

Transcript Prepared By the Clerk of the Legislature
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Transportation and Telecommunications Committee
October 25, 2007

[LR67]

The Committee on Transportation and Telecommunications met at 9:30 a.m. on Thursday, October 25, 2007, at the Chamber Office in Broken Bow, Nebraska, for the purpose of conducting a public hearing on LR67. Senators present: Deb Fischer, Chairperson; and LeRoy Louden. Senators absent: Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; Mick Mines; Dwite Pedersen; and DiAnna Schimek. Also present: Senator Annette Dubas. []

SENATOR FISCHER: Good morning. Welcome to a hearing by the Transportation and Telecommunications Committee. My name is Deb Fischer and I'm the Chair of the committee and I represent the 43rd District, which is the district we are in today. So welcome to Custer County and welcome to Broken Bow. I think it's very important that, as senators, we have hearings outside of Lincoln because I believe that government should be accessible to the citizens in this state. So I'm happy to see so many of you here today. We had a really nice hearing, a full hearing, in Grand Island on this same resolution yesterday, and I look forward to hearing your comments this morning here in Broken Bow. At this time I would like to introduce the people up here at the head table, so to speak. On my far right, is Senator LeRoy Louden. He is from Ellsworth. He's our neighbor to the west here in District 43. To my right is our committee counsel, Mr. Dustin Vaughan. To my left is our committee clerk, Mrs. Pauline Bulgrin. And we are joined today by Senator Annette Dubas from Fullerton. On Senator Dubas' left is her legislative aide, Jessica Watson. So thank you all for being here today. I'd like to start. We need to go through some housekeeping things. The resolution we are hearing today is LR67 and that is the only resolution that we will be hearing. There is a green sign-in sheet at this small table here, and you need to fill in that form only if you actually testify before the committee. Please sign your name, complete address, and indicate who you represent regarding the legislative resolution that we're going to be hearing today. When you've completed that sign-in sheet, before you come to this table then to testify, please hand it to our committee clerk, Mrs. Bulgrin. There's also a yellow sign-in sheet for those

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of you who wish to indicate your presence regarding this resolution without publicly testifying. This will be labeled as an exhibit and will be part of the official records of this committee. We do tape our committee hearings and they are all transcribed and available to the public. If you have a prepared statement, please make it available so that we can follow along and have it inserted into our official record. Written materials may be distributed at the hearing to the committee members only as exhibits, while the testimony is given. If you are following other testifiers, please listen to their comments and try not to be repetitive. We would appreciate that. At this time, I would ask, if you have a cell phone, if you'd turn that off. We do not allow cell phones at committee hearings. And with that, I will open the hearing on LR67. When we have interim study hearings, we do not have proponents or opponents. Senators are here to listen to any information that you want to bring forward in regards to what the study is referring to. So please feel free to step forward at any time. We won't be doing the proponents and opponents. Mr. Dustin Vaughan will give the introduction here to the resolution. The next person who would like to testify, if you would come up to the on-deck table and we'll keep moving along in that format. So thank you. And, Mr. Vaughan. []

DUSTY VAUGHAN: Thank you, Senator Fischer. Good morning. Good morning, Senator Louden, Senator Dubas. For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. Today, we are discussing LR67, like Senator Fischer said, a study that was introduced to analyze the issues brought forth by LB676, the bill introduced by Senator Dubas last session. The bill would prohibit a train from blocking a crossing for more than ten minutes. Fines would range between \$500 and \$5,000. Nebraska currently has a similar statute on the books prohibiting a blocked crossing for more than ten minutes. However, it only applies to unincorporated villages...or unincorporated towns or villages, and the fine is significantly smaller. It's \$10 to \$100, written in statute. In addition, many municipalities have similar provisions in their city codes. Cities such as Fremont, Lincoln, Grand Island, and Norfolk have such a law. During the public hearing last February, testimony was introduced by the railroads that such a law is preempted by federal law. I wanted to give you a little

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background into that argument today. The preemption argument is based on the supremacy clause of the U.S. Constitution, which basically says the federal law takes precedent over conflicting state law. In this case, the argument is made on three federal laws: Federal Railroad Safety Act, the Interstate Commerce Commission Termination Act, and the commerce clause of the U.S. Constitution. Based upon these laws, it has become well settled that the federal government has jurisdiction over train speed, length, and air brake testing. Consequently, the argument goes that a railroad might have to adjust either the speed or the length of its train in order to comply with a state or a local provision, both of which are governed by federal regulations. Therefore, the law conflicts with federal law and is preempted under the supremacy clause. The majority of courts throughout the United States have ruled that laws providing a time limit on the blocking of a crossing are preempted by federal law. I did find a few cases where the state or local law was upheld, but they are few and far between. Nebraska is part of the Eighth Circuit Judicial District and if there hasn't been a U.S. Supreme Court ruling on a subject matter, then the each circuit's court of appeals' rulings are the law of the land. Because the Supreme Court or the Eighth Circuit has never ruled on a blocked crossing statute, we cannot be sure whether such a law is preempted by federal law in Nebraska here. However, it can be assumed that the court would lean heavily on other circuit opinions, the majority of which rule that state and local laws are preempted, like I said before. Based on that information, I think it's a strong probability that the Eighth Circuit would rule that such a statute...that a statute such as the one we have in our laws currently, or the one proposed in LB676, would be preempted. In addition, one Nebraska court has recently ruled in favor of preemption. That's a county court in Fremont, basically, one of the lower courts that we have in our court systems. I tell you this information just for that purpose, for your own information. I don't believe it should hinder the committee on moving forward on this bill, if they so choose. I just like to let them know that it's out there. In addition, I've provided some means of strengthening against the prohibition argument with some of the language that you can add to a bill, and we could certainly look at those options and amend the bill if the committee were looking to go forward on it. And with that, I'll turn it back to you, Senator Fischer. [LR67]

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SENATOR FISCHER: Thank you, Dusty. Are there questions? I see none. Thank you very much. At this point, I would open it up to our first testifier, if you'd like to step forward. Don't be shy. Mr. Loy. Thank you. Good morning. [LR67]

PAUL LOY: Good morning. [LR67]

SENATOR FISCHER: If you could state your name and spell your last name before you begin, please. [LR67]

PAUL LOY: Paul Loy, L-o-y, and I guess I don't have any positive information with me other than just my personal testimony. As I came up the highway this morning, for instance, there's a train sitting at the second crossing east of Berwyn and was sitting, I'd judge it to be, about 40 feet from the crossing. It leaves a very dangerous situation because you can't see around the train. The only safe way, really, is to get out of your vehicle, and I have done that before many times. But you cannot see up the track unless you get up with a nose on that extra track, and it creates a very dangerous situation. They do not sit back far enough, even if they do break the track...or at the crossings. They do not sit back far enough. I have three crossings at my place, which I live halfway between Berwyn and Ansley, about three and a half, four miles out from Berwyn, east. And I have three crossings where I can go north to where our farm ground is, and many times they'll have all three crossings. Now I say many times. I'd say that all three crossings would be once every six weeks. They will have the crossing directly across from me blocked very often, which is, I would judge, two to three times a week they'll have that crossing blocked for an extensive amount of time, and then I have to go down the highway with my equipment and so on. Otherwise, I can stay off the highway with my farm equipment and make it safer for everybody else, besides myself. When I haul my hay home, where I winter the cows, in the fall I use that same road with the hay...to haul the hay on because I can come and turn directly across the railroad tracks and directly across the highway and then on down into my property. And

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otherwise, I have to come down the highway with a load of hay and, again, it's unsafe for everybody else as well as myself. And so I'd like to...I'd just like to see them be courteous to them as we are to be courteous to them, and I don't think that's too much to ask. Thank you. [LR67]

SENATOR FISCHER: Thank you. Are there...just a minute. [LR67]

PAUL LOY: Okay. [LR67]

SENATOR FISCHER: Are there questions? Senator Louden. [LR67]

PAUL LOY: Yes. [LR67]

SENATOR LOUDEN: Yes, Paul, thanks for coming today. When you mentioned that that train was sitting 40 feet or so from the crossing, is that double track there? [LR67]

PAUL LOY: Yes, that is. [LR67]

SENATOR LOUDEN: Okay. And were there crew members in the train? [LR67]

PAUL LOY: Yes, there was. [LR67]

SENATOR LOUDEN: Okay. Were there...you know, there's painted marks at these crossings on the tracks... [LR67]

PAUL LOY: Yes. [LR67]

SENATOR LOUDEN: Was he beyond? [LR67]

PAUL LOY: Far beyond. [LR67]

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SENATOR LOUDEN: He'd pulled past the painted marks. [LR67]

PAUL LOY: Yes, way past the painted marks. [LR67]

SENATOR LOUDEN: Do you think it wouldn't be out of reason to have a crewman, train crewman, to dismount from the engine and come and guard that crossing? [LR67]

PAUL LOY: No, I don't. I don't think that's unreasonable at all. The fact is it has only been about probably six weeks ago that I got out of my vehicle and chewed them out, and I didn't use any strong words because I don't do that, but I let them know what my feelings were with them sitting actually right up to the very edge of the road and sitting in the train, watching me trying to see around. I, at that time, I got out of my vehicle and I thought that was a good opportunity to express my feelings. But I could not see around the train. And it's dangerous enough when they park behind those marks. A lot of times you can't really see that much even then. Might also add that train this morning was also blocking the crossing, the first crossing east of Berwyn, which is the one that Adams Land & Cattle uses all the time to stay out of Berwyn and stay off their streets. And it had been blocked all morning. [LR67]

SENATOR LOUDEN: That's what I'm wondering. These corporations always have to have safety meetings and everything to comply with OSHA and everything, and I'm wondering if that should be included in their safety meetings, that perhaps that they should consider the safety of other people also. [LR67]

PAUL LOY: Absolutely. Absolutely should. [LR67]

SENATOR LOUDEN: Okay. Thank you. [LR67]

SENATOR FISCHER: Thank you for being here today, Mr. Loy. When you said there

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were three crossings blocked, was that due to the length of the train? [LR67]

PAUL LOY: No, they were working on one crossing and there's been two different times just recently that that's happened, they were working on all three crossings. The fact is all the crossings from the Janesville Cemetery, which is about...it would be about two and a half miles out of Berwyn, three miles out of Berwyn to the east, and from there to Ansley, they're working on all the crossings. So there's no way of getting across anywhere through there. But this other time they were working on one crossing and then they had two crossings blocked and a... [LR67]

SENATOR FISCHER: Due to the length of the train? [LR67]

PAUL LOY: Due to the length of the train, yes. The distance between those crossings is just short of a mile. There is a light down there and they were waiting for that light. And then, of course, the next crossing is probably, I would guess, three-quarters of a mile on down the road and that one was being worked on, so we couldn't cross there either. And then you have to go to Ansley, Westerville, and clear back around, which is a long ways, or Berwyn and clear back around, which is also a long ways for farm equipment. [LR67]

SENATOR FISCHER: Have you ever seen the crew break the train, decouple the train, so they aren't blocking a crossing? [LR67]

PAUL LOY: They did just the past few days. They have had trains sitting down there for probably three or four days and they did break the train for the crossings down there. I did notice that there were crossing between here and Berwyn that were not...they did not break for those crossing, farm crossings, so to speak. But public crossings, they did break for those, which is kind of unusual. A lot of times they'll sit for a couple days without breaking at a crossing. That happens. [LR67]

