tend to believe that. On the other hand, I believe it's a states' rights issue. My question to you or to the ACLU is, so what if Nebraska happens to...if we happen to advance this resolution? So what? What happens at the federal level? I mean, it's due to be implemented in 2008. All this says is, we don't think so, and by the way, if you happen to change and rescind the REAL ID Act, that would be nice, but we're not taking any real action here. Isn't that a fair statement? [LR28]

LAUREL MARSH: I think that it's been a long time...yes, it is a fair statement. I also think that it's been a long time since there have been 22 states that have gone on record and have taken action that is contrary to something that our federal government has asked us to do that might otherwise be seen as a set of mechanics. [LR28]

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SENATOR MINES: But we're not taking action. This is merely a statement, a resolution saying, we don't want to do that. I mean we're not saying, no, we're not saying, no we're not going to do it. And my concern is, if we believe that and we don't follow course to implement REAL ID, what kind of trouble can we get...what federal repercussions are there by not implementing REAL ID? [LR28]

LAUREL MARSH: At this point in time, as I understand it, the federal repercussions are that Nebraska citizens would not have a correct document to show to get on an airplane, and we may not have a correct document to show to create a bank account. I was surprised to learn that, as is frequently the case, when the federal government wants to sanction a state for not going in a direction the federal government wants a state to go, they have a monetary, like a fund withholding. They say, we won't give you X-type of dollars for X purpose. I have not been...I've not seen that, and I have not been told that from other sources. [LR28]

SENATOR MINES: Sure. [LR28]

LAUREL MARSH: And I thought that...to me that made me wonder how serious the federal government was. Because they didn't put the weight of, you're not going to get federal highway funds, or we're not going to give you money for running your airports. [LR28]

SENATOR MINES: It's troublesome though, and I support...in fact, I'm going to vote to advance this resolution. But I think we have a lot of holes in our approach. If I can't board a plane in 2008, I have a problem and I think all Nebraskans do. And I don't...the federal government will respond. They will do something or nothing. And I just don't want us...Nebraska to be in a position where we've taken a beat our chest position, and it doesn't mean anything. All we're doing is saying, no, we don't think it's a good idea. [LR28]

LAUREL MARSH: When we say, no, we don't think it's a good idea, we collectively ask the federal government to have a conversation about a national ID that would be used for national purposes on a national level. And if action should be taken, which I imagine that ACLU would oppose, but if action should be taken, that it be taken consciously and deliberately with people being involved consciously and deliberately. [LR28]

SENATOR MINES: Okay. Thank you. [LR28]

SENATOR STUTHMAN: Thank you, Senator Mines and Laurel. Any other questions? Senator Louden. [LR28]

SENATOR LOUDEN: Yes. Does anyone have any idea what this card is going to look like when you get it? Is it going to look like your credit card, or is it going to look like your

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driver's license at the present time, or is going to look like a passport? [LR28]

LAUREL MARSH: I asked that. I talked to some people in our local DMV, and I don't think they have a clear idea. They did tell me that it would be...need to be made on special paper, as we've already heard. I believe that the manufacturer of that paper is a German company, but that the paper is manufactured in more than one location. [LR28]

SENATOR LOUDEN: Now will it have a magnetic strip on it? [LR28]

LAUREL MARSH: I'm sorry, I don't know. [LR28]

SENATOR LOUDEN: Because if it doesn't, then it's just a piece of paper, right? [LR28]

LAUREL MARSH: In order for it to be read and used in the ways that it is implied or inferred that it would be read and used, i.e., to get on an airline, or to get into a federal building, those applications would require a reader of some kind. At least right now when you show an identification it's scanned or read. [LR28]

SENATOR LOUDEN: Okay. What do we have now in Nebraska, if it isn't an identification card in your driver's license? Wherever you go, you can be in any other state in the Union, and if they want...if you have to identify yourself, you have to give your driver's license, and they take that driver's license number and your date of birth and that will track you anywhere in the United States. I'm wondering what difference is this going to be than what they're doing now, other than the fact that we'll have a different kind of card? [LR28]

LAUREL MARSH: I think rather than having the card, like is it bigger, or is it smaller, is it slightly different, to me, what I hear is that you're also going to have a national data base. And the national...we have a state of Nebraska data base right now. And while they might swipe this card, they being the people who I would say, yes, this means that I'm really Laurel Marsh, and you can use this to prove that my check and my ID have the same address, the same name, that we have the same appearance, that it's really me trying to cash this check, or to use this credit card. It's one thing to use it for those purposes, and another thing to accumulate the data that it's being used for those purposes. [LR28]

SENATOR LOUDEN: Well, that's not what I'm talking about. I'm not talking about a cashing a check someplace. I'm talking about if you wanted to get into a federal building someplace and they decided they wanted to check you out, they use your date of birth and your driver's license number, and then in about five or ten minutes they come back and tell you that's who you are. And that's what I'm wondering, what is the difference now? Because I've been involved where they use my card, you know, and it was a matter of minutes. And then I was at a convention that talked about REAL ID, and they

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were trying to vote against REAL ID at this convention. And I said, too late, they already did it. And I thought there were only 17 states that didn't have this type of driver's license in the United States so far. Do you have any comment? [LR28]

LAUREL MARSH: To the best of my knowledge, the information on those multiple uses is not accumulated. What's in the data base that shows your shining face and your address and your age is still information that is not I'm going to say logged. So that if you go to the federal building today or tomorrow, or an airport today and tomorrow, each of those places could independently check that you are you. But they probably wouldn't know that you went to the airport today, and the bank tomorrow, and the federal building on the third day. And that is the type of thing that, I think, this system will progress to. [LR28]

SENATOR LOUDEN: In other words, you don't feel like right now, with our driver's license, that you can be tracked, you know, be hunted up or IDed with your driver's license? Is that what you're telling me? [LR28]

LAUREL MARSH: I think that I can be identified. I don't know that I can be tracked. Now there are others here who know the answer to that, and I would also welcome the answer. [LR28]

SENATOR LOUDEN: Okay, thank you. [LR28]

SENATOR STUTHMAN: Thank you, Senator Louden. Thank you, Laurel. Any other questions? Otherwise, thank you. Are there any other proponents? Any opponents? Anyone want to testify in the neutral position? Seeing none, Senator Fischer, would you like to close, please? [LR28]

SENATOR FISCHER: Yes, please. I'd like to thank the committee members for their attention to this matter. In regard to some of the questions Senator Mines asked about the resolution and does it really mean anything, by itself no, it doesn't mean anything. It's not binding in any way on the federal government. I think in conjunction with the 22 other states who have done this, we would be sending a message to our congressional delegation that Nebraska is also against this. And I think the more states that would pass such a resolution, perhaps our congressional delegations will listen. And it does have to do with a federal mandate that has no money behind it and the cost. And it does have to do with privacy matters. Our last supporter that was up held up a grocery store card. Do you know every time they swipe that card, they keep track of what type of groceries you buy, and that information can be sold to different companies who then track buying trends for a person of your gender, and your age and where you live. Senator Louden, that's the difference with our driver's licenses here in Nebraska. We don't have that strip on the back of our driver's licenses where they can be swiped through a machine. Yes, we use them for identification in Nebraska, and they are

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secure. And to cash a check, or when we're traveling if somebody needs to see identification, that's what we show them. But there's no main system that that's being sent into every time we show it. On a REAL ID card, I would assume, we don't know for sure, but I would assume that will have some kind of metal strip where they can keep track of how many times Deb Fischer has gone to the post office today, how many times she's visited a federal building in the last week or month, what she's doing at her bank, you know, how many trips is she making there, and where is she traveling and with whom. To me those are concerns. In Nebraska right now, this is information from Director Neth, in 2001 the DMV implemented the interactive driver's license system; in 2003 they implemented the digital driver's license system. Those were costs to the state at that point. I do not have the numbers, we can get those. But those were costs to the state then. That hasn't been that long ago. We have very secure cards. The director feels they are some of the most secure that we have in the industry. In April 2004, Nebraska added the digital watermark as a covert security layer. Nebraska was chosen by the National Highway Traffic Safety Administration as the only state to participate in the digital watermark pilot project. Our driver's licenses are secure. We have spent a lot of money on our system in this state to update it and to make it secure. We have a system in this state where we have locations that are available to the majority of the people that live in the state, for them, so it can be somewhat convenient for them to go and get their driver's license. I think when we look at what the federal government is mandating with the REAL ID, that it's time that we, as a state, step up and say we have concerns about this, we have questions about this, and from what we know we can't support this. Thank you. [LR28]

SENATOR STUTHMAN: Thank you, Senator Fischer. Are there any questions? Senator Mines. [LR28]

SENATOR MINES: Thank you, Senator Stuthman. Senator Fischer, I'm going to support your resolution. I want to make that very clear. [LR28]

SENATOR FISCHER: Before you attack it. (Laughter) [LR28]

SENATOR MINES: No, I just don't...I hope that no one is under the false assumption that this is going to stop it. If in fact the federal government and our congressional delegation does something to change it, that's great. But this is about all we can do. You're taking the right path, you're doing the right things, I support it. But at the end it's all up to Washington, not to the state of Nebraska. [LR28]

SENATOR FISCHER: May I respond? [LR28]

SENATOR MINES: Yeah, please. [LR28]

SENATOR FISCHER: Wouldn't you say, though, that the more states that pass a

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resolution such as this and forward it on to their congressional delegation, it is helpful and it is a positive step in getting this repealed at the federal level? [LR28]

SENATOR MINES: I think it sends a very clear message. I also think that if states like California, Texas, Pennsylvania choose not to follow along, the rest of us will get drug, kicking and screaming. But I wholeheartedly support it. I'm with you. Just, I hope the media, or whoever is reporting this doesn't take it as we're not going to do it, by God. [LR28]

SENATOR FISCHER: Correct, correct. Because if it is required by law in the future,... [LR28]

SENATOR MINES: Yeah. [LR28]

SENATOR FISCHER: ...which it might be, because of our Homeland Security Department, we need to make sure that the citizens in Nebraska are able to board a plane and are able to enter federal buildings. And I'm under no illusions that Nebraska alone can fight this. But what I see as being very positive is that almost half the states currently have passed resolutions, or they have bills introduced in dealing with it. [LR28]

SENATOR MINES: Okay. I'm with you. Thanks. [LR28]

SENATOR STUTHMAN: Thank you, Senator Mines and Senator Fischer. Any other comments or questions? Otherwise, that is the closing. Thank you, Senator Fischer. [LR28]

SENATOR FISCHER: Thank you. [LR28]

SENATOR STUTHMAN: That closes the hearing on LR28. I will turn it back over to Senator Fischer. [LR28]

SENATOR FISCHER: Thank you, Senator Stuthman. Our next bill up is LB486. And I see that Senator McGill is here for the opening.

SENATOR MCGILL: I am.

SENATOR FISCHER: Welcome.

SENATOR MCGILL: Thank you. Good afternoon, Senator Fischer, members of the Transportation and Telecommunications Committee. For the record, my name is Amanda McGill, that's M-c-G-i-l-l. I represent District 26 and I'm here to introduce LB486. LB486 was brought to me by rail workers concerned with the security of their industry and the security of the communities developed around that industry.

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Representatives of these workers will be testifying after me, and they share the same concerns as I do for the safety of citizens, crews, and the infrastructure of the industry that they serve. LB486 will establish security guidelines to require rail carriers in the state of Nebraska to provide security to their trains when these trains are stopped in unsecured locations and have locomotive power attached. This security can be performed by crew members with available service hours left, or by trained personnel provided by the carrier. LB486 also provides for the Local Community Rail Security and Employee Education Act. This act would require railways in Nebraska to generate risk assessment reports that would be provided to the Public Service Commission, director of State Homeland Security, and the Nebraska Emergency Management Agency. Assessments will assist NEMA in making recommendations regarding preparation and response by local and state emergency personnel. The act also provides that carriers operating in the state develop and implement infrastructure protection programs. These programs will train employees how to recognize, prevent, and respond to acts of sabotage, terrorism and other crimes. These programs will be submitted to the Public Service Commission. The commission, in consultation with NEMA, shall review the programs, make recommendations, and conduct inspections. Additional provisions are added to secure trains with hazardous materials on board which are the greatest targets of acts of terror. In a post 9-11 world, we have placed a very high standard on and paid very close attention to the airline industry in regards to safety. Over the last five years though, the rail industry has generally been left to its own devices and has not risen to the level of security that our citizens and employees might expect. As so many have said over the last few years, it's not a matter of if, but a matter of when. We want to make sure that those in charge of one of our most vital industries have the tools to make sure we are as prepared as possible in the event of a mass emergency. I urge you to support LB486 and move the bill to General File. I thank you for your time and I'll take any of your questions, but I have some other folks who more...information following me. [LB486]

SENATOR FISCHER: Thank you, Senator. Any questions? Senator Louden. [LB486]

SENATOR LOUDEN: Yes. Thank you for bringing this forward, Senator McGill. I think there probably is some questions on security for the trains, especially when they're carrying hazardous material and what should be done with them. I guess, when I look here, you talk about securing a train. Now what do you mean by that? Do you mean putting armed guards out there, or do you mean setting the brakes on some of the cars? Or what do you mean by securing a train? [LB486]

SENATOR MCGILL: Well, that's something some of the folks following me, who have more experience might be better for. But, yes, having folks out there besides just the crews who their 12 hours is already up. I mean that's what's happening is those folks are just still there, not being paid largely to be there on the trains, watching over them, but to have other folks there to take over for them who have the security requirements.

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But like I said, the folks behind me may have better answers, more specific answers.
[LB486]

SENATOR LOUDEN: And you mentioned when you have power attached to the train, now if they unhook the locomotives, then they don't have to have secure people around there? [LB486]

SENATOR MCGILL: Yes, as far as I understand, and again, I'm not as familiar as some of the folks who are following, who might be able to clarify that for you. [LB486]

SENATOR LOUDEN: Okay, thank you. [LB486]

SENATOR MCGILL: Um-hum. [LB486]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB486]

SENATOR AGUILAR: Thank you, Chair Fischer. I'm having a little trouble understanding why you would want, if there's a train out there and it has hazardous materials on it, why would you want the PSC to know about that? I guess I'd feel better with as few people knowing that that exists as possible. [LB486]

SENATOR MCGILL: And my intention is not to have that be a public record sort of information, and that's something I'd be able to work on, because we don't want the whole world knowing what their plans are and how they would handle an emergency and what their preventative actions are. So that is something that I'm willing to work on, to make sure that it isn't a whole lot of people who are knowing that information. [LB486]

SENATOR AGUILAR: Because the PSC, I mean, that's a public...(laugh) [LB486]

SENATOR MCGILL: And there would need to be some confidentiality issues looked at, because we don't want the wrong people to be getting their hands on that information. [LB486]

SENATOR AGUILAR: Okay. [LB486]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator. [LB486]

SENATOR MCGILL: Thank you. [LB486]

SENATOR FISCHER: Would the first proponent, please step forward. [LB486]

RAY LINEWEBER: (Exhibit 1) Good afternoon, Chairwoman Fischer and senators...
[LB486]

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SENATOR FISCHER: Good afternoon. [LB486]

RAY LINEWEBER: ...on the Transportation and Telecommunications Committee. My name is Ray Lineweber, L-i-n-e-w-e-b-e-r. I am the Nebraska state legislative director for the UTU. I'll attempt to complete my time within a five minute period. I'm here today appearing in support of the proposed legislation as honorably offered by Senator McGill on behalf of her constituents some of whom are UTU members. Nebraska is a state which is blessed with two significant railroad employers, BNSF Railway Company, and Union Pacific Railroad. With two of the worlds busiest rail lines located in Nebraska that ensures Nebraskans countless opportunities for gainful employment. We are most appreciative for the employment. But the employees are demoralized when they work for 12 hours and then are left waiting for a train, until the train is needed and a new crew arrives. It is not unusual for a crew to have been on a train or railroad property for 16 hours or more before they are relieved. These crews operate thousands of railroad trains each month across Nebraska. And while that provides great employment, risks too are there. The most significant risk facing us today in the railroad industry is the risk of a breach in security, and unfortunately since the 9-11 attack, railroad security measures appear to have taken steps backward instead of forward in Nebraska. Some other states have either adopted or proposed security measures intending to protect their citizens. I expect the railroads or their lawyers will comment on those. The federal government is talking about regulation, too. But Nebraska should take inexpensive measures to minimize the current risks as LB486 proposes. Senator McGill's constituents are not unique in sitting on trains, waiting for a relief crew and transportation in northeast Lincoln. The same can be said for Omaha, Blair, Valley, Broken Bow, Columbus, Ellsworth, in short, nearly every senator on this committee has a railroad parking lot in their legislative district. And with that parking lot creates blocked crossing problems as well. The proper location for railroads to park the trains are those secured railroad classification yards; Lincoln and North Platte are two of the largest where the public is not at risk and crews are properly relieved and significant savings is provided for all. You may also be courted with concerns by opponents the state would be burdening interstate commerce with this proposal. And the state wouldn't be placing a burden on interstate commerce with the railroads by promoting the movement of trains, therefore having other business products on the move. By way of example with regards to security, I made reference to BNSF as those employees were the first to raise the concerns with Senator McGill about sitting on trains for long periods of time after their 12 hours of duty, under the provisions as established by the Federal Railroad Administration. The FRA refuses to address the issue greater than 12 hours. FRA does not regulate the time for employees after 12 hours, merely calling that limbo time, time not on duty, or off duty. There's a Ninth Circuit attachment in yellow. And that limbo time is part of what employees are reaching out to the state of Nebraska to curtail, as during that time trains are sitting still and unprotected, nobody gains. I expect the opponents will testify about their security measures. However, I am aware that BNSF has reduced

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their special agents, or railroad police as some refer to them, to a minimum. BNSF is now relying on crews, local police, county law enforcement, and yes rail buffs to promote security for them, that's the green attachment. A proactive and enhanced security plan would be to keep trains moving. In doing so the state would be aiding the shippers, lowering the risks of security breaches for the state, and expediting the use of employees for railroad management. It is an everybody wins proposal. Does this proposal require railroads to keep trains moving? Not verbatim, but the alternative is they would have to have somebody secure that train if the crew didn't have any time left, Senator Loudon, to work. We're not saying that they have to go out and hire a bunch of detectives, but clearly if they leave a train and a crew is sitting there and been there for some time after the 12-hour period, then yes, they'd have to secure it. Shippers and the public and Nebraska would win. Why, may you ask, would the railroads not be embracing this security concept? The answer is relatively simple. They are captive shippers, they don't have to compete for business, and as a result of that lack of competition they don't focus on plans which are employee ideas of expediting train movement. As a matter of reference, railroad management is not on record supporting any safety regulations they must follow by law currently. LB486 is no different. One senator commented to me this doesn't cost railroads anything if they keep trains moving. And that's correct, that's exactly what the bill is intended to do. The security provisions are intended to force communication in the railroad industry, where communications are forced, security becomes reality, not rhetoric. Thank you for affording me the opportunity to testify before you today. Should questions arise, I welcome the opportunity to attempt to answer those. Thank you. [LB486]

SENATOR FISCHER: Thank you, Mr. Lineweber. Are there questions? Senator Stuthman. [LB486]

SENATOR STUTHMAN: Thank you, Senator Fischer. Ray, I've got a question, and I'd like to have you explain this to me. You know, if a crew has been on the train for 12 hours and his 12 hours are up, does the train just plum stop, right in the middle of nowhere? [LB486]

RAY LINEWEBER: That's correct, Senator. [LB486]

SENATOR STUTHMAN: And then they wait until the new crew comes from nowhere to that nowhere place? [LB486]

RAY LINEWEBER: That's correct. [LB486]

SENATOR STUTHMAN: Isn't that a problem of management? [LB486]

RAY LINEWEBER: Yes, it is, and we have attempted for years to convince management to develop a communication plan that if a crew is not going to...if they

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leave point A and they're heading for point D, but at point C they realize they only have an hour left to work, and between C and D it's three hours, we would ask that they take measures to get another crew out there. That would keep the train moving, instead of stopping. But all too often it's after the 12 hours another crew is called. So then you have an hour and a half transportation out, often times hour and a half transportation back, there's 15 hours for the crew. [LB486]

SENATOR STUTHMAN: So then your security part on this, is this the security of those crew people when they're sitting there? [LB486]

RAY LINEWEBER: Well, the security would kick in after the 12 hours, and a 15 minutes grace period. So if a crew had been out there for 12 hours, they've been working all night or all day, and right now the railroad has them kind of guarding the train, if you will, if they're not napping after the 12 hours, I probably would be. But the intent here is to say after 12 hours and 15 minutes, if you don't have somebody guarding the train or a new crew on the train, then you have to provide some type of security. A second crew could provide that security, but because that second crew on that train will be the ones ready to move that train, that's the whole goal, keep trains moving. [LB486]

SENATOR STUTHMAN: So you're waiting for the new crew to come, and you want a security crew to come there, too, to protect the ones that have had their 12 hours in? [LB486]

RAY LINEWEBER: To protect the train. [LB486]

SENATOR STUTHMAN: To protect the train, while they're waiting there, waiting for the other crew to come? [LB486]

RAY LINEWEBER: That's correct. [LB486]

SENATOR STUTHMAN: Is...the crew, do they get paid for these extra three hours? [LB486]

RAY LINEWEBER: Some do and some don't. Those hired after 1985 don't. Those prior to 1985, there are some collective bargaining agreements that protect them. [LB486]

SENATOR STUTHMAN: Okay, thank you. [LB486]

RAY LINEWEBER: Thank you. [LB486]

SENATOR FISCHER: Other questions? Senator Louden. [LB486]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Thanks for coming here to

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testify today, Ray. I guess, I have...to me this thing is going three different ways here. And I haven't quite been able to understand how it was supposed to be together. First of all, when you talk about the crews running out of time and that sort of thing, that's a labor issue, isn't it? And does the state of Nebraska have authority to get mixed up in your labor issues? [LB486]

RAY LINEWEBER: That's a very good question, Senator. The time allowance for crews working the railroad industry, the Federal Railroad Administration, by regulation, allows crews to work for 12 hours. But after that 12 hour period, the Federal Railroad Administration has chosen to call that limbo time, meaning they don't regulate it, and that's where the rub is. Because after crews have operated 12 hours and the railroad doesn't go get them, that's not time on duty or off duty, they call it limbo time. And that's where we're saying the state could intervene to keep the trains moving and minimize that limbo time. [LB486]

SENATOR LOUDEN: But that's just limbo time for the crew that ran out of time. That wouldn't be limbo time for the crew you're sending down to move the train again? [LB486]

RAY LINEWEBER: No. All transportation, when a crew is called for duty and transported out to get a train, that is time on duty, being transported out, but it's not time on duty being transported in after their 12 hours. [LB486]

