MOSER: The hearing for Telecommunications and Transportation Committee will now come to order. My name is Mike Moser. I serve as Chairman of the committee. I serve District 22, which is Platte County and most of Stanton County. And we'll start introductions on my right with Senator DeBoer.

DeBOER: Good afternoon. I'm Wendy DeBoer, District 10, Omaha.

BOSTELMAN: Bruce Bostelman, District 23, Saunders, Butler, Colfax Counties.

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

MOSER: Thank you. And Senator DeKay is also on our committee, but today, he's presenting a bill. So, our committee clerk is Lynne Woody. Our legal counsel is Mike Hybl. There are blue testifier sheets on the table near the entrance to the room. Please complete it and hand it in to the page if you come up to testify. Our pages today are Ethan and Ruby. Those not testifying but would like to record your presence, please sign the gold sheet in the book on the table near the entrance. Handouts submitted by testifiers will be included as part of the record as exhibits. Please provide 10 copies of any handouts. Senators may come and go during the hearing. This is common and required, as they may be presenting bills in other committees at the same time. Testimony will become-- will begin with the introducer's opening statement. Then we'll hear from supporters of the bill, then those in opposition, and then those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make a closing statement if they wish to do so. Please begin your testimony by giving us your first and last name, and please spell them for the record. Today, we, we will be using a 3-minute light system, so testimony will be limited to 3 minutes. When the green light's on, you have 2 minutes, yellow light hits, you have 1 minute left. When the red light comes on, bring your comments to a conclusion and then there will be time for questions after that. No demonstrations of opposition or support on testimony is allowed in our hearings. Be sure to turn off your cell phones or put them on vibrate. And with that, Senator DeKay, the floor is yours.

DeKAY: Good afternoon, Senator Moser and members of the Transportation and Telecommunications Committee. For the record, my name is Senator Barry DeKay, B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska, and I'm here today to introduce LB966. LB966 was brought to

me by the Department of Transportation, and is their annual update, excuse me, update bill for the year. The bill does 2 things. Section 1 of the bill deals with traffic signals. In 2022, the Nebraska Supreme Court released an opinion in the case, State v. Albarenga, which invalidated the Lincoln City Municipal Code, Code that prohibited turns on a steady red arrow. This court decision brings state law into conflict with the Federal Manual of Uniform Traffic Control Devices, which was adopted into state law under Statute 60-6,118. It explicitly prohibits this. As such, the statute needs to be updated in order to reflect the intended meaning of the signal. There's also no definition for what is meant by a flashing yellow arrow indication on a traffic signal, which should also be clarified by this bill. These changes would bring our state statutes back into compliance with federal government. Section 2 of the bill deals with how the variable gas tax is calculated. Current state statutes states that while variable taxes to be set in an amount sufficient to meet the appropriations by the Legislature, the rate shall be set in increments of 1/10 of 1%. This bill proposes a small change to existing statute, which would provide more precision in the way the variable fuel tax is calculated, by adjusting the language to go from 1/10 of 1% to 1/100 of 1%. In other words, we would just be adding one more decimal place. This change is not meant to affect the revenue the department collects in form of variable gas tax, and is simply a technical fix to improve some internal calculations. Deputy Director Jaber from the Department of Transportation is behind me and can provide more in-depth explanation of the changes being proposed in this bill. Thank you.

MOSER: Questions for Senator DeKay. Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Senator DeKay, for being here. Quick question on the first part of the bill that updates the traffic lights indication. Are these things that we already have in practice? It's already implemented, it's just a matter of updating the statute to reflect it?

DeKAY: It's just going to clean up the statute a little bit, because in one instance, you got a solid light and the other one you got a blinking arrow. So it's gonna put everything in compliance. And if there's any different definition on that, the assistant director will address that, coming forward.

FREDRICKSON: OK. So our traffic lights already do all this. They're just putting it in statute. Got it. Thank you.

MOSER: All right. Thank you, Senator. We appreciate it.

DeKAY: Thank you.

MOSER: Supporters of LB966. Welcome.

KHALIL JABER: Thank you. Good afternoon, Senator Moser and members of the Transportation and Telecommunications Committee. My name is Khalil Jaber, K-h-a-l-i-l J-a-b-e-r. I am the deputy director of engineering for the Nebraska Department of Transportation, and I'm here to testify in support of LB966. This is a bill NDOT worked with Senator DeKay to introduce, which is a department clean up bill, really, that makes 2 very simple, straightforward changes to the statute, as you heard from Senator DeKay. The need for the first section of the bill was caused by the Nebraska Supreme Court case in 2022. The result of this case is that city must install signs clarifying whether drivers are prohibited from turning on solid red arrow. Currently, if no sign is present, drivers can treat solid red arrows as a stop condition and enter into the intersection to complete their turn after coming to a stop, rather than waiting for the signal to turn green. However, to align with the federal standards found in the Manual on Uniform Traffic Control Devices, as we refer to as the MUTCD, turns must be not allowed at all on steady red arrow signal when they are illuminated. As such, it is necessary to update Nebraska statutory language to reflect that intent. At the same time, NDOT traffic engineering team realized that there were a statutory-- there were no statutory definition for the meaning of a flashing yellow arrow indication. And as such, we use this opportunity to define that, as well. We have worked with the city of Lincoln, Omaha, and Grand Island, as they are the jurisdictions primarily impacted by this change. These municipalities have the vast majority of signals with this type of indication arrow anywhere in the state and express their support for these changes. It is critical that as a state, we have traffic control devices which are used properly with consistently applied definitions. It would be dangerous for a flashing yellow turn arrow to mean one thing in Grand Island and another in Omaha. The background and needs for the second part of the bill is equally simple and straightforward, although they only directly impact the department, though it indirectly impacts the traveling public when they go to the fuel pump. As you know, once the Governor budget is approved by the Legislature, the department is tasked with setting the variable excise tax to produce revenue equal to the approved Highway Cash Fund appropriation. To clarify the effect of these changes, we are seeking, and I have provided an exhibit for the record, which walks you through the process and the math we used to calculate the various parts that makes up the fuel tax as a whole, which may change every 6 months. This document shows the total component pieces that are change and demonstrate that from one 6-month

period to the next, it was impossible to maintain the same variable fuel tax due to the statutory requirement that the rate be adjusted in increments of 1/10 to 1%. The intention of this bill is not to increase or decrease NDOT revenue, rather, is to give more precision when it comes to setting the variable excise fuel tax and overall motor fuel tax. Thank you. And I'd be happy to answer any question you may have.

MOSER: Senator Bosn.

BOSN: Thank you. Thank you for your testimony. I guess I just want to go back to the sect-- the first part of this bill that you talked about. Am I correct to say that flashing yellow means you can proceed with caution? Solid yellow means you need to stop if you can safely do so?

KHALIL JABER: That is correct, Senator.

BOSN: OK. So what happens or is there an explanation in here for, I enter the intersection when it's flashing yellow, but I-- I'm-- so I'm across the threshold, but it turns red before I have completed my turn. Am I, am I correct to say that that does not subject me to running a red light type violations?

KHALIL JABER: That would be our interpretation. Once you engage in the intersection, that means you made that move into occupying that turn while it's flash-- the flashing yellow. Therefore, you're entitled to immediately, once it turned red, so, you know, we're clear for you to turn once the opposite traffic has stopped.

BOSN: OK.

KHALIL JABER: The, the area where the, the solid red on the right turn lane is a little bit confusing. Because if, if we have-- we have to install another sign to, to tell the public that this is an actual stop and you can't turn. Because in a lot of different places where it's just red, people are making the right turn lane. So, you know, in the interest of safety, we wanted to make sure that we're in compliant with the MUTCD for one thing, but also to make sure the interpretation is clear across all our cities that actually have similar of these traffic signals.

BOSN: So your intention with this is, is there's no right on red if you have a right, red arrow and it's solid.

KHALIL JABER: That is correct.

BOSN: So no longer would we see the sign above that you sometimes don't even notice because you're not looking for it, that says no right on red.

KHALIL JABER: That is correct.

BOSN: OK. I'm, I'm there now.

MOSER: OK. Thank you for your testimony. More supporters for LB966. We had 1 proponent letter and no opposition or neutral letters. Welcome.

ELIZABETH ELLIOTT: Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. I'm Elizabeth Elliott, E-l-i-z-a-b-e-t-h E-l-l-i-o-t-t, director of Lincoln Transportation and Utilities. I'm here to testify in support of LB966. First, I'd like to thank Senator DeKay for introducing this bill and for NDOT being a, a great partner in talking through these challenges. Because this bill ultimately represents a significant step forward in enhancing traffic safety and streamlining traffic control measures for drivers across our state. The inclusion of the flashing yellow arrow previously undefined in our state law, but has been in use since 2017 here in Lincoln, is a crucial aspect of this bill. Research has shown that the flashing yellow arrows have tangible benefits, including a notable 16% reduction in left turn crashes and a remarkable 26% decrease in injuries and fatalities. By incorporating this proven traffic control measure into our legislation, we can effectively enhance intersection safety and mitigate potential hazards. Additionally, the bill aims to further define allowable turning movements on steady red arrows, aligning our state standards with the federal guidelines as previously noted, the MUTCD. This alignment not only ensures consistency with national traffic control standards, but also provides local jurisdiction-- flexibility in selecting appropriate traffic control devices and clearly defining the meaning of that red arrow signal for drivers. That will allow us to reduce additional signage or signal installation and alleviates the strain on the infrastructure resources, and yet improving the overall traffic flow. By enhancing the clarity of the red arrows signal indications, we enhance our drivers' understanding and safety for all road users. Therefore, we ask your support of LB966. And thank you for allowing me the opportunity to testify and would be happy to answer any questions.

MOSER: Questions? Senator Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. I guess the question I'd have is on the red arrow right turn. Do you think that-- it's not an issue for a

stop and turn right, or are you going to change the red arrow to just say red light?

ELIZABETH ELLIOTT: There are, in intersections where we do just do the circular red because we do think the red turn in that area is safe once you've come to a complete stop and the intersection is cleared. But there are certain areas, intersections where we think a red turn on red is increasing the chance of a crash. And it's those intersections where we use those red arrows.

BOSTELMAN: So you potentially could take some of those red arrows off or put some on.

ELIZABETH ELLIOTT: Correct. That's where the flexibility comes in.

BOSTELMAN: OK. Thank you.

MOSER: Senator Bosn.

BOSN: Thank you. Can you tell me how this change will be messaged to the public? So-- because that will be, I mean, I'm thinking of the intersection when you get off of 180 to get onto Superior Street, right, you exit and you're taking a right to get on to Superior. It's close to 14th Street. Right now, it says no right on red. And that was a huge change. And if I were a police officer looking to make a lot of money for my department, I'd have sat there and run radar on that, because everybody stopped and turned right there. And so that change was huge. And I see this-- that potential with this change, where you're now adding an arrow that people--

ELIZABETH ELLIOTT: Absolutely. And that's something that we take into consideration with any change. When we installed the flashing yellow, again, that causes confusion. And the more confusion that's out there, the more likely of the crashes. So we're really going to take significant steps in trying to educate the public. So we'll be developing some PSAs that can go both on TVs or social media. We'll also work closely with, at least, Lincoln Police Department, here locally. I, I know that there's going to be this period where we're going to have to educate drivers across the community. So we'll work together with them and hopefully be able to allow, kind of, a little bit of leniency during the learning period throughout this. But we will do enhanced messaging on these changes in multiple different ways.

BOSN: Thank you. That addresses my concern.

MOSER: Thank you. Other comments? Thank you so much for your testimony. More supporters for LB966.

JULIE HARRIS: Good afternoon, I'm Julie Harris, J-u-l-i-e H-a-r-r-i-s, I'm the executive director of Bike Walk Nebraska, and we're the bicycle and pedestrian advocacy organization for the state. We're here in support of this bill for a couple of reasons. Number 1, the-- to follow up on the red arrow, turning right on red issue. Right on red is a significant safety issue for people biking and walking in crosswalks. I can think of 1 intersection in Omaha in particular, where there's a bike lane and a right red arrow, to prevent people from trying to, to turn on red when there's bikes coming. And there is confusion there. So I'm, I'm glad to see that this will be part of it, because I think that will hopefully make it safer in intersections. And to your point, Senator Bosn, that we are going to really have to educate folks on the need to pay attention to these things. We have 1 question on the blinking yellow arrow, arrow portion of this bill, which is that it specifically calls out pedestrians in crosswalks in the language. It does not specify bicyclists in crosswalks. In 2016, we worked with Senator Kowalski's office to get a bill passed, LB716 at the time, that gave bicyclists the same rights in crosswalks as pedestrians. So our only question here, and we'd like some clarification about whether or not an amendment might be needed to insert bicyclists into that language to make sure that it's consistent with previously passed legislation, and to make sure folks on bikes are equally protected in these intersections. Happy to answer any questions you have.

MOSER: Thank you.

JULIE HARRIS: Thank you.

MOSER: Next supporter. Anybody else to speak in support? OK. Anybody to speak in opposition? Seeing none, anyone here to speak in the neutral capacity? Seeing none, Senator DeKay, you're welcome to close.

DeKAY: Thank you, again, Senator Moser, and members of the committee for this hearing on the bill. I appre-- appreciate the discussion we have today. I hope that it clarifies a lot of the issues with the red lights and yellow lights. I'm glad you diverted the questions to the subject-matter experts behind me, because I'm probably not the right person to ask about lights. If there are no further questions, I would be happy to try to answer them. Otherwise, I'd appreciate a favorable consideration on LB966. Thank you.

MOSER: Questions? Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. So Senator DeKay, can you tell me, and I should ask, are DOT, thus far, on the, on the change in the calculations of 1/10 to 1/100. Is that going to come out to be more of a increase or a decrease in the fuel tax?

DeKAY: It-- the way it was told to me is that it wasn't going to change. It was just a cleanup on that part of the bill. It wasn't going to change the revenue stream coming forward or not, it's, it's just-- make things easier to work with, within the internal workings of the office.

BOSTELMAN: OK. Thank you.

MOSER: Thank you, Senator. That'll close our hearing on LB966. Now, we'll have LB1133. And we received no comments online. Senator DeBoer.

DeBOER: Did you just say you had no comments on my bill or previous bill?

MOSER: Yeah, no comments on your bill.

DeBOER: OK. Good afternoon, Chair Moser and members of the Transportation and Telecommunications Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent the 10th Legislative District, which is in northwest Omaha. I'm here today to introduce LB1133, as amended by AM2151. So I think you have the amendment there. LB1133 gives Nebraska the ability to have our rail inspectors oversee hazardous waste being transported within Nebraska. The Federal Railroad Administration has a state safety participation program in which states, when authorized, can employ state safety inspectors in authorized safety areas. Current statute grants the authority for our rail inspectors to have authority over track and motive power and equipment, for example, think of locomotives. LB133, as amended by AM2151, expands this statute to include authority over hazardous waste. The PSC is here, and I would ask you-- I would encourage you to ask them any technical questions. But I will say this. The explosion in East Palestine, Ohio, last year started a national conversation on railroad safety and the debate over oversight. Months later, here in Nebraska, we had a rail car explosion in North Platte. And those are reasons why I brought LB1133. We have avoided what could have been a much worse disaster. Had the wind been blowing a bit differently, had it been a different chemical, who knows what would happen to the workers in the rail yard and the citizens of North Platte or the water

we all rely on? Having an inspector in the rail yard authorized to inspect rail cars carrying hazardous waste maybe would help us to catch the leak before it turns into an explosion. So let's try to do that. Let's pass LB1133 and give us another tool in the toolbox to be sure that our workers and our communities are safe. Thank you for your time, and I urge the committee to advance LB33-- one-- LB1133.