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SENATOR FISCHER: I travel this road a lot. I see trains parked a lot. When you say that there are trains blocking crossings for a couple days, does that happen often? [LR67]

PAUL LOY: Way too often. I can't tell you how many times it happens, but it does happen. [LR67]

SENATOR FISCHER: Would you say those are public or private crossings? [LR67]

PAUL LOY: They are public crossings. They like to block the crossing this side of Berwyn and make people go on down around. Well, there's a steel bridge there and I do not have farmland up there so I...it's not a real problem for me, but there's a steel bridge there and you cannot go through Berwyn and come back across that steel bridge with big equipment. You've got to cross that crossing if you're going to go north with farm equipment, and they'll block that crossing very often. And there's another gentleman here that I gave a paper to, maybe he'll testify also, and they use that crossing, I'm sure. And I have...I used to be able to call the railroad on their 800 number, which they have posted at every crossing. I could call that number and get somebody. And now they will not answer my calls. I have to leave a message and I have yet to have anybody call me back. And at one time, well, you call them and talk to them and they would say, well, we'll get it fixed and we'll take care of it. But in the last...probably the last three or four years I have not been able to talk to anybody except the people in Dallas. They direct me then back to the road master here in Broken Bow, and the road master will not return my call. [LR67]

SENATOR FISCHER: How many times do you think you've called in the last couple years where you haven't had a call returned? [LR67]

PAUL LOY: Oh, probably six or eight times, at least, at least. I got tired of it. I don't call anymore because it doesn't do any good. I mean you can't talk to anybody and they

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won't call you back to...so...I see a white hat out there, I'll stop and visit with them, but they... [LR67]

SENATOR FISCHER: Politely, of course. [LR67]

PAUL LOY: Yes, I do. But most of them can't do anything because that's not their area. [LR67]

SENATOR FISCHER: There was a bill passed by the Legislature a couple years ago that allowed the railroads to close some crossings and I know a number have been closed along Highway 2 here. Has that helped the situation, to have those crossings closed to the public? Does that help in preventing even more blocked crossings? [LR67]

PAUL LOY: Well, if the crossing is not over, why, it's not going to be blocked, of course. [LR67]

SENATOR FISCHER: Right, but does that help alleviate some of the pressure on the crossings that are left? [LR67]

PAUL LOY: The feelings of closing crossings in Custer County, as far as I am aware anyway, has been we don't want any closed. That's not progress, that's going backwards, and that's my adamant thought. The crossing, the first crossing east of Berwyn, had an accident here a few years ago. They tried to close it. I was instrumental in getting a meeting between the state of Nebraska and the railroad and the citizens, at the crossing, in fact, and we had about 50 people there that was against closing the crossing, and it's open now. And most of the crossings are there for convenience of the people that live here, and when you start closing a bunch of crossings, there are some that they close, and they have closed very few, but when you go closing them, why, it's causing a hardship on somebody. I can talk a lot about closed crossings and a lot about those that have been closed away from here, but that isn't dealing with the local people.

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And I've done a lot of study on closed crossings and what they have done to people and how it's affected their lives, so and so forth, and I don't want to see that here. But it doesn't take very long to break a train. If they're going to be there more than ten minutes, they know that they're going to be there more than ten minutes or a half an hour. I'm very willing to wait for them, because they have a job to do also, but I also have to make a living and my living is on both sides of the railroad track, as well as many of the neighbors. I can't tell you very many neighbors that don't use those crossings. [LR67]

SENATOR FISCHER: Okay. Other questions? I see none. Thank you very much for being here today. [LR67]

PAUL LOY: Thank you. Thank you. Appreciate it very much. [LR67]

SENATOR FISCHER: Next testifier, please. Morning. [LR67]

JOANNA COOK: (Exhibit 1) Good morning. My name is Joanna Cook, C-o-o-k. We live at just east of Berwyn at 166.1, and I'm sure all the railroaders know us. (Laugh) We have...our house is on the side of the railroad...Gary wanted to be here today but he is gone out of town, and we have a lot of documentation that they block our crossing, they're always too close to the crossing. We had tried called. You try doing whatever and you can't get through to them. It gets better for awhile, and then it's just right back to where it was before. This is our only way in and out of our house. It really makes it hard, you know? That's our farming operation. When they block it, a lot of times they'll block it for, well, on 2-24 there was a train that blocked it for six and a half hours. You try to get in and out of there with farm equipment. I mean, you're mad by the time you get done. And then we're not supposed to be mad, you know? We've dealt with it for years and years. I have pictures. I don't know what else I guess, but it is really hard. This morning I have a picture of the train that is too close to our crossing, and I did call. I called...it's down further than that. It's...I called Dan Hannon and he's a special

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investigator. He said...you know, there's always an excuse. You know, today the excuse is there was a derailment, which I understand, but they need to park back. You know, it just...they won't get out of the train, you know. If you try to go and see around them, you can't see around them. They told us don't get out of the car to go check to see. Well, okay, are you suppose to sit there? You know, we have time schedules too. It's a loss of time. You know, I think our time is worth a lot, too, not just theirs. I think they need to talk to these engineers. They say a lot of them are young. I understand they're young, but they still need to have training. You know, they need to train them so that they can get them to come down out of the train when there's somebody sitting there. There's always two people in that train. You know, there's got to be. And they can come...one person come down out of that train. We have a lot of times that they are too lazy to park back and they don't want to get their feet dirty, so they'll park--and there's pictures of that, too--they'll park right on our crossing so that they can change crews. Well, that's not safe. You can't see around. It's a double track. But they're not going to get dirty or wet or snow or whatever, so that they don't have to...so that they can change their crew. You know, that's very unsafe. [LR67]

SENATOR FISCHER: Thank you, Mrs. Cook, for being here. Are there questions?
Senator Dubas. [LR67]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mrs. Cook, for being here today. Have you ever tried calling the local law enforcement? [LR67]

JOANNA COOK: Yeah, we've got sheriff reports in there too. [LR67]

SENATOR DUBAS: And do they try to do something or have they... [LR67]

JOANNA COOK: They have. We had one instance that we were called very radical and a lot of names, you know, because we went down there, and that guy, the engineer, called me a lot of names and told us that I was on railroad property and I wasn't

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supposed to be there. And he said, I'm going to call the sheriff. I said, he's coming. So he came and he said he was very terrible to talk to. He says, what that guy basically told me is he was going to retire within a month and you couldn't tell him anything. You know, he didn't need to be told. And that's just how those engineers are to talk to, you know. So we did meet with three officials, and I have those names and dates back in there as to who we talked to and the date that we talked to them, and they basically told us that we have to call the 800 number if we need a...if we have a problem. The law enforcement says they can't do anything; you know, that they are not in their jurisdiction. You know, they can talk to them, but basically they can't get up there to say anything to them. If they don't want to come down, they can't talk to them. You know, they're in the same boat. [LR67]

SENATOR DUBAS: So, as far as you know, there's been no citations issued or anything like that from local... [LR67]

JOANNA COOK: Oh no, I don't think there's any citations. There's reports, but.. [LR67]

SENATOR DUBAS: Okay. Have you met with, like, your local county government and tried to see if they can talk with the railroad on your behalf? [LR67]

JOANNA COOK: We have talked to everyone. (Laugh) [LR67]

SENATOR DUBAS: Okay. [LR67]

JOANNA COOK: I mean, we were the ones that we called Senator Fischer too. I mean we have called and called and called. [LR67]

SENATOR DUBAS: Thank you. [LR67]

SENATOR FISCHER: Other questions? Senator Louden. [LR67]

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SENATOR LOUDEN: As I read your report there, the train was there for six and a half hours. Had you contacted anybody from the railroad or anything, and did you get any kind of response or anything? [LR67]

JOANNA COOK: No. [LR67]

SENATOR LOUDEN: I mean, they didn't answer you back, or they didn't...or they just...they told you something else or what? [LR67]

JOANNA COOK: You call and you get answering machines,... [LR67]

SENATOR LOUDEN: I see. [LR67]

JOANNA COOK: ...you know, and they'll say they'll call you back and leave your number at, you know, and then have a nice day. [LR67]

SENATOR LOUDEN: Uh-huh. Uh-huh. [LR67]

JOANNA COOK: You know, by the time you get done with their nice days, you really want to tell them to have a nice day, you know? [LR67]

SENATOR LOUDEN: What...yeah. What, you said the sheriff, then you called the sheriff's office and then they move the train shortly. Who did the sheriff get ahold of? [LR67]

JOANNA COOK: I can't remember who that was, I guess. [LR67]

SENATOR LOUDEN: Okay. But he didn't use the 800 number evidently. [LR67]

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JOANNA COOK: I don't believe so. [LR67]

SENATOR LOUDEN: Uh-huh. There, according to the report there they gave the sheriff, there was a mechanical problem with the train. Did anybody ever tell you that? [LR67]

JOANNA COOK: I've had that report a lot. I was at the...at our crossing one night and, you know, and they think at 2:00 in the morning that they can park there, too, because there's not going to be anybody in and out of there, but I work in town at my own office. I have an accounting office in town, and I work tax hours during tax season, so I'm going home at 2:00 and 3:00 in the morning sometimes, and there's a lot of times they're parked across there. Well, I don't have an 800 number or anything to call at that time sometimes, so I sometimes walk up to the engineer and ask them to please move. Well, the one time that I can remember, for instance, he says, well, something is broke, I can't. Well, sure is funny, about two minutes later he moved, you know? [LR67]

SENATOR LOUDEN: How far is...how far is the...are the engines usually from your crossing? I mean, is this in the middle of the train or close to the engine or close to the rear end of the train, or where is... [LR67]

JOANNA COOK: Sometimes they're only two or three cars past our driveway, you know, and blocking it. But then there's a lot of times they're sitting 50 feet from our crossing, and that's what's really bad. [LR67]

SENATOR LOUDEN: You mean they close your crossing and the engine is 50 feet beyond the crossing, and those guys won't go back there and do anything? [LR67]

JOANNA COOK: All they have to do is break it, you know? [LR67]

SENATOR LOUDEN: Well, yeah, I know. [LR67]

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JOANNA COOK: They had it broke and sitting there for three days this last little while, and I don't have a problem with that. Today they're sitting right 50 feet from our crossing. You can't see around that train, you know? [LR67]

SENATOR LOUDEN: Is there a crew people in the trains, or is it...is it a parked train? [LR67]

JOANNA COOK: You couldn't see them today, but after I called Dan Hannon, he came down, out of the train; came from the back, so I don't know if he was on coffee break or reading his newspaper or what. You know, I have no idea. [LR67]

SENATOR LOUDEN: Uh-huh. Okay. Thank you. [LR67]

SENATOR FISCHER: Senator Dubas. [LR67]

SENATOR DUBAS: Thank you. Back to the question of who you contacted, have you ever called anybody at the Department of Roads, Department of Transportation here at the state? Are you aware of... [LR67]

JOANNA COOK: I don't believe so. [LR67]

SENATOR DUBAS: ...people that you can call that has... [LR67]

JOANNA COOK: No, I've never gotten...I don't think we've gotten those numbers anytime, the Department of Roads. I mean, the state troopers used to, you know, they used to say they can give them a ticket and everything, but this last two or three years, they say they can't touch them; they can't do anything. So they won't even come down. [LR67]