SENATOR LOUDEN: Okay. You're on your own after 12 hours, but you can't go anyplace except back to the headquarters. [LB486]

RAY LINEWEBER: Right. [LB486]

SENATOR LOUDEN: Okay. Now the next question I would have on that, when you talk about securing the train now, are you talking about setting the brakes and stuff when you're going to leave it sit there, or are you talking about putting armed guards so terrorists don't drive it off, or what are you doing? What do you mean by securing the train? [LB486]

RAY LINEWEBER: Well, some of the...the California legislation was fostered by somebody getting on the train, actually threatening the crew, and the crew gets off, of course, to get away from harm. So in this day and age where more and more trains are sitting outside of terminals where they can be secured, you know, there's more of an opportunity for a security risk. The crew that arrives at a location and has worked 12 hours, now we're asking they be the guards, they've worked 12 hours. What we're saying is that the following crew could be the ones to secure the train. The crew that arrives prior to 12 hours could, as long as they have some time left to work. But it doesn't make sense to me to secure that train and take time securing it, and then have

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to have the other crew unsecure it. The best thing to do would be to get a crew out there in time. [LB486]

SENATOR LOUDEN: Okay. Now when you use the term "secure", you mean they go down and sit...chain the brakes down and stuff so it doesn't... [LB486]

RAY LINEWEBER: By company rule, yes. [LB486]

SENATOR LOUDEN: ...doesn't move. Which is your rules. Now what about when you go off and leave the engines hooked onto that train for two or three days? What do you mean by security there? [LB486]

RAY LINEWEBER: Well, in the... [LB486]

SENATOR LOUDEN: Or does this bill even dis... [LB486]

RAY LINEWEBER: In the proposal... [LB486]

SENATOR LOUDEN: ...does this bill even address that? [LB486]

RAY LINEWEBER: Yes, in the proposal it addresses the fact that when a train is left in an unsecured state, that... [LB486]

SENATOR LOUDEN: Now that means it's sitting out there where any... [LB486]

RAY LINEWEBER: It means it's sitting and no crew on it. [LB486]

SENATOR LOUDEN: ...anybody could get out there. [LB486]

RAY LINEWEBER: Right. [LB486]

SENATOR LOUDEN: But the brakes are locked, chained down. [LB486]

RAY LINEWEBER: The brakes are set, you remove the locomotives from it. Those locomotives, the brakes have to be set on them and the locomotive shut down. And the reason for that... [LB486]

SENATOR LOUDEN: Running or shut off? [LB486]

RAY LINEWEBER: Shut off. [LB486]

SENATOR LOUDEN: This is what this proposes? [LB486]

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RAY LINEWEBER: That's right. [LB486]

SENATOR LOUDEN: To shut the engine down? [LB486]

RAY LINEWEBER: The reason for that is that way, you know, there's a lot of stuff on the Internet on how to run locomotives, lot of railbusting in this country. And it will only take one adverse group to learn how to run that locomotive off, if it's running. And we'd prefer that the alternative be a great communication plan that I know they're capable of. But in order for us to force that plan, they're going to have to do something like LB486 prescribes. [LB486]

SENATOR LOUDEN: Now does the state of Nebraska, I ask again, do we have the authority to tell the railroad, you have to shut your locomotives off if you're going to put them on a side track for more than a certain number of hours or something like that? Or you have to do something with the key to it or something like...or what? [LB486]

RAY LINEWEBER: Well, the state has the authority, it's a local safety hazard. And the federal government allows the state to take measures to address local safety hazards. I know there are a number of court cases in favor and there's a number of court cases against. I guess it's who's the last lawyer you talk to. [LB486]

SENATOR LOUDEN: Well, that's...and then the other deal on this security is what I'm wondering about that mentioned something about carrying, what, oh high risk material or hazardous material, I guess, is what it's called. And aren't there laws now that when ever they carry some hazardous material through an area they're supposed to notify some of the emergency people, law enforcement or the Nebraska State Patrol, or somebody like that? Or is that just on nuclear waste? [LB486]

RAY LINEWEBER: Perhaps on the nuclear waste. And clearly, as the Senator testified earlier, we're not saying that you notify everybody and put on the screen hazardous material coming through the state, because the railroad is a good form of transportation. But the bottom line is we prefer, in order to provide the best for the shippers in the state, that the trains be kept moving. And that's why the proposal is in there, to make certain that the hazardous material awareness, everybody is aware of what they're transporting, the respective responders. But we don't want to cloud that...any activity there. Clearly we want to make certain that the trains keep moving, and that's the purpose of the Security Act. [LB486]

SENATOR LOUDEN: Now in here when they mention hazardous waste then, do they...does that have to be specified? Because what do you call hazardous waste? I mean is that a propane tank, or is that Benzedrine in a tank, or is that ten cars of diesel fuel, or what? How would that be considered, and what would have to be notified the emergency people on? [LB486]

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RAY LINEWEBER: They would probably follow the categorization as developed by federal law. [LB486]

SENATOR LOUDEN: Well, I know there are some problems out there because what's that little black thing you use to start...to put in the engine to make it start? [LB486]

RAY LINEWEBER: The reverser? [LB486]

SENATOR LOUDEN: Yeah. Well there's was one of them laying on my counter back at the ranch. And I found it laying out there in the pasture. So if you need one (laughter) and you want to move a train, I got one. [LB486]

RAY LINEWEBER: Thank you. [LB486]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB486]

SENATOR AGUILAR: Yeah, Ray, I think I've heard this particular legislation before. And I'm going to ask the same question I asked the last time I heard it. What does...what kind of training does an oncoming crew have, in other words the crew that's coming in to replace the one that's tired, to provide any security from like a terrorist takeover of that train, wouldn't it make more sense to have somebody like law enforcement, that's properly trained, or even possibly somebody in homeland security be responsible for the security of the train? [LB486]

RAY LINEWEBER: It would, Senator, but we don't want to drive the costs through the roof. Obviously, the railroad employees have done a wonderful job moving those trains. They've done a great job securing them. It's a lot easier to provide security as long as they're moving. You don't see too many moving trains become problematic and hot spots for people with adverse motives. Certainly, if a train is sitting there after the 12 hours, that's why after 12 hours and 15 minutes the crew is tired, they want to go to bed. So often times they're going to nap right there. You know, it's not...I mean, as complex as it is in the railroad industry, it's not easy for people to understand that after 12 hours, they're stuck there until somebody comes and gets them. [LB486]

SENATOR AGUILAR: But in reality, if you're going to talk about the threat of a terrorist takeover, a railroad crew in no way should be responsible for that. [LB486]

RAY LINEWEBER: No, and we're no match for it. And that's why we'd prefer to keep the train moving. [LB486]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB486]

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SENATOR STUTHMAN: Thank you, Senator Fischer. Ray, if your real concentration is to keep the trains moving, and in my area, Columbus, a train goes through there every seven minutes, and here we're talking about if a crew is at 12 hours and they stop the train dead, wait three hours for another crew to come, and can you imagine how many trains you got backed up moving every seven minutes a train goes? I don't think this is happening. [LB486]

RAY LINEWEBER: Senator, it is being caused a lot more than people realize. And subsequently, where you have trains coming through there every seven minutes, when one crew runs out of time and they have to wait for another crew, often times it causes a whole bunch of them to run out of time behind them. And it's all about communication, And better communications plans can make those trains, keep those trains moving. And that's the whole intent here. If indeed you don't have a communication plan, then you have security problems. And that's what we have out there. [LB486]

SENATOR STUTHMAN: But that is happening right now? [LB486]

RAY LINEWEBER: Yes, it is. [LB486]

SENATOR STUTHMAN: Well, maybe it is, but I really never...have never visualized that it is happening. Because, you know, for a one-hour...well and to get another crew there, if they're between an area where they've got 50 miles between the community, whether there would be anybody there. I mean, those trains could be backed up forever. [LB486]

RAY LINEWEBER: Well, they have a number of areas of double track. And on Union Pacific for a significant stretch they have triple track east of North Platte. So a lot of crews, where they run out of time by the 12 hours, they can tuck them away and get other trains around them. So it doesn't mean that every time one train stops, everybody stops behind it. So they may have in between a couple of areas where they can get trains around them. [LB486]

SENATOR STUTHMAN: Okay, thank you. [LB486]

RAY LINEWEBER: Um-hum. [LB486]

SENATOR FISCHER: Other questions? I have one for you, Ray. In your testimony you spoke about...you said, some other states have either adopted or proposed security measures intended to protect their citizens. Can you tell me what states have passed similar legislation? [LB486]

RAY LINEWEBER: The state of California passed a form of it, either last year, the state of Utah proposed one this year, it's been laid over, that I'm aware of. [LB486]

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SENATOR FISCHER: Okay. Thank you very much. Other questions? Senator Schimek. [LB486]

SENATOR SCHIMEK: Yes, thank you, Madam Chair. Ray, thanks for being here. Like Senator Stuthman, I guess the first question on my mind is, how often does this happen? Are we talking about frequency? [LB486]

RAY LINEWEBER: Senator, the easiest way for me to explain it is that some railroads are measuring the crews out there greater than 13 hours, and the reason they're measuring 13 instead of 12 is that 12 is too big to get their arms around. It's significant. [LB486]

SENATOR SCHIMEK: Well, I'm thinking that from a practical standpoint this might be very difficult sometimes for the railroads, because I'm assuming that if you stop at point B or C, there may not be anybody very close to those particular points from which to bring crews. I mean don't crews pretty much live in the bigger communities along the line, or am I mistaken in that? [LB486]

RAY LINEWEBER: No, no, you're not. The railroads have established areas, by way of example, crews leave here, go to Ravenna, it's 30 miles west of Grand Island. Crews get on at Ravenna and go to Alliance. The railroad establishes those limits to make certain...because they believe they can get crews those distances within a 12-hour period. [LB486]

SENATOR SCHIMEK: In 12 hours. [LB486]

RAY LINEWEBER: That's correct. So it's not every little area where we stop. But the measurements for this process are that we have a significant amount of traffic out there. And the dispatchers workload is very, very heavy. They've got a blueprint in front of them. If they stop a crew at B, and they've got crews coming from the opposite...trains coming from the opposite direction, they're going to know whether the crew is going to make B to D, basically when that crew stops at B. And they could take measures then to make the call so the crew could be relieved at C. [LB486]

SENATOR SCHIMEK: Let's say for some unknown reason that train between Ravenna and Alliance gets delayed. I mean it's behind time, the crews are on the train 12 hours, and they have to stop somewhere between those two communities. That means, I mean I can see that it might be difficult to get new crews out there in an hour and a half or whatever. And I'm thinking even if you do, then you've started the second crew out say an hour and a half ahead of Alliance before you ever get to Alliance. So that means you're going to run out of your 12 hours before you get to the next selected spot. I mean, it probably isn't important to this bill, but I got to understand how this works. [LB486]

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RAY LINEWEBER: Well, the industry is very, very complex. But the example you used...they had a derailment of 12 cars at Broken Bow on Saturday night, and blocked both main lines. So obviously the crews west out of Ravenna, they brought them back to Ravenna to get rest. The crews east out of Alliance, between Alliance and Broken Bow, took them back. There they relieved them, there are emergency provisions that our people accept that. But on day-to-day operations, if they leave Ravenna and they get as far as Broken Bow and they've worked 8 hours, and they're traveling 20 miles an hour, they aren't going to make Alliance by the time that 12 hours is up. That's what we're saying. Somebody needs to design some software and look at the central tower control operation, which the railroads have on these two main corridors, to make certain they communicate with the people who contact, call, and haul the crews. And that's not being done very efficiently right now. [LB486]

SENATOR SCHIMEK: Thank you. [LB486]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB486]

SENATOR STUTHMAN: Ray, explain to me, you've got the railroad, Union Pacific Railroad, then you've got the employees, they are employees of the Union Pacific Railroad, governed by a union? [LB486]

RAY LINEWEBER: Um-hum. [LB486]

SENATOR STUTHMAN: That's what it is, that's union people then, right? [LB486]

RAY LINEWEBER: That's correct. [LB486]

SENATOR STUTHMAN: Okay, thank you. [LB486]

SENATOR FISCHER: Other questions? I was just taking a moment here, Mr. Lineweber, and I was looking over the green sheet you referred to in your testimony about rail fans providing security. That looks like, correct me if I'm wrong, it looks like that's a program that the...is it the Burlington sets up... [LB486]

RAY LINEWEBER: Yes. [LB486]

SENATOR FISCHER: ...sets up on a web site where people can register and... [LB486]

RAY LINEWEBER: Yes. [LB486]

SENATOR FISCHER: Is it mainly to report any activity around the tracks? [LB486]

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RAY LINEWEBER: Suspicious activity. [LB486]

SENATOR FISCHER: Also, and it says 6,000 people across the country have registered so far in that program. Also employees of the company, correct, they report? An example here is the hand brakes on a rail car were left on and caused problems. [LB486]

RAY LINEWEBER: Um-hum. [LB486]

SENATOR FISCHER: Someone was lying across the tracks, that was reported, too. [LB486]

RAY LINEWEBER: Um-hum. [LB486]

SENATOR FISCHER: So do you...would you imagine under this proposal that you have, you know, when you talk about securing the train, which I'd like you to explain that a little more, too, but this program probably would be eliminated then, wouldn't it? You wouldn't be able to have just anybody register on the Internet to monitor the rail system in the country? [LB486]

RAY LINEWEBER: No, it wouldn't eliminate the program. Clearly, what it does is it allows for...and BNSF can explain it better than I, but I can explain it from what I've seen on their Internet, allows for people to watch for trespassers, watch for like a person laying across the track in advance of a train getting there and there being a fatality. So there are a number of interlinked objectives there that work relatively well. But let's fine-tune it, let's take it one step further. And by keeping the trains moving, you know, it's less susceptible to any of the activities that those who would want to commit against the railroad would commit. [LB486]

SENATOR FISCHER: As you know, I travel Highway 2 a lot. [LB486]

RAY LINEWEBER: Yes. [LB486]

SENATOR FISCHER: We lost our train along Highway 20, which by the way we would love to have back. But I travel Highway 2 a lot, and so we have trains about every seven minutes. When you talk about securing a train, my first question would be, how many employees are on those coal trains, for example? That's the main business going down Highway 2 there. How many are on a train? [LB486]

RAY LINEWEBER: Two. [LB486]

SENATOR FISCHER: Two. [LB486]

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RAY LINEWEBER: And sometimes...well, it depends. If there's a person training to be a locomotive engineer, that's called a fireman. So that person may be in training on there. Right now the BN is hiring a number of new employees, as people retire, for training purposes. So there may be as many as four on the crew, but most of the time two. [LB486]

SENATOR FISCHER: How do you secure a train that's, I don't know, a mile long, those coal trains? How do you secure a train with two to four people on it? Is this a security bill? How do you secure a train with two to four people? [LB486]

RAY LINEWEBER: Well, the way you secure this, and this is after trains are stopped, so if a train, which the majority of them are a mile and a quarter to a mile and a half long or longer, as you know, and so if a train crew is to be I'd say 11 hours and 30 minutes on duty, generally it takes 20 to 30 minutes for the conductor to apply sufficient hand brakes on the loaded coal train. It's a percentage of the number of loads and the grade as well. So if it's sitting on a steep incline they're going to be putting a lot of hand brakes on; when it's relatively flat, not near as many. That's how they secure the train. The conductor separates the crossing, and the engineer secures the locomotives and the conductor goes back and sets a sufficient amount of hand brakes. [LB486]

SENATOR FISCHER: I guess I'm having hard time, you know, with the bill. It's called the Rail Security Act. [LB486]

RAY LINEWEBER: Um-hum. [LB486]

SENATOR FISCHER: When I think of security I...you know, we just had the discussion with the REAL ID and homeland security and things. And you did bring up some of that in your testimony. I don't know if this a railway security act in that sense, when you only have two to four people on a train. To me it's...and in the discussion and questions it sounds more like a labor-management problem that's going on here. How would you respond? [LB486]

RAY LINEWEBER: I wish...and thank you very much. I wish we could resolve that through the labor and management. But there are policies as established by the railroad, they make a determination when to go get the crews; they make the determination what vans to use; they make the determination how a train shall move or where it shall stop. I wish it were that simple that it would be a labor-management issue, that we should never have to be here. But the good regulations that have caused the railroad to save millions and enhance safety have all been done through a regulatory body, not through the willingness of a railroad industry and/or the labor union. [LB486]

SENATOR FISCHER: What regulator body? [LB486]

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RAY LINEWEBER: Being either the state or the federal regulations. [LB486]

SENATOR FISCHER: Federal regulations, do they set the workable hours? [LB486]

RAY LINEWEBER: They set... [LB486]

SENATOR FISCHER: And what is workable hours? [LB486]

RAY LINEWEBER: Well, there's 12 hours,... [LB486]

SENATOR FISCHER: Okay. [LB486]

RAY LINEWEBER: ...as set by the Federal Railroad Administration. But the time period after the 12 hours, which we're attempting to address here, limbo time and they can leave them out there as long as they want through company policy. There's no agreement to go get them. That's not negotiable. [LB486]

SENATOR FISCHER: Twelve hours on, twelve hours off? [LB486]

RAY LINEWEBER: The feds, if a crew has worked 12 hours, the federal law requires them to have at least 10 hours rest. If they work less than 12, it's only 8. And that transportation to the terminal is not considered rest time. [LB486]

SENATOR FISCHER: Do you know cases where...I'm in the area that Senator Stuthman was calling the middle of nowhere. Do you know of cases where crews were left out after their 12 hours, say the train has stopped and the brakes are put on, and the 2 or 4-man crew is sitting there for 10 hours until they can start up the train again, or does that count as rest time when you're sitting on the train? [LB486]

RAY LINEWEBER: No, that's a very good question. The feds do not allow them to use the train as a rest quarter. They have to take them to some lodging. But the problem is, is after the 12 hours, it may be 3, 4 hours before they get them to lodging, and that 3 or 4 hours is not counted as rest. [LB486]

SENATOR FISCHER: It's not counted as rest? [LB486]

RAY LINEWEBER: Not counted as rest. [LB486]

SENATOR FISCHER: And the travel time is not counted as rest. [LB486]

RAY LINEWEBER: That's correct. [LB486]

RAY LINEWEBER: The rest actually only begins when they get to the lodging. [LB486]

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SENATOR FISCHER: Okay. Thank you. Senator Aguilar. [LB486]

SENATOR AGUILAR: Following up on that, but you said if they were hired before 1985, because of the collective bargaining process, they were paid, did you not? [LB486]

RAY LINEWEBER: That's correct, in a number of areas that's correct. [LB486]

SENATOR AGUILAR: So what I'm starting to hear here is whatever you can't successfully collective bargain, you're bringing to the Legislature to resolve for you. [LB486]

RAY LINEWEBER: No, Senator, that's not our intent at all. Clearly, we want to make certain we...and we've attempted to get them to get the crews off of trains, but the communication mechanisms just haven't worked well among all the groups. [LB486]

SENATOR AGUILAR: Thank you. [LB486]

SENATOR FISCHER: Other questions? I see none. [LB486]

RAY LINEWEBER: Thank you. [LB486]

SENATOR FISCHER: Thank you very much. And I appreciate your willingness to spend this much time answering our questions, Mr. Lineweber. Thank you. Are there other supporters of the bill? Good afternoon. [LB486]

RANDY MEEK: (Exhibits 2 and 3) Good afternoon to you, and glad to be here. My name is Randy Meek, R-a-n-d-y M-e-e-k. I'm the chairman of the Nebraska State Legislative Board of the Brotherhood of Locomotive Engineers and Trainmen. I represent approximately 1,000 members who operate trains in the state of Nebraska daily on both railroads. I'd also like to make a comment. I'm also a working locomotive engineer, in fact I worked 16 hours yesterday, going up to Ravenna. I didn't work 16 hours, but I was 16 hours getting there, and I was 14 hours coming home. Six o'clock this morning is when I finally laid up. I think my boss, back there, was trying to keep me from getting here. But I would just like to make a comment on some of the questions you had earlier. These hours of service questions, they really aren't collective bargaining. They have to do with the fact that Congress passed the hours of service laws, FRA enforces it, Supreme Court has interpreted it. Prior to the Supreme Court decision, we had a lower court decision on hours of service that required us to be off the train in 12 hours. As long as that lower court decision was in effect, we had very few violations. They got us off regularly, before 12 hours. It wasn't until after the Supreme Court overturned that decision that we ended up with this problem. Now is any of this germane to security? I think that's questionable. It certainly wasn't part of our model bill

last year. The bill we're looking at today is very similar to LB1152, introduced last year by former Senator Matt Connealy. I know a lot of you were here last year when we talked about this. That was supported by us, as well as the Maintenance of Way Employees union. Spence Morrissey was their lobbyist, former Senator Spence Morrissey. LB1152 was a pared down, yet more conservative bill than the teamsters rail conference model bill it was patterned after, yet it did not get out of committee. LB486 goes further in many areas than LB1152 did. In one way, we feel it goes a little too far. We have spoken to Senator McGill's staff about these concerns, and believe they may be addressed later. So we're offering our support at this time. Like I said before, it's been one year since we last visited railroad security in this committee. And while we are closer to getting a national rail security bill passed, that has really been the only visible progress on this issue. For those of us working on the railroads, we see no change in conditions since the high alert railroad security survey was completed. And by that survey, I mean the teamsters rail conference did a survey of our members and the Maintenance of Way members on the railroads and asked them several questions. Those results were returned back, and they were tabulated. I've included that in the comments that have been handed out today. The one change we have seen recently is that terrorists in Iraq are now using chlorine bombs routinely. I've included a New York Times article that talks about that. We warned of this possibility last year due to unguarded and unsecured shipments of these types of chemicals. And now it appears it's even more likely to happen here. I've also included copies of my testimony from last year for your review, since it's very germane to this issue. Also, we've presubmitted several comments on this bill to the clerk last week, and I'm sure you've already reviewed those. The BLET remains highly committed to the safety of our members and the public, and continues to support sensible and practical measures to increase rail security. We do have one primary concern with the bill as written. LB486 would require a locomotive to be shut down when unattended. A bill recently passed in California also required that. But it's being challenged, it's not yet effective. LB1152 did not include that provision, and we do not believe it is necessary, and could possibly have detrimental effects on our members. In support of this position, we offer the following points: shutting down locomotives will require all railroads operating in Nebraska to convert to an antifreeze cooling system, locomotives currently do not use antifreeze and are drained if needed to be shut down in cold weather. This disables the locomotive from further use until the cooling system is refilled. Requiring conversion of entire fleets of locomotives will likely be considered an interference with interstate commerce and probably overruled by the courts. And the environmental hazard resulting from the leak of hundreds of gallons of antifreeze containing coolant should also be considered. Additionally, crews boarding trains being off air, when you detach the engines, you take away the air source from the train. In that case, after four hours, FRA requires crews walk that train per federally mandated inspection rules. And that can take...sometimes you have to walk it two or three times to get that completed. And being a mile and a half long, that's a lot of walking. Walking conditions are often hazardous, rough, especially in cold and freezing conditions. And additionally, crews boarding shut down locomotives

