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SENATOR BAKER: Chairman of the Transportation and Telecommunications Committee recognized Senator Connealy to introduce and open the hearing on LB 1152.

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SENATOR CONNEALY: Thanks, Senator Baker and members of the Transportations Committee. For the record, I am Matt Connealy. I have the opportunity to serve the people of the 16th Legislative District. I'm here to introduce LB 1152. It was brought to me by railroad workers who are on the job

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daily, watching the work that they do. But also wanting to make sure that they have the tools to get their job done, not only to do whatever job they have on the railroad, but also to protect the public and protect the railroad's investment. Representatives of those workers behind me will be testifying in support of the bill. The state is preempted from regulation on railroads by federal law in many, many areas. Safety issues though, however, are not totally preempted for states. And this bill relates entirely to safety and that category, that we have the power to look at and see if we can help make sure the state is safer. LB 1152 creates a Local Community Rail Security Act. This act would require railroads to have an assessment of their facilities and provide safeguards and procedures to protect those facilities from acts of sabotage, terrorism, and other crimes. The act requires railroads to put in place safety plans to prevent or respond to such events, to train and properly equip railroad workers for these events, and to share risk assessment plans with all emergency responders and to observe practices which would minimize the risk to railroad facilities. The bill also gives the Public Service Commission oversight of the provisions of this act.

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Unfortunately, in these times, we as a state must be prepared for the worst that can happen. Railroads are vulnerable to such events and we can't control all aspects of these facilities. We can, however, assess the risk, communicate the plan in case such event would take place. With those front-line workers who are prepared to work on any project or any eventuality that they may be responding to. We can also make sure that safety precautions are taken to prevent such acts. We can hope that nothing will, like this would ever happen in our state, but we want to be, make sure that those in charge have all the tools they need to ensure that we're very prepared in case something does happen. We all have assets to protect and the railroads and their investment, the workers, and our citizens. Following me will be representatives, like I said before, that will help talk about this idea to help protect our state.

SENATOR BAKER: Thank you, Senator Connealy. Questions from the committee? Senator Brown. We have been joined by Senator Pam Brown.

SENATOR BROWN: Do you know of other terrorism target

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industries, such as the airline industry, which have state-level regulation around antiterrorism?

SENATOR CONNEALY: No, I don't know. And, but I sure, I could look at that question and get back to you with it.

SENATOR BROWN: And do you think that there are no safety plans now for the railroad industry?

SENATOR CONNEALY: No, I do not. I know that there are safety plans, as there are in other industries and the like. But I think that, in these times, we have to have not only a heightened sense of those plans, we also should have to share them with first responders and with communities that will also be part of that.

SENATOR BROWN: Isn't there a danger in the dissemination of information to potential terrorists themselves or (inaudible) by virtue of publicizing that kind of information?

SENATOR CONNEALY: I think that's a good question and I

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think that we ought to take that in consideration. But I also think that we ought to share information with local responders and with the workers themselves so that they understand as much as we can under those concerns, what needs to be done on, when an event happens.

SENATOR BROWN: Thank you.

SENATOR BAKER: Any other questions from the committee? Seeing none, thank you, Senator Connealy.

SENATOR CONNEALY: Thank you.

SENATOR BAKER: Thank you.

SENATOR CONNEALY: Thank you, Senator.

SENATOR BAKER: Testifiers in support of LB 1152?

RANDY MEEK: (Exhibit 1) My name is Randy Meek, that's M-e-e-k. I'm chairman of the Nebraska State Legislative Board of the Brotherhood of Locomotive Engineers and

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Trainmen, also a working engineer on the Burlington Northern Santa Fe Railroad. And I'm the representative of approximately 900 members who operate trains in the state of Nebraska and who work on the Burlington Northern Santa Fe and Union Pacific Railroads. Since 9-11, which was nearly four and a half years ago, we as workers have seen what we believe to be a very cavalier attitude about railroad security in our workplace. If you go to the AAR web site and read their paper on security, you'll get the impression that they have every base covered. However, a critical view of their security reveals some major deficiencies. And in your packet handed out, there's a report called the High Alert which was a survey that we sent out and compiled, a compiled report based on the survey we sent out to our members and the membership of the BMWE, Brotherhood of Maintenance of Way. In that report, it reveals a lot of flaws, basic day-to-day security. The railroads plan was admittedly the product of in-house critical action teams, directly under the control of the Association of American Railroads. As the AAR membership is composed of the CEOs of major railroads, it is really no surprise to us that the result of their security plans is long on words and short on