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Senator DeBoer, for being here for this bill. Question. Do other states have this-- a similar statute in place for hazardous materials?

DeBOER: So my understanding is that the-- and you should ask, he's behind me-- but my understanding is that the permissive authority from the feds allows us to take up this area. So ostensibly, other states would have also chosen to take up this area.

FREDRICKSON: My other question, just to follow up on that, is so with, with this, this would require inspections or this would just allow the PSC to undergo such inspections should they see fit?

DeBOER: It puts the inspector--

FREDRICKSON: Inspector.

DeBOER: --into place. So I'm not sure that it requires specific inspections, but it allows there to be an inspector who can go and check some things out. But I may not have that exactly right. So I'm going to let you ask that to the people behind me.

FREDRICKSON: Thank you.

MOSER: Oh, oh, we have a question. Senator Bosn.

BOSN: Thank you. So, Senator DeBoer, when I look at the bill, essentially the original bill adds Section 212 to the language on page 13. That's the only underlying change that I see. And then the amendment says: Strike 212 and insert 171, 172, 173, 174 and 179.

DeBOER: My understanding is we initially had gotten the wrong area of statute, federal statute to refer to.

BOSN: OK. So what does 171 do?

DeBOER: Why don't you ask the people behind me?

BOSN: OK. OK. I will do that. Fair enough. They're on warning.

DeBOER: It's not my day to know everything right away.

BOSN: I will follow up with them and then with you if I have additional questions.

DeBOER: Thank you.

MOSER: So you would have somebody from the PSC go into the rail yards, ask for the manifest, look and see what's in the train?

DeBOER: Why don't you ask the folks behind me? I'm sorry, y'all. This is just not my day. So why don't you ask them exactly how this will work because I am not as prepared as I'd like to be.

MOSER: OK. Well, it sounds like an honest answer. Thank you. All right. Well, thank you for your testimony. Supporters for the bill. Welcome.

KEVIN STOCKER: Good afternoon, Chair Moser and the members of the Transportation and Telecommunications Committee. My name is Kevin Stocker, K-e-v-i-n S-t-o-c-k-e-r. I represent the Nebraska Public Service Commission's 5th district, and I'm here to testify in support of LB1133. With over 3,200 miles of track in operation in Nebraska, the commission recognizes the importance of ensuring the public safety as well as the safety of rail employees. The most recent data available from the Association of American Railroads show that in 2021, 17% of all carloads originating in Nebraska were transporting chemicals and 59.6% of all carloads terminating in Nebraska were transporting chemicals and coal. Recent events in Nebraska and nationally have highlighted the need for increased inspection of railroad safety. LB1133 seeks to enable the commission to enforce standards related to hazardous material inspection as part of the Federal Railroad Administration's State Safety Participation Program. The addition of the federal regulation sections offered in AM2151 would require the commission to conduct independent inspections to determine compliance with pertinent sections of federal hazardous material regu-- regulations, make reports of those inspections and findings, and to recommend the institution of enforcement actions by the FRA to promote compliance. The commission unanimously supports policy that promote rail safety. I would like to also provide a brief historical overview of the commission and federal regulatory commissions that have evolved since the commission's original creation. The office was created in 1885 to regulate railroads, and in

1906 the commission became the Railway Commission officially. Since 1976, the commission has partnered with the FRA to administer Nebraska's State Rail Safety program, and has statutory authority to assist the FRA in enforcement of federal standards for safety. LB1133, with Senator DeBoer's proposed amendment, would add the necessary references to expand the commission's authority to assist the FRA in enforcing federal standards as it relates to hazardous materials. The commission remains consistent in our position. We support safety. The commission will work diligently to perform the duties it is assigned and will complete those duties as prescribed and in accordance with the appropriation by the Legislature. I would like to thank Senator DeBoer for her interest in Nebraska rail safety and to the committee for your time this afternoon. That concludes my testimony, and I'm happy to answer any questions that you may have.

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Commissioner Stocker, for, for being here and for your testimony. I don't know if you caught some of my earlier questions, but just kind of out of curiosity, so the PSC would be overseeing this. Is this some-- can you walk us through a little bit about what that inspection might look like or that process might look like or?

KEVIN STOCKER: Well, there are 5 disciplines that rail inspectors can oversee. [INAUDIBLE] power and rail are what we are pursuing today. This will give us additional-- an additional inspector to be on scene for hazardous material questions, or if there is an accident, to have an expert trained by the FRA, but will be one of our inspectors reporting to the state on what is going on.

FREDRICKSON: Got it. Thank you.

MOSER: Senator DeKay.

DeKAY: Thank you, Chairman Moser. So is that inspector already on the job, or would you be hiring another person or more people or how does that work?

KEVIN STOCKER: This creates a new position at, at the PSC. The Governor has put an importance on rail safety after what has happened in Nebraska, most recently in the last 12 to 14 months. This is another discipline that we felt after the, the chemical explosions in East Palestine and in North Platte, that this would be a good position for Nebraska to have. Nebraska is home to a lot of rail transport.

MOSER: Senator Bosn.

BOSN: Thank you. OK, so I wasn't aware that this creates a new position. Can you tell me how that will be funded, how that person will be funded?

KEVIN STOCKER: It's going to have to be an appropriation from the-- from the Legislature that will go ahead and fund this position. The position will be trained by the FRA in accordance to all of their laws. But once they com-- commit to it, once we have the funding in place, we can go ahead and issue offers for a new inspector, but it will be coming out of the funds statewide.

BOSN: OK. So is it your understanding that we would only need one individual to fill this position or, I mean, given the size of our state and the stations that we've got for railroads, would we need more than one individual to do this?

KEVIN STOCKER: Actually, this position could be dual trained in another one of the disciplines for railroad, whether that be track or whether it be motive power. We feel that one position for hazardous will be ample at this time in Nebraska.

BOSN: OK. So what you're saying is one of the individuals already there can be licensed or trained to do the inspections for hazardous materials and whatever they were already there to do.

KEVIN STOCKER: Not already there. You have to enter into a dual agreement that this person is going to be trained--

BOSN: OK.

KEVIN STOCKER: --is my understanding.

BOSN: OK. Thank you. That answers that question. So then I go back and if you're not the right person, we'll try a third time. But the amendment strikes the addition of 212 and then adds another of-- a number of other numbers that we're complying with here: 171, 172, 173, 174, and 179. Can you tell me what those do?

KEVIN STOCKER: They come one after another.

BOSN: They're consecutive, smallest to largest.

KEVIN STOCKER: AI-- I'm, I'm not the right person to ask for that. I know that when we did see this bill first, that we scrutinized it

pretty hard to make sure that it was in compliance with the FRA's regulations. So I'm not a lawyer. I can't tell you what those amendments are--

BOSN: That's fair.

KEVIN STOCKER: --and I'm not well versed on it.

BOSN: OK. All right. That's no problem. I appreciate your answers. Thank you.

MOSER: Senator DeKay.

DeKAY: Thank you. You said you'd be hiring and training one more Inspector. Where would that person be trained at and what would be the qualifications for that?

KEVIN STOCKER: The inspectors are trained in state by the FRA and now not-- I'm not certain that all of the hazardous material training will happen in state, but they will pair up with a hazardous materials inspector from the FRA. And that inspector will be trained to FRA standards. So I guess I can't answer where all of the-- all of the training will happen.

MOSER: Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. First question, do you know, is there someone from the railroad that's going to follow you?

KEVIN STOCKER: I, I believe there are people in the room. I'm not certain that they're going to testify.

BOSTELMAN: I saw some head shaking, so.

KEVIN STOCKER: OK.

BOSTELMAN: I think we'll see that, so we could ask some questions there. I'll save you the-- on that. The question I have, the individual-- because the fiscal note doesn't-- shows no fiscal impact. So the fiscal doesn't show any additional staffing members or purposes for this. So you mentioned the FRA. So does the federal regulators have someone in Nebraska currently or not?

KEVIN STOCKER: My understanding is that the feds do have inspectors. I don't know what disciplines that they've been trained in.

BOSTELMAN: OK. Thank you.

MOSER: So what do you anticipate an inspector is going to find? Do some shippers not properly mark or identify what they're shipping or the railroad doesn't follow the proper procedures for shipping some hazardous material or what do you?

KEVIN STOCKER: Possibly both of those, Senator. We don't know what we don't know right now. We do know that there have been some serious accidents in Nebraska and around the country. And we, we may be premature in saying, what are they going to find? Part of it may come from the railroad itself to say, was this shipment packaged correctly? And if we look at it and say, no, it wasn't, you know, that may alleviate some liability that goes to the railroads also.

MOSER: Are the railroads able to decline certain freight if they don't want to haul it?

KEVIN STOCKER: I'll defer that to the railroad.

MOSER: OK. Any other questions? Thank you for your testimony.

KEVIN STOCKER: Thank you.

MOSER: Yes. More supporters. Welcome.

ANDREW FOUST: Thank you. Hello, Chairman Moser and members of the Transportation Telecommunication Committee. My name is Andrew Foust, A-n-d-r-e-w, and I'm the Nebraska legislative director for SMART-TD. We have over 1,400 members in Nebraska from Omaha to south Morrill, Nebraska. And I'm here to testify in support of LB1133. On behalf of our organization, I want to thank Senator DeBoer for introducing this legislation. The Nebraska Public Service Commission currently has motive power and equipment inspector. With the appropriations request of the track inspector, this bill will allow the Public Service Commission to hire another railroad safety inspector. Currently, 32 states take part in this program and have statutory authority for a railroad safety inspector to work alongside the FRA. The FRA inspector covers thousands of miles of railroad lines in multiple states. This additional inspector will ease the workload of those overwhelmed FRA inspectors. I want to thank Senator DeBoer and the Public Service Commission for their collaborative efforts on this bill. This bill shows how much they both care about railroad, railroad safety in Nebraska. I want to encourage all committee members to support LB1133 and protect the citizens of Nebraska. Thank you for allowing me to speak today. And I'll be answer to-- answer any questions you might have.

MOSER: I have one. I guess your organization is a union, basically or?

ANDREW FOUST: Yes, we're a labor organization--

MOSER: OK.

ANDREW FOUST: --in Nebraska.

MOSER: Do you know the answer to the question? Are railroads required to haul everything--

ANDREW FOUST: Yes.

MOSER: --that somebody brings to them?

ANDREW FOUST: As long as they meet the shipping requirements, the railroads cannot turn down any shipment. We found that out in North Platte during the explosion. They weren't able to turn that down.

MOSER: Well, I had a railroad guy, a friend of mine, tell me that too. I was just curious. It didn't sound-- it sounded like that could create problems, because sometimes you could be hauling stuff that's pretty hot to handle.

ANDREW FOUST: Yes.

MOSER: Senator Bosn.

BOSN: Thank you. Third time hopefully.

ANDREW FOUST: I do not know the statutory.

BOSN: OK, well, then [INAUDIBLE].

ANDREW FOUST: That was a-- once, once Senator DeBoer-- I do know that once Senator DeBoer introduced the bill, the PSC legal came into and contacted her staff and said that that was not the correct statutes. And that's why 1212 or 212 was stricken and then the other ones added, because that specifically states what they can take part in.

BOSN: OK. So it's your understanding that these 5 statute sections that are referenced gives authority to do this state inspector work alongside with the FRA inspector to have these inspections.

ANDREW FOUST: Yes.

BOSN: OK.

ANDREW FOUST: And this, this bill only gives the PSC the ability to hire an inspector or more inspectors. That's why there's no fiscal note on the-- on the bill itself, because the PSC would have to go and ask for an appropriation for the position, just like they did with the track inspector.

MOSER: Senator Bostelman, you have a question?

BOSTELMAN: Thank you, Chair Moser. Well, I think that's all purpose for the fiscal note because they expect to hire because the next bill we have coming up, it talks about hiring someone, and they have a number in there for hiring that position. So not to be-- not to be, you know, that's where the appropriations come from. The-- Chairman Moser asked earlier about a manifest on each train. How is it that the inspector, is that what they're looking to do, or are we looking at spot checks once or twice a month? Once every 5th train? Once every so many cars? What type of inspections are going to be carried out?

ANDREW FOUST: There will be inspections, spot inspections, but there is also-- those inspectors also show up at the location if there's ever a disaster or an accident or-- and it involves hazardous material like the loading and unloading of it even. They go to the plant and say that this can't be loaded that way in the tanks or in the cars.

BOSTELMAN: Do the, the railroads currently have a, I'll call it an inspection system they do themselves that they carry out on, on trains, on loading, unloading materials they carry? Do they have their own inspection process or system that they use?

ANDREW FOUST: Yeah. Carmen currently do inspections on the train when the car's placed into the train. And if there's a leaky door or a valve that's not secured correctly, then they do their own inspections and, and take that car out of the train.

BOSTELMAN: OK. So the inspector that we're talking about will not necessarily go out and actually inspect every week but it may be certain locations, certain times or [INAUDIBLE], may be the North Platte yard or Lincoln yard or wherever it might be that they do those inspections and then if there's an accident they would pair up with a federal inspector then to inspect the crash site?

ANDREW FOUST: Yeah. They could. Once, once the person that's selected is trained, the training is completed, then they're able to go out on their own. The only thing we don't-- the PSC does not have jurisdiction and they cannot, like, issue a fine or a violation. They

would have to notify the current HAZMAT inspector, and that HAZMAT inspector would have to issue the, the violation. So they work along with them, but they can only like let them know.

BOSTELMAN: Right. Because I think it's only crossing. So they actually-- I think crossings is the only place that PSC really has any active role--

ANDREW FOUST: Yes.

BOSTELMAN: --on rails right now, I think, on trains. OK. Thank you.

MOSER: So if something derails, typically, somebody has a manifest what's on the train.

ANDREW FOUST: Um-hum.

MOSER: And then so you try to figure out what cars are potential liabilities if they're leaning or tipped over. Right?

ANDREW FOUST: Um-hum.

MOSER: And then typically you would call the police or the fire if there's a potential public hazard.

ANDREW FOUST: Exactly. Emergency response team, a lot of-- a lot of towns and, and cities have emergency response teams.

MOSER: Chemical response kind of guys. Yeah.

ANDREW FOUST: And the rail-- and both railroads currently have hazardous material departments that they go around and, you know, offer training to first responders. They are the first on the scene usually if, you know, working alongside the first responders.

MOSER: You know, we had an issue once where an alcohol car, ethanol, left the tracks and it was leaning and was leaking slightly. And we basically just let the railroad handle it. They had it pretty well under control. Ethanol is flammable, but it's not as bad as ammonium perchlorate or whatever like they had in North Platte. Other questions? Thank you.

ANDREW FOUST: Thank you.

MOSER: Appreciate your testimony. More people in support.

KEVIN STOCKER: Just grabbing my notebook.