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will frequently be exposed to extremely hot or cold cab conditions that will not remedy for extended periods. We believe that locking the cabs of the locomotives will provide sufficient protection, and additionally security measures, such as password protected access to computer operating systems could be used to prevent operation. It just came to me a little bit ago, that they could probably also just enable or disable the function of that locomotive via satellite; they have all kinds of abilities to control those locomotives via satellite, I'm sure they have that ability. It could be as simple as a crew getting on there and saying...just calling up Fort Worth and saying, enable this locomotive now. If that were the case, nobody could get on their and run it, locked or unlocked, shut down or not shut down. It's also clear to us that anyone that's acquired sufficient knowledge to operate a locomotive will have no trouble restarting it. It's usually as simple as pushing a button marked "start engine" in clear view on the back panel of the locomotive. So thank you. If you've got any questions, I'd be glad to answer them. [LB486]

SENATOR FISCHER: Thank you, Mr. Meek. Are there questions? Senator Schimek. [LB486]

SENATOR SCHIMEK: Thank you, Madam Chair. Hi, Randy, it's nice to see you. [LB486]

RANDY MEEK: Hi. [LB486]

SENATOR SCHIMEK: You mentioned something that I don't think I've heard about before, and I'm kind of new to this committee, but the National Rail Security Act, did you say is yet to be passed? [LB486]

RANDY MEEK: Yeah, there's a bill...it's being drafted...it's drafting right now. I think I can get you a copy, if you'd like. But we're working...I know both UT and BLE are working hard on getting a National Rail Security bill passed. It's not...there's not...there's none in effect right now. [LB486]

SENATOR SCHIMEK: And that will maybe address some of the things that are trying to be addressed by this bill? [LB486]

RANDY MEEK: It will address some of them, some of them, yeah. [LB486]

SENATOR SCHIMEK: Okay. [LB486]

SENATOR FISCHER: Other questions? [LB486]

RANDY MEEK: I don't know, I haven't really read the bill. I'm not sure what's in it. [LB486]

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SENATOR FISCHER: Other questions? Senator Stuthman. [LB486]

SENATOR STUTHMAN: Thank you, Senator Fischer. Randy, when you talk about security, what do you have in place for security if you have a derailment or something like that? [LB486]

RANDY MEEK: Well, in a case of a derailment they usually remove us, unless there is some use for us in moving some of the disabled equipment, we're usually taken off the site. [LB486]

SENATOR STUTHMAN: Well, I was referring to, say there's a derailment, and you've got a hazardous material into it. What do you do about that? [LB486]

RANDY MEEK: Oh, well, we have to be knowledgeable of whether we have any in our train. We get a list, a federally required list when we leave the terminal. It would have any carloads of hazardous materials, as well as the quantity included. If...our first duty would be to notify the proper authorities that we were in a situation like that and there's a possibility of a hazardous material spill. Following that, depending on wind conditions and the type of material, it's possible that we might investigate. But, personally, I'd just as soon get out of there. Some of this stuff is really nasty. [LB486]

SENATOR STUTHMAN: Yes, I'm sure of that. I'm a volunteer fireman, and you know we've had training on if there's a derailment with hazardous material, and there is a notification when hazardous material comes through the community. But the thing about it is we have to look at the placard that's on there to see what's in there. And there's guidelines as to how close you can be and what you've got to evacuate and stuff like that. So you know there are provisions already for securing the area in case there has been a derailment. And that's up to the responsibility of the volunteer...or the fire department when they are called to that prior to anybody else getting there. So I don't know if you were aware of that or not. [LB486]

RANDY MEEK: Oh, yes, I'm acutely aware of that. Of course, when there's a derailment, you get all kinds of attention. It's the...what we're attempting to address with security bills at the state level is to address those situations where we're not getting attention. Where these loads are parked, you could have eight or ten loads of chlorine parked right outside of town here, or right inside the city limits, waiting to get into the yard. If there are conditions that stop movement, they may just take the crew off of it and let it sit there. And as far as I know, it's not guarded. [LB486]

SENATOR STUTHMAN: Randy, do you feel it would be better to let the public know that there's hazardous material parked three miles west of town, or keep it quiet so nobody knows it's there? [LB486]

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RANDY MEEK: I don't think there is any need to alarm the public. I do think there's a need for the state to have some oversight in the matter. And I know last year that was a concern, would these proceedings be public. And LB1152 didn't address that, but I believe this bill does, in that anything that has to do with the security plans would be kept confidential. [LB486]

SENATOR STUTHMAN: Okay, thank you. [LB486]

SENATOR FISCHER: Other questions? Senator Louden. [LB486]

SENATOR LOUDEN: Yeah. Thank you, Senator Fischer. Randy, thanks for testifying today. Now this...okay, I'll ask you the question. When you're talking about this bill and securing a train, are we talking about locking the brakes, or armed guards? [LB486]

RANDY MEEK: I can't answer that question. I've read Section 4 of this bill, and I'm still trying to sort out just exactly what it does mean. I don't believe...based on the language as written, I don't know if a reasonable conclusion can be made. I think it would almost have to go to a court to be sorted out. [LB486]

SENATOR LOUDEN: One part I will agree with your testimony that shutting down those...I don't see any point in shutting down the engines on that, because I see them sitting idle for a week, for that matter, on some of these lines when they park them. And whether they have antifreeze in them or not, I don't know. But I know they many times leave them run for long periods of time. With...as you say, and I think Senator Fischer asked the other one that was giving testimony about the amount of crew members, two crew members on these trains and if you're having problems with them, keeping them moving and stuff. Is there anything in your labor relations with the railroad that they're going to go to less than two crew members? Are they going to one? [LB486]

RANDY MEEK: Oh there was some talk of that in the preliminary negotiations for this contract period. To my understanding that's been taken off the table at this time. So the next...if that remains the case, the next time we'll be looking at that issue could be six, seven years down the road. [LB486]

SENATOR LOUDEN: Then there would be no point in including anything like this in this bill to...if we're talking about security then, we talking about having more personnel on that train? There would be no point in putting that in this bill? [LB486]

RANDY MEEK: I don't know that we actually provide any security as a crew member. So I would have to say I don't believe so. [LB486]

SENATOR LOUDEN: At the present time two people on the train are enough to take care of the train? [LB486]

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RANDY MEEK: Yeah. [LB486]

SENATOR LOUDEN: Okay. And when these people run out of time, what kind of a transportation service, I mean the Burlington Northern has a whole business of its own transportation people. They hire a regular outfit that does taxi service and runs up and down the highway and the whole bit to haul these crews wherever these trains have stalled out. What do you call that? Or how does that work? Can you explain to me how that works? [LB486]

RANDY MEEK: Well, I believe both railroads contract with outside contractors for the transportation services. Armadillo Express used to be what it was called, I'm not sure what it is now, and then Renzenberger is another contractor. But anyway, they contract these services. And they have stations where they accumulate these vans: Lincoln, and Grand Island, and North Platte, and I'm sure Omaha, and Alliance, they have regular crew points, just like we do. [LB486]

SENATOR LOUDEN: That's a separate corporation that contracts out to haul the crew back and forth? [LB486]

RANDY MEEK: Yes. [LB486]

SENATOR LOUDEN: For the trains? [LB486]

RANDY MEEK: Yeah, no, the problem we ran into is on any normal day things are fine. As my example of yesterday, where I was 16 hours going from Lincoln to Ravenna, you know, there was a derailment and there was a quasi blizzard west of Ravenna, and there was a little bit of flooding, and things just got backed up. For some reason they only had one bus trying to haul crews out of Ravenna to relieve...with relief crews, as well as haul the dead crews that were out there on trains back to Ravenna. So this guy was really running his tail off, trying to do all this. Why they couldn't get...they had three called, they could only get one, I don't know why. [LB486]

SENATOR LOUDEN: Then you are back to a management problem or something. [LB486]

RANDY MEEK: Yes. [LB486]

SENATOR LOUDEN: Well, I knew a fellow one time told me, this was years ago when they were running the railroad. He told me that if the railroad went broke it wouldn't be because of bad management, it would probably be because of no management at all. And is this what we're talking about, management here, or are we talking about something that needs to be addressed? [LB486]

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RANDY MEEK: Well, as I said earlier, it's clearly management on relieving crews. Prior to the Supreme Court decision, we had no problem getting off trains in 12 hours. They just found a way to do it because there was a financial penalty if they didn't. We filed claims with the FRA, the FRA processed them, and they assessed penalties based on that. We can still file claims on that. But with the Supreme Court decision, they said we could sit on those trains indefinitely, and they call it limbo time. [LB486]

SENATOR LOUDEN: I see. Okay, thank you. [LB486]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB486]

SENATOR AGUILAR: Yeah, I just want to state that in light of that Supreme Court decision you keep referring to, it's not likely that we're going to do anything that flies in the face of a Supreme Court decision. [LB486]

RANDY MEEK: No, you're certainly not going to overturn it, no. [LB486]

SENATOR AGUILAR: Couldn't if we wanted to. [LB486]

RANDY MEEK: No. [LB486]

SENATOR AGUILAR: The other thing is Senator Louden asked you a question about security of the train, is it going to consist of crew members being on there, locking the brakes, or is it going to consist of firearms. You answered you didn't know that. [LB486]

RANDY MEEK: Excuse me? What was the question again? [LB486]

SENATOR AGUILAR: Senator Louden's question referred to whether or not securing the train had to do with armed guards, or does it have any...or is it more likely to be locking the brakes of a train? [LB486]

RANDY MEEK: Oh. You're talking about Section 4 of this bill? [LB486]

SENATOR AGUILAR: I'm talking about he asked you just a little bit ago. [LB486]

RANDY MEEK: Oh. Well, the answer I can give you is if you're referring to Section 4 of the bill, as to whether it's talking about armed guards or whether it's talking about tying...securing the train per the federal regulations, I'm not sure. As I told Senator Louden, I'm not sure what the language reads in that bill. [LB486]

SENATOR AGUILAR: Well, I can help you with that part, because it's not likely we're going to authorize people to carry firearms, if they're not completely trained in that

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arena. [LB486]

RANDY MEEK: I don't want to carry a firearm. [LB486]

SENATOR AGUILAR: Then that should answer that question. Thank you. [LB486]

SENATOR FISCHER: Other questions? I see none. Senator...I always want to demote people in this committee, Mr. Meeks. I have a question for you. You provided some written materials for us before the hearing. [LB486]

RANDY MEEK: Yes. [LB486]

SENATOR FISCHER: And in that you have the Supreme Court decision that you were referring to in your testimony. Is that correct? [LB486]

RANDY MEEKS: Yes. [LB486]

SENATOR FISCHER: Okay. And I do appreciate that. Thank you very much for being here today. [LB486]

RANDY MEEKS: Thank you. [LB486]

SENATOR FISCHER: (Exhibits 4, 5, 6) Are there other proponents for the bill? Any proponents to step forward, please? I would like to say at this time that we have three letters of support that have come in. These seem to be form letters, all the same. One is from Susan Smith of Omaha; one is from James Smith of Omaha; and one is from Mark Kavulak from Bellevue. And those are in your books. Next, are there opponents to the bill? Could I see a show of hands of how many opponents we have? Okay, about six. Would the first opponent step forward, please, to testify. Good afternoon. [LB486]

SCOTT HINCKLEY: (Exhibit 7) Good afternoon, senators. My name is Scott Hinckley, S-c-o-t-t H-i-n-c-k-l-e-y. I'm the general director of security initiatives at Union Pacific Railroad. In listening to the testimony today and reading the bill, I would like to start out by saying I, too, am confused by Section 4. And I can't tell you in total exactly what it means. I can tell you that securing a train under railroad rules means tying handbrakes, and that's the definition that we use. What you've heard today is a lot of comments about federal regulation, what crews are required to do, what the Supreme Court has decided, and efforts to put into legislation things that will challenge those regulations, change them, or try to find loopholes in them. One of the things that is evident today is that the bill displays a lack of knowledge of transportation security. Now that's not bad. There's a reason why, and that is because we don't want it in the public domain. As a Nebraskan, I don't know what the State Highway Patrol's security plan is for this building; I assume they have one. And I'm sure they'll enforce it at the right time and

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place. But they don't tell everybody what it is because then it wouldn't be a security plan. I have given a handout to you, sort of bullet points rather than just written testimony. But the railroads work in concert with both federal, state, and local security and police agencies. They oversee transportation security and planning and implementation. One of these concerted actions is called the Joint Terrorism Task Force. And there is one in Nebraska, it's headquartered at the Omaha FBI office, and the FBI, under the direction of the U.S. Attorney General, heads that. Railroad police are part of the intelligence gathering and sharing community. The information about counter-terrorism is protected information. We don't share that with the public, we don't share that with agencies like the Public Service Commission because they are not a security agency, they don't have federal security clearances to be able to handle the information, or to be able to act on that information, but the Department of Homeland Security, the FBI, and the CIA does, and we are part of that. We do notice, if you look on the web site in Nebraska, that lo and behold, Nebraska has a Department of Homeland Security already. And one of our questions is, as a bill gets introduced, where is that department failing that you would want to pull out part of their involvement in these joint task forces and give it to a public service agency? We don't understand where they've failed. We assume that there must be some failure there, or you would not be overriding their jurisdiction that you've currently given them. We have understandings with local police departments and fire departments. Both the Burlington Northern and Union Pacific have trained literally hundreds of local responders in how to handle hazardous material, how to handle their spills. We've expanded those types of incidence, also into terrorism type areas. There are national and local 24/7 information centers that monitor terrorism all the time. Omaha is the location of the Union Pacific Railroad Operation Center. One of the things that people don't understand is that security plans are dynamic, they're based on intelligence, research, and technology. If you go to the airport at any different time, you'll find different rules. Some days you can park closer than others, some days you can take your tooth paste, and other days you can't take your tooth paste with you. Those all come about because of intelligence. So people don't give their security plans to other people and say, we'd like you to approve them, or not approve them and give us help back. Security plans have to be acting on the most current intelligence and what's happening in the field and what you're going to do about it. As a result of that, the railroads have four security levels. They have levels when intelligence says that an attack would be small, and they have different things that they do when it says an attack might be eminent. And those things handle certain hazardous materials, we call them toxic inhalants, chlorine is one of them. But we do different things with them, but we don't tell everybody what we do, where we do it, or how we do it. We keep that within the police, the intelligence, and the security community. Our objection to the bill is it would then give that to a public service. And people can say, well, we'll tell them not to tell anybody, but the reality is they don't have any security clearances to get it in the first place. We find that the bill itself, as was mentioned, has been using the term we do, it's been shopped around. Eight states had it last year, more states have it this year. The only state that passed something similar

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was California. And they then wound up with some problems in that their department didn't have any security clearance. So their own state Homeland Security wouldn't share with them any information. So they decided to form a task force to say, maybe we need more information about this. And so I'm now working with them, as other railroads are, on a task force. What do we find in the situation now? Well, nationally, there is a lot going on in this area. There is proposed rule making from both transportation security and the pipeline and hazardous material security agencies, they both have current...and that's what Mr. Meeks was referring to when he said their union was supporting the national effort. We believe these things should be handled nationally, that states shouldn't have to be...to worry about being involved, but to know that there's a security, sort of a national security transportation pipeline. There's current action items that are out there that railroads are involved with and railroads are in compliance with. We believe that LB486 fails because it would distribute sensitive security information, would give security oversight to an agency with no security expertise. It focuses on training employees to repel hypothetical terrorist attack. Our main concern is not an empty coal train sitting out in western Nebraska, that that's going to be the point of target for a terrorist. We believe there's other points of targets for them, and that's what we should be focusing on, and should not be diverting resources to...and treat every train the same. We think there's those commodities that should be treated differently and security plans should reflect that. I thank you for the opportunity to testify today. And ask if you have any questions? [LB486]

SENATOR FISCHER: Thank you, Mr. Hinckley. Are there questions? Senator Louden. [LB486]

SENATOR LOUDEN: Yes, Scott, I think you answered my questions on what I originally thought the bill was all about was security on trains. Now my question to you is, how do you understand the bill when they talk about crews that are out there for too long of a time? To me, this is two different issues. [LB486]

SCOTT HINCKLEY: It looks like someone took Section 4, it's...the only place I've seen Section 4 is in Nebraska. And I've seen almost all the other states. So the thing about securing the train within 15 minutes is unique to Nebraska and not part of the standard bill that was offered to various states. Train crews secure the train by tying brakes and setting brakes to the train. It means secure it from rolling away. Okay? As opposed to providing security for a train, like I said, we're not sure what's going to happen to an empty grain train, or loaded grain train, or an empty coal train secure-wise as to why we would need to provide extra guards or something like that for it. [LB486]

SENATOR LOUDEN: Okay. Well, what's this having the crew, as some of the testimony was the crew would be out there for a couple hours or so before the transportation would come and pick them up? Now is that a labor issue? Is that a management issue? Or how come management leaves them sitting out there that long? [LB486]

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SCOTT HINCKLEY: Well, first of all, it's a very small percentage. It's almost always the result of some incident that happens in front of that particular train. We heard Mr. Meeks talk about some flooding and some other things. The last one I was involved with was next to tracks there was a collision of two vehicles that rolled over onto the tracks, and then the local police called the railroad and said, would you stop all your trains,... [LB486]

SENATOR LOUDEN: What about when the yards are too full... [LB486]

SCOTT HINCKLEY: ...which they did. So crews... [LB486]

SENATOR LOUDEN: ...and they can't get anymore trains in the yards, then they start parking them, you know, 40 miles back down the track then. [LB486]

SCOTT HINCKLEY: Then they go into sidings, or on triple track areas, then they go back. And then we send out relief crews. The problem is you don't plan on those things in advance. You don't say, tomorrow I'm going to have a flood, or tomorrow I'm going to have a broken rail going into the yard, and I have to stop trains. So let's plan on having all these relief crews stationed...I mean what they're saying is put crews in vans before you know it, and then send them out, down the road two or three hours and have them sitting there and waiting in case you stop a train. [LB486]

SENATOR LOUDEN: Why is it that sometimes the transportation, either they don't, like Alliance, they either don't leave Alliance until the train has already been stopped for a half hour, or else somebody should have known that those guys were going to run out of time, so they could have gotten some transportation arranged to be on the way to pick them up. Why doesn't that happen? [LB486]

SCOTT HINCKLEY: It does and it doesn't happen. I don't want you to think it happens every time. First of all, there's a collective bargaining agreement that says I have to give other employees a certain length of call. So if I have to give you a two hour call, and I don't find out until about an hour beforehand that a particular crew is not going to make it, because an incident happens, and I think, ah, they were going to make it and now they're not,... [LB486]

SENATOR LOUDEN: Well, that isn't the guys problem, that's management's problem. They can still send the transportation down there to pick that crew up and bring them in so they can get their rest time in, can't they? They don't have to wait until they call another crew to go down there, because they might not move that train. [LB486]

SCOTT HINCKLEY: Well, I think you have another bill on moving trains and keeping crossings...later on. And I'll let those people talk about what happens if you can't move a

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train, or cut it, or things like that. But, no, I understand your question. [LB486]

SENATOR LOUDEN: Well, yeah, but just during... [LB486]

SCOTT HINCKLEY: What you have is situations that I have to call crews and give them so much time. There are situations where, if I have the van out there, then the other crew comes to work and they don't have a ride to the train because there may not be enough vans to do both of those situations. Sometimes, vans take multiple crews, or they'll go pick up multiple crews and drop some off. There is a coordination effort. Most of the time when that happens, it's because of some incident that was unknown earlier during that trip. It could be a broken rail, it could be a derailment, it could be some other issue that has happened. And so the time frame involved is shorter. And so it's harder to respond in giving out calls, and moving vans and people around. We work very hard at it, because it costs us money. We don't do it because we like to. We didn't want to stop the train, but the federal hours of service law required us to stop the train. [LB486]

SENATOR LOUDEN: Okay, thank you. [LB486]

SCOTT HINCKLEY: And there's new federal hours of service law legislation that's actually proposed nationally to solve some of these problems. We think that's where it should be. [LB486]

SENATOR LOUDEN: Okay, thank you. [LB486]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Hinckley. [LB486]

SCOTT HINCKLEY: Thank you. [LB486]

SENATOR FISCHER: Would the next opponent please step forward. Welcome. [LB486]

ROBERTO MUNGUÍA: (Exhibit 8) Thank you. Good afternoon, Senator Fischer, members of the committee. My name is Roberto Munguia, spelled M-u-n-g-u-i-a. I'm the director of government affairs of the BNSF Railway Company. I'm here to give testimony in opposition to LB486. Just a little comment before I get into my prepared statement. I came here prepared to give testimony on a security bill, and I find myself listening to testimony about a labor-management issue. Senator Fischer cut right to the issue, is this a labor bill, or a security bill? I would say to you that this is a labor bill disguised as a security bill. The issue of hours of service is a labor issue resolved between labor, management, and is governed by the Federal Railroad Administration. I'll tell you during my testimony, as Mr. Hinkley just pointed out, there is a federal bill dealing with the federal hours of service. BNSF Railway opposes LB486 because its provisions will conflict with federal railroad regulations already in place. Additionally, as we speak, the entire area of rail security is currently being invaded in Washington, D.C. Once new