SENATOR DUBAS: There is statute that says the Department of Roads can examine

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complaints and I've had some conversations with Mr. Ellis Tompkins from the Department of Roads and he has told me about his involvement with working with the railroads and trying to address some of these situations, so I was just wanting to know if you were aware of... [LR67]

JOANNA COOK: No. [LR67]

SENATOR DUBAS: ...their involvement with railroads. Okay. Thank you. [LR67]

JOANNA COOK: No. [LR67]

SENATOR FISCHER: When you said that the train is blocking your crossing, what do you do? [LR67]

JOANNA COOK: A lot of times we'll call the 800 number. [LR67]

SENATOR FISCHER: I know where you live, so what do you do? [LR67]

JOANNA COOK: (Laugh) Well, a lot of times we'll call the 800 number or we have...now we have, like, Dan Hannon that we can call and a couple others that we can get ahold of. They've told us, please don't get out of the vehicle and talk to the engineer, so we can't do that, you know? But otherwise, we sit there, you know, and wait. And then you get mad. And then... [LR67]

SENATOR FISCHER: What's the longest you've had to sit and wait? [LR67]

JOANNA COOK: Oh, I suppose the one time that Gary had to wait, that Gary and the boys had to wait, was that six and a half hours. You know, that was probably the longest. I know there was one time that they had our crossing blocked and it was in the middle of the night, 2:00 in the morning or so, and it was three hours, I think. And I know

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there were some problems down the line and they were trying to work on it, but they never came back and talked to me and told me what was going on or anything, you know? They just had it blocked and I just sat there, sleeping, I guess. [LR67]

SENATOR FISCHER: What's your nearest crossing? [LR67]

JOANNA COOK: Our nearest one is a mile to the west, but we can't get across there. [LR67]

SENATOR FISCHER: You can't use that. [LR67]

JOANNA COOK: No. That...this is our only way in and out of there, and it's our business and our home. [LR67]

SENATOR FISCHER: How many people use the nearest crossing to you, the one that's a mile away? [LR67]

JOANNA COOK: Oh, a lot. [LR67]

SENATOR FISCHER: Is that one blocked too? [LR67]

JOANNA COOK: That one they block a lot of times so that they don't block us, because then they can't...their trains are so long, they can't...they don't want to block Berwyn, so if they pull up and don't block Berwyn, then they block that one and leave us open, if they can. But, no, that one will be blocked a lot, but there is other ways around there too. You know, that's what we've told them--this is our only way in and out. And they just...they don't want to break a train. You know, that's what they say, is they don't want to break them. [LR67]

SENATOR FISCHER: Okay. Thank you, Mrs. Cook. Other questions? Thank you for

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coming forward today. Is it all right if we keep your folder for the... [LR67]

JOANNA COOK: Yes, that's yours. [LR67]

SENATOR FISCHER: Okay. [LR67]

JOANNA COOK: I've got copies. [LR67]

SENATOR FISCHER: Okay. We will enter that into the record and we'll get copies to the other committee members then. Thank you for bringing that. [LR67]

JOANNA COOK: Thank you. And I do have more. That's just some of it. [LR67]

SENATOR FISCHER: Okay. Thank you. Anyone else wishing to come forward? Good morning. [LR67]

GARY SIMONTON: Good morning. My name is Gary Simonton, S-i-m-o-n-t-o-n. I live a mile and a half west of Berwyn and, as of last night at 8:00, my field crossing was blocked for three days. It gets very frustrating when you order trucks to come in and haul hay out. There's roughly, oh, 18 to 20 acres in there. It's all in alfalfa right now. Order trucks to come in, load out, get rid of your hay, and they show up and there sits a train. The biggest problem I have is when there's no crews; they've already picked them up. Then you make a phone call and they tell you, well, I don't have a crew on that train. No kidding. That's why I'm calling you. It will be...well, the nearest crew is in Ravenna. It's a good half an hour to get a crew out, and before they get one scheduled it's probably a matter of a good three hours before you can get anything moved, if you're lucky. I called yesterday morning on the train that was there. We needed some hay out of there. And the road master did call me back; told me that it would be moved by 2:00. This was about 10:00, 10:30 in the morning. As of 6:00 last night, it was still sitting there. I had tried to call her back, and no response. I have fairly good success when

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there is a crew on the train. Usually the unit is sitting just short of the main crossing in Berwyn. They normally have the dump crossing, which is the first crossing west of Berwyn, closed, and their reasoning is because you have access. You can go through Berwyn and then come back a half a mile to get past that train. That's fine, except for, like Paul said, farm equipment and such. There is a banister bridge just west of Berwyn that's difficult to get through. I've only got a 14-foot header on my windrower, but a 16-footer won't go through there. And I'm small time, compared to most of the guys. So if you find a crew on the train, I can usually get them to come down and talk to me, and most of the time they're glad--I'll give them a ride back--and they're glad to break it for you. But now you've wasted an hour and a half trying to get that accomplished. Sometimes I have found crews down there, there's a little park that the Sorenson's (phonetic) had made and I've found crews in that park and they look at you and go, I'm sorry, I'm out of time. And that is the big response that I get, is because of their union they have a certain amount of time they can be on the clock and when their time runs out, boom, they're done. They don't care what else is going on. They don't care what emergency you have. They don't care what you need to do. The land that I'm talking about is landlocked by the crick and so it's the only access in there; absolutely no other way in and out. And so they're depriving me rights to my land for three and a half days. I'm sorry, That's hard for me to understand how anybody can deprive you of access to your land. And like everybody said, you call the sheriff; the sheriff says, well, there's nothing we can do about it. You just live with it. And there's nice that I've bailed till 2:00 or 3:00 in the morning to get done and about the time you're done, a train pulls across the tracks, stops, and there you are. So you shut the tractor off; you go up and jump the train, which you shouldn't do, but we do anyway because I don't want to stay out there till 7:00 in the morning; and I walk up to the house, which is a half mile off of the...or a quarter of a mile off of the railroad tracks. And I walk up to the house; next day go down and get the tractor or whatever. It's not fair, it's not right, and it's a lot of we have to work around the railroad. I don't know why the two can't work together, but it is very frustrating. And I've lived there for 47 years, so it doesn't get any better. I was hoping that the second track...the problem that we run into is this is a bottleneck. There used to

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be single track east of Janesville, I believe. I'm not positive on that, but it was single track. So this is where the trains come up and park. This is the end of their two-way travel, and they have to wait for the trains to come back from the east. They're probably more important because they're full of coal...or they're empty and they're trying to get them back. The full ones sit and wait for the track to clear, and then they can go. So it's a bottleneck situation. As far as the blocked or the closed crossings, we really don't have any closed crossings in that area. All of our crossings have stayed open. And so it's a question of length of train. If they will pull up right next to the Berwyn crossing, they'll clear my field crossing, and some guys know that and that's what they do. That doesn't make it safe for the Berwyn crossing by any means, but they do...they have done that in times past. But this morning, coming up, I see Jim Burdick's field crossing blocked. Now he happens to have wheat in there this year, but if he'd ordered somebody to go in and spray that wheat this morning, they'd turned around, went back, probably charged him the trip out there, and then had to go back out there again to spray it. If it was blocked again, they'd charge him another trip. When you have hay trucks come in, as I mentioned earlier, they don't make that trip for nothing. If they have to turn around and go home, there's \$300 out of your pocket, and there's nothing you can do, no recourse. I'd like to see something changed, that's all. [LR67]

SENATOR FISCHER: Thank you, Mr. Simonton. Any questions? Senator Dubas.
[LR67]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Simonton, for coming this morning. Have you made calls to the 800 number? [LR67]

GARY SIMONTON: I have made calls to the 800 number. There was one day that there was a special investigator sitting on...I have a shelter belt of trees that's on the south side of highway, and there was two guys in a white pickup on the south side on my land with binoculars watching the train, and so I pulled up and says, hey, what's going on? You know, kind of weird. And he said, well, he says, we're watching these slow train...or

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watching these guys break the crossing, and he said, they're really taking their sweet time about it. And I got their number and that helps a lot, because you can...they're special investigators Joanna talked about, but there's not enough of them. There's not enough enforcement. Your law is wonderful, but the law doesn't do any good if we can't do anything about it. You can't get law enforcement to do anything about it. You can't do anybody to enforce it. You still have your hands tied. You can write all the bills you want, but until we can get some enforcement and some cooperation, it's worthless. [LR67]

SENATOR DUBAS: Have you...have you tried to set up meetings with the railroad to visit with them about your issues? [LR67]

GARY SIMONTON: I'm sure when I call that number and they want me to leave my...I mean, no, they're not going to pay any attention to me. It's like Joanna said. The more that you push them, the more they put you off. [LR67]

SENATOR DUBAS: Have you contacted the Department of Roads? [LR67]

GARY SIMONTON: No. [LR67]

SENATOR DUBAS: Thank you. [LR67]

SENATOR FISCHER: Other questions? Senator Louden. [LR67]

SENATOR LOUDEN: You mentioned when they block that crossing, you know, and your trucks have to go home and \$300 bucks or something like that, and if you have people come to spray and it, you know...do you think there should be something in there that the railroads would be liable for some of those expenses that you would incur that would be detrimental to your business? [LR67]

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GARY SIMONTON: Absolutely. In the case of hay, there's times that...and I can't give any exact instances, but there's times you got hay laying down. It might be optimum time to be bailing. But if there's a train sitting on the tracks, three hours later you've lost the dew and if you go in there and bail it then, you've lost all the leaves so you've basically ruined that crop. And that's out of your control. And so when you talk about compensation, there's many factors in there that are involved in that train sitting on the track. [LR67]

SENATOR LOUDEN: Now you say you lived along the railroad track for 47 years?
[LR67]

GARY SIMONTON: All my life. [LR67]

SENATOR LOUDEN: Okay. [LR67]

GARY SIMONTON: I was born and raised there. [LR67]

SENATOR LOUDEN: I'm about the same way, only it's more than 47 years. And I know how the railroad works. If you had something in there where they would have to give compensation and they decided that it was cheaper to pay you the compensation rather than break that train, it would maybe happen that way. So I mean, by having something like that, doesn't necessary mean they'd break the train. [LR67]

GARY SIMONTON: Exactly. And, you know, it wasn't our choice or anybody's choice for them to reduce the crew from four men to three, or to reduce the crew from three men to two. Now they only run with two people in the unit. You know, that wasn't our choice. That was their decision, to save themselves a lot of money in wages paid out. But it really makes things difficult for the people that are living along the tracks that are trying to access their land. [LR67]

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SENATOR LOUDEN: Do you think then that if there was a person on the end of the train that it would help some of these problems of blocked crossings? [LR67]

GARY SIMONTON: We used to have people on the other end of the train and we still had the same problem, so, no, I'm not sure that that would. If they did their job properly, yes, but I think they get comfortable in the unit or in the way car and they, oh well, nobody needs that crossing. And that's true. There's days go by, I don't need that crossing, and I don't care if they block it. The problem is when I do need it, they didn't check with me when they blocked it, if you get my drift. They can't check with me every time, I understand that. The problem is they have to leave it open so that if I want to access my own land I have that ability. I would like to take a train and block it across Burlington Northern's president for about three days and see how he feels, (laughter) and let him not have access to his home for three days, or make him jump the train for three days. It's very frustrating. And by that time, he'd get the message. But until then, I don't think it will happen. [LR67]