MOSER: Yeah, we only allow you to testify once. Otherwise, we'd be here all day. Something would pique your interest and then you'd come back. Welcome.

AMANDA SNIDE: Afternoon. Thank you for your time today. My name is Amanda Snide, A-m-a-n-d-a S-n-i-d-e. I represent the Nebraska SMART legislative board with Mr. Foust. The FRA has started this program to allow for additional inspectors. I can't speak for them, but I can for myself and those that I represent. There need to be more safety inspections on rail cars of all types. Amit Bose, the director of the FRA, wrote a letter to Union Pacific in September about the 19.93% failure rate of cars in Bailey Yard, and the 72.69% failure of locomotives during their inspections, during spot inspection, days before the explosion that made national headline news. The current inspection instructions for employees like me that work in transportation and take these trains down the road is a computer-based training that takes roughly 5 minutes to complete. This training focuses mainly on the ladders and the handbrake systems. It does not focus on the wheels, which are most likely going to be the cause of a derailment en route. I strongly encourage you to support LB133 [SIC]. I'm available for any questions.

MOSER: OK. Any questions? Seeing none, thank you for your testimony. More supporters. Anyone else to speak in support? Is there anyone here to speak against LB1180-- LB1133? Anyone in the neutral? Welcome.

ROBERT BAVIER: Good afternoon, Senator Moser and members of the Transportation and Telecommunications Committee. My name is Robert Bavier, R-o-b-e-r-t B-a-v-i-e-r. I'm the senior director of Union Pacific Railroad's hazardous materials team. I've been in service for 22 years, going on 23. I have the privilege of leading a team of 16 hazardous fuels managers systemwide, covering 23 states. And our mission is prevention, preparedness, response and recovery. Today I'm going to be speaking about a couple of those. First is prevention. So in our prevention activities, we conduct inspections of hazardous materials. Last year's team, we were able to inspect a little over 1,500 rail cars systemwide. And how that's done is we look at all 4 sides of the rail car, the bottoms of the rail car, climb the ladders. Last year, our team climbed a little over 10 miles of ladders for 16 of us. It's a great way to stay in shape. And, and we're looking for loose fittings; improper placarding; nicks, tears in jacketing; releases for sure; proper equipment, communication systems so the signage and placarding on the-- signage and marking on the railcars are appropriate. I've also worked in several states side by side with some inspectors, along with FRA hazardous fuels inspectors and, and

they conduct the same type of inspection. Last year, we inspected a solid number of 500 railcars in the state and will continue to do so for the root cause and analyze. So we're taking that from the point at which we found a problem all the way back to usually the shipper or consignee person that as you well stated, Senator, Mr. Chairman, that-- to make that corrective action.

MOSER: OK.

ROBERT BAVIER: With that, our position is neutral. And thank you for your time. Does anyone have questions?

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Mr. Bavier, for being here and for your testimony. So I think if I'm-- If I'm understanding you correctly, you're sort of outlining measures that UP has internally--

ROBERT BAVIER: Correct.

FREDRICKSON: --to ensure safety. What-- and what responsibility does UP have for the contents of shipments? Is that the shipper's responsibility or does that lay on the railroad?

ROBERT BAVIER: That's correct. So like you referenced in the numerical values, the 101, the 102, the 172 so those are federal regulations, 49 CFR, that dictates the safe transportation of hazardous materials. The shipper's obligation is to provide hazardous materials in a package compliant with 49 CFR. What our teams do is go and we're taking a snapshot. 1,500 railcars is not a lot of railcars. In transportation, we understand that. So we're taking a snapshot of that activity and ensuring that those obligations are met and, and followed. So whether it's 101 organizational tables or the marking compliance or the tank car construction or their fittings, those are all dictated by federal regulation. And that's what we were referencing earlier.

FREDRICKSON: And thank you for that. And so I can appreciate your, your neutral testimony here. Do you anticipate, should this bill pass and go into law, do you anticipate UP would continue your internal inspections in addition to the potential PSC inspector as well?

ROBERT BAVIER: Yes. We would continue our operations. It's another set of eyes. We will work side by side with those individuals. What I would ask is that they do the same thing that we do. And that's finding a problem and working it to its root cause.

FREDRICKSON: Thank you.

MOSER: Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. A couple of questions with that too. It was mentioned, the previous testifier said, I think there was 32 other states may have something similar. How does that work in other-- how do you see that working?

ROBERT BAVIER: Sure.

BOSTELMAN: And is there a common thing throughout the states to how this works or how does that work?

ROBERT BAVIER: Yes. So let's take California example, that's where I was. I still reside there to this day. So the PUC inspector, that's what they're called, they're public utility inspectors, hazardous fuels trained. They are correct. They're authorized by the FRA and they're trained by the FRA. Usually that training is conducted in Pueblo, Colorado, but it's variable. And they're, they're instructed on how to safely inspect a railcar, how to safely inspect a train, what to look for, how to safely work within a rail yard, considering that's a very hazardous situation, just moving around a rail yard. It takes a lot of training to get done. They will conduct inspections just like we do: looking at all 4 sides of the railcar; looking for proper placarding so warning devices for emergency responders; make sure that that railcar is in proper working order; its DOT compliance has been approved and there's a stencil on the right-hand side of the railcar that will give specific dates when testing needs to be applied; then they climb the railcar and, and look for, of course, any, any sites or scenes that have a source of release or loose fittings, loose plug. The difference between a release and, and a loose valve can be something as small as a 16th of an inch. So it's important that we inspect them and get those corrections made because we don't want hazardous fuels released in transportation ever.

BOSTELMAN: So do they do those inspections no notice? Are they in conjunction with? Do they go in-- I don't know if you have labs, facilities like that? How are those-- how does this person function, this position function?

ROBERT BAVIER: Yes to all of the items you just stated. Random inspections occur. They'll go to a rail yard siting. They'll go do that. They don't have-- they have complete authorization. Not a-- it's not as though they need to have permission to be on the railroad.

Certainly we need to know where they're at in the rail yard to make sure that they-- they're safe and the train doesn't come in upon them. They work in conjunction with us, the FRA, when we jointly conduct tank car blitz is what it is. So we'll, we'll go to an area with a multitude of team members and try to inspect as many railcars as we can in a period of time, 2 to 3 days. They'll also have the opportunity to go work with shippers and consignees. A consignee is an individual that is accepting a load of, of product and work with them on how to properly secure that railcar. And some of them even can talk to and speak to the specificity of the transfer. How does-- how do transfers actually work? Because there's some technicalities and some science and some experience based upon taking a product from a fixed facility tank, running it through some type of transportation device and getting it into a railcar and vice versa.

BOSTELMAN: OK. Thank you.

ROBERT BAVIER: Yes, sir.

MOSER: Some of the railcars could be owned by the people who are shipping the items, and some of them belong to the railroad.

ROBERT BAVIER: Yes. And the section side of that is it depends. So the vast majority of what Union Pacific Railroad transports are owned by someone other than Union Pacific Railroad, either the company that's transporting that chemistry or a leasing agent. Union Pacific Railroad has a small fleet of railcars that are designed to primarily haul our transport fuel, our diesel fuel for our own resources, waste oil or oils for lubricating.

MOSER: Or ballast or--

ROBERT BAVIER: Yeah. And then that wouldn't be in rail-- in a tank car, per se. It wouldn't be HAZMAT. But yeah, the railroad, Union Pacific Railroad owns many railcars, but not containing hazardous materials.

MOSER: So if you see a leak, then what do you do?

ROBERT BAVIER: So if we see a leak, first of all, we isolate and deny entry. So we don't want anybody else coming around the railcar until we can address it. We assess the situation.

MOSER: You gotta go figure out what it is?

ROBERT BAVIER: Oh, absolutely. And that's one of the first things you do. Remember I talked about we take a walk around the railcar. So when we're walking around that railcar in a hazardous materials inspection, we're looking at that information. What's the placard on it? What does the marking say it may have in it? What's the track list? So I can access the track list from my phone or print it out at one of the stations within the rail yard, and we'll know what's in it. And from that, we address our PPE concerns, report it to our dispatch center, and they notify the locals based on the regulations of the state.

MOSER: You can't walk up and touch it and see what it looks like.

ROBERT BAVIER: We haven't done that for about 30 years. Yeah.

MOSER: It might melt your fingers.

ROBERT BAVIER: No, sir. No, I haven't stepped through that. So we can, if you want, I can step through that repair process or identification.

MOSER: If you knew what it was, I mean, if it was soap or corn syrup or something, that's different than if it's some acid or something that's--

ROBERT BAVIER: Correct. The benefit of railroads in general. 99-- nothing's ever for sure. But 99% of the time we know exactly what's in that container. It may take a minute to identify it. If it's in the system, we know exactly what's in the container so we can dress PPE, our personal protective equipment, appropriately. Sometimes it may be something not much different than we're wearing today. Other times, we may be in a full Level A suit. That's the space suits that you see. Sometimes it's something in between, firefighter safety gear or, or a flame retardant jumpsuit that we'd see maybe in service of a gas company, per se.

MOSER: Senator DeKay.

DeKAY: Thank you. Thank you, sir. In lieu of events that have happened, like in the last 14 months or so, has this expedited the need or want for more inspectors, or have you been talking about this with the expected modes or possible different shipments that would be coming possibly in the future?

ROBERT BAVIER: I don't know of any big changes. I'm not in our marketing and sales department, right. I don't know of any big changes that are on the-- on the horizon. I don't see anything like a crude oil boom in North and South Dakota in 2000, was it 2012, 2014? It's

relatively consistent. Our numbers are consistent. They fluctuate a bit, sometimes up, sometimes down based on the market. Railroads benefit happens to be for the market, a little bit of flexibility.

MOSER: OK. Thank you. Any other questions?

ROBERT BAVIER: Oh, and one thing that I did remember in one of the other questions that was asked. As the railroads are obligated, Class I railroads are obligated by the common carrier clauses that we transport hazardous material safely. Right? And we can't refuse. So if it's in the 49 CFR 101 table, and that table authorizes what mode of transportation a certain chemical could be in, if it's certified to operate in rail and it's being transported in a DOT package that's approved for that chemical, we cannot refuse it.

MOSER: OK. Thank you for your testimony. We appreciate that.

ROBERT BAVIER: Thank you.

MOSER: Any other supporters? Oh, I'm sorry, we're in neutral. Come on up. Apologize for that.

JEFF DAVIS: Mr. Chairman, members of the committee, Jeff Davis, J-e-f-f D-a-v-i-s, appearing here on behalf of BNSF Railway to offer neutral testimony on LB1133. BNSF respects what LB1133 is trying to do. The Federal Railroad Administration already has people doing these inspections in Nebraska in what's called Region VI. So whether you want to supplement that work, that's your-- that's your choice. What I want to spend my time here today is talking about what BNSF is already doing and what the rail industry is getting right. On average, 99.99% of all of our HAZMAT trains arrive without incident; and our safety vision is to get to zero accidents, zero injuries. Over the last 10 years, we've reduced the number of our mainline derailments by almost 50%. We take a multilayered approach to safety, incorporating it into every step of the transportation process. We have a safety plan for every hazardous material we transport. That includes risk identification, where we proactively determine and prioritize the sources of the risk for the material, making sure our equipment and facilities are designed for safety, as well as using PHMSA's risk-based routing selection, speed restrictions, commodity specific safety briefings for our employees, environmental hotlines and a program designed to help employees approach others about safety, remote monitoring of those trains, increased track inspections on those routes where the data is provided to the FRA. We're doing more than 450,000 miles of track a year with automated track geometry track

inspections now. The presence of equipment detection technology, BNSF has more than 4,000 wayside detectors collecting data on every locomotive and railcar crossing our system 24/7. We use analytics and algorithms to sort more than 35 million equipment detector and track detection data readings daily. In conclusion, 2023 was a record safety year for BNSF. We had the lowest injury frequency rate in our 175-year history. The Heartland Division, headquartered here in Lincoln, led the way with .59 injuries for every 200,000 hours worked, roughly 100 FTE. We are focused on what is-- amounts to preventing a handful of derailments for every 100,000 HAZMAT trains. So I want to make sure that everyone knows that we are safe and committed to getting safer. Thank you.

MOSER: Thank you. Questions? So I'm going to ask a question and then you can decline to answer it if it gets you into trouble. So they had a situation in North Platte, that's not your railroad, but they had perchlorate being shipped in and they had wood pallets. Is that a potential safety hazard or is that just a freak happenstance that the perchlorate leaked and it blew up?

JEFF DAVIS: OK. I know nothing about what happened in North Platte.

MOSER: Sure.

JEFF DAVIS: What I will say is my understanding is that the shipper, whoever's product that is, is responsible for packaging and labeling that material.

MOSER: So it's identified correctly--

JEFF DAVIS: Correct.

MOSER: --and so that it stays in the shape and form that it was shipped in--

JEFF DAVIS: Correct.

MOSER: --all the way to its destination.

JEFF DAVIS: Correct.

MOSER: OK. Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. Real quick, does the state have rail inspectors? I think the only inspections we do through the PSC is our crossings. We don't have anything-- in your statement you have in

here that kind of leads me to think that we have rail inspectors. Says: If the Legislature wants to make rail inspectors HAZMAT inspectors, what does that mean? We don't have rail inspectors, so it's on them.

JEFF DAVIS: Well, I was a little confused myself about whether, you know, looking at the fiscal note that was zero, are they going to be cross-training someone that's there existing or are they--

BOSTELMAN: Right.

JEFF DAVIS: --are they-- and they gave me the impression it's like, OK, we're going to-- they're going-- the PSC is going to cross-train somebody that is already, already there.

BOSTELMAN: That explain-- and I appreciate that, because I think if you look at the bill, it doesn't say that they're going to add more people.

JEFF DAVIS: Right.

BOSTELMAN: And that's probably, if it moves forward, it's probably an amendment we might want to make in there so that we do get an accurate fiscal note so we have an accurate picture as to what they're expected to do. So just wanted to clear that up. Thank you.

MOSER: All right. Any other questions? Thank you for your testimony. Anybody else in the neutral? Seeing none, Senator DeBoer.

DeBOER: Thank you, everyone, for such a good hearing. I apologize for not being prepared at the beginning with some more specific answers, but I do have answers now for Senator Bosn. Section 171 is a general definition section. And then 172 will indicate what qualifies as hazardous materials. Section 173 talks about requirements for the shipping, how you can do the shipping of these materials and requirements for doing inspections of those materials. There's additional requirements in 174, less clear about that one. And 179 is talking about hazardous waste, which is transferred by the rail tank car rather than a traditional railcar. So what happened was we needed to specifically say what authorities we were giving to an inspector. So the initial Section 2-- 212, which was originally in the bill, was one that dealt with participation in the safety pro-- safety participation program in general. But it turns out that what we needed to say wasn't we're authorized to do that and authorized in that bill, but that we needed to talk about the specific things which they are-- which are these, these federal rules that they are authorized to do

inspections about. So these are the subject matter of the hazardous waste materials that we're going to talk about or inspect. If there are any other questions, I will now attempt to answer them that I've had a minute to catch my breath.

MOSER: Thank you for your testimony. Thanks for bringing the bill. That'll close our hearing on LB1133. Now we'll be going to LB1212. Welcome.

WALZ: Thank you.

MOSER: Floor is yours.