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regulations are developed and adopted, they will further supersede any similar regulations developed on a state level. As some of you may recall, a similar bill to the one before us was introduced last year, LB1152. The language of LB486 is similar to last year's bill with a few exceptions. This bill and this committee voted that bill indefinitely postponed last year. Similar bills were introduced last year in Illinois, Missouri, Indiana, Kentucky, and Ohio, also California. The only state that passed this particular type of legislation was in California, and that is currently being contested in federal district court, centering on the area of federal preemption. Following the events of September 11, 2001, the BNSF, along with other major railroads, developed a comprehensive security plan with the assistance of counterterrorism experts. This plan included the assessment and prioritization of all railroad assets, vulnerabilities, and threats. Based on this assessment, the railroad industry identified appropriate counter measures to reduce risk and restricted access to important rail facilities and information. BNSF continues to work with federal agencies, including the Department of Transportation, Federal Railroad Administration, Transportation Security Administration and others in an effort to continuously improve the security and safety of railways in a management consistent with safety and security of all stakeholders throughout the transportation cycle. Additionally, BNSF participates with these agencies as well as the Department of Homeland Security, Department of Defense in other intelligence matters. A railroad police officer and a knowledgeable railroad analyst worked literally side-by-side with government intelligence analysts at the FBI National Joint Terrorism Task Force, and also in two additional intelligence offices under DHS. I earlier mentioned that this entire area of rail security is currently being debated in Washington, D.C. In the handout marked exhibit number one is a copy of the testimony of Kim Hawley, Assistant Secretary of Transportation Security Administration and Department of Homeland Security which she gave on January 18, 2007 before the U.S. Senate's Committee on Commerce, Science and Transportation. The same testimony was given on February 6, 2007 before the U.S. House of Representatives, Committee on Homeland Security Subcommittee on Transportation Security and Infrastructure Protection. Hawley introduced this testimony saying, I would like to highlight some of the important steps that TSA and Department of Homeland Security are taking in partnership with the Department of Transportation on a transportation network partners. Many of these important security steps are built upon and fortified by a solid safety foundation that has been developed over the years by our transportation partners and DOT. Exhibit number 2 of the handout is a copy of the cover letters, dated February 12, 2007, from the Secretary of Transportation, Mary Peters, to the Honorable Richard Chaney, President of the U.S. Senate, and to the Honorable Nancy Pelosi, Speaker of the House of Representatives. The first sentence of the letter states, enclosed for introduction and referral to the appropriate committee is a bill entitled "Federal Railroad Safety Accountability Improvement Act." Exhibit 3 is a copy of that bill for your review. In addition to the security provisions, the federal bill has provisions for railroad workers hours of service. And that's what we've been talking about, basically, at the beginning of this testimony. Those provisions, as outlined on Section 4 of LB486 will be resolved

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through that federal legislation. As a further update, Erin Daste, counsel for the House Homeland Security Committee, is planning to mark up a rail security bill in subcommittee this Thursday, March 1, 2007. The full committee is scheduled to have a hearing on the bill on March 6, and the full committee will market the bill on March 13. All of these pieces of federal legislation will further supersede anything done on a local state level. And with that, I end my testimony. [LB486]

SENATOR FISCHER: Thank you, Mr. Munguia. Any other questions here? Senator Louden. [LB486]

SENATOR LOUDEN: Yeah, Bob, thanks for coming to testify today. I guess we talked about Section 4, so no need to talk about that anymore. I was going to ask you about Section 11, where they don't leave locomotive equipment running and lock them up. And there was some testimony that there should be some type of security code to get into the computer to run them all of that. Is the railroad making plans to go that route, or are they doing anything about that? Or what do you do about these trains sitting out there running that somebody could turn on and let the brakes go and give it the throttle and go? [LB486]

ROBERTO MUNGUIA: Well, it's not that easy. And right behind me we're going to have an expert give you testimony on the process of securing a locomotive or train out on the main line once it's unmanned. So he'll answer the question much better than I can, Senator. [LB486]

SENATOR LOUDEN: Okay, then you don't know what they're doing at the present time to secure them, so they don't run loose? [LB486]

ROBERTO MUNGUIA: He's going to talk directly about that. [LB486]

SENATOR LOUDEN: Okay. Now, then the next question is, when you have hazardous material, and that's what I've asked before, what do we call hazardous material out there parked on these, you know, out there on these side tracks that are 30 miles from the central yard or something? [LB486]

ROBERTO MUNGUIA: Those are great questions, and I kind of prepared for them. As a matter of fact, I brought a person down here from Fort Worth who's an expert on hazardous material who's going to deal with that directly. [LB486]

SENATOR LOUDEN: Okay. Is that the guy that...your expert right there just now walking in? [LB486]

ROBERTO MUNGUIA: No, that's not him. (Laughter) [LB486]

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SENATOR LOUDEN: Okay. [LB486]

ROBERTO MUNGUIA: Although he could probably do a good job. [LB486]

SENATOR LOUDEN: Okay, thank you. [LB486]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here today. Next opponent, please. Good afternoon. [LB486]

BEN REED: Good afternoon. My name is Ben Reed, R-e-e-d. I am deputy chief of police for the BNSF. I'm here to testify in opposition to this bill. My main concern is this puts security information that protects the railroad in the public domain, which then becomes available to anyone who wants it, and that risks my people, and it risks the employees of the railroad. And any time there is a risk, then that's my job to negate that. A couple of things that were said before I came up here that I want to address. They said that we are not hiring people and we're cutting our forces. And that's just not true. We have hired almost throughout our entire system in our police department. We have realigned forces to address specific threats, that we have done, but we have not reduced any body count in our department. The other thing that keeps being said and asked is, what are you doing to protect these trains that get parked out on track? Well, in truth, coal trains, empty grain trains, loaded grain trains, we don't look at them as a specific threat. But we do care about the stuff that freight trains hold, right, and what is in those freight trains. And if those cars get set out, we're notified immediately. And when they get set out, we take precautions to protect them. I'm not going to discuss those in open session. But if you ever want a briefing, on what we are doing, in private sessions, I will talk to you about that. Without belaboring the point, security for the American railroad system is based on information flow. And we are connected to the intelligence community. And we look at specific threats as they come into the United States. I was thinking today, before I came to this committee, I have already had three briefings this morning on specific things that have happened throughout the world. And I would like to say one other thing about railroad police, if you don't think we aren't doing our job, look at this, they've attacked Spain railroads, they've attacked French railroads, they've attack British railroads. And since 9/11 they have not attacked American railroads, and I think we're very effective. [LB486]

SENATOR FISCHER: Thank you, Mr. Reed. [LB486]

BEN REED: I'll answer any questions. [LB486]

SENATOR FISCHER: Thank you. Any questions? Senator Louden. [LB486]

SENATOR LOUDEN: Yeah. Thank you. And, like I say, we have to knock on wood then that you haven't been attacked because I've...my question has been, what are you

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doing to protect your bridges? And I don't expect you to answer, other than a yes or no, the bridges over the Missouri River, for instance, I mean a little old device clamped on the rail could derail a car or train or something going across that bridge. Do you have cameras and security and people around to see that that don't happen 24/7? [LB486]

BEN REED: In a private session, I'd be happy to answer all those questions, sir. Publicly, we have a plan to protect those bridges. [LB486]

SENATOR LOUDEN: Okay. That's good enough. Now when you talk about your trains that are sitting out there, you know, that are parked along there, when...what you call a hazardous material and what I call a hazardous material are perhaps a dangerous situation, might not be the same. Now when you park an empty coal train that's got ten cars of diesel fuel hooked to the front of it, do you consider that the same kind of a train as a whole empty coal train? [LB486]

BEN REED: I don't see that as the same threat level. Is it a concern? Every train out there is a concern and it's my job to protect it. But I don't see that as a threat as I would if I had a load of chlorine gas sitting in that same location. [LB486]

SENATOR LOUDEN: Now, if you went out there and somebody knocked the bottom off of the...and turned the chlorine gas sitting out there, probably could kill a half a dozen cows or something, but it would vaporize into the air. But if they went out there and unscrewed two of the bottoms off of a couple of those diesel fuel cars, and what...what do they haul? [LB486]

BEN REED: I thought you meant locomotives. You said diesel fuel cars? [LB486]

SENATOR LOUDEN: I said with ten cars of diesel fuel sitting in... [LB486]

BEN REED: Okay, yeah, we would be notified and we'll take actions on that. [LB486]

SENATOR LOUDEN: Okay. Then you have it written down someplace or you're notified that those trains are setting there for a day or two? [LB486]

BEN REED: Yes, sir, I'm notified on every car that's set out. We track them, too. [LB486]

SENATOR LOUDEN: Yeah, I know they are tracked, but I didn't know if anyone paid that much attention to them when they're setting out there. Because you're setting out there, I mean you could dump that diesel fuel in the environment out there and you'll be forever cleaning it up. [LB486]

BEN REED: We...when you say I know you track them, you're thinking probably the

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railroad tracks them. I'm saying my department, away from the railroad, tracks those kinds of shipments. [LB486]

SENATOR LOUDEN: I know what you mean, yeah, yeah. Because that's how you keep from losing them. Okay, yeah. Thank you. [LB486]

SENATOR FISCHER: Other questions? I see none. Thank you very much, Mr. Reed. Next opponent, please. Good afternoon. [LB486]

THOMAS NAGEL: Good afternoon, everyone. My name is Tom Nagel and I'm superintendent of operating practices for the BNSF Railway. [LB486]

SENATOR FISCHER: Could you spell your last name, please? [LB486]

THOMAS NAGEL: N-a-g-e-l. [LB486]

SENATOR FISCHER: Thank you. [LB486]

THOMAS NAGEL: I'm here today to give testimony in regards to LB486 in opposition. I'm based in Omaha, Nebraska and I work for the Colorado and Nebraska divisions. My railroad career began in June of 1969. I have been a brakeman, a locomotive engineer, a train master, a road foreman, and my present position, on five different divisions. I have a total of 36 years of railroad experience. I've been in my present position since November 2001. In my present position I'm involved with air brake, train handling and operating rules processes. I have 12 direct reports who are also involved with the aforementioned issues. First, for clarification purposes, I'd like to describe the process for securing a train against movement, and second I'd like to describe the hours of service requirements in regards to train securement. BNSF air brake and train handling rules, and federal power brake law require that a crew member secure their trains and locomotives when leaving them unattended. All of our crew members are required to be examined on the federal power brake law requirements annually. All train crew members are provided with and are required to have a copy of the BNSF air brake and train handling rules in their possession while on duty. The first procedure I will be describing is for securing trains with locomotives attached. This is the procedure used by crews securing trains that are relieved from duty for various reasons, including not being able to continue working because of on-duty time limits required by the federal hours of service law. This rule is from the BNSF air brake and traveling rules which incorporates provisions from the federal power brake law. Securing an unattended train or portion of a train with a locomotive train attached. To secure a train or portion of a train with the lead locomotive consist attached, perform the steps below. Secure equipment against undesired movement. When securing an unattended train, in addition to hand brakes required to secure a train, now a hand brake, think of a hand brake as the parking brake on your car. Okay? Each car has a hand brake. All

locomotive hand brakes and the lead consist must be applied. When determining the minimum number of brakes required to secure a train, the locomotive hand brakes should be counted toward the total hand brakes required. Use the table provided in Rule 104.14, if the minimum number required is not known. Release all air brakes to ensure hand brakes will prevent movement and secure the locomotive consist, as outlined in Rule 102.3. There is a table provided in the BNSF air brake and train handling rules that is referenced as 104.114. This table gives our crews guidance on how many hand brakes should be applied, depending upon the weight of the train and the grade condition at the location where the train will be secured. The next procedure I will be describing is for securing locomotives without cars. This rule is from the BNSF air brake and train handling rules, which incorporates provisions from the federal power brake law. This is Rule 102.3 that was referenced in Item 3 that is part of the unattended train rule. Unattended locomotives: place the throttle in idle, unless you are protecting the engine from freezing. Place the transition handle, if equipped, in the off position. Think of that as a gear shift lever. Place the generator field switch, or the circuit breaker on the control stand, if equipped, in the off position. Remove the reverser from the reverser slot on the control stand, and place it in the receptacle, if equipped. Do not remove the reverser handle if you need to increase the throttle position to prevent freezing. Apply all hand brakes. Release the air brakes to determine that hand brakes will prevent movement. Make a 20 pound brake pipe reduction after allowing the brake system to charge. [LB486]

SENATOR FISCHER: You're not going to test us over all this, are you, sir? [LB486]

THOMAS NAGEL: In about five minutes. (Laughter) [LB486]

SENATOR FISCHER: Could you kind of move past that maybe. [LB486]

THOMAS NAGEL: I can, yes, I can. [LB486]

SENATOR FISCHER: Thank you. [LB486]

THOMAS NAGEL: All right, I'll go on. [LB486]

SENATOR FISCHER: Thank you. [LB486]

THOMAS NAGEL: Okay. As you can ascertain,... [LB486]

SENATOR FISCHER: We realize there's many steps and it's complicated. Thank you. [LB486]

THOMAS NAGEL: It's very...steps, yes. As you can ascertain from the process I've described, it would be extremely unlikely that an individual who is not trained in railroad

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operation be able to make a train ready for movement and then operate it for any distance. There are other safeguards, such as alerters which will stop the movement. In regards to train securement and the 12-hour on-duty time limit mandated by the United States Congress, when crew members are being relieved under the hours of service law for other operating reasons, they must secure their trains, in the manner previously described, before they have exceeded the 12-hour on-duty limit. In the rare instances when a crew does not have time to secure their train, they must remain with it until they are relieved. Crew members are compensated during this time for the applicable collective bargaining agreement of their craft. They remain on this rate of pay until they arrive at their relieving terminal. Before crew members depart their trains after being relieved, they inform the train dispatchers of the location where the train is secured. Thank you for allowing me to testify. And if you have questions, I'm ready. [LB486]

SENATOR FISCHER: Thank you, Mr. Nagel. [LB486]

THOMAS NAGEL: You're welcome. [LB486]

SENATOR FISCHER: We can see that. Any questions? Senator Louden. [LB486]

SENATOR LOUDEN: Yeah, I think I asked Bob the question a while ago, what you're doing to secure these engines so somebody can't move them and that sort of thing. And you proceeded to outline it. I thought it was rather interesting, but (laughter) other folks didn't. But anyway,... [LB486]

THOMAS NAGEL: I guess you have to be a "technocrat", Senator, to really appreciate it. [LB486]

SENATOR LOUDEN: As you mentioned, there was a whole procedure you had to do. Now, if these guys can learn to fly a 737, they sure as heck ought to be able to learn to move a locomotive, wouldn't they? And I'm wondering what else, I mean, do you have anything at all? Can you cut a wheel in two or something like that? What do you have that will actually keep it so nobody could move that train? [LB486]

THOMAS NAGEL: Well, I mean they have to go through all these procedures that I just explained. The only other...there's a few other ways that we can make it absolutely certain that they can't move it, though you can take the reverser off the locomotive and take it to a terminal and secure it, you can do it that way. But... [LB486]

SENATOR LOUDEN: Now, part of that reason you don't do that is because then you have to hunt somebody up when they go down to move the train again, whether or not they take it along. Sort of like your car keys, if you stick them in your pocket and leave them at the house, why it's not going to do you much good when you go down to the car. [LB486]

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THOMAS NAGEL: That is...yes, sir. [LB486]

SENATOR LOUDEN: Why don't you have a system like that so either it would have to be coded in there each time and be like opening a vault on a...at the bank or something, you'd have to go down there and key in this deal. And you would pick that up when you got your orders to go down to where you was going to move that train. [LB486]

THOMAS NAGEL: We are working on that system. It's part of the ETMS project which is being tested currently right now on our railroad, on the Beardstown subdivision in southern Illinois. You have to enter your employee ID to be able to start the system and move a locomotive. I think it's just a matter of time before we equip our fleet with all computerized screens and systems to get that in place. [LB486]

SENATOR LOUDEN: Now you're telling me... [LB486]

THOMAS NAGEL: It's a matter of time. Not all our locomotive fleet is equipped with computerized controls. [LB486]

SENATOR LOUDEN: Are you telling me then you're going to operate them all remote control, or are you telling me that you got to have people on there that know this? [LB486]

THOMAS NAGEL: No, you got to have people on there that know that. I mean, you could fly an airplane right now by computer, but we still have two people in the last one I was on the other day. [LB486]

SENATOR LOUDEN: Okay, thank you. [LB486]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Nagel, very much. [LB486]

THOMAS NAGEL: Okay, you're welcome. [LB486]

SENATOR FISCHER: Next opponent, please. Good afternoon. [LB486]

PATRICK BRADY: Good afternoon, senators. I'm going to speak in opposition to LB486. My name is Patrick Brady, B-r-a-d-y. I am assistant director of hazardous materials for BNSF Railway, and I've been with the railroad for over 15 years. In that my duties are primarily HAZMAT response, hazardous material response, and hazardous material emergency preparedness. For over the last 15 years BNSF and the BN railroad has provided HAZMAT traffic flows, hazardous material traffic flows to communities, counties, and state governmental agencies. These traffic flows allow agencies to

properly prepare for hazardous material emergencies. These traffic flows are provided upon receipt of written request. And the only thing that we ask is that the receiving agency treats this information as security-sensitive information. The traffic flows provide several things. It provides for all the hazardous materials that we move through a community, the DOT proper shipping name, the hazard class, number of loaded shipments, number of residue shipments, number of loaded intermodal shipments, and number of residue intermodal shipments. This information can be provided in a rolling three months, six months, or twelve month time period. BNSF has a hazardous material emergency response plan, which outlines how we are prepared for, respond to, and recover from emergencies that involve hazardous material. Under this plan, we train our train crews, our maintenance and mechanical forces to the Occupational Safety and Health Administration, OSHA awareness level. Under this level, they are trained how to detect a hazardous material situation, protect themselves, and initiate a response. In addition, BNSF has a Hazardous Material Emergency Response Team that 177 members at 51 different locations that are trained to take offensive and defensive measures to mitigate a hazardous material incident and protect the community and our employees. In addition to our Hazardous Material Emergency Response Team, BNSF has a network of preapproved and prequalified contractors to augment our team. In our emergency response plan we also provide the requirements for local, state, and federal notification of incidents that involve or may involve hazardous material and the method for making those notifications. In order to ensure that communities are properly prepared for emergency involvement with the railroad, BNSF has provided, at no cost, hazardous material training to communities and participates in exercise in local communities. Through this training exercises the information we provide to the communities on how they can safely and effectively respond to hazardous material emergencies. Over the last five years, BNSF has trained over 1,000 responders in the state of Nebraska. Although 1,000 responders trained is a large amount, we realize that we have not trained all the responders affected. This year, BNSF is developing a DVD training program for our first...to provide to first responders at no cost. This DVD program will be provided to all the fire departments in the communities that we travel to, again at no cost, and will contain virtually all the information that we do in the on-sight training. To minimize the risk of release of hazardous material, BNSF is conducting route risk analysis for all of the extremely hazardous material that we transport, which the Department of Transportation calls poison inhalation hazards, which include materials like chlorine. This risk analysis ensures that we are using the safest route for transportation available for these materials. Our risk analysis mirrors that of the approach outlined in the Department of Transportation notice of proposed rule-making, called HM252 and the TSA's proposed rule on railroad security. Thank you for my time and letting me speak in opposition to LB486. [LB486]

SENATOR FISCHER: Thank you, Mr. Brady. Are there questions? I see none. Thank you very much. Any other opponents to the bill? I see no more. Anyone here ready to testify in a neutral capacity? I see none. Senator McGill is not here, and so she's not

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here to close. So we will close the hearing on LB486 and we will take a ten minute break before we start the hearing on LB676. So we'll reconvene about 4:30. [LB486]

BREAK

SENATOR FISCHER: At this time I will open the hearing on LB676. And thank you, Senator Dubas, for waiting while we took a short break here. [LB486]

SENATOR DUBAS: (Exhibit 1) No problem. I think I've been where you are, so...Good afternoon, Chairwoman Fischer and members of the committee. My name is Senator Annette Dubas, that is A-n-n-e-t-t-e D-u-b-a-s, and I represent the 34th Legislative District. LB676 would raise the fine issued for blocking railroad crossings in the cities of the first and second class, as well as unincorporated areas and villages. So basically, it would impact my district and those in central and western Nebraska who encounter blocked crossings on a frequent basis. The antiquated statute that this bill would amend has been on the books since the 1920's. According to this statute the fine for blocking a railroad crossing for longer than ten minutes is a minimum fine of \$10, with a maximum fine of \$100. My legislation would change the minimum to \$500, and the maximum to \$5,000. In addition, LB676 provides a clear enforcement mechanism which has to my knowledge not been in place. You will hear of various accounts today about the perception of how a ticket or a citation should be issued and by whom. There is not a uniform enforcement mechanism being used across the state of Nebraska. Furthermore, the Federal Rail Administration, which is the administration responsible for regulating safety issues related to railroads, has no applicable statute for the state of Nebraska on their books. And I believe this is due to the fact that a clear enforcement mechanism does not exist. You've undoubtedly already read the cases provided to you by the lobby where the railroads will scream preemption. It is true that states have been found to be outside their jurisdiction when writing these laws in cases where they have tried to impose on federal regulations or union contracts. The railroads have, on occasion, mounted preemption defenses, citing FRA regulations and other federal requirements, including the former Federal Railroad Safety Act of 1970 and the Interstate Commerce Commission Termination Act. My amendment addresses clear intent that must be centered on blocked crossings as a public safety issue, and must not interfere with federal regulations. The issue has not been challenged in the Eighth Circuit, which is the busiest region in the nation for freight traffic. In fact, Nebraska is a home to the busiest corridor in the nation which is specifically where these incidents and complaints can be traced. And I think if you look in your packet on maps 1 and 2, you'll be able to see where we're at. My intent is not to involve the employees or to get in the way of any collective bargaining agreement. And I have added language that defines railroad carrier and omits any mention of the word person. I am a huge supporter of the railroads, the jobs they provide, the importance that they have on our economy, the importance that they have as the founding transportation system in the country. And I do not want to wish to ever limit economic development. In fact, I believe this bill will

help force the hand by asking the railroad industry to invest in Nebraska, invest in the infrastructure vital to the heart of their economic success. A former member of the Nebraska State Patrol, Mr. Leon Cederlind, who will testify later, brought this issue to my attention, and I would like to publicly thank him. This is clearly a substantial issue to many of my constituents, and I submit that this is primarily a local public safety issue that is compelling enough that the state should offer legislation. Case in point are the strong arguments made that closing two crossings in Grand Island would pose a serious public safety issue, especially related to public safety vehicles crossing while overpasses are being built. This is a long-standing problem in the Grand Island area, and the Hall County Board and other officials have been trying to find solutions. They went so far as to invest in a study. And you'll find additional articles reported by Tracy Overstreet and others that outline the Grand Island and Hall County issue. The public safety argument is both justifiable and enforceable. It will simply take a legislative body that has the political will to get around the red tape imposed by the railroads self-regulating standards. I'm offering an amendment which guts my original proposal, but the intent still remains the same in the bill. We have held meetings right up to the very last minute to be able to present to you a clear and concise bill. And I am willing to put another redraft together after all the arguments are on the table today. I appreciate the individuals in this room who have taken the time to visit and work with me. And you will hear their main argument is that the state will be preempted. It has not happened that way in all states, and is not always the case. I would like to afford them the protections that they deserve and that are federally regulated. States are very limited in the extent to which they may legislate on railroad matters. Federal law through legislative acts and case law governs most aspects of the railroad industry, including employee matters. There are, however, some areas in which states may have involvement. The Railroad Safety Act of 1970, as amended, states, laws, regulations and orders related to railroad safety shall be nationally uniform to the extent practicable. A state may adopt or continue in force a law, regulation or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of that state requirement. A state may adopt or continue in force an additional or a more stringent law, regulation or order related to railroad safety when that law, regulation or order is (1) necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation or order of the United States government; and (3) does not unreasonably burden interstate commerce. The Federal Rail Safety Act is to promote safety in every area of the railroad operations and to reduce railroad related accidents and incidents. This act contains an expressed preemption provision, meaning states may not regulate rail safety, 49 USC subsection 20106. As stated earlier, however, the act also provides that a state may adopt a law concerning railroad safety until the Secretary of Transportation regulates on the same subject matter. A report submitted for the Federal Railroad Administration on the impact of blocked highway rail grade crossings on emergency response services, in response to Section 9004, of Public Law 109-59, examined the causes, solutions, and examples of projects that reduced the impact of blocked crossings. According to the report signed

by the acting Secretary of Transportation, there are no federal regulations regarding blocked crossings in general. The report suggests that a community concerned with blocked crossings may want to consider several possible solutions, including working closely with the railroad since, in many cases, a solution based on changes by the railroad may be the most cost-effective. Ironically, the bill before you was presented in 2001 by then Senator Roger Wehrbein. I've also heard from several senators that the agreement reached at that time, tabling the bill, has not...it has failed, we haven't seen the successes or the responses to it that we had hoped. Senator Stuhr and the York area held a meeting three months prior to the end of her term, and the sheriff of York County indicated that he is still troubled by this issue. You will find an article in your media packet that includes that printed story by the York Times in January of this year. Also, according to the report, some states and communities have attempted to address blocked crossings through legal action. The report further indicates that the states authority to legislate or regulate blocked crossings is highly contentious and still being defined in the courts. In other words, no matter what statute we pass, the railroads will challenge it in a court of law. However, I submit that we have the jurisdictional authority to regulate blocked crossings when public safety is an issue and because it is not specifically regulated by the FRA. This is a local public safety issue. The Legislature has not completed its service to the people of this state by actively engaging in protecting the safety of the public through legislation. The death of a person caused by a blocked railroad which prohibits emergency personnel from responding should be completely unnecessary to regulate the situation before it occurs. The issue of public safety is primary; secondary to that is the inconvenience. You will hear from many associations behind me that will indicate that this is in fact a clear concern of the sector that provides emergency care to the public in many local situations. I've also provided legal counsel with case law that indicates exceptions to local preemptions. And I believe that the state of Nebraska can absolutely get around the preemption argument with statute that will hold in court of law because other states have done it. Thank you for your time and I'd be happy to try to answer any questions. [LB676]