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actions and funds. The way it is now, we really can't, it's really not clear to us if any federal branch has direct authority over railroad security. We have FRA and DOT and DHS and nobody seems to be clearly in charge. We know, I know the FRA has not done much and most, if not all, of the federal funding has gone directly to the airlines rather than railroads. Their security plan also states that a database of railroad critical assets was compiled as part of the plan. This was needed and commendable, but in talking to an employee of the Nebraska Emergency Management Agency, NEMA, it was discovered that this database is considered proprietary information and is closely guarded. So much so that when the Department of Homeland Security made a request of NEMA to acquire from the railroads a list of their critical infrastructure, one railroad refused entirely and the other provided a very limited list. Right now in Nebraska, only two points of railroad critical infrastructure are identified and both have received funding from DHS for increased perimeter patrols from law enforcement, also known as buffer zone protection. There's obviously much more critical infrastructure unidentified, Missouri River bridges being among some of the obvious ones.

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To my knowledge, there is not so much as even a remote web cam monitoring these important structures. Since nearly all railroad infrastructure and hazardous material storage is out in plain sight and easily accessible to the public, not identifying it is similar to trying to hide an elephant in a cherry tree by painting his toenails red. Now the railroads will probably talk about their community HAZMAT training and their Pueblo facility and maybe try to tell you that's part of their security. But they were doing that anyway and that's really not a deterrent. We feel that is in LB 1152, NEMA and emergency responders and law enforcement should be made aware of what critical areas are subject to attack and what their response should be. They should also know what the railroad's response will be. Passing the bill would make that information sharing mandatory. The report does highlight the almost complete lack of security training for employees. As a working locomotive engineer, I can tell you that no training was given me until last month, more than four and a half years after 9-11. Passing this bill would require rail worker security training as part of a comprehensive infrastructure protection plan. The report also points out that communications are another issue of

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concern. The train crew is, by default, the first responder to any incident involving hazardous materials, yet we have no way of speaking directly to emergency response or law enforcement personnel. Should the train be taken from our control or the locomotive radio disabled, we have no emergency distress signal. Airlines require lockable, entry-resistant doors on cockpits, yet there is not such requirement for locomotives. And in fact, most cannot be secured at all when they're vacant. This bill would be able to address those concerns. The railroads plan also mentions that they've implemented encryption on their communications. Well, I know that's to be a fact on their remote control transmitters, on their remote control locomotives. But as far as all common communications, such as railroad radio communications, that's still not encrypted and can be intercepted by anybody with a common scanner. Caution gives me reluctance to speak freely on the scenarios imaginable should terrorists ever decide to target railroads. We do know that trains are a prime target from London and Madrid attacks. Yet, as our report shows, there has been no increase in railroad police presence and most days, our members never see one, even though they're in yard

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facilities where dangerous cargo is stored. Railroads are increasingly using remote controlled locomotives in yard facilities, removing employees that kept watch over facilities and equipment. And these same remote control locomotives and their controlling transmitters are often unsecured, both in use and out. Railroads are also working very hard to eliminate half of the crews that currently staff trains, which will put even more responsibility and stress on workers who have no schedule for regular sleep. Our members are being put under more and more pressure to work long hours to handle the ever-increasing amount of rail traffic. They are under threat of dismissal if they are not working or on call to the railroad for a minimum of 75 percent of every hour of their life. Add to this that, in the near future, large amounts of high-level radioactive waste may be shipped across this state, combine it with the current state of security, and you can see a recipe for a major disaster may be brewing. I urge you to read this High Alert report that you've been handed. This bill would basically create an infrastructure protection plan, which would provide increased inspections and assessments within 15 miles of vulnerable community points, such as schools and

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hospitals. Tracks, equipment, and cargo within this 15-mile radius would be more closely monitored. And that is the heart of the bill, as I see it. I, as far as the federal issue, I think railroad security is much like the immigration law currently, in that it might be better handled federally but no solutions have been forthcoming federally. As states increasingly take on immigration law, so should they also take on railroad security. Thank you, I'm willing to answer any questions.