WALZ: All righty. Good afternoon. Oh, I'm [INAUDIBLE] I have the wrong Chair.

MOSER: You have Suzanne yet?

WALZ: Yeah. Good afternoon--

MOSER: Oh, that's--

WALZ: --sorry-- Chair Moser--

MOSER: That's a compliment, I would say.

WALZ: --Chair Moser and members of the Transportation and Telecommunications Committee. My name is Lynne Walz, L-y-n-n-e, and I represent Legislative District 15. Today, I'm introducing LB1212, that was brought to me by the SMART Union and is a comprehensive, comprehensive approach to rail safety. As this committee is well aware, rail safety is a hot topic nationwide and especially here in Nebraska. Just last week-- just last week, there was a derailment in Cairo. Three weeks ago, there was a derail-- derailment in Kennard. In November, there was one in Sidney. In September, there was an explosion at the rail yard in North Platte. In June, there was a rail-- or derailment in Bennet. Derailments and other issues have become all too common in our state, and an analysis by the Lincoln Journal Star found that Nebraska had the fifth most derailments in the country. They estimate that a train has derailed in the state roughly once every 7 days. In fact, the Bureau of Transportation Statistics recorded 54,539 trail-- train derailments from 1990 to 2021. States have been back and forth over the ability for states to regulate rail safety measures, and we're seeing many states across the country move forward with their own measures. LB1212, that's in front of you today, is our own approach to Nebraska's rail safety needs. This bill is

mirrored from one that has been considered in Colorado and has received a recommendation from their Transportation Legislative Review Committee. Additionally, a few weeks ago, Iowa's Senate Committee-- Subcommittee on Transportation approved a bill to require rail companies to install and maintain train defect detectors on railway branch lines. So LB1212 does several things that I will try to go over with you briefly. First, the bulk of this bill only applies to Class I railroads and not Class II or III that do not exceed restricted speed. Additionally, the plain-- the bill does-- excuse me. Additionally, the bill does limit train length to no greater than 8,500 feet if it's carrying hazardous substances. A key point of this bill is that it requires the railroad to have an operational and properly maintained wayside detector system, including a hot bearings detector and dragging equipment detector installed at, at least, every 20 miles. As part of that requirement, the railroad must submit to the Public Service Commission a report that discloses the location of each detector, the characteristics of each detector, the operational status of hot variance detector, and dragging equipment detectors. This bill also provides that a train must be stopped and investigated if a defect message is received. This bill also updates our current statute, not allowing crossings to be blocked for longer than 10 minutes unless it's continuously moving or is beyond the railroad's control. A crew member is also permitted to report to a crew member's designated union representative for a violation of this bill, an injury of a crew member while operating a train or in yard service, or if there's a death during the operation of a train or in yard service. This bill also designates-- also allows a designated union representative to enter a railroad's place of operation during reasonable hours and give reasonable notice. This bill also provides for fines if portions of it are violated. One of my favorite parts of this bill is that it also provides railroads-- provides that railroads will offer training to each fire department that has jurisdiction along tracks. This training is over the general hazards of dangerous goods and how to handle any incidents with them. Finally, the bill requires railroads carrying hazardous substances to have insurance coverage adequate to pay for cost, damages, and liabilities arising out of accidents. This bill-- this bill is really meant to be a comprehensive approach to rail safety measures that should already be happening. LB1212 really just gives the state the ability to have checks and balances to ensure that our communities and our constituents are safe. With that, I'd be happy to answer any questions, although we will have rail workers who are experts coming up behind me.

MOSER: It doesn't look like we have questions, so thank you.

WALZ: All right. Thank you.

MOSER: Supporters of LB1212? Greetings.

TIM SCHRAM: Good afternoon, Chair Moser and members of the committee. My name is Tim Schram, T-i-m S-c-h-r-a-m. I represent the Commission's third district and I'm here today on behalf of the Commission to provide testimony in support of LB1212. I'd like to thank Senators Walz and Jacobson for introducing this bill. LB1212 recognizes the importance of safe and efficient rail operations to Nebraskans, and would add safety training accountability measures to Nebraska law. We understand that the proposed requirements in this bill are intended to prevent or minimize the risk of potential tragedies, similar to which occurred at East Palestine, Ohio. The Commission understands that the preliminary NTSB reports indicate that the East Palestine derailment was likely caused by an overheated bearing, but the federal legislation regulating standards for trackside detectors and adding other safety measures is currently stalled. Rather than waiting on federal legislation which may or may not be passed, the Commission is supportive of the additional preventative safety measures in LB1212. We support the bill's requirements that railroads offer training to each fire department having jurisdiction along the tracks. Further as it relates to enforcement, the Commission supports the additional tools that LB1212 would provide and believes safety requirements in this bill become more meaningful when companies must account for them through reporting. The Commission supports these measures and will do its best to implement them in a manner consistent with the legislative intent. While blocked crossings can be a nuisance, more importantly, we have been concerned about the safety risk they pose when first responders cannot get through to get to a call for help or when children feel obligated to climb through stopped railcars to get home from school. These types of complaints prompted the Commission to open an investigation related to frequent and prolonged block crossings in Hall County. This investigation led to a complaint and ultimately a stipulated agreement. However, the railroad has maintained throughout the proceeding that the Commission lacked jurisdiction, stating any attempt to regulate crossings was preempted by the Interstate Commerce Commission Termination Act in 1995 and the Federal Rail Safety Act in 1970. A number of states have crafted legislation to address this issue. Unfortunately, as you may be aware, states that have adopted blocked crossing laws have been uniformly unsuccessful when these laws are challenged. As a result, while the Commission supports blocked crossing limitations, we believe that any attempt to enforce such

legislation would be challenged in court. This concludes my testimony. Thank you for your time. I'd be happy to answer any questions.

MOSER: Requiring fire departments along the route to be trained could be pretty substantial. I mean, there are towns every 8 miles along the railroad. So you could have hundreds-- well, let me think about that-- dozens certainly in Nebraska.

TIM SCHRAM: That is correct.

MOSER: And does the bill describe what kind of training or just that it has to have training?

TIM SCHRAM: I, I believe from what I read is, is hazardous, you know, like, early-- the earlier bill on hazardous materials. But there's probably some behind me that could answer that better than I.

MOSER: OK. Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. I want to speak mostly to the fiscal note. I think questions to that. It appears that the only thing that's fiscally is potential hiring a contractor to figure out what the insurance requirement would be is $25,000. But it looks-- if you're going to do the fines and penalties, maybe there's hearings that has to be done or inspections that need to be done, probably have to hire more people. Shouldn't that-- shouldn't that fiscal note--

TIM SCHRAM: I, I talked to--

BOSTELMAN: --shouldn't that fiscal note really reflect that?

TIM SCHRAM: Well, the, the Commission already has employees in place, the Department of Transportation, which is also part of the railroad division. And then we have other administrative staff. So during the hearings, you know, unless it's a really prolonged hearing process-- I, I talked to the-- our staff at the Commission this morning on that and I, I looked at that fiscal note as well.

BOSTELMAN: Yeah, I guess, you know, the previous bill has a lot of these-- some of this stuff in it, but it, it says going to require to hire a new person, at least one person, if not more. I think that looking at this, they're adding-- they're adding quite a bit to the responsibilities and duties and insurance requirements and the federal fines that you have as well as-- I would think there has to be inspections done with that. So I guess my question is, is-- I don't-- I guess, you know, the fiscal note, I don't know if it's really taking

in everything because I guess if, if one bill says you need to-- need to hire people while your next bill is similar, says you don't, I don't know which, which it is so--

TIM SCHRAM: Yes.

BOSTELMAN: --that's, that's my comment to it, I guess.

TIM SCHRAM: A little clarification-- I, I-- if I may. On the last bill, there was an amendment filed and the, the Commission did have a fiscal note filed. But with the amendment, there was another fiscal note filed that's at LFO right now that apparently, I apologize, the senators don't have.

BOSTELMAN: OK. I just think that there's a lot being put into this bill that-- and I guess if you have staff that's available that's not doing anything to pick up these extra duties, I guess you don't have to, but it seems to me it's at least a half FTE or, or more that you'd have to bring on board just to meet those needs. That's, that's your problem.

TIM SCHRAM: OK. Thank you.

MOSER: Thank you for your testimony.

TIM SCHRAM: Thank you.

MOSER: More supporters for LB1212?

JERRY STILMOCK: Mr. Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association, the Nebraska Fire Chiefs Association, in support of LB1212. Thanks to Senator Walz and Senator Jacobson for cosponsoring and Walz for introducing. Particularly, Section 7, it gets to the training aspect. Let me hit on 3 items. First of all, Nebraska's volunteer firefighters, they are encouraged to take an upper or a, a-- an awareness level of training. There's 5 levels of training for hazardous materials from-- kind of, Senator Moser, what you had said earlier, you identify what it is. Don't touch it. Get away from it. Don't go near it. Awareness, operational, a little bit more skills and training technicians that are able to go into the hot zone, if you will, evacuate. They're trained on how to use personal protective equipment and, and then specialists, the highest level you could imagine and the fifth level completes out with incident, incident commander specificity training. So that's one item. Even at the-- at

the awareness, the very basic level for first responders, they are taught the use and guidance in how to apply the yellow book. It's an emergency response guidebook that takes, takes a first responder to just that, that awareness level of how to read a placard, what the placard contain-- what the number applied to that placard contains, and, and then just an understanding of how to-- how to use that manual to identify hazardous materials. My other point was-- Senator Moser, a great question-- is, like, how much could this cost the railroads to be able to train? So right now under Nebraska's volunteer fire school, it's, it's put on each May in Grand Island, approximately 1,200 to 1,500 volunteer firefighters, volunteer first responders, including emergency medical service providers show up, and they're able to take a hazardous materials class. The railroads actually come in co-coach it, co-teach it. It's, it's limited to 30 class members. So a, a way to assist that would be-- volunteer fire departments historically for years have entered into mutual aid agreements. And those, those departments in a mutual aid area or region of Nebraska share responsibility, share training, and cooperate. So there would be one method to hit in a region of the state, in one episode, one training, one Saturday, where the railroads conceivably can come in and train more than-- more than just 1 or 2 departments. So a lot of reasons to support Section 7 and we hope that the committee would consider advancing the bill. Thank you, Senators.

MOSER: Senator DeKay.

DeKAY: Thank you, Chairman Moser. Thank you, Mr. Stilmock, for being here. Couple quick questions. Number 1, the fire school down Grand Island, is that just regular training or is that specific training, requested training that they bring in a specific instructor for hazardous waste? And is that delegated toward communities along the train routes or is that for all communities that might be dealing with hazardous waste all under one umbrella training?

JERRY STILMOCK: It would be for anyone who wants so it's-- there's not a designation of who may enroll or who may apply to be in the 30-unit class. The, the training is offered, but I, I don't believe it, it arises to the level of that awareness training. I think that would have to be done separately by, by somebody from the Fire Marshal's Office training division that offers services to volunteer departments, Mr.-- or Senator DeKay.

DeKAY: Thank you.

JERRY STILMOCK: Yes, sir. Thank you for your question.

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Mr. Stilmock, for being here and your testimony. So you specifically highlight Section 7, so the training component. So-- and, and maybe I'm piggybacking it off of Senator DeKay here. So my understanding is that the railroads currently do offer the training. There's just no requirement to attend the training because they can't require, obviously, firefighters to attend their training. How, how do you envision this will change what's currently occurring or improve that?

JERRY STILMOCK: Yes. Thank you. I, I called a couple of fire chiefs throughout Nebraska in preparation for this afternoon, and I asked that very question because I, I anticipated maybe somebody would ask it, sir. So the, the hot railroad communities that are serviced by volunteer fire departments, they are able to call-- they shared with me in their region if they call UP, they are able to arrange for UP to come out and do specificity training for what the fire department may ask. The problem is with the over 490 volunteer fire departments in the state, that, that, that issue-- and not all railroad locations, sir, to that Class Is, but particularly where Senator Walz's bill would be directed to. They, they just don't have that ability or time and it's not required. I think, generally, if they want it, they, the volunteer fire departments, and request it, the arrangements will be made by the railroads to come out and, and do that training. It's those that don't ask the training that aren't aware that maybe there's something more that they should know that concerns our members because it's a-- it's a volunteer organization, sir.

FREDRICKSON: Sure.

JERRY STILMOCK: And what you don't know sometimes, obviously, may hurt you.

FREDRICKSON: So, so my question is--

JERRY STILMOCK: Yes, sir.

FREDRICKSON: --so if I'm understanding you correctly, my-- so it sounds like it's, it's more of a lack of awareness of the trainings available. Because my understanding is the training is available, they're just not aware that they are able to get the training. Is that-- am I understanding that right?

JERRY STILMOCK: That, that, that may be a, a fair statement. I, I could not challenge it because the, the people that I did call said,

yes, they are able to. It's just, pardon me while I, I go marketing for, for the volunteer first responders is they are getting-- they're receiving more and more and more requests to participate in providing safety--

FREDRICKSON: Sure.

JERRY STILMOCK: --to the citizens and tourists in Nebraska, that how much do you ask for and in the inundation of trying to help and what to ask for. But, but I have to agree with your statement that you made.

FREDRICKSON: OK.

JERRY STILMOCK: Yes, sir.

FREDRICKSON: Yeah, because I'm just thinking if the-- if the railroads are already providing this, you know, this, this bill won't change that at all. It's just a matter of opting into the training is the concern here.

JERRY STILMOCK: The fact that it's going to be a two-way communication, right now it's a one-way.

FREDRICKSON: Got it.

JERRY STILMOCK: Hey, will you come out and give us training? Yes, we will. This way it would be both agencies, volunteer fire and rescue and the railroads. The railroads will be required to make the phone call now and that seems like an inducement--

FREDRICKSON: Got it.

JERRY STILMOCK: --to help the burden of the volunteers. Yes, sir.

FREDRICKSON: So you see the benefit of the bill that it will-- it will sort of catalyze it and sort of require the railroad to be more proactive in offering it.

JERRY STILMOCK: I do.

FREDRICKSON: Is that your understanding? OK. Thank you.

JERRY STILMOCK: Yes, sir. Thank you for your questions.

MOSER: Thank you very much for your testimony.

JERRY STILMOCK: Yes, sir. Thank you, Senators.

MOSER: More supporters for LB1212? Welcome again.