SENATOR FISCHER: Thank you, Senator Dubas. Are there questions? I have a couple. Concerning the preemption issue, what states have done anything on this issue, and do you have any information on that? [LB676]

SENATOR DUBAS: On specifically the blocked crossing issue, I have a list of states that has statute in place, and they have a variety of ways of addressing fines. Their times range from 5 minutes to, I believe, 20 minutes might have been the biggest amount of time. [LB676]

SENATOR FISCHER: Okay. Do you know how many states? [LB676]

SENATOR DUBAS: I've got 32. [LB676]

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SENATOR FISCHER: Okay. And when you spoke of your amendment, the first page on your packet, is that the amendment you would like us to consider? [LB676]

SENATOR DUBAS: Yes, yes. [LB676]

SENATOR FISCHER: Okay. Do you know how far apart, in Section 2, I believe, how far apart are the crossings in an unincorporated area in the state on average? Do you know? [LB676]

SENATOR DUBAS: I guess I don't know that for sure. [LB676]

SENATOR FISCHER: Okay. Why are the exemptions made in Section 4 on (b) and (c), a grain dealer, and licensed under the Grain Dealer Act, and a warehouse licensee under the Grain Warehouse Act? Why did you want those two to be exempt from this? [LB676]

SENATOR DUBAS: Was that... [LB676]

_____ : That's part of that act. [LB676]

SENATOR DUBAS: That's already in place. [LB676]

SENATOR FISCHER: According to the Grain Dealer Act they're already exempt? [LB676]

SENATOR DUBAS: Yes. [LB676]

SENATOR FISCHER: And the Grain Dealer Act, is that a Nebraska statute? [LB676]

SENATOR DUBAS: Yes, yes. [LB676]

SENATOR FISCHER: Would you have a problem if those two weren't exempt? [LB676]

SENATOR DUBAS: As I stated in my testimony, I'm very willing to work on anything that makes this piece of legislation workable and enforceable. [LB676]

SENATOR FISCHER: Okay. Okay, thank you. Senator Mines. [LB676]

SENATOR MINES: Thank you, Senator Fischer. Senator Dubas, this bill affects cities of the second class, villages, and unincorporated areas in the state. Why not cities of the metropolitan class and primary class? [LB676]

SENATOR DUBAS: I know that there was legislation introduced in the past, and I

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believe Senator Schimek might have carried that legislation. And, I guess, again I was trying to address the issue from my district's point of view. [LB676]

SENATOR MINES: And would you object to an amendment that would include primary class and municipal class cities? [LB676]

SENATOR DUBAS: As I said, I'm very open to making this a bill that will address...it's a public safety issue across the state of Nebraska, whether you live in the cities or the country. So, you know, I'm very serious about this issue being addressed and being addressed in a manner that we can enforce. So I'm open to any suggestions. [LB676]

SENATOR MINES: Okay, thanks. [LB676]

SENATOR FISCHER: Other questions? Senator Louden. [LB676]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Senator Dubas, as I read in here, I mean, you wrote a whole new section of law. And the fine is in here you more or less fine anybody that's out there responsible. Is that going to work? Sometimes those railroad crew out there, I mean, if they thought they were going to have to pay a fine clear up to nearly \$5,000, they might just plumb leave the country. [LB676]

SENATOR DUBAS: Well, that's what we tried to address with the amendment. We are not looking to make the crew or anybody on the train responsible. It's the railroad as a business that we're looking to hold responsible. And so we're hoping that the language in this amendment addresses their concerns. And again, you know, I've talked with the crew members, the crew lobby, and the representatives of their organizations, and my intent is not to hold any of the personnel responsible. That's the amendment we came up with. But again, I'd be more than happy to, if this isn't clear enough, if this isn't addressing their concerns, I'd be happy to work on it to make it...my intent is for the railroads to be responsible. [LB676]

SENATOR LOUDEN: Okay, thank you. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator. [LB676]

SENATOR DUBAS: Thank you. [LB676]

SENATOR FISCHER: Will you be here for closing? [LB676]

SENATOR DUBAS: Yes, I will. [LB676]

SENATOR FISCHER: Thank you. The first proponent, please. And could I have a show of hands of the number of proponents that plan to speak? Total of four? And could I see

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a show of hands of the number of opponents? Five, six? Okay. I would ask that you limit your testimony as much as possible. I do apologize, our first bill went longer and I hate to shortchange you here, so we won't institute the light system. But, hopefully, you'll keep your...yeah, keep your testimony short and to the point. Thank you. [LB676]

JERRY STILMOCK: Thank you, senators. My name is Jerry Stilmock, J-e-r-r-y, Stilmock S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association with membership of about 7,200 men and ladies serving all of Nebraska, appearing in support of LB676, thanking Senator Dubas for bringing this back to the committee. We've supported efforts in the past by Senator Schimek, Senator Wehrbein, and others and, of course, the issue of public safety. In reviewing the early comments of this particular bill, this year in the Omaha World-Herald, one of the responders by the railroad, when asked of the significance of this legislation responded, well, the answer simply is to, when an emergency vehicle encounters a blocked crossing because of a train is for that emergency responder to telephone the railroad in order to request that that railroad train, the train be removed from the crossing. It wasn't more than two weeks ago that I was in front of a different committee when the issue of response time was so critically reviewed by the committee, four to five minutes in terms of responding. And what the impact of any delay in responding may cause to the victim of a fire, to the victim of a rescue call, and to go through the procedure, though it wasn't outlined in the particular newspaper article, but if you will, in your mind, picture, if you will, an emergency vehicle encountering the blocked crossing, the emergency responder contacting the railroad telephone number, the railroad telephone number contacting dispatch, dispatch contacting the train crew, and all of that assuming that all of those connections happen in order to alleviate the problem. I think, if in fact that is one of the position of the railroad, that what you simply need to do is call, call when you encounter, I think it takes too long a time, and there are too many obstacles when lives and property are on the line. In 1999, this committee received a report from a company out of Kansas City that reviewed the overpass issue, and there I thought it brought to light so well. It said the problem with what Nebraska has, because of what's already been recognized as the significant traffic through the state, in order to take just the top 10 percent of problem railroad crossings and put overpasses in there, it's \$166 million. At then the appropriation amount of \$6 million, it would take over 20 years just to take care of those 33 overpasses, without even recognizing the other crossings that were impacted in Nebraska. That's only the top 10 percent. We're talking about a huge amount of money that's never...it's not going to happen that quickly with the way finances are, of course. And we need some remedy, we need some remedy. We need to update a law that was put in place last in looking at the statute, 1927. I haven't had an opportunity fully to look at the amendment. I was coming in testifying upon the green copy. I'd just leave you with a thought, so often in emergency response we're left with this tag, Jessica's Law, where there's a lost child and the system to notify. I beg the senators, let's not have a Mickey's Law, or a Ruth's Law, that something happens and that child or that adult loses their life because the crossing was blocked.

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And, senators, I ask you to advance this bill to General File. [LB676]

SENATOR FISCHER: Thank you, Mr. Stilmock. Is there a question? Senator Mines. [LB676]

SENATOR MINES: Thank you, Senator. You're a lawyer and I respect your opinion. The preemption that we're all going to hear about, what's your position on that? What's your opinion? [LB676]

JERRY STILMOCK: I haven't studied the issue of preemption. [LB676]

SENATOR MINES: Not yet? [LB676]

JERRY STILMOCK: We have a law that's in the books since the early 1900s that addresses the very issue we're talking about. All we're talking about is increasing the amount of the fine and making it applicable to municipalities, add different categories, instead of just unincorporated areas. So we already have something out there, so why hasn't preemption been a problem before, Senator? And maybe it's not fair of me to ask the question back to you. And I'm certainly not expecting an answer, other than to say I haven't studied the issue of preemption. [LB676]

SENATOR MINES: Okay, I understand. Thanks. [LB676]

JERRY STILMOCK: Yes, sir. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Stilmock. [LB676]

JERRY STILMOCK: Thank you, senators. [LB676]

SENATOR FISCHER: Next proponent, please. [LB676]

LARRY DIX: Senator Fischer, members of the committee, for the record, my name is Larry Dix, spelled D-i-x. I'm the executive director of the Nebraska Association of County Officials appearing today in support of LB676. Certainly, I plan to keep my comments very, very brief. We, too, have been here previously, back in the days when Senator Wehrbein introduced legislation, Senator Schimek has introduced legislation. We come at it, certainly, from a safety point of view. We don't really have any comments on the fine or the amount of fine or anything like that, we simply come at it from a safety point of view. And those issues are pretty well explained. When the crossing is blocked, of course, we can't get there to do what we need to do. One other thing that we have heard from some of our law enforcement folks is sometimes it isn't just the crossing being blocked, it is when a train pulls up to a crossing, close enough that the arms go down, if there are arms, and what they see is one of the most dangerous situations

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when that happens is we do have cars going around those arms when that's down. And that, while it isn't a blocking of the crossing, the arms go down, it creates a very, very dangerous situation from a public safety point of view. I would leave you with just a couple of things though. Since 2001, certainly, our office has had fewer calls. And we appreciate the railroads giving us the opportunity to call a number and to alleviate the problem. And our office has had fewer calls with that. But I would tell you, we've got an awful, awful long ways to go. Being limited to that call system, I think Mr. Stilmock identified it very, very well. It's a process, yes, and thank heavens we have the process there. But when we're talking about emergency responses it's a process that just doesn't happen for us quick enough. So I think everybody understand the issue, understands where we come at it from a county point of view, from a public safety, pretty straightforward. Certainly, we would like to alleviate any of these blockages that we have because it does occur pretty much on a daily basis out there. And we're all aware of that. So with that, I'll end my comments and answer any questions anybody may have. [LB676]

SENATOR FISCHER: Thank you, Mr. Dix. Are there questions? Senator Louden. [LB676]

SENATOR LOUDEN: Yes, Larry, this...you, I suppose, know something about law. But in this bill here they talk about railroad carrier shall occupy or block any public highway, street, alley, in any city, the first class city, second class, village, or any unincorporated area of the state. Now, is this going to do these people out in the country any good with their crossings, or does this have to be in some type of village, or does this have to be a public crossing we're talking about? [LB676]

LARRY DIX: Well, just let us full disclosure, no law degree sitting in this chair. So I'm not going to really respond to that. I'm just bringing to the point that, you know, outside of the unincorporated areas, you know, is pretty much where the county property lies. But if there needs to be clarification, certainly we would want that clarified so it includes any of the county jurisdictional areas. [LB676]

SENATOR LOUDEN: You would be for doing something for the rural crossings? [LB676]

LARRY DIX: Absolutely. [LB676]

SENATOR LOUDEN: Would be what they call private crossings out there. [LB676]

LARRY DIX: Yes. [LB676]

SENATOR LOUDEN: Okay, thank you. [LB676]

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SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Dix. Next proponent, please. Good afternoon. [LB676]

GARY KRUMLAND: Good afternoon. Senator Fischer, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB676. I'll just incorporate virtually everything that Mr. Stilmock and Mr. Dix said, and won't repeat that. But I do want to just emphasize that this bill does repeal an existing statute which basically is the statute that authorizes villages to adopt an ordinance to handle this situation. LB676 adopts...makes it a state law that's enforceable by state law enforcement or local law enforcement. So it carries more weight than what the current status is. So we think that does help and it does apply, basically, everywhere in the state, other than within the cities of Lincoln and Omaha. So with that, I will be happy to answer any questions. [LB676]

SENATOR FISCHER: Thank you, Mr. Krumland. Are there questions? I would follow up on Senator Mines' question. Would you want the larger cities included in this bill? [LB676]

GARY KRUMLAND: Well, I would have no objection to including them. But, I guess, that would be what the committee and Senator Dubas would be willing to... [LB676]

SENATOR FISCHER: For example, do you know how many public crossings there are in Lincoln? [LB676]

GARY KRUMLAND: No, I have no idea. [LB676]

SENATOR FISCHER: Do you know how many overpasses there are in Lincoln, viaducts? [LB676]

GARY KRUMLAND: No, I can't tell you exactly. I know there are one, two, I can think of three or four right now. But I don't have the exact number. [LB676]

SENATOR FISCHER: A village right, a smaller city, you said can adopt an ordinance. Does that include the cities of the first class, second class, or village? [LB676]

GARY KRUMLAND: Well, the statute that's being repealed would just apply to villages. [LB676]

SENATOR FISCHER: Only villages? [LB676]

GARY KRUMLAND: And those are municipalities with population between 100 and 800. [LB676]

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SENATOR FISCHER: Do you think if we would update the current statute to include allowing cities to adopt ordinances that that would help with this problem, instead of having another state mandate? [LB676]

GARY KRUMLAND: I would...I mean, it would be better than what we have. I like the idea, though, of putting the violation in state law as opposed to...that seems to carry a little more weight than just simply authorizing an ordinance. But that would be better than what we have right now. [LB676]

SENATOR FISCHER: Why would it carry more weight? [LB676]

GARY KRUMLAND: An ordinance would have to be enforced by the local law enforcement and prosecuted by the city. With a statewide ordinance, it could be done by State Patrol, any law enforcement officer could enforce it. [LB676]

SENATOR FISCHER: How...if we would pass this bill, how do you expect the State Patrol to enforce it? [LB676]

GARY KRUMLAND: Well, they are law enforcement officers, and they could enforce any state law, so... [LB676]

SENATOR FISCHER: Would it be easier to enforce it at the city or county level... [LB676]

GARY KRUMLAND: Well, they could... [LB676]

SENATOR FISCHER: ...where you have officials on site and, I guess, ready to do the job when... [LB676]

GARY KRUMLAND: Um-hum. [LB676]

SENATOR FISCHER: ...they can get to where that train is blocking a crossing, I think, easier than, especially in rural Nebraska, trying to radio a State Patrolman in order to enforce it? [LB676]

GARY KRUMLAND: Well, the local law enforcement would also have authority to enforce it, too, if it's a state law, local police or county sheriffs. [LB676]

SENATOR FISCHER: Under the amendment? [LB676]

GARY KRUMLAND: Well, yeah, under the amendment or under the green copy. [LB676]

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SENATOR FISCHER: Okay, thank you. Other questions? Senator Mines. [LB676]

SENATOR MINES: I have one. Thank you, Senator Fischer. [LB676]

SENATOR FISCHER: We're still awake here. [LB676]

SENATOR MINES: As an attorney as well, when does the ten minutes start and when does it stop? Who determines that? [LB676]

GARY KRUMLAND: I'm assuming that would be a matter of proof that whoever is filing an action under this would have to... [LB676]

SENATOR MINES: Exactly. [LB676]

GARY KRUMLAND: ...offer proof to show that they did observe it, they took time, and they timed it. [LB676]

SENATOR MINES: Well, in other words, I'm blocking a track and doggone it, they're still there, so I pick up my cell phone and I call local police; they come out. And it's ambiguous. When it...there's no clear definition of when ten minutes starts, when ten minutes stops. [LB676]

GARY KRUMLAND: Well, it would be a matter of proof. So it would be when the timing starts, and you'd have to go in and show that. I...the law enforcement officer observed it or some other proof like that. [LB676]

SENATOR MINES: Okay. It just seems difficult to nail down. Thank you. [LB676]

GARY KRUMLAND: Um-hum. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you, Gary. [LB676]

GARY KRUMLAND: Um-hum. [LB676]

SENATOR FISCHER: Are there other proponents? Good afternoon. [LB676]

LEON CEDERLIND: (Exhibit 2) Good afternoon. My name is Leon, L-e-o-n, Cederlind, C-e-d-e-r-l-i-n-d. I'm speaking in favor of LB676. The safety issues and the problems have been covered by the other testimony, so I'll skip that part of it. Statute 17-225 was first enacted in 1907, 100 years ago. It was updated in 1913, 1922, and last updated in 1929. In an article, in the Grand Island Independent, they had things that occurred at different years in the past, one article occurred in 1967, 40 years ago. It says, the Hall County Board of Supervisors agreed Friday to send another letter to the superintendent

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of the Burlington Railroad in Lincoln, complaining about its trains blocking Stuhr Road and other roads too long at one time. The reason I brought that up is nothing has changed in 40 years, nothing has changed in 100 years. The railroads know or should know when they need to block a crossing for more than ten minutes. When this happens, all they need to do is break the train, cut the train, open the crossing to the public again. I've seen this happen many times. The trains will often park with just an engine or a car or two past a public intersection, when moving just a little bit would allow that crossing, public crossing to be open. This indicates to me lack of care or indifference, whatever you want to call it, for the rights of the public. And when you attempt to call them, the railroads have their 800 numbers posted by each crossing, that system does not work very well. You're put on hold for long periods of time. When you finally do get a hold of somebody, they say, well, can't you just drive around it? Which is usually four miles or more. When I started calling these numbers, at first when I'd get a hold of some type of dispatcher they would just deny that they ever blocked a crossing for more than ten minutes. So I started documenting this to show that these are not isolated instances, and it was much longer than ten minutes. I started keeping a pad in my pickup, and this is not a complete list, but it's just a particular crossing near where my farm is where I started writing down times, dates, lead engine number, direction of travel, so I have proof there that it's not an isolated incident, and it's much longer than ten minutes. For instance, in November and December of 2006, I documented 38 times when one particular crossing was blocked by a parked train. And again, this was just when I attempted to cross it, but far short of 24-hours a days, long time periods. Just a few examples, November 6, engine 5712, east bound, it was blocked for more than 2 hours and 8 minutes. November 16, west bound train, number 9697, blocked for more than 3 hours and 10 minutes. There are examples after examples of situations like that. When I would call the dispatchers again to inform them of these problems, I'd usually just get a...someone who sarcastically told how important they were and how much more important things they had to do, and they'd move the trains whenever they were ready to. I started working my way up the railroad's chain of command, and I'd reach people with titles such as superintendent of operations, train master special agent, division superintendent, and finally general manager. Each higher ranked person was much more polite and at least pretended to be sympathetic to my cause, but nothing changed, at least until Senator Dubas introduced LB676. The railroads in LB676 are also exempted from liability from blocking a crossing when it is unintentional or beyond their control, under Section 1, paragraph 5. So to me that takes away the concern of railroads being penalized when it's not their fault. My name was used in some newspaper articles. I was contacted because of my working on this and the fact that I was with the Nebraska State Patrol for more than 25 years. After I got out of the State Patrol, I worked for a short time for one of these railroad leased van cars that shuffles the crews around, so I was able to get it from that perspective, too. Anyway, my name got in some newspaper articles about this issue. And upon hearing my name and any type of business of whatever, many people have told me their horror stories about trains blocking public crossings and the problems created and so on. It seems to be a

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universal problem in Nebraska wherever there are railroad tracks. And some people seem to think that, well, they're the trains, they're the railroads, they can do anything they want. But the railroads, like anyone else, is not above the law. I don't believe it's a matter of ability to comply with the law, but it's a matter of will. And this LB would provide that will. I would hope that the railroads would never have to pay a penalty for the violation of this law. This is just asking them to be good neighbors and putting some teeth in it. And the fact that they are fighting this, to me, indicates they fully intend to continue to park their trains on public crossings, and either ignore the law or pay the very minimal fine. I feel that LB676 needs to be acted into law to protect the rights of the citizens of Nebraska. Thank you. [LB676]

SENATOR FISCHER: Thank you, Mr. Cederlind. Are there questions? Senator Louden. [LB676]

SENATOR LOUDEN: Yes, Leon. Where do you live at? [LB676]

LEON CEDERLIND: Right now I live east of Grand Island, outside the city limits. And I have a farm about six miles west of Aurora. I'll be moving there and building a house out, moving there late spring. [LB676]

SENATOR LOUDEN: When you told me there was a west bound train, now was that west of Grand Island? [LB676]

LEON CEDERLIND: No, this is in that area, it's a double track, and I just wrote down whether the train happened to be moving west bound or east bound. [LB676]

SENATOR LOUDEN: Well, my question would be, how come if it was west bound, if they were that close to Ravenna or something, how come they were parked there for three hours there? Was the crew gone, or were they...did they still have a crew on that train? [LB676]

LEON CEDERLIND: That particular instance I do not know. I made notes on that particular one of three hours and ten minutes at the time that I attempted to call one, two, three, four, five different type of different people, worked my way up the chain of command to find out what the problem was. And I was just put on hold. This was blocked from 12:49 until 3:59 in that particular situation. And they finally returned my phone call at 4:11. And I said, yeah, the problem is taken care of, it moved 12 minutes ago, which is a very typical situation. They eventually get back to you, but long after the problem. Now if I needed a fire truck or an ambulance or whatever during that three hours, it would be a long delay. And another thing, where I live when there's a snow storm I cannot get out of there, except the one road; the others are blocked because of snow drifts. There's one road that was blocked so bad, the end of November of 2005, that the snow...county snowplow got stuck twice. The lay of the land shows that my