SENATOR BAKER: Thank you, Randy. Questions from the committee? Senator Brown.

SENATOR BROWN: You mentioned caution in scenarios, but do you think that revealing plans that might, or locations, that might also be revealed to terrorists, the where and what would be done, don't you think that that's also problematic?

RANDY MEEK: I do think it's possible it could be. I also, as I mentioned, most railroad infrastructure is already out in the open and easily accessible. Most of it can be seen,

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via GIS maps on the Internet. I think it's a possibility that you might want to not apply the open meeting laws, open records laws, as far as any state agency that handles this matter. In other words, you might want to close those meetings and keep that information. But I still think the information needs to be shared with emergency responders and those people that have need of that information.

SENATOR BROWN: Do you know of any state-level regulation of the airline industry which would be, of course, finding terrorist target industry, do you know if there...

RANDY MEEK: No, I do not know of any. But as I said also, it just seems like the airlines have gotten all the money. And they have handled it federally.

SENATOR BROWN: Would you agree that the Capitol is probably a bit of a terrorism threat?

RANDY MEEK: I don't know that the Capitol is. It very well could be. But I do know the Capitol is within two miles of yard down here. And the evacuation radius for most spills

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at night of seriously hazardous stuff is up to five miles.
And I've seen material that shows that, from railroad
security consultants, that, oh, like in certain hazardous
material, the kill zone can be up to 15 miles with wind
drift. So you're easily in an evacuation area here.

SENATOR BAKER: Other questions? Randy, I'm trying to get a
handle on, you're a working engineer?

RANDY MEEK: Yes.

SENATOR BAKER: So when you crawl on that train, there's a
manifest goes with that train, I assume, isn't there?

RANDY MEEK: Yes, there is.

SENATOR BAKER: So you have a rough idea but my question, I
guess, as a first responder, we have to go by the placards.
But there would be placards on the various cars depending,
you know, numbers depending what's in those cars. And then
what about a trailer train, and I'm not familiar with that
so much as...

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RANDY MEEK: Yes, they're placarded also.

SENATOR BAKER: They're placarded also? So we'd have, you know, as a first responder, we'd look at that, say there was a derailment, and we do occasionally handle those.

RANDY MEEK: Um-hum.

SENATOR BAKER: We'd look at that placard on that trailer train and say this, this, this should be in that car. And that's on there now though, isn't it?

RANDY MEEK: Yes, it is.

SENATOR BAKER: Okay, I was just trying to get some idea that those are on every train, I assume, there's a manifest, tells the crew somewhat...

RANDY MEEK: Yeah, it's a federal requirement that every train that has hazardous cargo has to have a train list of

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the location in the train and what it is.

SENATOR BAKER: Okay, and that goes from crew to crew,
obviously...

RANDY MEEK: Yes, yes it does.

SENATOR BAKER: ...as it goes across the state. Okay, any
other questions? Seeing none, thank you, Randy. Next
testifier in support? Welcome.

SPENCER MORRISSEY: Good afternoon, Senator Baker, members
of the committee. My name is Spence Morrissey and I am
registered lobbyist for the Brotherhood of Maintenance and
Way Employees. Spell my name, it's S-p-e-n-c-e-r M-o-r-
r-i-s-s-e-y. And I am the registered lobbyist for the
Brotherhood of Maintenance and Way Employees division of the
International Brotherhood of Teamsters. We are the men and
women who build and maintain the railroad tracks, bridges,
and buildings on Nebraska's railroads. We have just
recently merged with the International Brotherhood of
Teamsters. And along with the members of Mr. Meek's group,

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the Brotherhood of Locomotive Engineers and Trainmen, we make up what is known as the Teamsters Rail Conference. Since 9-11, the nation's railroads have worked with the Department of Homeland Security and various other terrorism experts to increase their security efforts. According to the Association of American Railroads, the nation's railroads have developed a comprehensive security plan which includes improved communication with national security agencies. Another part of that plan is improved communications and training for local first responders, law enforcement, and rail employees. Improved facility security is also a claim made by the AAR. The AAR and the railroads have received high praise from experts in the field on a national level for the plans that they have worked on and developed. The Teamsters Rail Conference undertook a nationwide survey of BLET, the engineers, and BMWED, the people that work on the track, to evaluate the safety and security that is actually in place on the job. Now Randy and myself, Mr. Meeks and myself come to this building once in a blue moon. Normally, we are on the tracks, running up and down the tracks, driving the trains is what Randy does and I inspect track. So we're not telling you what we read