SENATOR LOUDEN: When you...with the crew members and the distance then, do you think that...I mean we've had more problems as they got the trains longer. I mean that's part of our problems. And they're not going to get any shorter because now we're talking about building a line up in South Dakota, that one up through that part of the country, and they're talking about pulling cars that have on, what, weighing 300,000 pounds--bigger cars and bigger trains. So we know this is all ahead of us. In the future we're going to see long ones. What should be done? Should there be a limit on the length of the trains, or should there be a limit on the length plus how many crew members have to be involved, or should they be set up some way or another? I mean, they can look down that train and see when somebody pulls up to a crossing and wait, and when that happens should they be required to go back and open that train? [LR67]

GARY SIMONTON: Oh, most definitely. But if you've ever sat by the train and had one of their crew members walk from the unit, Berwyn is approximately right at a little over a

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mile from my crossing, if you've ever seen one of those guys walk from there to where you're sitting, it just takes forever, and they're not in any hurry. [LR67]

SENATOR LOUDEN: Well, it's hard walking on those rocks. [LR67]

GARY SIMONTON: Well, exactly, and that's why I usually go home with the tractor, I go get in the pickup, I go down, I pick them up, I take them down, we block the crossing. A lot of times they'll stay there so that they can close the crossing after you get done. But again, it's all time, time out of your day and busy schedule. I do believe that there should be a certain number of crew per length of train. I think that's a good idea. I don't understand why they can't...they're usually slowing down to stop anyway. I don't know why they can't stop at the crossings that they know they're going to block and drop a guy off, finish on their way, and when they get down there that guy could open the crossing and there it is, it's taken care of. [LR67]

SENATOR LOUDEN: Okay, thank you. [LR67]

SENATOR FISCHER: Other questions? Mr. Simonton, do you know if the crew can break a train on their decision, taking the responsibility for doing it, or do they have to call a superior in order to do that? [LR67]

GARY SIMONTON: I don't believe...it's my understanding, every time that I've worked with the crew, they've always said, oh, do we have you blocked down there? Son of a gun. Yeah, we'll run down there and break it. And I said, well, I'll give you a ride. And so there's no communication in that aspect that I know of. [LR67]

SENATOR FISCHER: Do you know if there's something on a train where the engineer knows if a crossing is blocked without you having to tell them? [LR67]

GARY SIMONTON: They claim that they have car counters, which tells them how far

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they go, and they go, well, our car counter must be off a half a dozen cars or whatever. Usually with me, it's a matter of six to ten cars that are over the end of my crossing, and usually it's the trains that are going eastbound that usually get me caught. Once in awhile it will be a westbound train and they will be right up there within, like Joanna said, within 50-60 feet. Maybe the two units or two units and a couple of cars will be across there. Well, that's a fairly easy...except it takes time, a fairly easy fix. The other fix is to drive a mile to the other end of the train and go in through the Berwyn crossing and then come back around and there's a driveway right there. You can pull up to them and, you know, say, hey, what's going on today? I have had times that I've pulled up and they have tinted windows and you can't see in the cars, and so next to taking a rock and trying to keep from breaking their window.... (Laughter) [LR67]

SENATOR FISCHER: Don't do that. Don't do that. Do you think it would be helpful to limit the length of a train or maybe increase the time that a train could block a crossing, instead of 10 minutes increase it to 30 minutes? Would that give...if you change the time frame there, would that give the crew the ability to decide, well, let's see, we're going to be here three days, we better break this train; we're going to be here an hour, we better break this train? You know, the ten minutes, that... [LR67]

GARY SIMONTON: Yeah, it's pretty quick. [LR67]

SENATOR FISCHER: Yeah. [LR67]

GARY SIMONTON: There are times, though, that I've pulled up to them and visited with them and they'll say, well, we're waiting on one last train, it's going to be here in 15 to 20 minutes. And three hours later you're still sitting there. So the change of the amount of time to break the crossing, no. What is going to break the crossing is them doing their job. They know where that train is and, if they don't, they've got radio communication. They know exactly where that train is. [LR67]

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SENATOR FISCHER: Do you think it would be helpful for the Legislature to pass any kind of law dealing with this, or does this need to come from the railroad company themselves in dealing with employees? Is that your opinion then? [LR67]

GARY SIMONTON: Well, I believe that both has to happen, but I think the biggest responsibility is on the railroad. I would...I guess I would like to see the railroad put on more special investigators, police, so to speak, that when we're having trouble in an area why don't they come up here and scout this? They know it's going on. I mean everybody here has called them umpteen number times. Why don't they come up here and patrol this a little bit? Another thing is when that train is sitting there, I've reported what unit number it is. They know what crew came off of there and what crew stopped and left it sitting there. So why don't they reprimand that crew? Why don't they write them up? Why don't they say, okay, you know, you did this, you're responsible? Dock their pay one time or I don't know. I mean I'm kind of talking off the top of my head, but... [LR67]

SENATOR FISCHER: As we all do. [LR67]

GARY SIMONTON: Yeah. I mean I think that they can...they could control this if they wanted to. They don't want to. We don't have anything that affects them economically. We don't take away from their income in any way, shape, or form, so we have no strong-arm tactic, so to speak. And the bill that you're talking about, as far as fining them, if we could enforce it I think it would be great, but we've got to have some way to enforce it. Otherwise, it's just another piece of paper we wasted a lot of time on. [LR67]

SENATOR FISCHER: So you believe that the current statute that Nebraska has isn't being enforced and so, until that one...I mean, until we can show that there is the ability to enforce that, nothing is going to change. [LR67]

GARY SIMONTON: Well, exactly. You can talk to any one of the people that are here

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and, of course, we're talking about the rural part of outside of Broken Bow, but anybody here will tell you that there isn't a one single thing that we can do to enforce a fine. I've heard that thing, that you can call a sheriff and the sheriff will give them a ticket. If there's no crew in the train, how is he going to give them a ticket? If there's nobody there to talk to, his hands are tied, as well as ours our. Until we get some way to enforce this and for the railroad to become accountable, then they don't have any problems. [LR67]

SENATOR FISCHER: Okay, thank you very much for coming today. Oh, Senator Dubas. [LR67]

SENATOR DUBAS: One last question, please, Senator Fischer. Have you ever observed them breaking a train? [LR67]

GARY SIMONTON: Yes. [LR67]

SENATOR DUBAS: Estimation, how long did it take for them to? [LR67]

GARY SIMONTON: Oh, not very long once you get there. They basically will...probably takes five minutes to walk back to the car that they're going to break. They may get on the radio and ask him to come back a little bit, to give them a little slack so they can pull the pin, and then basically he pulls forward, and he tells him how many cars he's got to go, and stop. So I mean we're talking about a minute and a half by the time he's there. The time factor is the fact that if you're going to break the tail end, you've got to travel from the unit back to the back end, and walking and on foot, why, you know, I imagine it's ten minutes. It feels like an hour by the time you wait for him to mosey his way down there. That's why I usually go and give them a ride, and I don't think that's in their policy necessarily, but there's a lot of them that are very nice people, they're out there doing a job. The problem is it is just a job and they just get paid. The ones that I come in contact with don't like the fact that they blocked us, but they didn't go to any special effort to

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break it either. [LR67]

SENATOR DUBAS: Have you watched them put a train back together? [LR67]

GARY SIMONTON: Yeah, I have, because there's been times that I've just needed to get in and get some hay or get a piece of equipment or something and come back out and I tell them they can close it afterwards, and they just basically bring the train back. Again, it's a minute-and-half process. Bring the train back, it slams together, they hook up the air hose, and they're done. [LR67]

SENATOR DUBAS: So the time is what takes them to walk from one end of the train to the other. [LR67]

GARY SIMONTON: Right. Right. The actual break is minimal. The persuasion to get them to come is monstrous. Sometimes...of course, my dad was not real eloquent with words and he used to go down and razz them all the time, you know, is this, you know, get the farmer week or...he used other words than that. But anyway, we've dealt with it for years and years and every time we've put in a new set of tracks where it doubled or something, we'd be happy because we thought it would take the pressure off of this bottleneck, but it tends to be the eight-hour mark, I guess, from Alliance or whatever. This is time to shut down here. I don't know. That's a guesstimation. [LR67]

SENATOR DUBAS: Thank you. [LR67]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Simonton, for taking the time today. Others wishing to testify? Hello. Good morning. [LR67]

J.M. CHRISTENSEN: Hello. [LR67]

SENATOR FISCHER: If you could, state your name and spell it for us, please. [LR67]

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J.M. CHRISTENSEN: J.M. Christensen, C-h-r-i-s-t-e-n-s-e-n, live here in Broken Bow.
[LR67]

SENATOR FISCHER: Okay. Thank you. [LR67]

J.M. CHRISTENSEN: We farm ground from Ansley to Broken Bow. And I don't know, there isn't much you can say that hasn't been said. It's a big pain in the butt, is what it amounts to. I mean you're trying to pick corn. We're out there right now. My son is supposed to be here and it's maybe a good thing he isn't, but he wanted...he called me this morning, wanted me to come down here. And the main crossing is the one in west Berwyn, east Berwyn. You just...I mean, the crossing in Berwyn is open but...and Berwyn, with trucks, they don't want you drive through, and I can see why, but there's no other way to go so...the one in east Berwyn is generally closed, and the one west of Berwyn is. And you never know. You know, you can't turn around a semi in the middle of the road, so if you come down there, well, uh-oh. My daughter-in-law took me up the tractor the other day and on this one west of Berwyn, there's a little hill there and you can't see over it, so you don't know whether to head down or not. I called her on the radio. She apparently didn't hear me. I said, did that train move yet or is it blocking? It's just a royal pain. So I don't know the answer. I know one time there was a guy there and he gave me his number, a railroad guy, and he said if you...if they block that you let me know. And while we stand there talking, a train come up and blocked the road. [LR67]

SENATOR FISCHER: Did he make a call? [LR67]

J.M. CHRISTENSEN: Yeah, I think he got them (inaudible). He lived at Kearney at the time, wherever he was. But like I say, there's not much you can do. People called and called and call. I don't call them because I don't figure it....it's a waste of time. I thought maybe with this new track they'd kind of eliminate some of that, but it has made it worse, if anything. And generally, if they're going to be there, you know, several days,

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well, they'll break it. And we've given rides back and forth too. That's kind of a pain, too, but they ain't going to...when you walk up there, they don't crawl out and see what you want. They stay in there and you got to, like he says, throw rocks at them or something to get their attention. And one was sitting just across the tracks. I said, can you back up? No, we can't back anything up unless there's somebody back there, unless it's for their advantage. Then they can back up. But they're not supposed to back up the trains without, you know, somebody back there on the other side. So I don't know if shorter trains would help or not. If they could somehow make them so they stay in between them crossings some way. That's not about to happen, I don't imagine, so...but we got trucks and we can't keep up hardly anyhow and then they come in and there's a crossing blocked, so...and it's a long ways around, especially with equipment. Like everybody was talking about that bridge there at Berwyn, you can't get through there so you got to go the long way around to get back somewhere, wherever you're going. [LR67]

SENATOR FISCHER: Thank you, Mr. Christensen. Are there any questions? [LR67]