ANDREW FOUST: Hello again, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Andrew Foust, A-n-d-r-e-w F-o-u-s-t. I am the Nebraska Legislative Director for SMART-TD. I'm here to testify in support of LB1212. And on behalf of our organization, I want to thank Senator Walz for introducing this vital rail safety legislation. LB1212 addresses many, many ways to prevent accidents, injuries, and possibly fatalities. I have not-- I will not have enough time today to address all parts of the bill, but I do want to highlight some of the most important ones. Number 1, wayside detectors. Detectors prevent potential accidents like the ones that we had last February in Senator Ibach's district and last October in Senator Lippincott's district. We have confirmed that Union Pacific is shutting off these detectors, and that BNSF is disregarding the messages sent from the detectors, just like what happened in East Palestine, Ohio, 1 year ago. This bill holds the railroads accountable for working and maintaining detectors. Number 2 is hazmat training. After the explosion in North Platte in September of 2023, we found that first responders have not received proper hazmat training for over 4 years. This bill would require all railroads to provide annual hazmat training to first responders with railroads in their jurisdiction. And lastly, number 3, train length restrictions for trains hauling hazardous substances. On the AAR, Association for American Railroads website, which the railroads often cite as authority, it states in 2021, the median train length of a Class I-- trains on Class I railroads, meaning half were longer, half were shorter, was 5,400 feet. Just 10% of the trains were longer than 9,800 feet, about twice the elevation of Denver, Colorado, and fewer than 1% of trains were longer than 14,000 feet, about half the cruising altitude of a commercial jet. But this information is false. Union Pacific reports their average train length from 2021 to 2023 was 9,339 feet. The concerning issue of the-- the concerning issue is that rail crews cannot hear defects over the radio when the train is at such a length. If the train crew cannot hear the defects from the detectors of the crew-- of the cars hauling hazardous substance, then we cannot stop the train, set out the defective car. This bill alleviates those concerns by limiting such trains to a length of 8,500 feet. I want-- I want to encourage all committee members to support Senator Walz's bill and protect the citizens of Nebraska. Thank you for allowing me to speak today and I'll be able to answer any questions that you might have.

MOSER: Senator Bostelman.

BOSTELMAN: Thank you, Chairman Moser. Just trying to look through the bill here. How often-- how frequent are the detectors on the rail? I think it was 20 miles in here. Is that normal in other states for the bearing detectors?

ANDREW FOUST: There is no regulations on detectors currently from the Federal Railroad Administration. So some of the railroads, they have them, they're just scattered all over the state. There's no specific mile.

BOSTELMAN: So there's no states really does any specific distance?

ANDREW FOUST: Yeah. There's no specific distance, currently.

BOSTELMAN: OK. Thank you.

MOSER: Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thanks for being here.

ANDREW FOUST: Thank you.

M. CAVANAUGH: So there's no specific-- there's no regulation over the distance between the detectors.

ANDREW FOUST: Yeah. There's no regulations, period, over detectors at all.

M. CAVANAUGH: So if detectors are turned off, how do you know if detectors are turned off? How do you know if they're on? What is-- like, what is your experience with the detectors? What's the-- are they serving the purpose?

ANDREW FOUST: We gathered-- we've gathered information directly from Union Pacific that said in September of '23, a, a specific detector was only running 7% of that month.

M. CAVANAUGH: Only running 7% of what?

ANDREW FOUST: Of September of 2023.

M. CAVANAUGH: You mean only 7% of the time the detector was on?

ANDREW FOUST: Yes. That's correct.

M. CAVANAUGH: OK.

ANDREW FOUST: So Union Pacific-- this-- where I, I stated in my, my testimony where I said that Union Pacific is shutting off the detectors and BNSF is disregarding the detectors. I know for a fact BNSF is disregarding the detector because I have a picture of a broken wheel that led to a derailment in Senator Lippincott's district that derailed 30 coal cars. That, that broken wheel was found on the empty train traveling west, was loaded with coal in Wyoming, and traveled back and derailed 8 miles away from the original detector that found it. I sent an email to all the Transportation Committee members.

M. CAVANAUGH: Yeah, I feel like I'm remembering that now. OK. So-- OK. I think-- I'm trying to wrap my head around 7%--

ANDREW FOUST: Yeah.

M. CAVANAUGH: --of the time, what, what is the efficacy of even having it turned on, I guess, but. Thank you.

MOSER: Senator DeKay.

DeKAY: Yes. Real quick. So if that broken wheel was detected here, how come-- and went out to Wyoming and filled with coal and brought back, how come it wasn't replaced somewhere along the line if it was seen in the [INAUDIBLE]?

ANDREW FOUST: So originally the detector found it and it's, it's almost like an X-ray machine. The picture of it, I mean, is plain to see that the wheel was cracked. To my knowledge, Fort Worth, Texas, was notified of the broken wheel from the detector. They sent an email to Alliance, Nebraska. That car was supposed to be set out in Alliance, Nebraska. The decision was made to send it on to central Wyoming to be loaded. And then no one notified the car men at the-- at the coal mine to set the car out there. And it was on its way back. And then after that, before the car derailed, it was-- the decision was made to set the car out in Lincoln, Nebraska. So it traveled over probably 1,000 miles. It would have traveled after-- about 1,000 miles after the detector first responded or gave the information to Fort Worth, Texas. So that's why I, I stated that-- their disregard for messages from those detectors.

DeKAY: Thank you.

ANDREW FOUST: Yep. Thank you.

MOSER: The 7% was for one particular detector, but then made that--

ANDREW FOUST: Yes, that was one--

MOSER: --other detectors that were working?

ANDREW FOUST: Oh, that was-- that location of the detector was west of Bailey Yard, which is the largest classification yard in North America.

MOSER: In North Platte.

ANDREW FOUST: Yeah. It was directly west, so any incoming train, they could have found the-- the detector would have sounded, gave alert to the carmen or the, the inspectors of the car and then the car could have been set out in North Platte. But then it went through, specifically, in, in Gothenburg, right downtown Gothenburg. Last February, there was a derailment because of, of flat spots on the wheels.

MOSER: OK. Senator Bosn.

BOSN: Thank you. Can you explain for me some of the correlation between the train length restrictions and, and the hazardous material? Is there-- you said the median train length is 5,400 feet.

ANDREW FOUST: That's what the AAR states. But that information is false.

BOSN: OK. What is-- AAR stands for?

ANDREW FOUST: Association of American Railroads.

BOSN: OK. So what is your-- what is your contention that the length-- the median length actually is more accurately?

ANDREW FOUST: According to quarterly reports and year-ending reports from-- directly from Union Pacific's website, from 2021 to 2023, the average length of trains was 9,339 feet.

BOSN: So we'll just, for rounding numbers, use 9,300 if that's OK.

ANDREW FOUST: That's fine.

BOSN: And so your, your request here is to move it to 8,500, which is actually longer than what the AAR even says, regardless, right, so you're giving them more length.

ANDREW FOUST: Yes.

BOSN: And less length than what you think is the current actual numbers.

ANDREW FOUST: Yes.

BOSN: And can you explain for me the reason behind how that relates to the safety? Is there-- longer cars derail quicker, faster, more dangerously? What is the correlation there?

ANDREW FOUST: What we found over the years is the radios that are up in the cab of the locomotive, the train will go over the detector and the detector will give a warning to the crew after the, the entire train is over it. Well, if it's over 10,000 feet, the, the radio signal won't alert the, the, the the crew that they have a defective car in their train because the radio signal is not strong enough. So if we limit it to 8,500 feet, that's a pretty good length that we've come up with that the radio-- that we can receive radio communication from the detector after our train has gone over it.

BOSN: OK. So the-- is there any particular reason that when the locomotive goes past it, that it doesn't alert them right away when there's a wayside detector that goes off?

ANDREW FOUST: The locomotive?

BOSN: Well, you said that's where the radio is, right?

ANDREW FOUST: Yeah.

BOSN: OK. So why once the defective wheel goes past this detector, doesn't it immediately sense that?

ANDREW FOUST: It reads the whole train. So after that last wheel on that last car goes over the detector, then the detector sounds, it'll say no defects or it'll say defect in axle 400, and then we count back what, what axle that was. But it cannot read until the entire train has traveled over the detector.

BOSN: So they're not real-time detections in terms of car 17 had the-- had the detector go off, car 35 had it. So it's not dinging you every time one comes back.

ANDREW FOUST: Yeah, it'll tell you the whole train.

BOSN: OK.

ANDREW FOUST: So if there's multiple defects, it'll say axle 35, axle 102, axle-- were, you know, defects.

BOSN: And it's, it's just not in real time so it's not telling you that until the whole train goes past. OK. And your reason here is that the distance after 8,500 feet is too far for that radio to make that consistent connection.

ANDREW FOUST: Yeah, the, the signal.

BOSN: OK. Thank you, though, that was my question.

ANDREW FOUST: We've also found that the train length-- we're working on a patent that was developed in 1873. The first patent for a railroad knuckle was in 1873 when cars were-- you know, trains were 20 cars long. Now we're talking about trains that are, you know, 3 miles long, the potential of 3 miles long, and the weight and the force of those knuckles, it's not built that way, you know. That's-- so that's why we limited it, too.

MOSER: When they put the train together, don't they put some engines in different places to kind of equalize that in places?

ANDREW FOUST: They're not required to do that unless it gets cold or like a grade, if it's-- if it's operating on grade. So that means like a hill or, or stuff like that. But mainly they use distributed power, is what they call it. They'll put them in the middle or they'll put them in the-- at the end of the train and that keeps it-- that equalizes it. But it's not really-- when it's cold, it's not for that purpose, it's to maintain the air going through the entire train because when it gets too cold it'll freeze up the, the air valves.

MOSER: And then the air brakes will go on--

ANDREW FOUST: Yes.

MOSER: --or you can't get them to release. OK. Other questions? Thank you for your testimony.

ANDREW FOUST: Thank you.

MOSER: More supporters? Welcome.

JAKOB FORSGREN: Good afternoon. My name is Jakob Forsgren, J-a-k-o-b F-o-r-s-g-r-e-n. I am the Nebraska State Legislative Director for the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. I'm also a maintenance of way worker living here in Lincoln. I help maintain railroad tracks and right-of-way for a railroad operating in Nebraska. I come to you today to show support for LB1212. On February 3 of 2023 at 8:55 p.m., a train carrying vinyl chloride derailed in East Palestine, Ohio. I'm sure many of you are familiar with the disaster and the crisis that is still ongoing, all caused by an overheated bearing on a train carrying hazardous material. But I'm sure you aren't as familiar with is that 3 hours and 5 minutes prior to that derailment, a similar derailment occurred due to a similar reason. At 5:50 p.m., a BNSF train derailed in Rulo, Nebraska. Thankfully, this one did not result in hazmat being released. However, the cause of it is why I am here today. This derailment was caused by a wheel that delaminated as a result of an overheated bearing. This train had set off 3 hot box detectors or hot bearing detectors prior, designed to warn of this problem before it results in disaster. These warnings were ignored twice, and by the third warning they found the train was too long to fit into a siding where the car could be set out safely. As a result, they were told to keep going. The car derailed 3 miles later. Warnings being ignored, coupled with trains being too long to clear the main track in pursuit of profit causes this kind of thing. And we must protect the stakeholders-- we must protect the stakeholders from the shareholders. This derailment did not end in disaster, but it certainly could have. The car that derailed was then drug across the bridge over the Missouri River. The potential for disaster was massive. This bill could be a huge start in protecting Nebraskans in a way the people of East Palestine wish they would have had a year ago. Let's protect Nebraskans before the next disaster happens. Thank you and I'd be happy to answer any questions.

MOSER: Questions? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Moser. Educate us on this-- what you just went over and what we've heard before. So you mentioned a hot box, you mentioned detection. So we have a train on a rail going to east/west, one track going down. If you have a detector go off, how is it then that you manage that train or that detection-- it probably depends upon what it is to keep that train safe or not-- when does that train stop? When do you switch it out? When do you fix it? How does that work? Because you've got rail traffic going east and you have rail traffic going west and how--

JAKOB FORSGREN: And I think--

BOSTELMAN: --could you-- could you help me understand that?

JAKOB FORSGREN: Yeah. Sorry for interrupting, Senator.

BOSTELMAN: No, you're fine.

JAKOB FORSGREN: I think the, the difficulty they found in this instance was typically you'll get that train on to a siding where if you have one track that runs east/west you'll have another track adjacent to it at one point that, that is only so long where you can pull the train, stop it, and then another train going the opposite direction can pass. In this instance, the train was too long for any nearby sidings to pull that train and stop it to get that car off of that train and so the instruction was to continue on their trip until they could reach a siding that would have been long enough and 3 miles later it derailed.

BOSTELMAN: So forgive me for-- once again you can educate, educate me or educate us on this. So you have a car and it's got a hot bearing, it's got a broken wheel and you pulled off onto a side track. Do you bring a maintenance train in there then, that then lifts that car up to remove that axle, remove that wheel and replace it in, in, in place or do you just continue on with the train at a slower speed? How does that work?

JAKOB FORSGREN: At this point, that I don't know that I'm qualified to answer. I do track maintenance. So I, I, I see these things from kind of a 30,000-foot view. That might be a better question for another craft. Somebody that might be in the-- in the machinist portion of it that actually fix the train cars.

BOSTELMAN: OK. Thank you.

JAKOB FORSGREN: But oftentimes-- what I-- what I can say is that when they have a car that poses a risk, oftentimes they will split the, the train up, leave that car on that siding, put the train back together without that car, and then continue on their journey. And then at some point, someone can come repair the car or the wheel, the bearing.

BOSTELMAN: Sure, maybe-- yeah, it probably just depends upon where the location is at the time and, you know, the things surrounding it where they can-- cannot get it off the track or not, so.

JAKOB FORSGREN: Yeah, I imagine you're correct.

BOSTELMAN: All right. Thank you.

JAKOB FORSGREN: Yeah. You're welcome, Senator.

MOSER: Thank you for your testimony.

JAKOB FORSGREN: Thank you for the opportunity.

MOSER: More supporters? If you plan to testify, if you could come up and get in the front row, that would save a little bit of time. Welcome.

AMANDA SNIDE: Hello again. Thank you, Senator Moser and senators on the committee. Appreciate your time. My name is Amanda Snide. Amanda, A-m-a-n-d-a, S-n-i-d-e. Again, I'm with the SMART-TD Legislative Board. Working on the railroad, I get to see a lot of accidents. So far in this month alone, I've seen 5 derailments in Bailey Yard. I've watched cars go through retarders or the braking systems meant to stop them, yet they fail. These cars are rolling freely until the crews that I represent take it upon themselves to take action and stop them before they could run into the loaded hazmat cars on the train ahead of them. You don't see this in the news because it was a close call and we stopped anything bad from happening. September 14, the explosion of a hazardous chemical called "perchloric acid" occurred in the rail yard. While the authorities did an outstanding job of warning the public, executing an evacuation zone and maintaining as much transparent communication as possible, the railroad failed to let their own employees know what was going on. In most cases, employees returned to work within a few minutes not knowing what chemical was in the giant cloud on the north end of the yard. The siren that's to be sounded when a hazmat chemical is released in the yard never sounded. The emergency plan was updated after this incident, and I'm very thankful that they allowed Director Foust of myself to be a part of that process. I'm also a volunteer firefighter and EMT, and I've been able to attend the trainings provided by the railroads and the shippers of hazmat chemicals on how to handle a railroad emergency, specifically. First responders need more access to training for how to handle these situations, not due to their, their lack of understanding, but as catastrophic derailments and incidents are ever increasing, the training on how to handle them needs to as well. As track maintenance has seen a significant decrease in recent years, this isn't due to those that do the job being unwilling, it's the forced reduction in their staffing, the increase in territory to the overburdening of their abilities in order to save the carriers money, but at the cost of the safety of everyone on or near those tracks.