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experience in nine years there that you can get out that other road, there would be no problem at all if the train wasn't parked on it. [LB676]

SENATOR LOUDEN: Okay, thank you. [LB676]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB676]

SENATOR AGUILAR: Thank you, Madam Chair. Mr. Cederlind, thank you for coming down today. Your testimony is very important to what decide here. There was recently a survey in Grand Island, a proposal to move the UP track clear outside the city, would bypass the city entirely. Were you supportive of that proposal? [LB676]

LEON CEDERLIND: I attended all those hearings regarding that. And I was fairly neutral on that issue. It wouldn't have affected me either way. Whether it would have been moved around it to the south or north, or going through it, I think there was also information regarding overpasses or underpasses to be able to allow emergency vehicles, the general public, anyone else to get around the tracks. And when you have enough of those, that addresses that problem. [LB676]

SENATOR AGUILAR: It wouldn't have affected you. But wouldn't it have meant a lot of public safety within the city of Grand Island? [LB676]

LEON CEDERLIND: Within the city of Grand Island, yes. But by having more overpasses and/or underpasses, it would also allow access to hospitals, fire departments, and so on within the city of Grand Island. [LB676]

SENATOR AGUILAR: And we have underpasses now in Grand Island. [LB676]

LEON CEDERLIND: We have two, yes. [LB676]

SENATOR AGUILAR: Yeah. The incident that you referred to where the crossing was blocked for three hours, do you know what the cause of that was? [LB676]

LEON CEDERLIND: No, I never did get an answer to that. In some other situations where it was not quite that long, but still more than two hours, the train crew had run out of hours. I was advised that they had spent all the time they were allowed to and had to stop. But the people in the upper echelon at the railroad also told me that they knew before they stopped that they could have broken the train, cut the crossing before their hours were up, and they said they'd look into the matter as to why the train crew did not do that. Another problem I frequently come across is on Highway 34, west of Aurora, there's a two mile stretch where there's no public roads. There's an overpass that goes across, over the top of the railroad. The trains can park there all day, all night for weeks, and no one would ever care because they wouldn't be blocking any public crossing. To

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me it's just a matter of consideration for the public that they don't park them there instead of parking...instead of blocking a public crossing. And the teeth in this LB676 would force them to be more considerate. [LB676]

SENATOR AGUILAR: And I agree with what you're saying, but we still don't know, and maybe we can hear from the railroads later on why that happens. What I'm saying is if it was one of these exempted areas that caused that train to stop in the first place, this bill wouldn't impact that one way or the other, would it? [LB676]

LEON CEDERLIND: That's true, but when I did call them, I did ask, do you have an emergency somewhere? And they said they didn't. However, in the case of an emergency, for instance, this last weekend there was a derailment in Broken Bow. About a month and a half ago there was a derailment in Gibbon. When they knew the trains were going to be blocked for a long period of time in both of those situations, the trains weren't very considerate. A month and a half ago, all up and down the Union Pacific track there were trains parked, but they were either parked short of the public crossings, or broken at the public crossing. They did give consideration. That's what we're looking for. And this last one at Broken Bow, in the vicinity of my farm there were three trains parked there all day Sunday again. They had their trains broken to leave the public crossings open. I thank them very much for that. That's consideration and that's what we hope they continue to do. [LB676]

SENATOR AGUILAR: Thank you. [LB676]

SENATOR FISCHER: (Exhibits 3, 4, 5) Other questions? I see none. Thank you very much. Appreciate you coming in today, Mr. Cederlind. Are there other proponents? I do have two letters of support, Mr. Cederlind also sent one, but he was here at the hearing; I have two letters from people who are not present: Dick Ternes from Columbus is in support of the bill; and also Nels Sorensen from Jefferson County is in support of the bill; Senator Dubas has just handed me another letter of support from Rick Boucher, the lobbyist for the Nebraska Sheriffs Association. And we will have that entered into the record. Next, are there any other proponents for the bill? Next, we'll have the opponents. Would the first opponent please step forward. And not to stifle any testimony, but if you could be brief, that would be wonderful. [LB676]

ROBERTO MUNGUIA: My name is Roberto Munguia, spelled M-u-n-g-u-i-a. I'm the director of government affairs for the BNSF Railway. I'm here to give testimony in opposition to LB676. First of all, there was an amendment to this bill that I was given a copy of as I was sitting down here waiting for the hearing to begin. So I can't...obviously, I didn't have the time to digest the amendment. But at first blush, there are a couple of issues that just jumped right out at me. Number one is the amendment would take away responsibility from any crews for blocking a crossing. So I guess what that tells me is that if management tells a crew to go ahead and cut the crossing, and they don't do it,

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again the crew is not responsible, that doesn't make sense. Local public safety hazard, if we're talking about crossings across the state of Nebraska, I guess I don't understand where the definition of local safety hazard comes into play? One other thing before I get into my written testimony is last year Senator Baker passed LB79, and that was a redundant crossing bill. And right now the Department of Roads is going through an analysis to find out exactly how many crossings are going to be affected by that particular legislation. There will be crossings that will be closed as a result of that. And I think in part that's going to help the blocked crossing situation. As far as my testimony, and again this is based on the original bill. Some of this I understand is being changed, but again I haven't had an opportunity to digest that. We oppose the bill, BNSF Railway, on four different areas. First of all, we are already taking some proactive measures to minimize and eliminate blocked crossing problems. Number two, there are no provisions in the bill that allows for moving trains or trains that are being reassembled after being separated at a crossing. Number three, excessive monetary penalties. Number four, it conflicts with federal interstate commerce regulations. The challenge of the industry is to deliver the nations commerce as safely, effectively, and efficiently as possible. The commerce railroads transport touches everyone of us on a daily basis. The clothing you might have purchased at your local department store probably came by rail. Coal needed by utilities to produce electricity for your home definitely came by rail. The 10,000 plus tank cars of ethanol shipped out of Nebraska to help reduce our dependence on foreign oil was shipped by BNSF in 2006. A million bushels of corn produced by our rural neighbors was shipped to competitive markets by rail. And the critical military ammunition and equipment needed by our sons and daughters to deal with conflicts in other lands was shipped by rail. The railroad industry rises to meet these challenges 24 hours a day all year long, regardless of the weather conditions. The movement of BNSF fleet of 6,300 locomotives and 220,000 freight cars on its 32-miles (sic) of track is orchestrated by our central dispatching office in Ft. Worth, Texas. Our system is not perfect and trains do not always flow as we plan. And yes, we have blocked highway rail crossings and we apologize for that. We do understand the inconvenience these blockages may have caused our neighbors, and we are trying to minimize these problems as much as possible. We are not ignoring the problem. So what are we doing? First of all, we have created a computer reporting system that monitors the frequency of blocked crossings by location. This system will allow us to focus and develop corrective measures at specific highway rail crossing locations that are frequent problems. Secondly, we are improving our operational planning on the movement of our trains. We have had communication with our train dispatching offices and instructed them to work closely with our train crews so that both parties will have a clear understanding as to how long a train will be held at a particular crossing. This practice will give the crew members better information to evaluate when a train should be separated at a crossing. Thirdly, we have heightened awareness on the part of our operations supervisors and our train crews about this issue. Instructions, both verbal and written, have been given to our train crews that our trains need to be separated, unless there is a mechanical breakdown or for federal railroad administration safety

requirement when they anticipate or become aware that a train will be at a highway rail crossing for longer than ten minutes. And finally, BNSF continues to invest in capital expansion projects to improve train velocity by means of double tracking our main line between Lincoln and Alliance. During 2005, we spent \$125 million, in 2006 we spent \$93.6 million, in 2007 we currently plan to invest over \$56 million in double track projects. As information our objective is to double track the remaining 60 miles of single track by the year 2020. These measures will help eliminate the blocked crossings in the future. As I further...well, as I understand the original bill, it had again no provisions for a moving train or the recoupling of trains at a crossing. Under this bill if a train is moving through a crossing and it takes longer than 10 minutes it will be in violation of this particular act and subject to a fine of \$5,000. On average it takes 8 minutes and 20 seconds for a coal train traveling at 10 miles an hour to clear a crossing. If that same train has to slow down to observe FRA conditions or compliance with federally mandated signals, there is no way that that train will clear in the ten minutes provision. Or if a train blocked a crossing for five minutes, then it begins to pull, in all likelihood it will not clear that crossing stipulated by this bill. Additionally, if a train has been separated at a crossing and it takes longer than ten minutes to put back together, again we are in violation of this and subject to a fine of up to \$5,000. As to the fines, where is the justification for a fine up to \$5,000? This amount appears to us to be absurdly excessive. By comparison, if an individual is found in violation of a Class I misdemeanor the penalties associated with this violation are up to one year in prison or a \$1,000 fine or both. Examples of a Class I misdemeanor are assault in the third degree, motor vehicle homicide by a person not under the influence of alcohol, sexual assault in the third degree. I believe you'll agree with me that these fines outlined in this bill are excessive and arbitrary. In conclusion, I ask that the committee carefully review the language of LB676 because the unintended consequences of this bill will impact train speeds and their movements, which are in direct conflict with provisions established by the federal government on interstate commerce. That concludes my testimony. [LB676]

SENATOR FISCHER: Thank you, Mr. Munguia. Any questions? Senator Aguilar. [LB676]

SENATOR AGUILAR: I think you touched on two of my questions, Robert. Number one was if a train is stopped for any reason, it comes to a complete stop, whether it's an emergency or whether it's because the conductor wanted to stop off and see his girlfriend, and it's a mile and a half long. In the city how long will it take to clear an intersection, physically? [LB676]

ROBERTO MUNGUIA: Well, good question. And I anticipated that. I have a fellow right behind me who is the trainer for new hire conductors, and he'll walk you through all the mechanics of breaking a train and reassembling it. But it will take longer than ten minutes, Senator. [LB676]

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SENATOR AGUILAR: Because you talked about ten miles an hour, well if it's at a complete stop, it doesn't take off at ten miles an hour. It takes off a lot slower than that. [LB676]

ROBERTO MUNGUIA: Exactly. [LB676]

SENATOR AGUILAR: Now the other question was okay, we got the issue of breaking a train. So we open up the intersection. At some point in time you have to rehook and get those cars out of there. So you're going to back across the intersection, hook up, you're going to be at a complete stop again. How can you physically clear that intersection in ten minutes? [LB676]

ROBERTO MUNGUIA: You can't, not in ten minutes. [LB676]

SENATOR AGUILAR: So there's no way... [LB676]

ROBERTO MUNGUIA: You just can't do it. [LB676]

SENATOR AGUILAR: ...you can stop from paying that \$5,000 fine? [LB676]

ROBERTO MUNGUIA: Absolutely. The trains that we're looking at, and again these are coal trains that I'm talking about, but they're running from 135 cars to 150 cars in length. So when somebody has to cut that crossing, and again I don't want to steal the thunder of the person behind me, that person may have to walk half the distance of that train to cut that crossing. It takes a while, and if the wind is blowing, and it's snowing like it did the other day, it's going to take longer than ten minutes. You just can't do it. [LB676]

SENATOR AGUILAR: Thank you. [LB676]

SENATOR FISCHER: Other questions? Senator Louden. [LB676]

SENATOR LOUDEN: What's the rule now for how long you can block a crossing? [LB676]

ROBERTO MUNGUIA: The rule we try to use is again the ten minutes. But understand that that...that's...as I mentioned, that's difficult to do because of the, number one, the number of trains out there. [LB676]

SENATOR LOUDEN: But I mean in statute now it's ten minutes? [LB676]

ROBERTO MUNGUIA: I don't know if it's clear...okay, I've got somebody that can deal with that specifically. [LB676]

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SENATOR LOUDEN: Okay. In other words then, it isn't the matter of the minutes, it's the matter of whether it's a \$50 fine or a \$5,000 fine. [LB676]

ROBERTO MUNGUIA: Well, it's both, Senator. Ten minutes is... [LB676]

SENATOR LOUDEN: Okay. Now one other question, how long can you block private crossings? [LB676]

ROBERTO MUNGUIA: That's a good question. I... [LB676]

SENATOR LOUDEN: It's my understanding you can block them as long as you please, that's what I was told by a guy on the engine one day that if it didn't have a cross buck there, that he could... [LB676]

ROBERTO MUNGUIA: Well, that is not our practice. But... [LB676]

SENATOR LOUDEN: That was...it could be blocked as long as he felt like blocking it. [LB676]

ROBERTO MUNGUIA: Again, I have a person who will talk about the whole issue of preemption and crossings. And I believe she'll be able to answer that question. [LB676]

SENATOR LOUDEN: Okay. But you do agree that there's a problem here, or else we wouldn't be sitting here discussing this at 5:30 at night. [LB676]

ROBERTO MUNGUIA: Absolutely, absolutely. And we're not here to ignore the problem. We're trying to do something about it. I mean our business is moving trains. There's a huge demand right now for coal, there's a huge... [LB676]

SENATOR LOUDEN: Now next question. If you have...if these trains are getting so long that you can't walk from halfway to the other in ten minutes then, why don't you put a caboose on there and put a crew at the back end? [LB676]

ROBERTO MUNGUIA: If you have a caboose on the rear end and you have to walk half the distance of the train, you're in the same... [LB676]

SENATOR LOUDEN: Well, it's halfway, at least they don't have to walk two-thirds. Besides that, he can stand still and the caboose can pick him up when it comes by. [LB676]

ROBERTO MUNGUIA: Well, I've got somebody that will talk about that. But the caboose issue has been dealt with in the past. And I don't think we'll ever go back to cabooses. [LB676]

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SENATOR LOUDEN: Well, probably not, but I mean the problem can be solved. It's a question of whether management wants to. I mean, it can be solved easier than what it is. It's just a question of whether the management wants to. I mean, you get down to it, bottom dollar is what you're talking about. [LB676]

ROBERTO MUNGUIA: It's not whether management wants to or not, we definitely want to keep our trains moving. Our measure of success is by velocity. And the only way we get that is to keep the trains moving. Mr...Senator...came up and testified, in due respect to him, he called me, we went out to look at that particular issue that he had, and he has three crossings within a mile of each direction of his property, literally from his house he can open the door, look outside and decide which crossing he wants to use. There are a number of crossings out there at one mile increments. That's no excuse to block the crossing. But with this double tracking that we're doing, I think that's going to relieve a lot of the issue. Grade separation is another one, of course, you're talking about serious money or closing crossings. [LB676]

SENATOR LOUDEN: Okay, thank you, Bob. Thanks for testifying. [LB676]

ROBERTO MUNGUIA: Sure. [LB676]

SENATOR FISCHER: Other questions? I have a couple here. In regard to Mr. Cederlind, you said you went out to his place and looked at the crossings. Are those public crossings? [LB676]

ROBERTO MUNGUIA: Yes, ma'am. [LB676]

SENATOR FISCHER: Are they covered by current law or under this bill? Under current law you can't block a crossing for ten minutes on any public highway, street, alley in any unincorporated town or village. [LB676]

ROBERTO MUNGUIA: I'm not certain whether that would apply. I couldn't tell you, ma'am. [LB676]

SENATOR FISCHER: I guess I would question, and we'll have counsel look into this, if it currently applies in a situation like that. I'm interested when you talk about how many crossings per mile. Do you have any average on how many crossings there are, and I don't know how you define public crossing? Is it how somebody gets to their house in the country? Is it how they get to a pasture in the country? What is a public crossing that the railroads are supposed to keep open? And how far apart are these? [LB676]

ROBERTO MUNGUIA: Well, it depends on the area, as far as, you know, how far the crossings are. I know in the York County area there's a crossing about every mile.

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[LB676]

SENATOR FISCHER: So how do you keep them open when there's a crossing every mile and you have trains that are a mile to a mile and a half long, and as you brought up before, when you decouple them and everything, the time involved there. We heard on the last bill the problems with crews on the 12-hour limit that they can work and that trains just park then. So I guess I just have a lot of questions on how you can improve under this bill or under current law? What can railroads do and what can management do? [LB676]

ROBERTO MUNGUIA: Well, I did mention the fact that we are working... [LB676]

SENATOR FISCHER: I had like 20 questions in there, didn't I? [LB676]

ROBERTO MUNGUIA: We are working, when I say we, I'm talking about management is working directly with train dispatchers and also the operating crew, particularly since this bill came out, to make them aware that, you know, they have to cut that crossing within the required amount of time. When a train goes dead on the hours of service on the main line, they're blocking a crossing, if there's no other crew that's going to relieve them within a short period of time, they are instructed to separate that crossing. [LB676]

SENATOR FISCHER: How many crossings, do you think, will be closed under LB79 that was passed last year? [LB676]

ROBERTO MUNGUIA: I heard... [LB676]

SENATOR FISCHER: Do you have any idea what DOR is coming up with? [LB676]

ROBERTO MUNGUIA: The ballpark I heard was in excess of 200 crossings. [LB676]

SENATOR FISCHER: Do you think that will help address this situation? [LB676]

ROBERTO MUNGUIA: It will help, it won't resolve it, no, but it will definitely help. [LB676]

SENATOR FISCHER: Senator Stuhr, if I remember correctly, was opposed to that bill and didn't want crossings closed. But yet she had a problem with crossings being blocked. If I came to you and said, I don't want any of my crossings closed, Broken Bow has, what, seven, seven crossings or something in town? [LB676]

ROBERTO MUNGUIA: I'm not sure. [LB676]

SENATOR FISCHER: We'll discuss Broken Bow sometime. [LB676]

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ROBERTO MUNGUIA: Sure. [LB676]

SENATOR FISCHER: But there's seven crossings in town, they fought a viaduct for years. They don't want to close any crossings, but they're really angry over noise, over trains blocking crossings. What would you advise me to go home and tell my constituents in Broken Bow? [LB676]

ROBERTO MUNGUIA: A problem that we face, not only throughout Nebraska, but through all our system and that is closing crossings. No one wants to cut a crossing, excuse me, remove a crossing because of the inconvenience. We've worked with Broken Bow, we've worked with a number of communities to say, okay,... [LB676]

SENATOR FISCHER: Most in the 43rd District? [LB676]

ROBERTO MUNGUIA: I'm sorry? [LB676]

SENATOR FISCHER: Most in the 43rd District? [LB676]

ROBERTO MUNGUIA: I couldn't tell you for sure. But what we try to do is say we'll come in and we'll build a grade separation, an overpass. We will contribute X amount of dollars, the Department of Roads will contribute X amount of dollars. But in order for us to do that, you need to help us out and maybe eliminating X crossing and X crossing. No, we can't do that. Well, you can't have your cake and eat it, too, I guess, Senator. We've gone to Broken Bow. We wanted to put in overpasses, but it's been voted down. So what do you tell them? I'm not...I can't tell you, I don't know. [LB676]

SENATOR FISCHER: So I need to tell my constituents that it's a difficult situation the way we have freight moved across the country currently to keep every crossing now open in the state open during the transport of that freight. [LB676]

ROBERTO MUNGUIA: It is difficult, but we will work with every community if they want in fact to close crossings. We will pay them X amount of dollars to close that crossing. And if in fact there are enough crossings in there, like I said, two crossings, three crossings, we'll work...we've worked with the Department of Roads to try to get some grade separations in there. You know this thing of trains we need to understand that that's going to be a growing situation. And as Americans we have an insatiable appetite for products produced in China, India. And all that stuff is coming off the PNW, into California, and we're shipping it across the country. Coal, ethanol now is a big thing, corn is going to be even bigger. So there is a lot of demand for rail services. And unfortunately, yes, we are going to block some crossings. We're not ignoring the problem. I guess that's the main thing I want to get across here is that we are not ignoring it. You have our attention. We're trying to be good corporate neighbors. [LB676]

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SENATOR FISCHER: How many complaints do you receive on average a month? [LB676]

ROBERTO MUNGUIA: I, myself? [LB676]

SENATOR FISCHER: Burlington Northern Santa Fe. How many complaints do you receive a month average? Do you know? Or is somebody coming after you that might know? [LB676]

ROBERTO MUNGUIA: I wouldn't know because they don't come to me and I don't have...I couldn't answer that, Senator. [LB676]

SENATOR FISCHER: If you could get that information to the committee, that would be appreciated. [LB676]

ROBERTO MUNGUIA: Okay. [LB676]

SENATOR FISCHER: Any other questions? Senator Hudkins. [LB676]

SENATOR HUDKINS: Thank you. Mr. Munguia, there is a situation in Saunders County. There is a bridge crossing, but it's on a county road, and the railroad is taking this crossing out without following the statutes on how to close a crossing. Do you know anything about that? [LB676]

ROBERTO MUNGUIA: Yes, and before I came to this hearing I got a hold of the appropriate person and followed up on that. We talked to him last year, and I think we communicated to you that we were going to get the situation resolved. I told him the fact that I'm going to be here today and chances are that might come up, we are looking into that again. And I believe the fellow will be calling I think it's the county supervisor or the county commissioner out there. But I will follow up with that person, Senator. [LB676]

SENATOR HUDKINS: Could you also follow up with me, so I know when this is being taken care of? [LB676]

ROBERTO MUNGUIA: Absolutely, you bet. [LB676]

SENATOR HUDKINS: Thank you. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you very much. Next opponent, please. Good evening. [LB676]

MARK ATHEY: Good evening. Is this evening now? [LB676]

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SENATOR FISCHER: Yes, it is. [LB676]

MARK ATHEY: My name is Mark Athey, spelled A-t-h-e-y, and I'm the terminal superintendent for BNSF, here in Lincoln, Nebraska. And my responsibilities are the railroad operation in the immediate vicinity, here in Lincoln. I guess I am here just to talk about the measures we're taking here locally, here in Lincoln, to try to alleviate some of the concerns and this problem. The trains in this immediate environment of Lincoln are dispatched by a control operator located in our tower control at West O Street. These operators have instructions to ensure that we dispatch trains so that we keep trains moving over crossings. And if this operator fails to do this, we'll make them subject to disciplinary action. However, there are circumstances where crossings may be blocked by a train. Primarily, here in Lincoln, it would be to a train that is making some type of switching move. For instance, a train sitting out a bad order car could take 10 to 15 minutes per car to set out a bad order car. Second circumstance of when a crossing may be blocked is when a train has had a locomotive, car, track, or some type of signal breakdown that's caused that train to be stopped. And in that circumstance our tower staff are required to call the 911 operator in order to inform rapid responders of our situation and the estimated time it will take to clear the crossing. Twice I've met with our neighborhood, here at First Street, to address their concerns. Their primary concerns were due to the excessive noise due to the whistle regulations, but also due to the blocked crossing issue. And in that the way I've responded with that is I've got exact track measures from our track department, given that to our control operators so that they know exactly what length of train they can fit between crossings. We've also put a mechanism on the First Street crossing gates in order to measure the length of time we have the crossing gates engaged. And since the time we have instituted this policy, this may have happened, but I'm not aware of a single train that we have, through an operating decision, have allowed to come in and stop over a crossing. We're committed here locally to make sure that the crossings are kept clear. And with that, that's the end of my testimony. Open to any questions you may have. [LB676]