J.M. CHRISTENSEN: Like I say, we lived down there east for 40-some years, down east of Berwyn, but we deal with all them crossings because we farm on both sides of the track. It's a pain (inaudible). [LR67]

SENATOR FISCHER: I see no questions. See, when you come up later in the testimony you don't get peppered with questions as heavy then. [LR67]

J.M. CHRISTENSEN: Yeah. Good. I'll have to remember that. (Laughter) [LR67]

SENATOR FISCHER: So thank you for taking the time to be here today. Appreciate it. [LR67]

PAUL LOY: Senator Fischer, may I address the... [LR67]

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SENATOR FISCHER: Yes, Mr. Loy. You need to come up to the table. We don't usually let people come up, but you may. [LR67]

PAUL LOY: Okay. Well, I'd like to address law enforcement and... [LR67]

SENATOR FISCHER: If you can state your name, though, for the record. [LR67]

PAUL LOY: Paul Loy, L-o-y. And I'd like to address the law enforcement, which I didn't before, and I have talked with the railroad people. We have met at the...out...like I say, I talked to white hats when I can. I've talked to them a lot of times and they will say, call your law enforcement, they'll come out and they'll give a ticket. And when they hand the ticket to that engineer, why, he's going to move the next time; he's going to take care of it. I have talked with the law enforcement directly. They say that their hands are tied; they can't do anything. The sheriff calls the investigator in Alliance and apparently that's not doing much good because I haven't seen any changes. In regard to the state go-between, between the railroad and us, so to speak, the only dealing that I've ever had with them is that they are wanting to close crossings. They...I have never found them to be too willing to do anything other than talk about trying to close more crossings. And it's a lucrative thing for the state, and I know it's a safety thing, and that's what they cite to me. It is a safety thing. I mean, if there's not a crossing there, they don't have to worry about safety. But again, it's a step backwards sometime. So thank you. [LR67]

SENATOR FISCHER: Thank you very much. Anyone else wishing to step forward?
Good morning. [LR67]

FRANK BENNETT: Hi. [LR67]

SENATOR FISCHER: Good morning. [LR67]

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FRANK BENNETT: Good morning. My name is Frank Bennett, B-e-n-n-e-t-t. I'm with the Burlington Northern Santa Fe. My title is superintendent of operating practices and my...to put that in a nutshell, I supervise the operating department, the people who run the trains between Alliance and Ravenna. I was asked to come here by Mr. Munguia to represent the BNSF and answer any questions that may arise. I'm not going to try to dispute any or all of the comments so far this morning. You know, I may when it comes time to answer some questions, but I guess the few things I'd like to say is we don't block crossings intentionally. We have strict rules and guidelines for all of our employees. All of our employees are trained. I think we have a pretty extensive training program for our conductors and for our locomotive engineers, and we have a rule about blocking crossings for more than ten minutes. And we have an operations testing program. Our operating supervisors go out and basically police our train crews, and in the event that they see an operations exception, they are cited with a rules exception and it goes on their record. Blocking a crossing for more than ten minutes, if that were the case, if that were discovered by one of our operating supervisors, it would be entered as an operations test exception and the employee would be counseled. This is just part of our overall program. I think most of what we're talking about here this morning is private crossings. We rarely block a public crossing ever. If we do, it's what we call a service interruption. [LR67]

J.M. CHRISTENSEN: That is not true. It's not true. [LR67]

SENATOR FISCHER: Go ahead. [LR67]

FRANK BENNETT: If we do block public crossings, our crews do try to keep an eye on it, and if they do get contacted that the crossing has been blocked we make all effort to clear it. It's kind of coincidental. You've all commented about the trains parked everywhere right now. We had what we call a major service interruption the other side of Lincoln. We've had derailments and a washout, and were unable to get all this coal to

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the utilities so we're backed up. I think... [LR67]

SENATOR FISCHER: Well, I thought maybe you were just doing that for our benefit because we had the hearing here today. [LR67]

FRANK BENNETT: It actually worked out pretty good that way. (Laughter) But I think, you know, if you look at it, I think honestly, I think we've done a fairly good job of clearing the crossings that need to be cleared. The problem, you know, my perception is we have far too many crossings. Like this gentleman said here, what we need is a partnership between us and the landowners to...you know, why would one landowner need three or four crossings when, if we had this partnership, we can maybe improve the right-of-way, upgrade one crossing even to a point where we have gates and/or lights, and close the other crossings. That public crossing with the gates and/or lights would rarely be blocked and access would be there 100 percent of the time. So again, we don't block crossings intentionally. We do have an unpublicized tool for our employees on this particular subdivision on which crossings they are to never block, which public...or which private crossings we feel that can be blocked on a temporary basis, but...and they use it and they make all effort to clear the crossings that they can. But again, the amount of traffic we've got and the amount of crossings we've got, we're going to block some private crossings, but we don't ever intentionally block a public crossing. Again, the partnership is the way to go. We have formed partnerships and there have been a number of times where a rancher would call us and say on Saturday morning I'm going to move a herd of 500 cattle from one side of the tracks to the other; can you help me out? We have sent flagmen to the location. We'll stop traffic until he moves all his cattle across, then start running trains again. The same with a farmer. If he's got a harvest crew coming in, he's got to move a bunch of equipment from one side to the other, if we know that in advance, we work with these landowners. And that's the kind of partnership I think we need to try to form. Again, I'm not going to try to dispute all of the comments. I would like to make one more comment and then maybe answer some questions. We have had some instances where there has been some

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confrontations between landowners and our crew members, and our crew members have been instructed to avoid confrontation with the public at all cost. And so maybe that would be the reason that the perception is that they won't get out and talk to the landowner, because they know that the landowner is going to be upset. So they're trying to avoid a confrontation. So just to wrap it up, again, we've got pretty extensive rules that our people are to comply with, and when they don't, they are held accountable, when we know about it. We don't always know about it. But we do have rules in place to enforce blocking crossings for more than ten minutes. And just...I'll just end up by saying a blocked crossing, to us, more than ten minutes, is the train stopped for ten minutes? If the train is moving across a crossing slowly and then stops, from the time that he stops that's when the ten minutes would commence. I think that's really all I've got, if there's any questions. [LR67]

SENATOR FISCHER: Okay. Thank you, Mr. Bennett. Are there questions? Senator Dubas. I'm sorry, sir, Mr. Christensen, you can't ask any questions at a public hearing. Just the senators can ask questions. Senator Dubas. [LR67]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Bennett for being here. We've referenced the ten-minute time and I believe that's in Department of Roads' regulations. Do you know where that ten minutes...how that time has come to exist? [LR67]

FRANK BENNETT: You know, I really don't. Actually, before coming to this meeting I did look through the federal regs and I could not find anything that states ten minutes. We've got a rule in our rule books for our people that says ten minutes is the max. [LR67]

SENATOR DUBAS: And is that ten minutes based on anything specific? [LR67]

FRANK BENNETT: I really don't know. It's just for as long as I've been around, 30-plus

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years, it's been ten minutes. [LR67]

SENATOR DUBAS: There has been some questions raised as well, could the state regulate the length or the speed of a train. Is the state allowed to make those regulations? [LR67]

FRANK BENNETT: To my knowledge, no. [LR67]

SENATOR DUBAS: Are there any federal regulations that deal with a blocked crossing where a train is actually at a standstill? [LR67]

FRANK BENNETT: Well, again, no, I looked and I could not find that. [LR67]

SENATOR DUBAS: In the opening statements that the legal counsel made, preemption was brought up and that most states' regs would probably be preempted by federal regulations. Do you know if there are any exceptions or exclusions to preemption? [LR67]

FRANK BENNETT: No. [LR67]

SENATOR DUBAS: Well, as I've looked through the FRSA, that's the Federal Railroad Safety Act, they do reference that a state may adopt or continue in force an additional or more stringent law, regulation or order related to railroad safety or security when the law, regulation or order is necessary to eliminate or reduce an essentially local safety or security hazard; two, is not compatible with a law, regulation or order to the U.S. government; and three, does not unreasonably burden interstate commerce. Are you familiar with that portion of FRSA? [LR67]

FRANK BENNETT: No, I'm really not familiar with that. I understand what you read, but I'm not familiar with it. [LR67]

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SENATOR DUBAS: Okay. Are you familiar with the West Memphis, Arkansas, case?
[LR67]

FRANK BENNETT: No, ma'am. [LR67]

SENATOR DUBAS: I believe that was an ordinance that West Memphis, Arkansas, passed, in conjunction with state statute, where they actually were able to put fines into place dealing with blocked railroad crossings. And the Highway Commission is the one that has jurisdiction over those regulations and have, so far, been able to get the railroads to comply with those rules and regulations. But you're not familiar with....
[LR67]

FRANK BENNETT: No, ma'am. [LR67]

SENATOR DUBAS: Okay. All right. I think that's my questions for the moment. Thank you. [LR67]

SENATOR FISCHER: Other questions? Senator Louden. [LR67]

SENATOR LOUDEN: Yeah, where you from, Frank? You from Alliance or you're from Broken Bow? [LR67]

FRANK BENNETT: I'm sorry. I'm from Alliance, Nebraska. That's where my job is. That's where the division headquarters is that's responsible for this territory. [LR67]

SENATOR LOUDEN: Okay. Then you're, as you've indicated here, there's a huge difference between public crossings and private crossings, is that correct, on how they're handled? I mean you actually...your ten-minute rule applies to public crossings, it doesn't apply to private crossings, that the railroad has put out? [LR67]

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FRANK BENNETT: It would generally apply to basically all crossings, but we unofficially prioritize. There are so many crossings. Between Alliance and Ravenna, where these train crews operation, there's in excess of 300 crossings. [LR67]

SENATOR LOUDEN: Uh-huh. [LR67]

FRANK BENNETT: And there's just so many crossings that we, again, unofficially prioritize and sometimes a private crossing is blocked. [LR67]

SENATOR LOUDEN: When you mentioned that, you know, they don't get down or people have to come up to the engine and I've got instances where people have had to drive down there to the engine and then they had to go up on that engine and literally knock on the window or open the door or something, you know, in order to get somebody, those new pumpkins, as you call them, these orange engines nowadays, these AC units, is there a certain technique you have to get on to one of those engines? Can you just walk up and step on the one? Is it safe? [LR67]

FRANK BENNETT: For you or for me? [LR67]

SENATOR LOUDEN: For anybody. [LR67]

FRANK BENNETT: If you were to get on that engine, we would consider it trespassing. But I guess if you're talking safety or if you're talking is it permissible for you to get on that locomotive? [LR67]

SENATOR LOUDEN: No, what I'm asking is when they first came out they were told that you had to jump onto that engine because they were an AC unit. That was AC electricity running through there and you could be shocked on that thing. Is that still in some of your regulations or not? [LR67]

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FRANK BENNETT: That's pure foolishness. [LR67]

SENATOR LOUDEN: The old ones were DC units, but these are AC-operated units now, aren't they? [LR67]

FRANK BENNETT: That's correct. [LR67]

SENATOR LOUDEN: And there's no danger to anyone getting on or off that engine? [LR67]

FRANK BENNETT: No, sir. [LR67]

SENATOR LOUDEN: There's no way that they'll ground out to that engine, you can be grounded out? [LR67]

FRANK BENNETT: No, sir. [LR67]