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on a web page and we're not telling you what someone has told us to tell you. We're going to, we are testifying as to what we see the reality on the railroad tracks on a day-to-day basis. The Teamster Rail Conference report and executive summary of that report, the survey called High Alert, which I believe you all should have a copy of, at least one. And that report, that summary tells a completely different tale than what you read on the AAR web site and what the federal terrorist experts say. I inspect railroad, I inspect the railroad track from Tecumseh, Nebraska, to Lincoln, Nebraska. That track is inspected 7 days a week. I set my truck on the rail and I go down the rail and I physically get out and measure deviations of cross level, sags, look for defective rail, look for defects on trains as they go by. That rail corridor is a portion of the UPBN rail corridor through Nebraska that is the heaviest rail tonnage corridor in the history of the world. Never before has this much tonnage run on a railroad in the history of the world. And it's all coming through Nebraska. We're doing, we're moving more and more tonnage with more and more trains at higher speeds than ever before. And we're accomplishing that task with fewer and fewer people. Now

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I'm proud and I'm amazed at what the railroads accomplish. I'm amazed at the amount of tonnage and the coordination that takes place to move those trains and move crews and maintain the railroads from point A to point B. And I'm equally proud of the efforts the rail employees put in to help the railroads meet those goals. And this isn't a jobs bill, you don't see any jobs created. We see a problem and we're trying to address it. We're trying to have at least this discussion. Railroading today is basically a rolling experiment, especially in Nebraska, never been done before, never in the history of the world. I've been told by people that know, inspectors, federal inspectors, state inspectors, that the stretch of track between Lincoln, Nebraska, and Kansas City, Missouri, known as the St. Joe Subdivision on the BNSF Railroad is one of the best maintained stretches of track in the country. And I believe that because myself and the other inspectors are down there, we're very aggressive at what we do. But I also see a railroad infrastructure that is straining under the pressure of all of this traffic and all of this tonnage. Our track components are wearing out and breaking in record numbers. We have changed the way we do business. We're inventing new ways, constantly

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searching for new ways to maintain this infrastructure. We work at night. We work with division and local planners that look out towards Wyoming and look south towards the power plants and try and predict when there will be a window on the St. Joe sub or maybe the track that runs through Waverly. And then we shuttle our troops to those areas because there's going to be a window, a gap in traffic for them to work. And we're always utilizing the highest tech, the biggest and the fastest machinery available. The railroads are working hard to maintain their track and the employees are working hard to help. But remember, it's an experiment, it's an experiment, more tonnage than ever before in the history of the world. Now if you ever stood next to a coal train going by you at 50 miles an hour through a switch or through a rough spot of track, you know what I'm talking about. Now if we add to this formula of all this tonnage and this infrastructure that is fatiguing as we speak, you add to that formula hazardous material. I think it's about 16 percent of their business. And you add to that formula the potential for high-level nuclear waste moving through this state on a daily basis if the WIPP facility, the storage facility in Nevada ever opens. We are

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the funnel for the high-level nuclear waste. When you look at all those things put together, from just the maintenance point of view, you have a potential for a serious disaster and we start considering terrorism or sabotage. We have an issue that definitely deserves our attention. If rail security has increased since 9-11, I am unaware of it. And I'm the person that should know. I'm like the beat cop out there. I'm the first person to see people, trespassers. I'm the first person to see a problem. I'm the first person they call in the middle of the night when a train reports a rough spot or a broken rail shows up. I'm the first person that shows up after the train crew to a derailment. And the only thing I have gotten for security training is a one-page safety briefing that says, you should confront all trespassers and report them. I received a five-minute video that showed me how to identify strangers and what a stranger would look like. (Laughter) I know strangers, I work with a lot of strangers. But if indeed there was an increased, a dramatic increase in rail security training to the employees, I would know about it, Randy would know about it. Because we are there every day and we are the front-line people. Security in the rail facilities in Nebraska is