SENATOR FISCHER: Thank you very much, Mark. Any questions? Senator Schimek. [LB676]

SENATOR SCHIMEK: Yes, thank you, Madam Chair. I feel as if I should make a comment at this point because I really do appreciate the kinds of things that you and the railroad have been working on. I haven't heard any complaints lately, other than the noise one as you mentioned it. It sounds as if maybe even that is getting some attention and might find a way of resolving at least to some extent. So, you know, I'm keeping my fingers crossed. I think the things that you've outlined I did not know all of that, so I'm very appreciative that you've informed me at least of what's going on here in Lincoln. So thank you. [LB676]

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MARK ATHEY: Thank you. You know, we take it very personally. And here, I mean, there may be some people here in Lincoln here. But if there's a train blocked across a crossing, there's a number that I'd like you to call, and that's 458-7567, and that's our on duty terminal manager. And that's the senior operating officer in charge of our terminal. And that number is manned 24/7. And then they will rectify the situation. A lot of times these are unforeseen events, a break into a locomotive failure, and we can give some idea of how long that crossing will be blocked. [LB676]

SENATOR SCHIMEK: I do still shudder, though, when I hear about things like three hour blockage of crossings in some of our rural areas. That needs to be addressed very seriously. So maybe they...the rest of the railroad people who have responsibilities can take a leaf out of your book. [LB676]

MARK ATHEY: I think we all have that same concern. [LB676]

SENATOR SCHIMEK: Thank you. [LB676]

SENATOR FISCHER: Senator Aguilar. [LB676]

SENATOR AGUILAR: Thank you, Madam Chair. Thank you for what you're doing here in Lincoln. My question is, it sounds like you're being extremely pro-active on this issue. Do you have any knowledge if the same thing is happening in other large cities, for instance Grand Island? Or can that be initiated? [LB676]

MARK ATHEY: Well, I can't speak specifically for Grand Island. But before I took this position here in Lincoln, I've been here in Lincoln about two years, I worked in our dispatching center in Ft. Worth. And they dispatch, you know, of course, part over the Ravenna sub, which is Grand Island, York, that whole area. Of course it was a five state area which I was responsible for. And it sounds like a broken record, but it is taken very, very seriously. Each dispatcher knows exactly where each of the crossings are, and occasionally they'll make a mistake thinking that this particular size train can fit between these two crossings. And every once in a while they'll make a mistake there. Some unforeseen event will occur that causes a train to stop for longer than what they anticipated. But it is...it may sound like the railroad is giving lip service, but that's...it's taken very seriously. We, most of the communities, in some way or form, have gotten phone numbers of people and therefore have been able to get people's attention. But understand, you know, I live here in Lincoln, and we have a train master who lives in Grand Island. So, you know, they're part of the community, too. So they...we all have the same emphasis. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB676]

MARK ATHEY: Okay. [LB676]

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SENATOR FISCHER: Next opponent of the bill, please. Welcome. [LB676]

DENNIS GENGLER: Madam Chair and committee, members, my name is Dennis Gengler, D-e-n-n-i-s, last name G-e-n-g-l-e-r. I'm a manager of field training for the BNSF Railway, working for the Technical Training Center in Overland Park, Kansas, although I've resided in Nebraska since the seventies. But my duties now have taken me around the system to do training on every division. My primary responsibilities are training in the field operations, of course, with conductors, engineers, and certification, including new conductors that we hire on the railroad. Two points I want to make, and I'm careful not to duplicate previous testimony. But this bill, legislative bill as an opponent of LB676 with the ten minutes in regard to my experience of having worked as a conductor on the railroad in the first 19 years of my career, and ten minutes, defined moving or stopped. We do have trains, on a regular basis, moving through Nebraska with 150 cars, that are approximately 8,300 feet long, so in excess of a mile and a half. And with...getting a calculator out, I'm sure that we could...it would be...at exactly a mile and a half at ten miles per hour is nine minutes so we can...that train would block the crossing. So any point in operations, for instance, one signal we can play with is called the stop and proceed, where I would come up to the signal and I'd stop and proceed at a restricted speed. With a train of tonnage of 150 cars, and a mile, over 21,000 tons, just the momentum of stopping and beginning again, we would be in violation of this as written. So best case scenario, I mean we can look at it from that perspective. Worst case scenario are the things, the unplanned events with service interruptions ahead of me, in other words on a train in front of me, I, as a conductor, would have to, now after being stopped, make my way back to the crossing and make the cut of the crossing. There have been times that I worked as a conductor that I might add that I have gone back to the crossing and remained there and nobody has showed up at the crossing, so to speak, and if they had I was in position to make the cut. But the process then to go back and cut the crossing that requirement that was given in testimony earlier, of course, with securing the train, applying the brakes, applying the air brakes, and then putting the sufficient number of hand brakes on, and then releasing the air and then, to make sure the train stays put, that those hand brakes will hold it, then to set the air again and make the separation. This all results in a lot of time and logistics as far as walking there and then the process of doing the work while I'm there. So cutting the crossing, then of course there are things to do with the safety appliances at the crossings with the crossing lights and gates. We would have to make the cut sufficient to provide safe view as well as not interrupt the operation of a crossing, lights. If I'm on main track one, and on an adjacent main track that warning would not be provided. So there are...that's the worst case scenario, and just the logistics of walking back in those unplanned events, so service interruptions we refer to them, things as simple as an air hose explodes and the air pressure in the train line is exploded and puts the train in an emergency and we're stopped. Now to diagnose the problem and repair it, these are all things that are unplanned events in that process. Having been an examined and

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promoted conductor since the seventies and having worked on those jobs and experienced literally with all aspects, my seniority was here on the Nebraska division. So there were crossings, when I worked on a regular basis through subdivisions, I knew the footage of every crossing. And when I was planning ahead I would avoid, and we have a specific rule that says we don't block crossings longer than ten minutes when possible. And I've previously described some of those incidents that are unplanned and it's just impossible to comply with the ten minute rule. With that, any questions? [LB676]

SENATOR FISCHER: Thank you very much, Mr. Gengler. Are there questions? I have one. Oh, Senator Louden, you...no, you go ahead, Senator Louden. [LB676]

SENATOR LOUDEN: When you mentioned, you know, blowing an air hose or something like that, I think that's in there, if it's due to an emergency condition or something like that. So I think that part is probably clarified. I have no problem with that. What I'm wondering is, what's in statute now when everybody is worried about the ten minutes? In my understanding that's already in statute now, so this isn't something new, the ten minute rule, is that correct? [LB676]

DENNIS GENGLER: Well, in the operating department, with our employees and my primary duties are when we hire the new conductors, they go through my rules class and comply with that. So to understand statute, I can't go there, I don't know, because our rules specifically state that...federal requirements are contained within our rules. So our rule says ten minutes when possible. [LB676]

SENATOR LOUDEN: Okay. And then what do your rules say about private crossings? [LB676]

DENNIS GENGLER: It makes no distinction between public or private. [LB676]

SENATOR LOUDEN: How come those conductors, engineers tell me then if there isn't a cross buck there, then that's a private crossing, and they can block it as long as they want? [LB676]

DENNIS GENGLER: The first part of that sentence is an accurate statement, the second part is not. They make the erroneous statement because there is no distinction. Now I don't blow the whistle for private crossings because we don't have the necessary signage for the whistle marker. But in terms of blocking crossings, our rule makes no distinction between public or private. [LB676]

SENATOR LOUDEN: Yeah, but your railroad does, doesn't it, which is a private crossing, which is a public crossing? If the thing with the cross bars is there then that's not...if that's there, that's a public crossing. If it isn't there, it's a private crossing. [LB676]

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DENNIS GENGLER: Yes, Senator. [LB676]

SENATOR LOUDEN: And in order to be a public crossing, you've got to have what, 20 cars a day or something like that to cross over that crossing? [LB676]

DENNIS GENGLER: No, I don't think it's a matter of...honestly, I don't know what constitutes a public or private. I understand a public... [LB676]

SENATOR LOUDEN: Well, what I'm saying is I have one crossing I know of in my district that has two families that live down that crossing, and I can't get that considered a public crossing. They said, no, there isn't enough traffic across that crossing in a days time in order to warrant it being called a public crossing, because if it was a public crossing it gets treated different as far as blocking it. This is what I've run across over the years, and this is...I'm wondering where you come down on that? [LB676]

DENNIS GENGLER: I don't know how to respond to that. I don't know how to make that distinction. I think my emphasis has to be, Senator, is that I want the conductors that go through my training classes or those that I interact with to understand their rules requirements to work as a conductor. And they are in charge of the administration of the train which is, in fact, complying with the rules that are applicable to crossings. If it is a crossing, and I can speak personally from an agriculture background where I have family members that have farm ground that is inaccessible, or I should say it only needs to be accessed in the spring and the fall, for the crop going in and out. The rest of the year you can block the crossing and it's not... [LB676]

SENATOR LOUDEN: Okay. Now if one of these people blocks my crossing and I write the engine number down and call the head honchos and everything, and they bring the guys. Do they make that engineer and that conductor take a book of rules test again? [LB676]

DENNIS GENGLER: Maybe we should. [LB676]

SENATOR LOUDEN: But do you? [LB676]

DENNIS GENGLER: The requirements, as far as operations testing, when the evidence is brought that we have employees not complying with the rules, there is a process, depending on the level of infraction, to discipline those. And usually it's not a matter...it's much worse than just having them take a book of rules test. [LB676]

SENATOR LOUDEN: Okay, thank you. [LB676]

DENNIS GENGLER: Okay. [LB676]

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SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB676]

DENNIS GENGLER: Thank you. [LB676]

SENATOR FISCHER: Next opponent, please. Hello. [LB676]

RANDY MATSON: My name is Randy Matson, R-a-n-d-y M-a-t-s-o-n, switch gears here a little bit. I'm with the short line railroad. I represent the NKC Railway, we're a short line railroad, runs in Nebraska, Kansas, and Colorado. I'll read my brief statement here. I sit here in opposition to the bill. My position as superintendent puts me in the field nearly every day to observe our employees and to assist them in their duties. Personally, I have never witnessed one employee of ours intentionally blocking a crossing with any equipment to hinder the movement of vehicle traffic. Our employees, instead, have made every effort and are strongly encouraged to never block a crossing for longer than is absolutely necessary to complete the assigned work. However, situations arise on occasion where it becomes necessary to occupy crossings for an extended period of time. We as a railroad know these situations exist and train our employees to deal with them in an expedient and efficient manner. As a short line railroad, we deal with different situations, I guess, than the Class I's do. We run a local type service where literally every one of our trains stop in a community. We deal with the industries, mainly grain elevators and fertilizer plants; that's the bulk of the commodities that we haul. So we do stop in these communities. In most cases we can avoid blocking the crossings, but there are situations where we can't. One point...or one community that I'll point out is Wilsonville, Nebraska. In six-tenths of a mile there are five crossings. Now if you do the math with any length of a train you're going to block something. And when we go in there to switch out that industry, we're going to block a crossing for more than ten minutes every time. It takes usually about 20 minutes to switch your cars in and get back to your train to air it back up and continue on down the line. If you're picking cars up at that location, it becomes a whole other game. The federal government requires us, I haven't heard this addressed yet, new requirements from the federal government, just in the last three or four years, require us to Class I air test every car that we pick up at a location to put in our train. And a Class I air test involves observing both sides of the train or the car, I should say, that car, observing both sides of the car, looking it over for any kind of a defect, and then putting the air to it, charging it up, and observing that the brake equipment works properly. If the weather is cold, like it was the last few weeks, charging up one car can take up to 25 minutes. If it's a mile long train and you're trying to put it together, say at a location where you're blocking a crossing, it can take an hour, hour and a half to get the entire train charged, depending on...you're going to have a lot of leaks and things, because the rubber gaskets you're dealing with, and when they get cold they leak. And you have to measure the amount of leakage in a train per the federal government, or you can't move the train, simple as that. If I put...if I stop in, I'll use the example again of Wilsonville, Nebraska, and I add 10 cars to a 30-car long train, and it's zero out, and it takes me 25 minutes to recharge that train so that I can air

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test it, it will take me another probably 10 or 15 minutes to walk the train, so to observe the brakes operating properly, as the federal government requires me to do, before I can get on the train and move it. So in that situation it would be impossible to move that train. Now I know there are provisions in the bill for emergencies and things like that, what I've read anyway. I have seen no provisions for inclement weather, which really affects the movement of trains and the air testing. As far as the fines, I agree with the other testimony that's up here, I think they're a little excessive. We, as a short line, don't have the funds to go out and assist communities in building overpasses and things like that. We would like to see some crossings closed down. I think six of them or five of them in six-tenths of a mile might be a little excessive. But that's the kind of things that we deal with. You asked...somebody up here asked the question earlier, how many complaints you've received. I've received one in the last six months, and that was due to an air problem on a train, we couldn't clear a crossing, and we had a gentleman wanted to get to work, and I don't blame him, but we couldn't move the train, we couldn't get the brakes to release to move the train. We don't have a lot of issues with blocking of crossings, other than the federal laws that require us to do what we have to do. That's my testimony. [LB676]

SENATOR FISCHER: Thank you very much. Are there any questions for Randy?
Senator Louden. [LB676]

SENATOR LOUDEN: Thank you for coming to testify. This is the first time I got to talk to somebody that owned a railroad. [LB676]

RANDY MATSON: I don't own one, I just work for it. [LB676]

SENATOR LOUDEN: I see. How many people do you have for a crew on your train when you're moving them? [LB676]

RANDY MATSON: Two or three. [LB676]

SENATOR LOUDEN: Okay. And how long of car trains, do you pull 100-car trains?
[LB676]

RANDY MATSON: We pull...we actually deliver some trains for the BNSF to the power plant in Sutherland, Nebraska, 128 cars. [LB676]

SENATOR LOUDEN: Okay. That's what I was wondering, if you pull some... [LB676]

RANDY MATSON: And we also do 110-car grain shuttle trains. [LB676]

SENATOR LOUDEN: Now, when you talk about airing them up and that sort of thing, is that a maintenance problem, or... [LB676]

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RANDY MATSON: No. [LB676]

SENATOR LOUDEN: I mean, not necessarily cold, because when it gets cold I know the railroad used to buy all the heat and the alcohol that was up and down the line to pour down their lines... [LB676]

RANDY MATSON: No. [LB676]

SENATOR LOUDEN: ...to thaw them out. And I'm wondering, you know, why you should have that much trouble when it's cold. They should seal up after a while, or they should have not come unsealed, unless they were uncoupled. Is that right? [LB676]

RANDY MATSON: No. They've been uncoupled, most of these cars, that have been reloaded with grain or emptied of fertilizer, whatever happened to be in them. And all the air equipment on a car doesn't operate as smoothly in cold temperatures as it does in hot temperatures. It's just a fact of life. You can take the same car and change the temperature 40 degrees, and you can...at 60 degrees it might charge up in two minutes, well that's maybe a little too fast, five minutes let's say, and at zero that same car may take 20 to 25 minutes. I mean that's just... [LB676]

SENATOR LOUDEN: Who owns the cars that you're talking about? Whoever happens to be in the world that sent that car over there? [LB676]

RANDY MATSON: Exactly, tank cars and... [LB676]

SENATOR LOUDEN: Okay, do you find some are better maintained than others? [LB676]

RANDY MATSON: Yes. [LB676]

SENATOR LOUDEN: Okay. [LB676]

RANDY MATSON: But it's still...under cold conditions, any train takes longer to charge up. [LB676]

SENATOR LOUDEN: Okay, thank you. [LB676]

SENATOR FISCHER: Any other questions? I see none. Thank you, Mr. Matson, for coming today. [LB676]

RANDY MATSON: Thank you. [LB676]

SENATOR FISCHER: How many more opponents do we have? Two. Okay, would the next opponent step forward, please. Good evening. [LB676]

NICHOLE BOGEN: (Exhibit 6) Good evening. Thank you for your patience. My name is Nichole Bogen, that's N-i-c-h-o-l-e B-o-g-e-n. I am local counsel for the BNSF Railway. I do live in Bennet, Nebraska, right next to a railroad track. And since I've been representing the railroad since 2003, and this kind of goes to Senator Louden's questions, I haven't had to address a ticket issued under a state statute from Nebraska. However, I do want to tell you about a little case out of Fremont, Nebraska that some of you may or may not be aware of. I've given you a lot of reading materials, trust me, I'm not going to go through them. It's highlighting preemption, outlines the types of preemption and the types of laws that are going to be affected here. I basically took it from my brief that I used to move to quash citations that were being issued in Fremont in 2005 and 2006. The situation we had there is there is a highway and the BNSF Railway crosses the Union Pacific Tracks, and that's maybe one situation that hasn't been brought up by the testimony of the gentleman behind me is we're not talking about one railroad operating through Nebraska. We have multiple railroads. There's testimony that the railroads should know that they're going to block a crossing. Well, what if there's another railroad operating? We're not familiar with every railroads operations throughout the state and where they may be at a certain time. But it's really beside the point, because the way that the...it came about is the BNSF has to cross the Union Pacific in Fremont. It's like coming up to a stop sign in your car and you have to wait until that light turns green before you can move forward. And if it doesn't turn green, then you sit there. Well, when the train is sitting there, they are blocking crossings. Well, there was a police officer who took, I think, some personal offense at it, but also was enforcing the law like he's supposed to do, and would sit and time the trains and then issue citations. And these are \$50 citations, not significant in a dollar sense, but think about it from the railroad's perspective for a moment, who has hundreds of thousands of crossings throughout its tracks, going through several different states and the \$50 starts to add up. Every state, I think Senator Dubas mentioned that there is 22, 32 states have some type of crossing regulation, that money adds up. So there is a principle to this that the railroad is willing to fight. So I moved to quash the citations on a facial preemption. If you're not familiar with different types of preemption, it can be facial, you say the statute, just on its face, not even looking at the facts and all of the exceptions that have been mentioned by the gentlemen that run these railroads on a day-to-day basis, just on its face it affects railroad operations. And it touches on safety issues that FRA, the Federal Railroad Administration and the Federal Railroad Safety Act has chosen to legislate in. And there is different types of preemption. Now, I believe Senator Dubas mentioned that there was not a local...a state court that made a decision. Judge Vampola, of Dodge County Court, did make a decision. And he decided that just based on the face of the Fremont Ordinance read almost exactly to what we currently have under the state statute. They did have exceptions for emergencies, and that was vaguely defined in the same way that this is, and he said it was preempted under both

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the Interstate Commerce Commission Termination Act, which hasn't even been discussed here today, and the Federal Railway Safety Act, because it did touch on issues of safety. When you're talking about a blocked crossing by a railroad, you're not talking about anyone else; all you're talking about is the railroad doing the blocking. So, of course, it touches on railroad operations. I've included a copy of his opinion in your materials, and he did mention this raises safety concerns of the police, and 911, and he recognized that. He said, nonetheless, the U.S. Supreme Court of the United States, under the Raich decision that came out in 2005, said, no matter how dire the circumstances, if the federal government has chosen to regulate in a specific area, the state does not have the right to step in and add regulations to it or have contrary regulations to it, no matter how unfortunate those circumstances might be and the consequences of that. So, I guess, what it comes down to is you've already heard from the people that are running this railroad day in and day out. I don't do that. But I do handle the issues once it enters a court, once there are citations, I do litigate crossing accidents. And I think what this really boils down to is the Legislature is not in the business of operating railroads. First off, you just don't have the expertise, there's too many issues involved. It doesn't mean they're not accountable. It doesn't mean they're not governed by the laws, or there isn't laws to govern. There's the Surface Transportation Board that governs all sorts of operations on the railroad, railroad facilities, so on and so forth. There's the Federal Railroad Administration. These are huge bodies working very hard to come up with as much national uniformity and safety. And it's not just the Federal Railway Safety Act, it's the Federal Railway Safety and Security Act, and they do take this stuff very seriously. I think the second issue and my purpose to be here today...well, the second general issue is to keep in mind the railroad has absolutely no incentive to block a crossing. There is the likelihood that a car may not see it at night, and they come up and they see this dark coal train, and they slam into it, and it kills them, it's happened in our state, it can happen again. There's absolutely no incentive for the railroad to do that. And then they face a several million dollar lawsuit. That's much more than a \$5,000 fine. They have no incentive to block crossings, they need to move trains. And I think they're making very sincere efforts to do that. Finally, just my final point, I said final twice, but I'll have to hit two things. Another thing Senator Dubas mentioned is that the issue has not been challenged in the Eighth Circuit. There is an Eighth Circuit case in my handouts to you. I'll agree with her that it's not addressing a crossing. However, it's the Burlington Northern Railroad Company v. Minnesota, and it comes out of the Eighth Circuit in 1989. And it stated that a state law requiring railroads to have cabooses was preempted by federal law, even though there was absolutely no specific federal railway regulation on cabooses. And I think you heard that same sort of language from the senator in regards to blocked crossings. Nonetheless the Eighth Circuit said, we see that the FRA took this into consideration, they looked at cabooses, they considered it. We're going to apply basically a dormant commerce clause, we're going to say because they regulate in this area and they considered it and decided not to do it that it's preempted. Again, it was a facial preemption based on the fact that the FRA considered it. I think she also mentioned that

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the FRA has put out an issue paper on blocked crossings. They've considered it, they've considered putting out a national, how much time do you have, and they've chosen not to. So based on Judge Vampola's decision, and that decision alone, which our inner circuits and in our state, I think this legislation would be preempted on...for several reasons, just on its face, without even getting into our examples. There's lots of other cases out there. I couldn't find a case that said this blocked crossing statute is enforceable, except for one, and that was Mundelein, Illinois, which six months later the same court, the Illinois Court of Appeals, took the opposite position six months later. So other than that one case, I couldn't find it. I'm certainly willing to look at others. But I do believe the railroad will fight the legislation. I haven't gotten my marching orders to do that yet, but I'm certain that they will, because it's not just a local issue, it's a national issue for them because they are going all over the country. And they have to know what their laws are throughout the country. I can take questions now. [LB676]

SENATOR FISCHER: Thank you. Are there any questions? Senator Louden. [LB676]

SENATOR LOUDEN: Yes. I didn't...maybe you said, but I didn't catch, who do you represent? [LB676]