SENATOR LOUDEN: Okay. Because that's what I was told when they first came out. I was wondering about that. When we talk about crossing...can you hand him one of those pictures, if you would...I got some pictures of a crossing and it's a private crossing. (Exhibit 2) How do you hope to maintain them? If you will look on page 1 there, this is a crossing in there west of Ellsworth and you can see it's a railroad track with a crossing, and I think the picture one is probably the north line; and the picture two is a little bit closer to the north line, looking north; and picture three is it. Now on picture four you see a car pulling up there where there's two double track, and if you'll notice, the track in front of the car is considerably lower than the main...than the line on the north side. And as you can see on page 5, this is more or less a lower view of the car pulling up there. And then on page 6 you can see where, as you go across with the car, the nose of the car starts to drag going over that crossing, or drags into that dirt. As we

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continue on to the next page, on the page 7, you can see where literally the car literally hits into the dirt; and then as you see on 8, that's as you start to go on across; and as you turn the page to page 9, you can see what the angle is between the two tracks. Now to me this is very unsafe. Why do you keep these crossings? You know, why is this happening or how many of these crossings do you have like this up and down your line that it probably is an accident waiting to happen? These pictures were taken last July, by the way. It isn't that they were...been a long time. [LR67]

SENATOR FISCHER: Senator Louden, could I ask if you are entering this as an exhibit into the hearing? [LR67]

SENATOR LOUDEN: Yes, I would, yes. [LR67]

SENATOR FISCHER: Okay. Thank you very much. We will enter it as an exhibit. (Exhibit 2) [LR67]

SENATOR LOUDEN: And then of course on the picture 16 down there, you can see where the car is coming back from the other side of the track and nosing down. Why do we have to put up with, you know, this type of work? I mean, you guys got the equipment that you could level...that could be leveled up. That could be changed. It sure might cost you some money or something, but is it cheaper to take a chance and pay damages if somebody gets killed than to fix a crossing, or where you at on this? [LR67]

FRANK BENNETT: I guess, first off, let me just start off by responding by, you know, I'm an operating supervisor. This is an engineering issue. But what you're telling me and what you're showing me here makes perfect sense to me, but it goes back to the partnership issue. If we get the call, you know, from an individual, you know, in a nonthreatening manner, which we get a lot of in the threatening manner, asking, you know, for somebody to come and take a look at this crossing, we think it's in need of repair, we do that. And this crossing here, I could...picture number one, I would say we

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could probably build up the approach to it a little bit. Obviously, one main line is lower than the other and that's...it's going to remain that way. But I'd also like to point out that this is a private crossing. Goes into farm field and it's going to be...my perception only, it's going to be pretty rare when you have a Cadillac driving across this crossing. [LR67]

SENATOR LOUDEN: Every day. [LR67]

FRANK BENNETT: Okay. Well, it's a rarity then. Okay. [LR67]

SENATOR LOUDEN: If you...there's two families that live down this road. I mean... [LR67]

FRANK BENNETT: Okay. But in most cases, the private crossings, my point there, most cases the private crossings to farm fields are four-wheel drive pickups and bigger equipment. [LR67]

SENATOR LOUDEN: Yeah, but this isn't a farm field. If you'll notice, let's see if we can see it here, there's an oil strip that starts on the...we get it...oh, yeah, the number one. See that house in the background? See that "autogate" and see that oil strip that goes from that "autogate" beyond there? This isn't an average farm field. This is an oiled, asphalt oiled, concrete asphalt oiled strip that leads out of there. The problem is we can't get it declared a public crossing because the county won't declare that as a road in Sheridan County. Sheridan County doesn't declare any public roads that go to somebody's place. And, of course, in the sound end of Sheridan County there aren't any roads that don't go to somebody's place. [LR67]

FRANK BENNETT: Okay. Well, again, it's an engineering issue and if our engineering department gets contacted about rough crossings or crossings that are in need of repair, most cases we accommodate. [LR67]

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SENATOR LOUDEN: Okay. Can you work on this? [LR67]

FRANK BENNETT: Have you made a contact to the engineering department? I mean, I could surely make a call, but... [LR67]

SENATOR LOUDEN: Bob took these pictures. Yeah, Bob has pictures of them all and he's worked on it. They've worked on it some, but it's still not satisfactory. [LR67]

FRANK BENNETT: Okay. Is this mine to keep? [LR67]

SENATOR LOUDEN: Yours to keep. [LR67]

FRANK BENNETT: I'll make a contact with Mr. Doug Johnson (phonetic), who would be responsible for this. [LR67]

SENATOR LOUDEN: Okay. That would be all I would ask on that then. When it comes to the train crew pulling up within somebody...some of them have testified, you know, maybe the engines are across the track...or across the crossing and maybe two or three cars. Why do those people on the engine have to be contacted to get down and break that train? I mean, it isn't that big of a job to walk back down there two or three car lengths and pull the pin, you know, for the time being here, something like that, especially when they see somebody coming up. So is this a labor issue or where is the issue at? Are we talking about a problem that you guys have with your labor rather than a problem we have with any kind of...anything in the statutes? [LR67]

FRANK BENNETT: No. You know, there could be a number of variables, you know, as to why that might happen. In most cases, though, from my experience, I've been doing this for a long time and I actually used to be an engineer, if we pull over a crossing and the crossing is only back there 3, 5, 10, 15 cars, both crew members keep an eye on the crossing and if traffic arrives, the effort is made to cut the crossing, in most cases.

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But I think someone brought it up here that we have what we call an hours of service. We're federally regulated. Our crews cannot work over 12 hours. If they do, we're subject to federal fines, crew members, as well as the company. In the case of an emergency, we'll violate the federal hours of service. If there's an ambulance that shows up at a crossing and that crew is dead on the hours of service, we'll cut the crossing and appeal the fine to the FRA. But in most cases, in my experience, crew members are conscientious and they'll go back and make that effort to cut the crossing. [LR67]

SENATOR LOUDEN: Now did they run out of time before they pulled up there and stopped the train, or did they run out of time after they pulled up there and stopped the train? Because if they run out of time after they stop the train, why didn't they break that train before they run out of time? [LR67]

FRANK BENNETT: That would be the best way to handle it, but you know, I don't know. It could have been that the plan was to move the train further on after a short stop for...to meet an opposing train at the end of double track and something changed and they couldn't move. You know... [LR67]

SENATOR LOUDEN: How much of a...how much of a, I guess, would you say repertoire (sic) you have between the dispatcher in Fort Worth and the train crew? Because this is...when I've talked to...I mean, I've been around this for a long time myself and a lot of times they can't find out from the dispatcher whether they're going to move or whether they're going to sit there. For some reason, somebody can't tell that train crew where they can be. I guess it goes like the old switchmen down on the track tells the engineer, you know, when he's waving to stop and start the cars, he tells the engineer that this is your brain, you know. And I'm wondering is this what the dispatcher tells these train crew out there on the main lines or on the track that you're not supposed to know anything because I'll tell you everything you know. And is there a problem in there? And that gets back to a labor issue again. [LR67]

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FRANK BENNETT: My only way to answer that is we've got personalities involved, you know, so one dispatcher might be very thorough in giving the crew all the information that they need to stay clear of crossings or to cut crossings. Another dispatcher may be incredibly busy and not handle the pressure as well as the other guy and he may not offer that information. [LR67]

SENATOR LOUDEN: That was my... [LR67]

FRANK BENNETT: We don't have a consistent effort, I guess I might call it. [LR67]

SENATOR LOUDEN: Uh-huh. That was my next question. How...are your dispatchers overworked down in Fort Worth? I mean, do they have a huge load and are they having to work, you know, more than eight hours or however many? How many hours do they sit there and look at these monitors, you know? Are they for like four hours on and four hours off, or how is that handled in the dispatching part? [LR67]

FRANK BENNETT: Well, just coincidentally, I was a dispatcher for our company for five years in Seattle, so I'm very familiar with the job. They're not overworked. They're federally regulated as well. They can only work nine hours. After they work 9 hours, they have to have a minimum of 16 hours off. They're busy. They're busy for the whole time that they're there, you know, depending on the traffic on that particular day. This particular line is fairly busy, as you all know. They're busy but, in my opinion, they're not overworked. [LR67]

SENATOR LOUDEN: That's what I was wondering, because it has to be an intense job and I was wondering if there's...if there's a problem, you know, on that level. [LR67]

FRANK BENNETT: We actually carry two dispatchers on this shift that basically share responsibilities of the job. One of them pushes all the buttons, communicates with the trains. The other one handles all the administrative work that's involved. So there's two

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people that are trying to keep trains moving on this subdivision. [LR67]

SENATOR LOUDEN: Okay. Thank you. [LR67]

SENATOR FISCHER: Thank you, Mr. Bennett. When you said that the Burlington Northern Santa Fe, in your opinion, needs to partner with landowners, do you...does the company have a current policy that deals with that? [LR67]

FRANK BENNETT: Not that I'm aware of, no. [LR67]

SENATOR FISCHER: In order, I guess, to get input then from landowners, the landowner would need to call the company. Would that be correct? [LR67]

FRANK BENNETT: That would be correct. In the couple examples that I gave, if a rancher was wanting to move several hundred herd of cattle from one side to the other, he makes the call, we work with that individual. [LR67]

SENATOR FISCHER: What number do they call? Do they call the number that's posted out there, the 800 number? Are you going to give out your private cell phone number? [LR67]

FRANK BENNETT: No, ma'am, I'm not. No. [LR67]

SENATOR FISCHER: You know, I'm just teasing you. What number do they call then? [LR67]

FRANK BENNETT: Well, preferably, it would be the 800 number to what we call the ROC center, and... [LR67]

SENATOR FISCHER: What if people aren't answering the 800 number, and what if you

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leave a message and nobody is calling back? [LR67]

FRANK BENNETT: Well, that shouldn't happen, and if it does, I apologize. That desk is operated, manned, 24 hours a day, 7 days a week. [LR67]

SENATOR FISCHER: Who does the landowner need to call if they have called that 800 number and they're not getting a response and they're moving 500 pairs the next day? [LR67]

FRANK BENNETT: I think, from the testimony that I've heard here today, I think everybody in this room probably has local telephone numbers that they can call. I'm not going to give any out today,... [LR67]

SENATOR FISCHER: (Laugh) No, but I'm just saying is there a... [LR67]

FRANK BENNETT: But there are local supervisors that can be reached that can... [LR67]

SENATOR FISCHER: Is there a number in the phone book they can call? Is there...you know, I agree with you that I think the company needs to develop these partnerships and try and work with landowners and realize when somebody only has one crossing into their place that can't be blocked. But how are these citizens supposed to get in touch with the company? You know, we've heard today sometimes that calls aren't returned from that 800 number, so is it...do you have...I'm not asking for your number, but are there numbers in the phone book or... [LR67]

FRANK BENNETT: Well, I've never looked at a phone book... [LR67]

SENATOR FISCHER: ...how do they get ahold of the company? [LR67]

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FRANK BENNETT: ...but I think there are numbers in the phone book. I really don't know. If you look...if you call information for Alliance, Nebraska, for BNSF Railway, there's a number of numbers. I don't know who you're going to get, but there's numbers available. But... [LR67]

SENATOR FISCHER: Maybe it would be beneficial to have the company look into that and try and get that information out so you can develop these partnerships that you spoke of, would be my suggestion. [LR67]