According to the investigation done by the FRA, the derailment in Gothenburg last February was due to a defective wheel hitting a defective track. Among the damage was a maintenance truck parked next to the track that was staged there prepared to fix a known issue with the track the next day. This derailment could have been prevented. In 2015, the FRA issued Safety Advisory 2015-01 recommending the use of WILDs or wheel impact low detectors to improve rail safety. These detectors reading kips are a 1,000-pound force. The recommendation is that cars at 80 kips be replaced when in a repair facility, and cars with 90 kips should be replaced at any location. The car in question read at 130.6 kips. This value should have raised alarms for months prior to this derailment, but crews were never notified that those defect detectors were going off. In closing, I ask that you help make the railroads more safe by allowing the Public Service Commission the ability to hold the railroads accountable and have more inspections. I ask that you support these bills and I'm available for any questions.

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Ms. Snide, for being here today and for your testimony. I think you mentioned that you've attended some of the trainings that are offered by the railroad.

AMANDA SNIDE: I have.

FREDRICKSON: You have. OK. I was asking a little bit earlier about that. Can you tell me a little bit about your experience in those trainings? Do you feel like those are sufficient or do you have any concerns about the trainings or--?

AMANDA SNIDE: I do. I went to the [INAUDIBLE]-- I believe Mr. Stilmock talked about fire school. I attended a training at fire school last May. I've also attended training with BNSF here in Lincoln last June. Those trainings are phenomenal for a basic level of education. I learned some tricks that I was able to put in place during the September explosion, different applications on your phone that you can find to figure out which chemicals are in which types of cars. On the day of September 14, the app didn't work correctly. I have been in contact with the makers of that app so that way, other first responders don't have the same incident occur.

FREDRICKSON: Do you have any-- do you have any thoughts or feedback on what might improve those trainings?

AMANDA SNIDE: I think the availability and that this bill puts more of the burden upon the railroads to approach the first responders, rather than vice versa.

FREDRICKSON: OK.

AMANDA SNIDE: If you're hauling the hazardous chemical, you should make sure that the people that are in the areas where you haul those chemicals are prepared to respond to them.

FREDRICKSON: Thank you.

MOSER: Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thanks for being here again. I have sort of, like, a cartoon image in my head when you said that the trains-- the brakes failed and then people just stopped them, like, I can't-- how, how do-- how do human beings stop moving trains?

AMANDA SNIDE: The 7 cars that I alluded to in the first part of my testimony, a locomotive got out in front of those 7 cars that were traveling at 12 miles an hour, not connected to anything else, and was able to get them stopped before they ran into the train ahead. Sunday morning, my crew specifically had a car rolling at us and my foreman jumped up on the car and tied the hand brake himself.

M. CAVANAUGH: OK, so my cartoon version wasn't too far off.

AMANDA SNIDE: No, it's not.

M. CAVANAUGH: OK. And those you said they don't make the news because they're-- the incidences are diverted.

AMANDA SNIDE: Correct.

M. CAVANAUGH: Is there-- what is the internal reporting and tracking of that?

AMANDA SNIDE: One of the employees that was a witness to the 7 cars rolling through put in-- something into the safety hotline or the reporting process that we have to report to Union Pacific that, hey, something safety sensitive went wrong and we would like to see it changed. It took almost 7 days for a response to happen, and the response only came after he reiterated that there was an issue and he had not received a response yet.

M. CAVANAUGH: OK. And I have another. OK, so you said that rail workers were not notified when detections went off.

AMANDA SNIDE: Correct.

M. CAVANAUGH: So I-- like, dumb it down as much as you possibly can for me here. So we had-- the previous testifier was talking about the length of the train and when it goes over the, the detector we don't get the detection until the entire train. But then that detection doesn't go anywhere outside of basically the cab of that train?

AMANDA SNIDE: There's multiple different types of detectors, and the different types of detectors have different ways that they alert that there is an issue. I believe Mr. Foust was talking about the detectors that are in line and have an almost real-time realization of something is wrong with your train. The WILD detectors are given to the carmen, they're the kind of--

M. CAVANAUGH: What are they called?

AMANDA SNIDE: The WILD. It's the wheel impact load detectors.

M. CAVANAUGH: OK. Sorry.

AMANDA SNIDE: You're fine. Those are given to the carmen or the people that repair the cars. And you talked about the 7% was mind-blowing earlier. Those are the types of detectors that are being turned off so they don't know these cars are bad before they come into the yard.

M. CAVANAUGH: And those are the WILD detec--

AMANDA SNIDE: WILD detectors.

M. CAVANAUGH: So the WILD detectors are the ones that have been turned off.

AMANDA SNIDE: The WILD detectors listen for the different sounds of the rail. Usually they're the flat spots or the potentially laminating wheels happening.

M. CAVANAUGH: OK. All right. So the WILD detectors have the WILD underreporting. Thank you.

AMANDA SNIDE: Senator Bostelman, you had asked a question earlier about if cars break en route, how they get fixed or different wheels get fixed? In my area, a lot of the trains that I represent go through

rural Nebraska going south Morrill. In different locations, we can stop that train and there are heavy repair trucks that can come out and they jack that car up and they can change wheels out or we can put them into set-out tracks where carmen are different-- contracted employees can come out and change those so that they're safe to move.

MOSER: Senator Bostelman.

BOSTELMAN: Thank you. Yeah, thanks. Thank you, Chairman Moser. Yeah, that was just kind of a question I just-- I think we need to know because if, if you have a-- if there's a defect found on the train, you know, how long does it take before you really can get to that train to get it-- get it addressed, fixed, or whatever it might be, whether it'd be a sidetrack or not or whether it went into a yard or not? Because it could be-- I don't know if it's 100 miles, 200 miles, so what does that train do, they slow that train-- should you slow that train down because you know you have a defect on it? If you have a hot bearing, I'm sure it's a whole different subject, because now, I don't know, I suppose there's a fire risk with that as well. So, you know, do you stop the trains and then you have a mobile crew that can come out and actually take care of that? I'm just curious. I just don't know the answer.

AMANDA SNIDE: So it's dependent. The different types of detectors have different things that they tell us, and the different issues that occur with those cars have us do different things. If you're near a bridge, you're supposed to stop before that bridge. If you have certain times of defects, you can move the train at walking speed until you get to a place where it's safe to set it out. So it depends on the type of defect that's found and the location that you're at. Most of the detectors have a set-out track pretty nearby in order to set out whatever defect is found.

BOSTELMAN: Well, I guess that, that comes back to the question I, I think is in the bill. I'm not for sure. I thought it was, like, every 20 miles you have to have a detector. How are they set out now? Is there a spacing in those things? Regular spacing? Is there a, a expected safe distance, I'll call it, that you should check every so many miles with a-- with a car as it goes? Do you know?

AMANDA SNIDE: So right now there's no regulations on that. I spoke about the train derailment in Gothenburg. It was actually the second loaded coal train derailment in a 2-mile spot on the same section of track. The section of track that handles the double coal trains, the

heaviest, longest that we have is the only section of track that doesn't have a defect detector on it.

BOSTELMAN: OK. All right. Thank you.

MOSER: So if you disconnect 7 cars from your train, wouldn't you open the air valve to set the brake so it won't roll away on you?

AMANDA SNIDE: So when you're cutting away from a set of cars, you would close the angle cock on the set that you're taking with you and you do not close the set that's staying there. So that way the cars dump or go into an emergency. You leave the angle cock open. If you're to close it, then it's bottling air and the air could eventually bleed off and have those cars roll out of control.

MOSER: OK. Thank you for your testimony.

AMANDA SNIDE: Thank you very much.

MOSER: More people to speak in support? Welcome.

SONNY FANKHAUSER: Thank you, Senator or Chairman Moser and members of Transportation Committee. My name is Sonny Fankhauser, S-o-n-n-y F-a-n-k-h-a-u-s-e-r. LB1212 considers the question, should the state have the ability to regulate and enforce the safe and efficient transportation of rail freight throughout its borders? Absolutely, the state and this committee should have a say in keeping the citizens of this great state safe. Over 12 years of railroad experience, a year and a half as a conductor and 11 years as an engineer, I've had to walk trains or inspect them several times over my road career for multitude of reasons. LB1212 addresses and moves to help mitigate the multiple reasons train derailments happen. We've all heard and talked about the most recent rail disasters, Lac-Megantic in Quebec, East Palestine in Ohio, and the response is usually something along the lines of, well, it didn't happen here or we can't predict the future, which are all correct. And I'm not going to sit here and play the speculation game or the what-if game with you. I believe in facts, so let's discuss some. Nebraska has 3,000-- approximately 3,117 rail miles. Speaking about BNSF specifically, there have been, in just the past 5 months, 3 major train derailments involving a coal train, all within a 60-mile stretch and involving over 100 rail cars. The same 60-mile stretch of rail has 3 ethanol plants on the side of that rail. According to the AAR, the American Association of Railroad, all Class Is hauled 3.4 million carloads of coal last year, 2.3 million carloads of chemicals, and 121,000 barrels of crude oil per day. Thinking about

those numbers, thankfully, none of this, past derailments in the past 5 months have involved chemicals or crude oil. I hope in thinking about these numbers, the committee sees a value in having a say on the safe and efficient transportation of railroad freight throughout this great state. Thanks for your consideration. Any questions?

MOSER: Questions? Seeing none, thank you for your testimony.

SONNY FANKHAUSER: Thank you.

MOSER: Anybody else to speak in favor of the bill? Welcome.

PAUL BELLOWS: Thank you. Welcome. My name is Paul Bellows, P-a-u-l B-e-l-l-o-w-s, with the Brotherhood of Maintenance of Way Employees Division, which is the maintenance of way workers that work on the track. I'm here to speak in favor of LB1212. I've been working for the railroad for almost 20 years. I've come here not only as a representative of the maintenance of way, but as a voice for all craft members working in the railroad industry. I'm sure most of you have heard of what PSR is, and if you haven't, take some time to look into it and the aspects as I guarantee it's not all sunshine and rainbows as the railroads would have you believe. A recent study by the U.S. Government Accountability Office published December 13, 2022: Of the 7 largest U.S. freight railroads, 6 have reported implementing PSR strategy intended to increase efficiency and reduce costs. While there is no one definition of PSR, stakeholders told us the strategy is associated with fewer staff, longer trains, and more. 2022, all 7 of these railroads told us they ran longer trains with the goal of increasing efficiency. If you listen to the railroads, they will tell you all the pros of how PSR is good for the customers and the economy and how they can move products so much more quickly. Recently, they've even been telling several news agencies that they have safety as their primary and number 1 focus. Take it from a boots-on-the-ground, hardworking employee that speaks for many members across Nebraska, what the railroads have said publicly and what their actions are, are 2 separate things. We have seen what PSR has done, and PSR is the direct reason for the 2 proposed bills today that we have been talking about. We have seen employee safety programs get thrown out the window while claiming they still have a safety program. We have seen safety meetings get axed. We have been told to overlook safety-sensitive items. We have been told-- or we have been treated as though we are garbage and can easily be replaced. If we as employees are treated this way, do you really think the railroads care anything about the safety of the public or how long the trains are? We have seen the manpower cuts across the state and all crafts making trains less

reliable, creating trains with more defects, track defects, and train defects being overlooked. When defects are noted, they are put off being fixed until [RECORDER MALFUNCTION] --fixed, trains being made so long they have to have issues climbing hills, men and women not being given adequate rest before being called in, in another shift or emergency, and manpower so shorthanded they cannot operate depots and trains at full operating efficiency. Some employees are reporting 20 to 40 hours of overtime on a weekly basis due to being-- due to being so shorthanded. I could go on and on about the employees on a daily basis. Let's talk about the recent derailments, which I think we've talked about enough today. We all understand what happened in East Palestine and the impacts of that derailment on the ecosystem, the townspeople, and the community. What if it happened right here in Lincoln, Nebraska, or Omaha, Nebraska, or for that matter, anywhere in Nebraska? Do the railroads have the public's safety in mind? That's not for me to decide, nor does my personal opinion matter. What does matter is why we're here today. Your job is to serve your constituents and do what is in their best regards and best interests. It is for the public safety that brings us here today. Passing of LB1212 can only further enhance public safety, create training for local fire departments, and provide some reassurance that if a catastrophe does happen in the state of Nebraska, the residents affected will be taken care of in a manner that will hopefully minimize the impact of such a catastrophe. Any questions?

MOSER: Questions? No, no questions. Thank you for your testimony.

PAUL BELLOWS: Thank you.

MOSER: Anybody else to speak in support? OK, is there anyone to speak in opposition? Welcome.

ROD DOERR: Thank you. Good afternoon, my name is Rod Doerr, vice president and safety-- chief safety officer for Union Pacific Railroad. I thank the committee and Senator Walz for your attention on railroad safety, although I rise in opposition of LB2020 [SIC] as currently drafted.

MOSER: LB1212.

ROD DOERR: While UP will submit other written comments, I would like to focus my statement on train length, blocked crossings, and wayside detectors. Some overall observations to begin. As technology is advanced, so has incredible leaps in rail safety. Since the 1970s, accident rates have fallen 80% in this industry. This is also true at

Union Pacific. Let's focus on just an example. Precision Train Builder is software that Union Pacific has recently built. Precision Train Builder is technology that in real time simulates the physics of mass and movement, or what is referred to as in-train forces. Precision Train Builder calculates the forces as a train is moving across the track, and will alert our dispatch office when predictive forces are beyond our tolerance limits. When such an alert is triggered, the dispatcher will issue instructions to the crew to slow their train, thus reducing the energy in the train and thus the in-train forces. Since installation of this software, Union Pacific has not experienced a single buff forced derailment. Regarding state regulations on train length, there is no established correlation between train length and blocked crossings or derailments. However, the Infrastructure Investment and Jobs Act of 2021 allocated $2 million to the National Academies of Science to study freight car lengths over 7,500 feet. We should wait for those results. Next, wayside detector technology of various types that have been talked about here today, such as hot journal, acoustic bearing, hot wheel, and many others have been deployed across the system for decades voluntarily by the industry. Union Pacific continues to install these detectors and has on the books another 80 to 100 hot journal bearing detectors to be installed on UP this year. Blocked crossings. Union Pacific understands that a blocked crossing for any extended period of time creates inconvenience and is unacceptable to its communities. This is not our intention, as it is in our best interest to keep our trains moving. Technology is aiding on our work to reduce the number of crossings occupied for any extended period of time. Currently being tested is a system where trained GPS coordinates are compared to each crossing's geofence location, where a train is shown to be occupying the crossing beyond an acceptable duration an alert is automatically sent to the dispatcher to advance the train or check on the crew to ensure the train is moving. In conclusion, train size limitations will have no effect on derailment prevention, as it does nothing to control the physics associated with in-train forces. Wayside detectors and the reduction in crossings are being aided by advanced technology, and while Union Pacific was not consulted in drafting LB1212 and must oppose the current draft, we remain available to discuss ways in which the state of Nebraska can join us in the important work of making railroads more safe. I thank the committee for your attention and would be more than happy to answer questions.

MOSER: Let's take Senator Brandt.

BRANDT: Thank you, Chairman Moser. Thank you, Mr. Doerr. What do you do for Union Pacific?

ROD DOERR: Chief safety officer. So I have the responsibility for the safety systems and programs of all of our employees, the communities we serve, the motoring public. I am responsible for our hazardous material team. You've just spoken to Robert Bavier, one of the best in the industry. And I also have Union Pacific's police force, our special agent, sir.

BRANDT: OK. Are you the one responsible for blocked crossings?

ROD DOERR: In part. Yes, sir.