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lacking. It's relatively simple to take steps necessary for you and I, any of us here, to enter just about any rail facility in the United States, any big yard in the United States, and do whatever we might want to do. You need to ask the railroads if we have increased security, how many rail police do we have in the state of Nebraska; how many on the BNSF, how many on Union Pacific, how many are on duty right now, and how many were on duty prior to 2001? And see what that dramatic increase looks like and see if you think it's the sufficient number of security people to cover all the miles of track in this state. And if there's a lack of security in the big rail yards where the rail police do hang out, imagine what it's like on line. Because all across the state, in your community, in your county, in this city, in Omaha, there are trains parked unattended, unsecured, no crew, parked for hours and days at a time, not in the yards, but out on line. Because of the heavy volume of traffic, they have to park them out there as they plan their traffic flow. If we've got a bunch of trains coming west, we're going to park some trains east. They're not going to go anywhere, so we're going to pull the crews off of them. We're going to leave them there until tomorrow, until the

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next day. And then we'll move them down the line. And while those trains are sitting there, the engines and the cabs are unlocked. Anyone could crawl on board and figure out how to get that train moving. If someone really wanted to do something, if they could learn to fly a plane, they can learn to run a train. This happens on a daily basis, trains stored all over the state. If a train was stored at the outskirts of Lincoln for an extended period of time or just north of this building a mile and a half and it had hazardous material on board, would the city police be notified if it had dangerous chemicals on board and it was going to sit there unguarded and unsecured for 12 or 24 hours, would the city of Lincoln police be notified? Should they be notified? Would the county sheriff be notified? Should they be notified? Would the firemen be notified and should they be notified? That's a good question, Senator. Do we want to give out this information, yes or no? That's what we're asking you folks to decide. That's a tough question. It's like, do we placard the cars? Senator Baker, as a first responder, obviously wants that car placarded when he shows up at a derailment or a hazardous spill. But that's also a target. It says right

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on the side of the car, chlorine gas. It's got a skull and crossbones placard on it. That's a tough question. Should we continue to keep those on there? I don't know. That's what we're asking you folks to decide. If the railroads are doing what they claim to be doing, why won't they share the information? They say because too many people get a hold of it, too many people will then have that information and be able to act on it. We, Randy and I talked about what we should tell you folks. We could lay out scenario after scenario after scenario of how-tos. But we're not going to do it. But let's be real. As Randy said, you can find it anywhere, on the Internet. A Miami TV station did an executive report, an investigative report about a month ago, where the reporter and the cameraman wandered into the Miami yard just to see how long it would take them to find and get next to some hazardous materials. They were snuggled up next to a carload of chlorine gas within 45 minutes. Nobody talked to them, nobody stopped them, nobody said a word for them. Took the video, did their little report, and left. That's the increased security that we're claiming. Are the railroads taking the proper precautions on their critical infrastructure? I don't see it. Now if they are, that's

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great. But I don't see it and I'm not going to lay out scenarios for you there, although I could. So what's happening? All the positive comments about their security and all the efforts they've made and all the money that they have spent on security, coming from the people at the national level, and we, the workers on the ground, the boots on the ground, we don't see it. What's happening? I think it's taking place, I think all the planning has been done, and I think it's been done at the upper echelon of the railroad corporation, the security personnel in Washington, DC, and homeland security. And none of it is moving down to the people that need it. None of it is coming down to the workers. Randy already described what the bill does, makes them make a plan and share a plan, show critical infrastructure and share it. If we can't, and we're not talking about a battle plan, we're talking about fighting an incident after it happens. This has already happened. We're not telling them how to do stuff. We're telling them, if you do this, we're going to respond to it. And we're going to be highly mobile, highly trained, and we're going to communicate with each other. And we're going to respond to it in a very effective manner. That's what this bill is

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asking. We're not asking to give them information that they don't already have. On the state level, is there a single other industry that we've picked out like this? Nope, I don't think so. Is, on the state level, is there another industry that leaves dangerous hazardous chemicals spread all over the state with no protection and no information to the law enforcement and responders in that area? Nope, no there isn't. Completely unprotected. Have the people in this building done a drill in relations with the railroad and the fire department? Because you are close, I mean, it's six blocks to the east, or west, you go west six blocks, that's a major main line, that's my main line. You go north, same thing. Has there ever been a drill done with the people in this building or communications? The potential for disaster is real. It's up to the Legislature, it's up to you folks to decide. Has everything been done to limit the opportunities and have we enhanced our response efforts and our ability to respond, so if something should, unthinkable, something unthinkable should happen, are we able to appropriately respond to it in the most effective manner possible? And that's what we're asking with this bill. Thank you.