FRANK BENNETT: And there very well may be a policy that I'm not familiar with, with our public relations department. I'm not sure. [LR67]

SENATOR FISCHER: When employees have violated a policy and you made mention that it is then put in their record and notice put in their record, what happens then? How are the employees held accountable? What happens? [LR67]

FRANK BENNETT: We're talking about a specific exception for blocking a crossing? [LR67]

SENATOR FISCHER: Yes. You said that a note is put in the employee's record. What's the next step then? Just in their record? Are they fined? Are they... [LR67]

FRANK BENNETT: No, they're not fined. We've got a pretty detailed, pretty complex discipline policy and I don't want to go into it because it is far too complex. It's based on progressive discipline. If an employee has been discipline-free for the past five years and we cite him for blocking a crossing for more than ten minutes, we set up what we call an investigation, a formal investigation. It's like a hearing, like this, is recorded, but the employee has the option to request alternative handling, which is a much less formal affair. We get together, we coach and we counsel the employee, and it gets entered in a database. Subsequent offenses, we progress more to...next offense would

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be an investigation would be set up. If the employee is found guilty of the exception, it would be a ten-day record suspension. It goes on his record that he was actually suspended for ten days, but he really wasn't. Then it goes 10 days, 20 days, 30 days, dismissal, within a given time period. [LR67]

SENATOR FISCHER: Okay. Can you tell when a train blocks the crossing? Is there technology available today that you don't have to have one of the two crew members that travel on your trains get out and walk back to make sure that your 4,999 car hasn't blocked a crossing? [LR67]

FRANK BENNETT: That would be a long train. Yes, we have what we call...it was referenced earlier, we call it a footage counter. When the engineer goes over a given point, a crossing, he pushes the button on his footage counter and it counts, based on the speed of the locomotive, how many times the wheels turn. And to be off by six or seven cars, which was mentioned earlier, I'm not saying that that can't happen, but it's pretty rare. Technology is to a point where we're pretty darn good with our footage counters. [LR67]

SENATOR FISCHER: Does the company ever check those footage counters? Are there records kept on that to know when a train has blocked a crossing? [LR67]

FRANK BENNETT: No. [LR67]

SENATOR FISCHER: In areas such as this, where you have, you know, we've discussed the bottlenecks in this area, do think there would be any reason that the company might be interested to know; that when you receive a lot of these complaints, can you keep track of them then by verifying it with your counter that's on the train? Would you be interested in doing anything like that? [LR67]

FRANK BENNETT: Well, we do have...our resource operation center actually tracks

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blocked crossing reports, and that's a document that is forwarded out to the operating department for us to go through thoroughly and see if we've got any consistent exceptions. And there are resources for us to follow up, you know, with the crew or just some follow up testing with the crew, or... [LR67]

SENATOR FISCHER: Do you ever check the counters? [LR67]

FRANK BENNETT: The counters do not maintain that information. It's not data that is stored... [LR67]

SENATOR FISCHER: Okay. [LR67]

FRANK BENNETT: ...in that particular piece of equipment. [LR67]

SENATOR FISCHER: When you have calls on blocked crossings and the property owner sends you the information on what train it is, from the numbers on it, do you keep track of that? [LR67]

FRANK BENNETT: There is a program for us to keep track of the blocked crossing and blocked...and the trains that actually block the crossings. I don't personally keep track of that. I don't know that any of my supervisors keep track of it. When we get this report, which comes out, I think, biweekly, we scan the report for consistent exceptions--are we seeing a given crossing blocked on a consistent basis. Because we're going to block crossings, but we don't intentionally block any crossing, but there are going to be crossings that get blocked. [LR67]

SENATOR FISCHER: If you see that a crossing has been blocked consistently, what is your policy on that? Do you try to remedy it? Do you inform your engineers that there is...there seems to be a problem here that this crossing is being repeatedly blocked? And what's your policy; what action is taken? [LR67]

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FRANK BENNETT: Well, the action taken would be we would follow up with the individual crews that we have identified, because we can get into our database and see what crew was on what train at any given time. We follow up with the crew, ask what was going on at that particular time, and on top of that we actually do what we call monthly marathons with this crew base in Alliance. We, for two and a half days, we bring crews in to talk about safety issues, and a number of times we've talked about our Rule 6.32.6, which is public crossings, and about blocking crossings. And we've actually talked about, unofficially, which crossings we may block for a short time, but which crossings we don't block, period. So we do discuss this. [LR67]

SENATOR FISCHER: Okay. Thank you. Other questions? Senator Dubas. [LR67]

SENATOR DUBAS: Thank you, Senator Fischer. Are there any state agencies that you work with, such as the Department of Roads or anyone else? [LR67]

FRANK BENNETT: Not that I'm aware of. The agencies that we work with are all federal. [LR67]

SENATOR DUBAS: So, like on closing crossings, you know, LB79 that was mentioned, do the railroads work with... [LR67]

FRANK BENNETT: Well, we do have a department that specializes in public safety and crossing closure. There are certain representatives that that is their responsibility, but I'm not totally familiar with it. [LR67]

SENATOR DUBAS: Okay. Do you know of any specific communications that the railroad might have with local law enforcement, like if they know that a crossing is going to be blocked for an extended amount of time that you might let law enforcement know, you know, this is not a crossing that you'll be able to use? [LR67]

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FRANK BENNETT: Well, depending on the situation. If it's a major track project where we know we're going to take a busy crossing out of service for an eight-hour period, there's a contact made and we work in conjunction with the state in those cases, I'm sure. [LR67]

SENATOR DUBAS: Okay. Yesterday, as well as today, I've been hearing the recurring theme of communication and how maybe we need to improve communication on all levels within the industry and with the public, and that was something that I fully wanted to do. Before I even introduced this legislation, I invited railroad officials into my office because I was aware of this situation; really didn't know, you know, what we needed to do; was looking for their guidance. And to be quite honest, was basically told there was nothing that I could do and that it was pretty much an isolated incident that I was referencing and that I should just pretty much let it go. I think these hearings are an indication that it's not an isolated incident; that people are frustrated and I'm sure they take their frustrations out on your crew, which is not something that I would encourage or recommend. But I do think it's important that we have this communication. I'm glad we're having these hearings. We need to get an understanding going between the industry and the public and trying to find out what it is we can do to...as you've said, we can't totally eliminate this problem, but I want to believe that there are things that we can do to help alleviate the situation for all people involved. And so, you know, it's my hope after this hearing, you know, I'm very willing to meet with railroad officials again as to what direction we can take this legislation. I've seen things that are working in other states, like West Memphis, Arkansas, where, you know, fines are imposed. The railroad doesn't want to pay fines and so they're looking at ways to remedy the situation. I've heard when community members or local government has met with the railroad in the past that temporarily the situation seems to get some remedy and then it kind of goes right back. So, you know, I want to believe that there is remedy out there; it's just finding the way to make sure that the railroads want to make it happen and we have a way to make sure that they'll continue to make it happen. So I appreciate you bringing your

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information forward to us. And this...you mentioned some kind of reporting system on the frequency of blocked crossings. Is that just internal information? Is that information that can be made known to the public or... [LR67]

FRANK BENNETT: To my knowledge, it's internal information for us to use and try to improve on. [LR67]

SENATOR DUBAS: Okay. All right. That's it. Thank you. [LR67]

SENATOR FISCHER: Other questions? Senator Louden. [LR67]

SENATOR LOUDEN: Yeah, you mentioned a little bit ago, Frank, about, you know, crossing cattle and that if someone wants to get into an area, they would call, they would see to it that that crossing is open. And I must say that we cross cattle quite a lot on the railroad track and we have very good luck getting the train stopped, providing we call a day or two, usually we try to call two or three days ahead of time, and we have very good luck at it. Now the phone numbers, though, that we have to use are some personal people that we know on the railroad. That usually works the best. We have never had a phone number such as you say the one in Alliance. You'll, more times than not, you'll get a voice mail or something. So if you really want to get something done and get...know that you're going to have someone there to help get you across the railroad track. We usually have to call...well, we call Mike Shannon (phonetic) and some of those people like that, that don't have a thing to do with it because I think he's working on maintenance in the yards, but he gets ahold of somebody and they do that. Now this is where your local employees are always trying to help local people and I think you got a level in there that your local employees are trying to get along with the local people, you know, and we appreciate that. And I was wondering on...if that can...if you can have local numbers someplace where people, you know, in these different telephone exchanges all up and down your line, all the way from Alliance to Ravenna or wherever you want to go to, that there would be some local people that could be

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contacted if they wanted to have that crossing open so they could get back and forth with the machinery, rather, as one gentleman said, you know, if his hay trucks are coming in then he's got to sit there waiting. If he knew there was a...if he had those hay trucks ordered, he knew when they were coming in, so he could tell somebody that, you know, I want that crossing open certain times. Is this possible? [LR67]

FRANK BENNETT: Well, yeah, I understand fully, you know, that it's always easier to work with somebody that you know, put a face with the name and...but the process we have in place is the 800 number and I don't see that changing. You know, there may be some improvements that we can do, you know, as far as response time, but that 800 number is strategically placed in what we call the NOC, the Network Operating Center, in Fort Worth. In the event that it's an emergency call, and they answer the phone, they're right there. They're right there. They can talk with our dispatchers. They can talk with our chief dispatcher. They've got all the contact numbers of the field personnel to dispatch the field personnel. But I don't see that line of communication changing. [LR67]

SENATOR LOUDEN: In other words, you don't want to try and set it up so there's some local people that you could get ahold of for them to see that their crossing would be open at certain times then. That's what you're telling me? [LR67]

FRANK BENNETT: Basically. I'd just as soon the call went into the 800 desk and then they, in turn, would coordinate with the field supervisors... [LR67]

SENATOR LOUDEN: Why? [LR67]

FRANK BENNETT: ...to accommodate. [LR67]

SENATOR LOUDEN: Why can't you call somebody local? [LR67]

FRANK BENNETT: Well, you can try, but I guess our process is really set up to work

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through our center that controls the movement of all of our trains, and they are actually more in control of the movement of our trains than any local supervisor. That local supervisor that you got ahold of would, in turn, have to make that call down to the NOC and set it up. [LR67]

SENATOR LOUDEN: Now the way I picture it, when we get ready to cross cattle, I don't think they tell anybody until ten minutes before they get there, because when they get there, then they call the engineers on there and stop the trains, or call Fort Worth or some place like that. I don't know if this is even recorded anyplace that we're going to be crossing cattle. They just say, yeah, we'll have somebody down there. A lot of times it's one of the track riders or it can be one of the signal maintainers. Once in awhile it's a section man. If you're lucky, you get the section man out there and they help you take the hay back off the railroad track. But they usually pull in there and you say, well, how quick? Well, let me see where the trains are. And they call on their little phones right there. That's the reason I'm wondering if you guys...what you have in management level and what is actually being done are two different...two different species. [LR67]

FRANK BENNETT: Very well may be, but the proper way to handle it is through the 800 number and we should coordinate it with the NOC, the Network Operating Center, and have the dispatcher actually put out written instructions from this time to this time, from this mile post to this mile post we're going to be moving cattle, all trains will be stopped. That would be the proper way to handle it. [LR67]