BRANDT: So is that state by state that we set blocked crossing law or is that national law?

ROD DOERR: That's national law. It was state by state. Apparently some lawsuits ensued and, and those states no longer regulate blocked crossings, sir.

BRANDT: So then the fine of not less than $10 or more than $100 is a federal rule not a state rule?

ROD DOERR: That's my understanding. Yes, sir.

BRANDT: So if you block a crossing for more than-- is it 10 minutes, you're subject to the fine. Is that correct?

ROD DOERR: 10 minutes. Correct.

BRANDT: But if you block a crossing for 10 minutes to 8 hours, the fine is still $10. Is that correct?

ROD DOERR: My understanding.

BRANDT: OK. So how do you put some teeth in this? Because what's happening is I have a town in my district where they're losing their minds because the UP is blocking the crossing for hours and hours and hours at a time and we aren't getting much satisfaction here.

ROD DOERR: Yeah, I-- it is-- as I said, it's not in our best interest. We want to keep the trains moving, because at the end of the day that's how we make our money. When we do block a crossing, there is a process, this new technology that we're standing up, and it is having positive effect. Until we get there, we need to work with our communities. The incident that occurred around this last bout of winter weather that I am thinking of here in Nebraska was an unacceptable response on our part. We've done a deep dive. We've

understood what we, we could improve and we're putting those measures in place.

BRANDT: So back to the small community, Carleton, specifically. When you block the only crossing in town, it's a 6-mile trip to go around to the other side of this crossing. And so if there were safety, fire department, you live on the wrong side of the tracks and your kids kind of want to get home because the bus dropped them off on the other side, what's the solution here?

ROD DOERR: There are protocols that if we're alerted, we should have cut that crossing.

BRANDT: You should have.

ROD DOERR: Should have cut that crossing. Why we didn't? Can't speak to the specific incident, but those would be our protocols. If our train crew can't walk back to cut the crossing, we, we have the ability to dispatch other people, though it would take some time to drive to the train to do the exact same thing. We are not-- we certainly do not want to block the communities we serve. They are in our backyard. This is where our employees and their-- we're blocking our own employees coming to work. We, we don't want to be in that business.

BRANDT: OK. If you could send me some information on that after this is over, I would appreciate that. Thank you.

ROD DOERR: Yes, sir.

MOSER: Senator Bostelman.

BOSTELMAN: Thank you, Chairman Moser. The Mead crossing was in my district. It was 25.5 hours. EMS fire is on one side of the track, rescue on the other side of track, Highway 92 is on the other side of the track. If there would have been an accident, that could have been catastrophic. And the reason-- and I, I do appreciate, I did get an explanation, but I think the explanation when the train was parked there, they could have broke the train, the train at that time and then opened that up. You know, it's frozen lines, whatever it was, I get it, I understand that. But then the comment is-- it was if something happens let us know and we'll respond. Well, one, we're talking minutes to save lives. So I-- hopefully, you know, there's something that can be done on, on our blocked train crossings to eliminate that. I, I would agree, I think that $10, $100 is, is not

significant enough. That's my comment. My question-- do you have a copy of the bill with you?

ROD DOERR: Not in front of me. No, sir.

BOSTELMAN: You do have one, you have this?

ROD DOERR: I do not.

BOSTELMAN: I have a couple, couple-- a couple questions specific to the bill, and I have it opened up to page 5 for you. So on page 5, line 4, they're talking about the detectors being every 20 miles. Could you explain, you know, how often you have detectors? Where they're at? What's the response? You know, I would-- just, you know, 20 miles seems to be pretty frequent, but I don't know. Could you talk to that, please?

ROD DOERR: I, I believe the 20 miles comes from some industry statistics. Our statistics, on the other hand, for the average on Union Pacific is just over 17 miles. Our goal is to get to 15, hence why we continue to invest in that technology. Each one of these detectors, by the way, is multiple millions of dollars. The easy locations where they've been installed implies that we have immediate public utilities to power these things up. The more difficult locations, we've got to dig in power lines. We've got to set up locations, signal boxes, huts, where all the electronics are stored, etcetera. Our goal is to get to the 15 mark. Why 15? There's a fair amount of rich data in the industry that would indicate that if you keep an, an eye on the health of a train as it's propagating across the railroad every 15 miles, you can head off a lot of the incidents. Now, there will be those quick failures-- mechanical failures that, that we may miss by virtue of that spacing, but the vast majority are taken out of play.

BOSTELMAN: How does this affect our smaller lines? So I think there's Nebraska Central. How does-- does it apply to them as well or is that different? Could you--

ROD DOERR: Certainly. Good, good question. It's different. Mass in motion at speed when there is a catastrophic failure can be significant. Right? The, the, the resulting forces involved can cause a lot more cars to be derailed or actually break open the container of the car. Slower speeds, you don't have that same force. So we will put far more money and protect ourselves in high-speed locations before we would invest in the-- in the lower-speed lines. But not every line is

equal. If there is known chemical customers or, or, or fertilizer sheds or utilities that take chemicals that are of concern, then we will likewise, even on the slower lines, invest in that technology.

BOSTELMAN: I have 2 last questions. Is that all right? OK, on line 19, same page, page 5, subsection (i) there, (c)(i), it says, "Stop the train in accordance with the railroad's applicable safety procedures." What is the safety procedure if you have a hot bearing, if you have a broken wheel? Do you stop the train on the track or do you-- and is this-- and, and my, my question is, is this appropriate or should there be different wording there?

ROD DOERR: Each one of these detectors, their handling is different. Let's use a couple examples, high-wide. We've got a shifted load on a car that might tear out a bridge or our signal system or strike cars at a crossing. Those will alert and immediately throw up a stop indication to the crew. So that is stop immediately. There are other detectors that are trending detectors. So for example hot wheel or hot bearing detectors. The first alert of one of those devices will tell the train crew, crew to slow their train. Again, we're trying to take energy out of the train. We drag that train to the next detector. If it alerts, it's a must stop and inspect. These detectors are sensitive in that they are susceptible to weather, sunlight into the-- let's talk about how a hot bearing detector works just for a second. There's 2 lenses that shoot up from the-- from the railroad-- from the railroad bed and that is infrared light that is detecting heat. If the sunlight from one lens is blocking its visual acuity, but there is a clear indication from the other, you have an inconsistency in the reading and so it may alert. Remember, our failsafe in all train activity is come to a stop. So we, we might get a false alert. But by virtue of that, we know that if there's another alert at the next detector, then that's a must stop and, and inspect and our crew stops the train, gets off, walks back to the axle indication, they count back, and then they're looking for heat and there's a number of ways they do that.

BOSTELMAN: OK. My last question is, the bill requires insurance. Is there a federal required insurance that either the shipper or the rail, UP has to have on specific cars, specific trains, specific exceptions?

ROD DOERR: Generally speaking, the railroads are self-insured. We do carry catastrophic insurance. And many, many of our hazmat shippers require us to carry that supplemental insurance.

BOSTELMAN: OK. Thank you.

MOSER: Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here.

ROD DOERR: Yes, Senator.

M. CAVANAUGH: What is a cut crossing? What does that mean?

ROD DOERR: We-- good question-- we, we occupy a crossing with the train if we're going to be there any length of time beyond the 10 minutes referred to. And it is-- it is a no one stops. What I mean by that, the crew hasn't just stopped for a different signal indication or we're queuing because there's a train ahead, but this is the train is broke down or we simply can't get the train into the yard for whatever may be going on. That's a no one event. We will ask our conductor-- our, our crew-- our conductor to drop off the head and walk back, pull the pin on the car behind the crossing location, and then we'll ask the engineer to pull the rest of the train forward. Then that conductor has to secure the unattached portion of the cars, meaning hand brakes, so it won't roll away on us. And the engineer does the same on the other end, throws up the air brakes and then-- and then places the train. Either the conductor walks back to the head end or by then we will have dispatched a van to pick them up and then take them to the head end.

M. CAVANAUGH: And how long does this process take?

ROD DOERR: It can take a significant amount of time. Depends on obviously how long that train may be and/or the walking conditions. Weather is like today at 50, probably it's a pretty easy walk. We go back 3 weeks ago where snow was up to our belly button, it was 20 below, that can be a long walk.

M. CAVANAUGH: But what do you consider a substantial amount of time?

ROD DOERR: Yeah.

M. CAVANAUGH: What's the-- what's the shortest amount of time it would take?

ROD DOERR: Closer to head end, it goes faster. It could be 10 minutes.

M. CAVANAUGH: OK.

ROD DOERR: Further back in the train or, again, walking conditions may be an issue. We could be into a situation several hours.

M. CAVANAUGH: OK. OK. I have-- I have a few more questions if that's OK?

MOSER: Pick your favorite 1 or 2.

M. CAVANAUGH: That's like asking me to pick my favorite kid. No, I'm just kidding. So back to the incidents that happened more in the train yard. I am now shifting from a cartoon image in my head to the image of the family station wagon rolling down the hill in Modern Family and Phil jumps on the front of the car and Claire yells, what's the plan, Phil, as he jumps on the front of this car. What's the plan? Because there's clearly incidences happening with the lack of detection by the WILD detectors. So it kind of feels like what we were hearing from the testifier is that the train yard workers are, are having to jump in and that's not really a practical solution or an ongoing solution. And it sounds like only 7% of the time the detector is on. So assuming, I think, the best of intentions as an employer, you want your employees to be safe and secure, you want your business to, to function appropriately, what steps are you taking to address this issue of the lack of tracking of these detections that are possibly avoidable and ensuring the safety of the rail workers? Because I personally am terrified when I hear that somebody had to jump into the cab of a train and manually secure the brake because the, the detection system has failed.

ROD DOERR: Senator, I am 100% with you. I--

M. CAVANAUGH: I hope so, you're a safety inspector or safety specialist.

ROD DOERR: --have gone to way too many employee funerals and I don't want to go to another.

M. CAVANAUGH: Appreciate that.

ROD DOERR: So the WILD detectors are on our main lines. WILD detector is a thumping force, it's measured in thousands of pounds or kips. So if there's a flat spot on a wheel, you can imagine it hammers the rail. I, I think we need to unpack a little bit about what we heard. I will sit before this committee and make a commitment right now that Union Pacific does not turn off its detectors. Period. End of statement.

M. CAVANAUGH: But the--

ROD DOERR: There is no on and off switch to these detectors. Once installed, they're on. With that said, it doesn't mean that they don't break down.

M. CAVANAUGH: The gentleman-- just to interject here-- the gentleman who testified previously said that that information came from Union Pacific.

ROD DOERR: I don't know who that person is talking to.

M. CAVANAUGH: OK.

ROD DOERR: That is not a condoned safety process.

M. CAVANAUGH: Well, perhaps we can have a follow-up conversation offline--

ROD DOERR: Fair.

M. CAVANAUGH: --where you can talk with them and get the appropriate information to the committee.

ROD DOERR: Very good.

M. CAVANAUGH: That would be great. Go on. I'm sorry.

ROD DOERR: Now relative to, to the rule of-- to, to the rolling rail cars, and I think we were talking-- the-- Conductor Snide, I believe is her name, made a statement, I think we were talking about in the yard. So we are now handling these cars, we're switching them. We're, we're organizing them to go to their end customers. If cars get away, it is not our desire. We should never have a car free rolling unless we're actively switching. So something has failed. Our safety strategy that we're putting real effort in here these last several months is around-- we've done a great deal of safety analysis. We use all those statistics. We brought in consultants. And the long and the short of it is if we focus on 12, what's referred to as operating rules, this is how we govern ourselves in our rail yards and on the railroad. Me, conductors, engineers, all of us have to live by these operating rules. If we do that well, then we won't have these cars roll away on us. And so the idea that we have a free cut of cars rolling down the railroad, somebody's got to jump on moving equipment and go spin, spin a hand brake terrifies the heck out of us. That's how fatalities occur. And, again, we don't want it. So this year we're taking

everybody into a class-- face-to-face class. So we'll do this in 25 or 30 of our employees at a time. Their manager-- this is something that we haven't done for 5 or 6 years, will teach the class. I am big in believing that you can't teach what you don't know. It's a different league, you better know what you're going to teach. So our managers are going to teach these classes and make sure our employees understand what the data says, what activities we have to do safely, and, and try to teach and get them aboard in our safety program. Again, I'm going back to the fundamentals. This is about all of us doing 12 things absolutely correctly and I know we can take it out of play.

M. CAVANAUGH: Thank you. One of the things that was mentioned because I asked about this, so they report these to a safety hotline. Is that-- what is the process if there are these near misses, how are they being instructed to document them so that someone in your position is aware that they're not just happening and everybody's just kind of moving forward because it was a near miss. What is the documentation process or is there a documentation process?

ROD DOERR: There is a documented process. There are 2 ways to, to report a safety concern. There's either a computer or CRT inside our crew rooms where you add the safety concern or there's a hotline. You dial a phone and, and leave a message. Somebody translates that and puts it in the computer. The management team-- what, what I heard earlier today is concerning in that it took 7 days for a response. Our standard is 48 hours, so I would have to know the specifics to do a little research here to back into what failed. But our management team is supposed to address the concern. Now, not every issue is the same. Say that somebody has tore out a gate, well, it's going to take a while to order the gate and get it installed. But it is our obligation to tell the employee that filed the concern what we are doing, and I'm hopeful that that 7-day lapse was one of those kind of scenarios. If it's a pothole, we need to get it fixed. If it's a door not correct or if it's a rail issue, we try to react as quickly as we can. Want to take those kind of issues out of play.

M. CAVANAUGH: Thank you. I have more questions, but I'll sit back for a minute.

MOSER: Thank you. Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Mr. Doerr, for being here and for--

ROD DOERR: Yes. Thank you.

FREDRICKSON: --your willingness to testify and your commitment to safety. I, I had a question about something you mentioned in your-- in your prepared testimony you discussed, I think, in the-- on the federal level, you discussed the Infrastructure Investment and Jobs Act and specifically a study on that related to train length and correlation to potential rail crossing. Help me understand how train length may not impact blocked crossings.

ROD DOERR: OK. One would-- the general-accepted thought process is the longer the train, the more blocked crossings you're going to have. I'm not sure that that's true. The longer the train equates to fewer trains that that territory will see. That part is true. So in total, do we block the crossing more or less? And that's what the Academy is working on. Our thought process is the fewer times that you have a train-vehicle interaction, the better safety is advanced. Now, not every location on the railroad is made equal. Crossings around our yards become more noisy because we're at slow load speed pulling into the yard or leaving the yard. Out here on the main line, we should clear up very quickly except for when we have mechanical or other issues. So that is what the Academy is working on. Relative to the safety of long trains, the FRA is also studying that aspect of running a longer train. And here, the BNSF, who we have someone in the room who works for BN so I am not in a place to, to talk about it, participated in a long train study with the FRA to address the safety issue of it. So there's really 2 studies that are ongoing.

FREDRICKSON: OK. And you have a timeline on when we might expect to hear anything on--

ROD DOERR: I do not know that.

FREDRICKSON: OK.

ROD DOERR: When the National Academy starts their work, they typically go pretty quiet--

FREDRICKSON: Sure.

ROD DOERR: --and, and they, they do their work and then report out.