NICHOLE BOGEN: I represent the BNSF Railway, I am their outside local counsel, here in Lincoln, Nebraska. We cover Nebraska and South Dakota for them. [LB676]

SENATOR LOUDEN: Okay. And then with this...what we have...what you've turned in then and according to testimony, the way I understand it then, your opposition is to the...because this law is preempted by the federal government? In other words, you're telling me you don't feel Burlington Northern has to do anything about it because of federal...the federal people have the control over this? [LB676]

NICHOLE BOGEN: I'm not saying that the railroad doesn't have a responsibility to run responsible operations, which I believe they do and how they've testified that they're doing that. What I'm saying is I don't believe states have a right to step in and legislate in this area, that's all. And there is an internal operating rule to keep it under ten minutes, and... [LB676]

SENATOR LOUDEN: Well, that isn't just necessarily just an internal operating rule when it starts affecting people from clear across Nebraska. I mean you're talking about 470 miles or so of Nebraska that you're running this piece of iron across, and at any particular time you can stop traffic for however long you want, according to what you've told me on this. This is what I'm wondering about, does the railroad really feel that they should be responsible in trying to do something like that? As we was listening to the testimony of some of these other folks, and then you come along and testify with these court cases, that they can more or less go too, because we're not going to do it because we have the federal laws on our side. Is that what you're trying to tell me? [LB676]

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NICHOLE BOGEN: No, that's not what I'm trying to tell you. My issue is that the state does not have the authority to legislate in this area. That you can't jump to the conclusion that the railroad can do whatever it wants, and does do whatever it wants. The railroad operating rules, internal operating rules have the effect of federal law, because they are supposed to be put into place by federal regulations. So the FRA says, railroad, you must create operating rules for all your trains that they must follow. And they have the force and effect of federal law on those employees throughout the country. And throughout the country for BNSF Railway TY and E, or the trainmen, employees, is to not block a crossing for more than ten minutes, if possible. The problem is it's not if in case of an emergency, because there are situations that we would not term an emergency, that yet still requires them, under federal rule to stop a train, and those are all those examples you heard today. And I've listed a bunch where case law has looked at the facts of a case gone beyond that face of the law preemption and gone to look at specific factual preemption. [LB676]

SENATOR LOUDEN: Okay. Then you are telling me that Nebraska can't put in force any kind of a statute to safeguard our citizens from getting from one side of the railroad track to the other? [LB676]

NICHOLE BOGEN: I don't think...I think it would be extremely difficult for Nebraska to legislate on the area of blocked crossings and not have it federally preempted. I don't know if it's possible. I've never tried, because it's not my job to do that. But I think it would be extremely difficult to do it because of the way federal preemption in this area is so broad. [LB676]

SENATOR LOUDEN: Okay, thank you. [LB676]

SENATOR FISCHER: Any other questions? Senator Stuthman. [LB676]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you, Nichole, for your testimony. In listening to the testimony, the opposition here in my opinion, you know, people do not want to...the railroad realistically don't want to block any crossing for any length of time. [LB676]

NICHOLE BOGEN: Um-hum. [LB676]

SENATOR STUTHMAN: But, you know, if some things come up, you know, there is a chance. The thing that also concerns me is, you know, we have this ten minutes rule, you know, from a long time ago. [LB676]

NICHOLE BOGEN: Um-hum. [LB676]

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SENATOR STUTHMAN: But, you know, we haven't had these 150-car trains, you know. [LB676]

NICHOLE BOGEN: Correct. [LB676]

SENATOR STUTHMAN: Maybe we need to change something that instead of every one mile there's a crossing, maybe it should be every two miles now, they close every other one of them. I mean it's something that I don't want to see happen,... [LB676]

NICHOLE BOGEN: Um-hum. [LB676]

SENATOR STUTHMAN: ...but we're dealing with a situation, in my opinion, and you can agree with me or not, but I think we have circumstances that are different today than they were 40 years ago. [LB676]

NICHOLE BOGEN: You know, I'm not a history buff in train operations, but based on the case law I've read, yes, it's changed a lot, the length of trains. And that certainly has an effect, and I think that's one of the things they've talked about is, you know, expanding the double track, which I've been involved in some of that, to help alleviate it. But I don't think this is a one shoe fits all situation, because if it is, when the FRA considered it, they would have put the shoe on. And they didn't. They said, you know, this is just a very difficult situation, and I didn't put that issue brief in my handouts, but it's available from on the Internet from the FRA. And they go through and talk about that. This is a difficult issue, it raises safety concerns. But you still have to work with the local community in trying to find the best solution. People don't like their crossings closed. I had one of those cases last year, and she was very upset about the fact that her crossing was being closed. So you're going to have people on both sides of that issue. [LB676]

SENATOR STUTHMAN: Yes. Well, thank you for your testimony. [LB676]

NICHOLE BOGEN: Thank you. [LB676]

SENATOR FISCHER: Other questions? I have a couple, if you would, Ms. Bogen. [LB676]

NICHOLE BOGEN: All right. [LB676]

SENATOR FISCHER: Currently, Nebraska has a law on the books about, you know, the ten minutes. Are you saying that federal law that was passed in, what, 1980 preempts that law that we currently have on the books? [LB676]

NICHOLE BOGEN: I think if the current law tried to be enforced, which my guess, since

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I haven't heard of...gotten any tickets, which they usually get forwarded to our office, tells me it's probably not being enforced. Then it would probably be federally preempted. That law was put on the books long before the FRA was brought about in 1970, and reauthorized in 1994. And there's been a lot of regulation come out of the FRA since 1994 as well. [LB676]

SENATOR FISCHER: What do other states have? Senator Dubas mentioned a number of other states that have similar laws or are working on them on limiting the times that a crossing can be closed or blocked. What do other states have, and are there lawsuits there, or is that not being enforced either? And would you recommend that, instead of passing a new law out of this committee, maybe we should just get rid of the old one we have? [LB676]

NICHOLE BOGEN: Well, I'll start at the end and work my way back. As far as what law would be best, I don't know that any law in this area, from the state level, is best. I think state agencies working with the railroad on a local level, educating everyone, finding better solutions in the communities is probably the best way to deal with this situation, especially since, as the railroad officials have spoken, these are when circumstances arise and communication becomes key. So I think having more interaction between the local train master that does live in Grand Island, you know, with the community, emergency people and so forth, and getting a dialogue and having clear and quick communication is probably going to be best. Going back to other states, one is Illinois, I mentioned the Mundelein case, and that's in your materials. Illinois has kind of taken the position that we're going to keep this law on the books, and then we're going to make fact decisions every time something comes up. So if a ticket is issued, then the courts, if the railroad wants to fight it, or talks to the county attorney and the county attorney won't drop it based on the facts that are presented to him, it ends up in court and they litigate it. So they're looking at a fact-by-fact situation. I don't think that's a very efficient use of court time or people's time, but people disagree with me all the time. The other...there's Indiana, the CSX cases that are mentioned in your materials, were found to be preempted. And they went to the Sixth Circuit Court of Appeals and said, you know, this is preempted, you can't enforce it. There are three Attorney General Opinions that I've handed out to you on city ordinances where legislatures had asked their Attorney General's or county attorneys had asked the Attorney General to give an opinion on the enforceability--that's Louisiana, Texas, and Kansas. Both Texas and Kansas Attorney General's found that the statute would be preempted, which is very similar to what we have seen here today. And Louisiana said definitely there was...because it involved train speeds, too. And said, definitely there is...you can't regulate on train speeds. But they would encourage looking at a fact dependent determination again; going back, well, what were the facts of what happened? And that's kind of how this statute is set forth. The problems I get into, once you get to a fact specific analysis is who's going to decide what is a critical mechanical failure? Who's going to make the decision that it's a serious real accident? In defending Federal Employers Liability Act cases, any of those

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cases get very serious very quickly. If they have an employee that has to walk a train in bad weather conditions, the railroad could be liable for that, and it could cost them a lot of money. So it troubles me that a jury would be making a decision as to what's a serious rail incident when the railroad goes to fight this on a fact specific position and what is a critical mechanical failure. I think again the railroad is in the best position to make that determination. They are market driven, they do want to make money, they have no purpose, other than protecting assets or the examples they've given for blocking crossings. There's just no win for them to do that. [LB676]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much. [LB676]

NICHOLE BOGEN: Thank you, senators. [LB676]

SENATOR FISCHER: Last proponent? [LB676]

CAMERON SCOTT: Yes. [LB676]

SENATOR FISCHER: Are there any other proponents, or opponents, I'm sorry. We're starting all over. Are there any other opponents? Okay. Welcome. [LB676]

CAMERON SCOTT: Good evening, Senator Fischer, members of the committee. My name is Cameron Scott. I'm here to testify against LB676. My last name...S-c-o-t-t. I am the general superintendent for the Union Pacific Railroad, responsible for the North Platte Service Unit. And we have approximately 4,000 men and women who operate the busiest railroad in the world between Gillette, Wyoming and Marysville, Kansas, and Cheyenne, Wyoming to Omaha, Nebraska. And the first comment that I wanted to make was to thank you for LB79. You asked a question, how many crossings do you think we can close? Last year we closed 27 crossings, and with all of your help our target this year is 40, and we think we can keep that pace up in the foreseeable future. And to your question, do you think we need to possibly expand LB79 to help create more of a stable rail corridor? I would agree with that 100 percent. The number of crossings that you've been asking about, I didn't do this on purpose, but this is the list of crossings that exists on our operating division. And it's a very thick document. Most cities and towns, whether they're primary or secondary, have 10, 11, 12 crossings. So there's still a lot of work to be done through LB79, and I think we'll make great progress there. In response to a lot of the questions about emergency cases, the one thing that I think all of us have to remember is that in many cases the towns and cities we operate through also are the cities and towns that our employees live in. And it's very important for us to have a solid plan in place to break a train in two, if we have an emergency crisis, particularly in my city of North Platte. And I have tested that program several different times myself, and it is extremely effective and will break a train, in my test, in a minute and a half to two minutes, which even still is probably not fast enough, but it is better than having no

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system at all. The professionalism of our employees is probably the best defense we have against blocking any crossings. As previously testified, almost every one of our engineers and conductors know almost to the foot the length of their railroad in between crossings, and do everything they can to not block crossings. They truly are professionals on the piece of railroad they operate over. Lastly, on the issue of caring, every single year on our road division we make presentations to about 20,000 citizens of this state through our Operation Lifesaver Program, to educate people on rail crossing safety. And that is something we will accomplish again this year and is something we're dedicated to, not only on the Union Pacific Railroad, but on the BNSF as well. And lastly, I'd like to thank you for my city. We are the lucky recipients of one of those expensive overpasses that people are referring to at Birdwood in North Platte. And I would like to invite all of you on a dinner train out to North Platte so you can that being constructed in the near future. It's going to make a big difference in the city of North Platte. And I'll be happy to take any questions. [LB676]

SENATOR FISCHER: Thank you very much, Mr. Scott. Are there any questions? I see none. Thank you. [LB676]

CAMERON SCOTT: Okay. [LB676]

SENATOR FISCHER: Thank you. [LB676]

CAMERON SCOTT: Thank you. [LB676]

SENATOR FISCHER: Are there any other opponents to the bill? Is there anyone who would like to testify in the neutral capacity? Please come forward. Good evening. [LB676]

RAY LINEWEBER: Good evening, Madam Chairwoman. My name again, for the record, is Ray Lineweber, L-i-n-e-w-e-b-e-r. I represent the UTU in Nebraska. This is a management state issue. And appearing in a neutral capacity there's one item that wasn't brought up today, and I'm hoping that if indeed the state does something about the crossing problem that they consider allowing the conductor or a crew member, if it's safe to do so, to raise the crossing gates when a locomotive is sitting there. Because right now management doesn't allow us to raise those gates. They fear somebody getting hit by an opposing train. Well, if we're on the south main, the conductor would stand on the north side and raise that gate, he or she could see the other train that may be coming around them. All too often we pull up to a crossing and the timer may not work, or the gate comes down and we're too close...the points have brought it down, we can't back up because there's no protection on the rear end. So we'd like to be able to raise the crossing, if it's safe to do so. And I think that certainly would be a good avenue for some of the employees to at least help out with the situation. There's been much testimony today about company rules. Blocking the crossings ten minutes, opening if

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possible. The if possible always lies in the hands of the dispatcher. Our people don't know one way or another whether the if possible factor is there. So having said that, I clearly appreciate the efforts of Senator Dubas. I think that they can work with every group to see if there is some factor that we can reach resolve on, and we'd like to be a part of that. [LB676]

SENATOR FISCHER: Thank you, Mr. Lineweber. Questions? Senator Aguilar. [LB676]

SENATOR AGUILAR: I hate to ask this question, but in most cases wouldn't an emergency vehicle go through that crossing without the gates even being raised? [LB676]

RAY LINEWEBER: Excuse me? [LB676]

SENATOR AGUILAR: Would not an emergency vehicle go through that crossing any way? [LB676]

RAY LINEWEBER: Well, some emergency vehicles can, but in those gated crossings where there are medians, they can't get through. And our people, they fudge sometimes and they'll go out and raise the gate for them. But they're really violating the rule. [LB676]

SENATOR AGUILAR: And they probably would in an emergency situation, would they not? [LB676]

RAY LINEWEBER: I'm certain that they would. But clearly when a train is blocking...when the gates are down and there's no trains coming, I call that an emergency situation for everybody in the public. [LB676]

SENATOR AGUILAR: Sure, yeah. Thank you. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB676]

RAY LINEWEBER: Thank you. [LB676]

SENATOR FISCHER: Anyone else to testify in the neutral capacity? [LB676]

RANDY MEEK: I'll try to be really quick. You guys got a lot of stamina. [LB676]

SENATOR FISCHER: You better be. (Laugh) No. Good evening. [LB676]

RANDY MEEK: Good evening. Again, I'm Randy Meek, representing the Brotherhood of Locomotive Engineers and Trainmen in Nebraska. We'd like to thank Senator Dubas for

addressing our concerns with this amendment and strongly urge its adoption. I'd like to thank Senator Schimek. Part of this language actually came from an amendment you had in 1999. I robbed it, but...in the past we've strongly opposed these types of bills, mainly because the current statute, 74-594, exempted train crews from responsibility only upon presentation of reasonable proof. In essence, we were guilty until proven innocent. So we like this new language much better. Secondly, we felt that many of the problems with blocked crossings are not because we're following instructions, but because we're not receiving instructions. We're either getting incomplete, inaccurate, or complete lack of instructions. I mean one testifier said that he was put on hold all the time. Well, we get the same problem. I mean we can call the dispatcher and request instructions on a crossing. It could be 10 to 20 minutes before they answer. Again, in past language, past bills, 1998, '99, and 2000 did not exclude crews. The wording any person was usually in the language. We feel that the railroad carrier addresses that problem. I do not oppose this bill if our members are clearly excluded from prosecution. To expect working people that are paying mortgages and sending kids to college to pay a \$5,000 fine is just truly an injustice in our opinion. One testifier mentioned that he didn't think it was fair that the crew was exempted, because if they were told to cut a crossing and didn't, that wouldn't be fair. But anybody that does that is not going to be working next week. I think the railroad would clearly would...that's called insubordination. It's one of the severest penalties you can incur as an employee. I would like to also say that another way this problem could be addressed is simply by providing us more transportation. The problem of the time it takes to walk back and cut a crossing, that's true. But when we have transportation there in the form of a crew van, or a manager vehicle or whatever, that time is cut drastically and it makes the crossing much easier to put back together also. So it's not that this problem can't be addressed. It's a money issue. And as far as what's a public crossing, I'd like to...I don't know if it's of any help to you, Mr. Loudon, but there is a public inventory data base of every public crossing in the United States; FRA maintains that. It's got the mile post location and the federal number assigned to that crossing. And that's all I have to say. Thank you.
[LB676]

SENATOR FISCHER: Thank you, Mr. Meeks. Are there questions? I see none. Thank you very much for staying. Is there anyone else to testify in the neutral capacity? I see none. Senator Dubas, would you like to close? [LB676]

SENATOR DUBAS: (Exhibits 7 and 8) Thank you so much for your patience and your attention. This is an important matter and I really do appreciate the long hour that you're putting in this evening. First off, I'd like to start off by saying when I decided to put some type of legislation together to address this issue, I called the railroads into my office and I said, you know, this is what I'm hearing, it's a concern, it's been an ongoing concern for a long time. What can we do? I'm not looking to be hard-nosed here. I just want some answers, and what can we craft to address this issue? And I really got no response. I got no suggestions, no constructive direction whatsoever. And so that's why

I proceeded to go in the direction that I did. So I really am open to addressing this issue and trying to find some remedy for it. I visited in-depth with Rich Anderson, he's an attorney who's now employed with the Lincoln Police Department. He spent numerous years as the county attorney in Buffalo County. And he's kind of known in circles as the guru of railroad legislation and prosecution, and he spent a lot time, as the Buffalo County Attorney, working on these issues. He was in one of the busiest corridors in the nation as far as the work that he was doing, so he definitely has had an understanding, and was very helpful in giving me a lot of good information and referenced the fact that we have been and we will continue to be the busiest corridor in the nation. We're talking about the number of ethanol plants that are coming on board, etcetera. So this isn't a problem that's going to just slowly disappear, it's a problem that's going to continue to grow. Two weeks ago, there was an accident in Gage County, and the write-up is in your packet. There was a train blocking a highway and a semi carrying eight cars was stopped to wait for that train. A 60-year-old gentleman rear-ended that semi. Emergency management dispatched medics to the scene, but they didn't know that the train was blocking this intersection that they needed to get to the area. Luckily, a crossing nearby wasn't blocked, they were able to reroute and get to him and they were able to take care of this gentleman. Not too long ago there was a child who was choking in Adams. Called the rescue, they had to reroute the rescue unit. Thankfully everything was all right, but again another time...amount of time that was taken up. Sheriff Sorensen, from Jefferson County, phoned me this morning. And he described an issue in Steele City. Steele City only has a population of 100 people. In 2002 four women were killed at an unmarked crossing by a train traveling at a high speed. The crossing was shut down which had previously acted as Steele City's main crossing, and now they only have one. The Union Pacific runs approximately 100 to 125 trains per day through Steele City. Subsequently, the one blocked crossing, the one crossing is blocked on a fairly regular basis for anywhere from 20 minutes to an hour. It's dangerous because the fire department is located to the north of the tracks and the town is to the south. In an emergency, when the crossing is blocked, vehicles must be rerouted down through Kansas and back into Nebraska to reach the other side of town. I've heard from Sheriff Watson in Hall County, in fact, he just called me this afternoon before the hearing, saying he'd just received two calls today, concerns with blocked crossings. I've heard from Sheriff Handrup, in Hamilton County; I've heard from individuals in Columbus, Bayard, Fremont, Lincoln, York, literally people from across the state, county officials, emergency personnel, and individual citizens. Sheriff Radcliff of York County has stated a severe issue related to enforcement and emergency management vehicles. That's also in your packet for your information. Sheriff Burgess of Fillmore County has stated that a few years back they had issues, but that those issues were remedied by logistics and that no construction had to occur. I don't know if this is coincidence or just raising the level of awareness. But right after I dropped this bill, for an entire weekend the crossings were cut in the Grand Island area. I submit that this situation can be remedied, I really do believe that it can, through logistic communications, updated technology, and again communication, I think, is key. Moreover, the railroads have the

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money and the ability to do this. Furthermore, this is not an isolated incident. The counties I have just listed run concurrent with the busiest corridor in the nation. It's time for action. And I really hope that as a committee and as a body we can come up with some solutions to this. I'd just like to address a few of the issues or questions that were raised. I was very careful when crafting this legislation that it did not step on FRA regulations, because that's where you run into trouble. FRA regulations definitely have the upper hand. The ten minute rule comes from the FRA regulations and also from our own Nebraska Department of Roads. And I visited with Ellis Tompkins from the Department of Roads, and we do have Department of Road regulations dealing with railroads and railroad crossings. He handles complaints, but really has no authority to go out and do anything, other than he kind of monitors the number of complaints that he gets and tries to achieve some remedy, if he's seeing a recurring problem in a specific area. Under FRA regulations, Nebraska Department of Roads regulations a train is exempt from the ten minute rule if it's in the process of recoupling, or passing another train, or switching, those types of things. And this applies to a standing train. A standing train is one that is not in continuous motion. So we're not looking at trains that are moving slowly across an intersection or across a crossing. I believe Section 1, subsection 6, of the amendment that I passed out to you addresses the concerns of emergency situations, weather, those types of things that were brought up. My understanding is crossings cannot be closed without county board approval. So when we're talking about closing crossings, that has to go through a local process. And the statement was made that the Legislature shouldn't run railroads. And I would agree with that. But we do have an obligation to provide public safety and to address those issues and to try to make sure that any business that operates in our state is taking public safety into paramount concern. The issue with Fremont, because the state of Nebraska had no clear law on the books, they were kind of left to their own devices, and unfortunately what they tried to do did step all over FRA regulations, and that's why, to my understanding, that's why they lost. I believe we gave legal counsel the FRA report that deals with an emergency vehicle and blocked crossings, and also a link for Chapter 3 for the blocked crossing regulations from FRA. So that's available for your resources. I appreciated hearing the fact that we could break a train in as short amount of time as one and a half minutes. I think that's a good piece of information to know. So I do have copies of my testimony and also Hall County Sheriff's Office and Grand Island Police Department, since 2002 to 2006, just a record of the complaints that they've received. So I'd be happy to give those to you for your information. And thank you again for your time and attention. I'd be happy to answer any questions. [LB676]

SENATOR FISCHER: Thank you, Senator Dubas. Are there any questions? Senator Aguilar. [LB676]

SENATOR AGUILAR: I'll try to be brief. Senator Dubas, would you not agree that there are times when the train is broke, it would take more than ten minutes to clear the crossing? [LB676]

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SENATOR DUBAS: I would agree with that. [LB676]

SENATOR AGUILAR: Okay. Then a quick, another quick question. Something came up. They were talking about...you have exemptions in here for mechanical failure. What if it's a mechanical failure on the train ahead that causes this train to stop? [LB676]

SENATOR DUBAS: I think that would be addressed under an emergency type situation. [LB676]

SENATOR AGUILAR: That would be an exemption as well? [LB676]

SENATOR DUBAS: Yes, yes. [LB676]

SENATOR AGUILAR: Okay. That was a concern. Thank you. [LB676]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator Dubas. [LB676]

SENATOR DUBAS: Thank you very much. [LB676]

SENATOR FISCHER: With that, I will close the hearing on LB676 and would entertain a motion to go into Exec Session. Short. [LB676]

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Disposition of Bills:

LR28 - Reported to the Legislature for further consideration.

LB486 - Indefinitely postponed.

LB676 - Held in committee.

Chairperson

Committee Clerk