SENATOR LOUDEN: Okay, even if that isn't the way it's happening now, but that's the proper way. [LR67]

FRANK BENNETT: That would be the proper way to handle it. [LR67]

SENATOR LOUDEN: Okay. Thank you. [LR67]

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SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Bennett, for being here today... [LR67]

FRANK BENNETT: Thank you. Thank you. [LR67]

SENATOR FISCHER: ...and providing us with information. I really appreciate it. Next person wishing to testify, please. Welcome. [LR67]

MIKE EVANS: Thank you. My name is Mike Evans, E-v-a-n-s, and I'm from Broken Bow. I appreciate you all being here today. Senator Louden, I think it's going to get a little tougher for you to call the local people, I'm afraid. But I don't have any crossings, per se, but I have quite a big of experience with dealing with the railroad. And, Senator Dubas, you keep referencing the NDOR. Now there is a tie between the railroad and the NDOR, but it's a bureaucratic nightmare. Mr. Tompkins, that you referenced earlier, is probably less easy to get along with than the railroad and he's the head of the NDOR, is that correct, of that division? [LR67]

SENATOR DUBAS: That division. [LR67]

MIKE EVANS: We've dealt with him in the city of Broken Bow on different issues and he passes the buck to the railroad, the railroad passes the buck to him, back and forth, back and forth, and you don't accomplish much by working with the NDOR through the railroad. And I'm sure anybody that's had the pleasure of trying to do that knows exactly what I'm talking about because all that Senator...or not Senator, but Ellis Tompkins will tell you is that he has the full support of the Governor and that's all you ever hear. I don't believe the Governor has an idea what Ellis Tompkins is up to, but that's my personal opinion. As far as forming partnerships and calling, I don't know how you can form a partnership or these people can form a partnership if they never get their phone calls returned and they're leaving a message on answering machines. I've never called the railroad to have them split a train, but they own a property over here in town, that blue

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house right next to Arrow Seed that should have been torn down 20 years ago. At the current time it's owned by the railroad leasing corporation. The phone number is right on the front of the building. I've been trying to get this building torn down because it's an eyesore for the town. I've called that phone number at least 20 times. When I first called the phone number, I was very cordial, and would you please do something about this building. By the time I called them the last time I said we're going to have this building condemned and tore down. It made no difference. I never received a call back from anybody ever about that property, and that's railroad leasing corporation and that was coming, as city councilman, from the town of Broken Bow. Made no difference. So I know that a lot of these people have called and got answering machines and never got return phone calls, so I don't know how you can form a partnership. I'd like to know also, Senator Dubas, you keep referencing the local enforcement. Do they have jurisdiction over the railroad? Can they give them a ticket for anything? I can't see our local sheriff going up to the window of the railroad car and getting anything done. I mean, if that's the property procedure and it's already in place, then I think we should utilize it. If they don't have that...if they have that authority, I don't think they know they have that authority. And so it's...I mean, if we call the local guys and ask them to go up there and take care of a problem, they're just going to give you the same answer, what you guys just said--we...there's nothing we can do about it. Well, maybe there is. So if the laws are written that way then we'd be okay and we could go that channel and probably get a lot more done. I guess one thing I wanted to mention real quick, in reference to paying fines along those lines, if they did...if you did send a ticket to the railroad, good luck getting paid on that one. Because it's going to go through a great deal of bureaucratic...bureaucratical webs to get the local bill paid, and I can't see it. At this point, I couldn't see that happening. I'll give you a quick for-instance. My uncle owns the elevator up here. The railroad had a derailment last year. It was snowing at the time, so it was...it's been awhile ago. They ran into his business, smashed in the side of it, did \$75,000 worth of damage, closed him down for two weeks, and he just got paid last week. So...and that was a \$75,000 claim. If you send them a \$50 ticket for blocking a crossing, it will be lost. You'll never see it again. And then it will just be on the county's

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books and it will never get taken care of. So that's something that they're going to have to address. If they have that authority, trying to collect on that ticket is going to be a challenge, I believe. And I would like to say that I personally have had some good contact with the railroad if I've got ahold of the right people. They've been very accommodating in some situations, much more accommodating than the employee that works for you guys, and I'm talking about Ellis Tompkins. So I don't know what the actual relationship is, but he's funded by the railroad and the...through the safety corporation or something. It's very unclear how that bureaucratic situation, how it is...who instituted it and how they act upon in that situation. It just seems like a situation that's not good for the people of Nebraska. And I just...I appreciate you being here so that I can express that, and that's about all I have to add. [LR67]

SENATOR FISCHER: Okay. Thank you, Mr. Evans. Are there questions? Senator Louden. [LR67]

SENATOR LOUDEN: As I talked to you before the hearing started, you were talking about quiet zones and honking. And I noticed this morning here, when we was in the hotel, I could hear them coming through. You know, they honk for about, what, full five minutes going through Broken Bow and all the crossing. [LR67]

MIKE EVANS: Yeah, seems like it. [LR67]

SENATOR LOUDEN: Where are you folks at on a quiet zone or wayside horns or what are you trying to do on that? [LR67]

MIKE EVANS: This booklet that I have in my hand here is the engineering study that we just had done. It's a \$12,000 study that we had to go through to get to find out if we were capable of getting a quiet zone here. And you asked the question earlier about whether you think you can put a wayside horn in without having a designated quiet zone, and I don't think that's possible. I think you have to go through the hoops of

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getting a designated quiet zone; then you can put your wayside horns in. You can have a wayside horn on one of the...one side of the street and a different type of safety device on the other side of the street. If you choose to do that, a...you asked how much they cost. They were \$110,000 in this study, but if you only have half a wayside horn it only decreases the cost about \$15,000 because of the wiring and everything. So I doubt if you can just put up a wayside horn without having a quiet zone. We've come a long ways on this. I started this probably a year and a half or two ago and it's a long process, and it will probably be a year and a half before we implement it, if we can afford it, because it's going to be a minimum of \$200,000 to do it for the city of Broken Bow, and we haven't even asked the people yet to see if they think that that would be a good way to spend their money. And I think most of them would think it is, but I don't know that for sure. I'm here representing myself, not the city of Broken Bow. But that is information that we have, very fresh information, because we just released it Tuesday night at the city council meeting. So we have a lot of knowledge on it, I guess, and it's still a long process. I hope that answered your question. [LR67]

SENATOR LOUDEN: Where were you...where you getting your parts at, I guess? Or when you're looking into this, you question a hundred and some thousand dollars. Is that for the quiet zone, or is that for just the wayside horns? [LR67]

MIKE EVANS: First thing they do is they evaluate each crossing and then they come back with a recommendation on each crossing, on what would be the most affordable way to approach that crossing and make it a quiet zone eligible crossing. What you would hope is that you could have medians at every one of them, because they're the cheapest route. We can get that done for \$25,000 to \$30,000 per crossing. But when we go to the wayside horn, it's \$110,000. If you go to a four-way crossing, like we talked about earlier, it's \$500,000, so... [LR67]

SENATOR LOUDEN: That's part of your quiet zone when you go to that four-way deal, isn't it? [LR67]

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MIKE EVANS: Yeah, but it... [LR67]

SENATOR LOUDEN: Do you have to... [LR67]

MIKE EVANS: ...that's the way you hope you don't have to use. [LR67]

SENATOR LOUDEN: Yeah. Do you have to have a median in there for a wayside horn?
[LR67]

MIKE EVANS: No, I don't believe so. [LR67]

SENATOR LOUDEN: That's what...because I was going to say Gering over there doesn't. Well, I just wondered, some of the material we had that we found is between \$65,000 and \$90,000, and that included the \$35,000 engineering study that the railroad claimed they had to do. And that's the reason I was wondering where you were getting your numbers from or if it was a different outfit that you were working with. [LR67]

MIKE EVANS: Well, it's coming from this engineering firm, and I suppose they might estimate the cost a little bit to the high side, but it's written right here in their study that we got back. So I guess if we went out on the market and could find one for \$90,000, we'd be \$20,000 ahead. But their estimate is \$110,000 and that might include the wiring and stuff too. [LR67]

SENATOR LOUDEN: Because I'm wondering, when you talk about a quiet zone, because Lincoln down there is trying to put in a quiet zone, and I think they're up around \$400,000. [LR67]

MIKE EVANS: I'm sure. [LR67]

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SENATOR LOUDEN: And that's the reason, when you say you're going to put it in for \$200,000, I'm wondering what you're doing that's making it...how you're getting by a little bit cheaper than they are. [LR67]

MIKE EVANS: Well, luckily the reason is because medians will hopefully work at every crossing. But if it doesn't work, we have one crossing that I don't think...it's going to be debatable whether it will work or not, and at that particular crossing it might take it from \$200,000 to \$300,000 if we have to go with the wayside horn. So hopefully we can do it for \$200,000, but I'm not guaranteeing it. [LR67]

SENATOR LOUDEN: Okay. Thank you. [LR67]

MIKE EVANS: You bet. [LR67]

SENATOR FISCHER: Other questions? Senator Dubas. [LR67]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Evans, for sharing your concerns. In your workings with the Department of Roads, and specifically Mr. Tompkins, has he made you aware of a process that's available to you as far as filing a written complaint and then being able to have a hearing on that complaint? [LR67]

MIKE EVANS: No, ma'am. [LR67]

SENATOR DUBAS: It is in statute that the department shall hold a hearing and shall make such order if you file this written complaint, but you've not ever been... [LR67]

MIKE EVANS: No, I didn't get that...any type of feeling like that from him at all. [LR67]

SENATOR DUBAS: Okay. All right. [LR67]

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MIKE EVANS: He was the...it felt like to us that he made all the decisions and his decision was final and that was it. [LR67]

SENATOR DUBAS: Okay. All right. Well, I appreciate knowing that. As far as, you know, getting fines assessed and making the railroads pay for whatever has happened, I've referenced the West Memphis, Arkansas, ordinance and to date they've been successful with implementing that ordinance. It's administered through their highway commission. There's rules and regs that the highway commission is able to enforce and have actually been able to assess fines, and I guess that's what I was looking at. [LR67]

MIKE EVANS: Yeah. [LR67]

SENATOR DUBAS: With the current statute we have on the books really doesn't have an enforcement mechanism in place. It really doesn't allow.... [LR67]

MIKE EVANS: Okay. [LR67]

SENATOR DUBAS: ...local law enforcement or anybody to do much of anything. And so that's what we are looking to address. If we are going to do something, we need to be able to enforce it. [LR67]

MIKE EVANS: Yeah, that's a great idea. [LR67]

SENATOR DUBAS: Thank you. [LR67]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Evans, for coming forward today. [LR67]

MIKE EVANS: Okay. Thank you. [LR67]

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SENATOR FISCHER: Is there anyone else who wishes to testify before the committee?
Is there anyone else who wishes to come forward today? I see no one. [LR67]

(UNKNOWN): Can I make a comment after...? You don't like to allow it, I know.
(Laughter) [LR67]

SENATOR DUBAS: Uh-oh, Deb. [LR67]

SENATOR FISCHER: Seeing no one else who wishes to come forward today, I will
close the hearing officially, and thank you all for being here. You may make a comment
now off the record, if you would like. I would like to announce that there is a letter from
Richard L. Boucher, the lobbyist for the Nebraska Sheriffs Association, that we will have
entered into the record. (Exhibit 3) Thank you. [LR67]