FREDRICKSON: And then 1 more question. In Senator Walz's opening, she, she discussed Nebraska being the fifth highest for derailments in the country. Now, obviously, I understand trains-- obviously, tracks are-- across the country, there's different challenges, topography,

etcetera, etcetera, as you've mentioned. What contributes to Nebraska ranking so high on that list?

ROD DOERR: A lot of train traffic. There are 2 major Class Is here in the state, multiple short lines and some switching terminals. FRA, in their data, makes no distinction of who the operator is. They just count the number of times the steel wheel leaves the rail. That's a derailment. And so it, it doesn't really surprise me, the more operators, the more track miles, you, you would tend to see more derailments because of what we're operating.

FREDRICKSON: OK. Thank you.

ROD DOERR: Yes.

MOSER: Senator Cavanaugh.

M. CAVANAUGH: Thank you. OK. You testified in your opening to a couple of things I wanted to follow up on. One was the length, that that was a point of opposition of the trains. And I looked-- the bill says that the length for hazardous-- it's for hazardous materials cannot exceed 8,500 feet. What is the typical length of a train?

ROD DOERR: The average for Union Pacific right now is 90-- 9,600, 9,700.

M. CAVANAUGH: And that includes if it's for hazardous materials?

ROD DOERR: Yes.

M. CAVANAUGH: OK. And then-- so that would require cutting the length when you're transporting hazardous materials,--

ROD DOERR: Correct.

M. CAVANAUGH: --specifically. OK. And then you mentioned lawsuits at the start of your testimony, that there were lawsuits, but you didn't specify who brought these lawsuits or what they were regarding.

ROD DOERR: Lawsuits-- I'm sorry, Senator, lawsuits regarding which?

M. CAVANAUGH: Well, that's what I was unclear about. You mentioned lawsuits, but I didn't know what lawsuits you were mentioning. I was trying to take notes as quickly as possible as, as my desk would indicate.

ROD DOERR: I, I am sorry, Senator. I don't believe in my prepared statement there was anything about lawsuits. I perhaps misspoke.

M. CAVANAUGH: Or I misheard. It's my-- would not go without reason to think that I misheard in this room, so thank you. I think that's all my questions.

MOSER: Thank you for your testimony. Is there anybody else in the-- opposition? Welcome.

ROBERT BAVIER: Good afternoon, Chairman Moser and the Transportation and Telecommunications Committee. My name is Robert Bavier, B-a-v-i-e-r is the last name, first name Robert, R-o-b-e-r-t, senior director of Union Pacific Railroad's hazardous materials team. I've been a member of that team for going on 23 years. In that, I lead a team of 16 hazardous materials professionals and managers in 23 states. We're a 4-prong mission: prevent, prepare, respond, and recover. And I'd like to speak to a, a portion of the bill in terms of the railroad safety and our safety training. It's one of the missions that I'm absolutely 100% behind and very proud of. Last year, our team was able to train 7,211 responders system wide. Of that, 171 of them were in the state of Nebraska. And we have a variety of training available from, as the chief spoke, most basic sections on how to read a [INAUDIBLE], how to use the ERG Guidebook that's provided by the federal government, all right, all the way up into technical training that we bring a train-- a train out to work with. That's a boxcar and 2 cars that were used for props and our training events go from utilizing PowerPoint presentation, all the way up into those boxcars for departments that can't make it to a rail yard or don't have a rail yard in that area, they maybe cover a main line somewhere else. We have a training trailer that we'll bring to their department and work with them and walk with them and show them what repairs need to be made, if it's within their capability. If you're not a hazardous materials training department, there's no sense in giving you that information. It's just leading you down a path that could be dangerous. We also have an option of online training. We continually try to improve, and this is one of the improvements that we found during COVID. We couldn't get into fire departments. So what do we do? We worked to develop online training and this-- we found this really assists with our volunteer brethren. Over 65% of fire personnel nationwide-- I don't know about the breakdown in Nebraska, my apologies, nationwide are volunteer firefighters because they have a full-time job, on top of that, they volunteer somewhere else. Where many of us, that's our profession. So this training is the basic sections that they would get from an in-person instructor. How do we

get out the word? This is what's really important-- and I see my yellow light. One, is every 3 years, we send a flier to the fire department along our right-of-way in 23 states. Every single year we reach out to the LEPC, the Local Emergency Planning Commission [SIC], of which many of us are members in the local Planning Commission and offer the same training and our, our training flier goes out. But I think most importantly, is our local territory managers reaching out to the fire departments and our brethren and offering that hand and offering that training. Sometimes they accept it. Sometimes they do not. I want to make a correction here, though, that prior to the fire that occurred in North Platte, we had conducted training in, in November of 2022 with the North Platte Fire Department. I have documentation for that. We did conduct the training. The Fire Department has to agree for us to come in. Sometimes their time is finite. I would love to be able to train everybody. And I would like to get the chief's card before we leave, and I'm going to ask for it. As the bill currently stands, I view we go above and beyond what is in the bill. I'd be very happy to work to change and modify it so it better suits everyone, ourselves and the--

MOSER: Does the committee have any questions?

ROBERT BAVIER: Any questions?

MOSER: The red light is kind of on here so we want to be fair. Senator Brandt.

BRANDT: Thank you, Chairman Moser. And thank you for your testimony. So you're Burlington Northern hazardous materials team, is that correct?

ROBERT BAVIER: Union Pacific.

BRANDT: Oh, UP. Sorry. So I'm a little confused, what's your opposition to the bill? I mean, I heard you talk about firefighters and training and everything like that. Why are you opposed to the bill?

ROBERT BAVIER: We already do what, what the bill states and more. So why do we have to, to have that section even in that? To me, it makes no sense. If-- now we could work together on it and make it better, absolutely would support making it better.

BRANDT: But if, if, if your company exceeds this, terrific. This is targeted at the other companies that do not meet those minimum standards, is it not?

ROBERT BAVIER: To my knowledge, both railroads in this state do about the same thing. I cannot speak for Burlington Northern Santa Fe.

BRANDT: All right. Thank you.

MOSER: Senator Bosn.

BOSN: Thank you. Thank you for being here and it's Bavier?

ROBERT BAVIER: Yes.

BOSN: OK. Sorry. I've--

ROBERT BAVIER: No problem.

BOSN: --written it down incorrectly. OK, so it seems as though some of the parts of this bill are more in your lane than others perhaps because you deal more with the hazardous stuff--

ROBERT BAVIER: Yes, ma'am.

BOSN: --than train length and stopping on crossways so I won't ask you any questions--

ROBERT BAVIER: OK.

BOSN: --about that unless I accidentally do and, and then you can tell me that you don't have anything to do with that.

ROBERT BAVIER: Yes, ma'am.

BOSN: Do you have anything to do with the wayside detectors--

ROBERT BAVIER: No.

BOSN: --as part of hazardous materials? OK. As it relates to the training, am I to understand your testimony today that it's your position we provide notice to the fire-- volunteer fire departments and offer to provide the training?

ROBERT BAVIER: Correct. Not just volunteer, all fire departments and first responders. Like the chief stated, we want to train. It makes good sense for us to build partnerships and relationships prior to the emergency occurring. We do have other options available, like the online site sections, but we prefer to get there and work with that department so we can understand. FEMA has a statement that says let's exchange business cards before there's an emergency. That's what we

want to do and we task our territory managers with that. Is it perfect? No. Territories change, managers change, training officers or chiefs change. That's why we continually reach out.

BOSN: OK. So then I'd like to ask you a little bit about the hazardous material insurance portions of this, or is that not something you know anything about?

ROBERT BAVIER: I don't know. I'm not a professional about the insurance factors.

BOSN: OK.

ROBERT BAVIER: But I know what Rod stated is absolutely correct.

BOSN: You know that-- what was that last part?

ROBERT BAVIER: What, what Mr. Doerr had stated was-- is correct.

BOSN: OK. OK. But you don't have any involvement then in what insurance you already have versus what this would require?

ROBERT BAVIER: No, I can't.

BOSN: OK. I don't have any additional questions.

MOSER: All right. Thank you. Other questions? Seeing none, thank you for your testimony.

ROBERT BAVIER: Thank you.

MOSER: Anybody else, else to speak in opposition? Welcome again.

JEFF DAVIS: Mr. Chairman, members of the committee, Jeff Davis, appearing on behalf of BNSF Railway in opposition to LB1212. First, I want to respond to something that Mr. Foust said earlier. We did not disregard the signal from the wayside detector. Someone in Fort Worth got that signal. They made a decision. They sent a message. They said set that car out in Donkey Creek. And it's our fault, it's our responsibility that carmen in Donkey Creek never got that message. So then just like Mr. Foust said, we sent another message and said, you know, set it out when it gets to Lincoln and the car didn't make it. And so, yes, that is our mistake. We've got to own it. And we're, you know, going to adjust our processes accordingly. That's what-- that's what I was told when we had this discussion. You know, I share the safety concerns expressed by these rail workers today. I want you to

know, again, we're committed to safety. We just disagree with how best to achieve the same goals of zero accidents and making sure everyone gets home at night. LB1212 is patterned off the Federal Railway Safety Act currently pending in the United States Senate. I would encourage you to review the written testimony submitted by BNSF AVP and Associate General Counsel Adam Weiskittel. The federal courts have repeatedly struck down state laws regarding train length, train speed, and blocked crossing, including one that's already on the books here in Nebraska. The installation of wayside detectors, the insurance requirements, the inspections by union employees are also prohibited, either by the Interstate Commerce Commission Termination Act or the Federal Railway Safety Act of 1974, I believe, '70 or '74. Once you take out those provisions, there's not much left. This bill is really an attempt to regulate issues already covered by federal statutes in more than 1,300 pages of federal regulations, regulations that are based on science and data, not just opinion. The FRA has been collecting data since 1975. They have a Rail Safety Advisory Committee where railroads meet with SMART, the other union stakeholders, and actual scientists. The next meeting is March 21. The wayside detectors will be on the agenda, and you can watch that meeting on the Internet. The study on very long trains by the National Academy of Sciences is due later this year. We support that process because what's happening at the federal level and what BNSF is doing as the railroad is working. Since 2000, the industry's train accident rate has dropped more than 23%, the hazardous materials train accident rate has declined by 73%, last year was the safest year in BNSF's 175-year history. Improved technology is what is going to drive rail safety in the future. Thank you.

MOSER: Thank you. Questions for Mr. Davis? Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here, Mr. Davis. First, I want to thank you for your opening comments and acknowledging that that was a mistake that happened. I think that that's appreci-- always appreciated. The other thing I was going to say is that the first gentleman answered all my questions. So he must have drawn the short straw in your group today by having to go first, so. Thank you for your time and being here.

MOSER: That's your-- that's your question?

M. CAVANAUGH: That was my question. You can respond if you want.

MOSER: There was no question mark at the end so you don't have to answer. Any other questions? How many wheels does a train car have? Is it 4 or are there tandems on each end?

JEFF DAVIS: You're going to have to forgive me, I'm not qualified to answer that question.

MOSER: Me either. OK. Any other questions? How many? There's 8. Yeah, I was thinking it was tandems on each end. OK. Thank you for your testimony. Anybody else to speak in opposition?

RON SEDLACEK: Chairman Moser and members--

MOSER: Welcome.

RON SEDLACEK: --of the Transportation and Telecommunications Committee, for the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, and I'm here testifying on behalf of the Nebraska Chamber. The-- we recognize the well-intentioned effort that LB1212 would address in regard to public safety concerns, however, the Nebraska Chamber did review the bill and believes that its provisions are an effort to-- by the state to review the areas that the U.S. Congress has reserved for the Surface Transportation Board and the Federal Railroad Administration. And when we get into those situations where we have an industry that's engaged in interstate commerce our general policy has been if that industry or those regulations are preempted by federal law, then we should be before the State Legislature to testify to the fact that we do not favor patchwork of state legislation that may end up truly disrupting that interstate commerce, particularly the supply chain, or result in some litigation or multiple litigation, as well as making a law that cannot really be enforced. And so for those reasons, that's why we're testifying in opposition to the bill.

MOSER: All right. Questions from the committee? Thank you, Mr. Sedlacek. Thanks for coming. Other opposition? Seeing none, neutral? We had 1 position comment in favor, we had 7 in opposition, and no neutral online comments. Welcome.

ADAM HAUSMAN: Hello. My name is Adam Hausman, A-d-a-m H-a-u-s-m-a-n. I'm in the neutral capacity. I-- I'm a second vice chairman for the BLET Nebraska State Legislative Board. I've been an engineer for 13 years and going to the detectors here in Lincoln, I could-- I was told by a carmen supervisor that if there's 200 [INAUDIBLE] cars in Lincoln, Nebraska, that they turn down the sensitivity of those

detectors. I just wanted to clarify that part. A lot of the-- in the blocked crossings, a lot of it's due to the-- these long trains and our infrastructure on the railroad cannot handle them. So they park the shorter trains for hours and hours for a mega train to make it into the yard so they could eventually either (a) cut it up or, or get a crew called for it. And then so we're-- you know, the shorter trains are sitting at 98th Street for, you know, 4, 5, 6 hours on, on end, so. And that's all my testimony, I just wanted to clarify a few things. I can answer any questions.

MOSER: Thank you. Questions for the testifier? All right. Seeing none, thank you.

ADAM HAUSMAN: Thank you.

MOSER: Is there other neutral testimony? Seeing none, Senator, you're welcome to close.

WALZ: All right. Well, first of all, I just want to thank the testifiers who came today and thank the experts who sat in this chair, the people who are really the boots on the ground. I, I wanted to prioritize this bill but Senator Jacobson had prioritized the 2-man crew and I was hoping that we-- I could work with him on, on that bill. But this bill is very important to me. You know, colleagues, we can avoid-- we could avoid a lot of these accidents and disasters. We can. 42 train derailments from January 2022 to November of last year. 42 that could have been potentially avoided. We've heard in this bill the importance of training our first responders. The requirement to have an operational and properly maintained detector system and reporting. We've heard about the reasonable requirement to limit the length of trains carrying hazardous materials. And then we've, we've also heard from the opposition of this bill stating that it's up to federal regulations to pass this type of legislation. We have all had constituents contact us. And if not all, the majority of you have had constituents contact you regarding rail safety. And we've talked about rail safety for years. And, again, I think that there are some really senseless accidents that we could avoid. Today, we heard a lot of ifs. We heard a lot of we're working on it. We heard a lot of we govern ourselves. We heard a lot of when and we're in the process of or we're making progress. But until that happens, let's pass this comprehensive bill. Iowa and Colorado have already taken steps to reduce derailments and protect their communities. So rather than waiting on federal legislation which may or may not pass, let us, as Nebraska, take the necessary steps to protect our constituents and our crew members. Thank you.

MOSER: Questions for Senator Walz?

BOSN: I just have a point of clarification. So some of these I can certainly see a relationship between derailment being reduced with trains that are shorter are being broken up at the crosswalks. But the insurance portion of this, that's kind of the last section of the bill, can you tell me how train derailments are avoided or prevented based on hazardous material insurance when in, in, in that-- what that connection is?

WALZ: I, I will get back to you on that question.

BOSN: OK.

MOSER: OK. Other questions? Seeing none, thank you so much for your--

WALZ: Thank you.

MOSER: --testimony. That will conclude our hearing for today. We're going to have--