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SENATOR BAKER: Thank you. Questions from the committee?
Senator Foley.

SENATOR FOLEY: Mr. Morrissey, thank you for your testimony.
You mentioned high-level nuclear waste as a substance that
might one day pass through our state.

SPENCER MORRISSEY: Yes.

SENATOR FOLEY: That's not happening today though, correct?

SPENCER MORRISSEY: I can't tell you that. But all I know
is that, in the future, if that facility in Nevada, the
waste isolation pilot project, ever opens up, it will be
daily carloads coming through Nebraska.

SENATOR FOLEY: Right, what, but before that happens, what
is the most dangerous substance, in your view, that's
typically and routinely passing through our state?

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SPENCER MORRISSEY: Well, I mean, again, there's all kinds of stuff out there. And I guess everyone knows it, but I mean it's liquefied propane, chlorine gas, I mean, you name it, it's out there. I don't, you know...

SENATOR FOLEY: Chlorine gas might be one of the most dangerous?

SPENCER MORRISSEY: It is one of the most dangerous as far, and if have had the opportunity to read this report, you know that it is been involved in many deadly derailments lately.

SENATOR FOLEY: And do you know of cases where railroad cars filled with chlorine gas have been sitting unattended?

SPENCER MORRISSEY: Yes, like five days ago for 12 hours in your district.

SENATOR FOLEY: And you mentioned, or maybe the previous testifier mentioned, that rail safety is an area that the federal government has not preempted. We do have

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jurisdiction over rail safety at the state level.

SPENCER MORRISSEY: That's, I'm sure, an argument that has to be answered. I think we can take the steps more stringent.

SENATOR FOLEY: What can you tell us about what other states are doing in this area?

SPENCER MORRISSEY: Other states, this bill is being introduced in various forms in other states, like Missouri and Colorado, California, Washington. The genesis was the lack of money spent on transportation other than airlines. It's like airlines get 90 percent, all other transportation in the country gets 10 percent and don't quote me on those figures. But it's very, very wide margin like that. Senators, Senator McCain brought a bill in DC and it just, there's nothing going on, there's no traction to be had in Washington at this point in time. The FRA, the DOT, the Federal Transit Authority, the homeland security people, they're all, it's a mishmash. And the General Accounting Office in 2004 told them they needed to get their acts

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together, get memoranda of understanding about who would do what and who would handle this issue. Because some, the FRA has got a little bit of it, under the DOT and Transit Authority has some of it. So it's, you know, I'd love love it to be straightened out there and it would go across the whole country. That would be the ideal. But, you know, how long do you wait is the question.

SENATOR FOLEY: Thank you.

SENATOR BAKER: Senator Smith, did you have a question?

SENATOR SMITH: You mentioned the question, has everything been done. Are you suggesting that this would be the answer or is that...

SPENCER MORRISSEY: I'd say it would probably be a start. And, I mean, you know, it's not the old nose of the camel under the tent kind of thing that always, you know, the slippery slope that, you know, that everyone always talks about, those cliches that you toss around here. But it's, there are other things that should be, I mean, should be

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done. The insecure trains sitting out on line. What can we do about them? What should we do about them, lock the cabs? That seems like one thing that should happen. And I understand, on some of the newer locomotives, there is that ability. But there isn't that ability even on some of the older locomotives. So they're just sitting out there running and whoever could figure it out could get out there and take off with them.

SENATOR SMITH: Okay, thank you.

SENATOR BAKER: Any other questions from the committee?
Senator Aguilar.

SENATOR AGUILAR: Thank you. Thanks for being here today. You made mention that, in a suspicious situation, your training and instructions ask for you to report that situation, correct?

SPENCER MORRISSEY: Yes, I would go, if I see a trespasser, I confront them. And normally, then they leave the right of way. Now if I'd see a suspicious situation, I would call

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the railroad police. I've never had to do that, never, I've never seen that happen, never had to, what are you folks doing. You know, for one thing, they saw me coming, they would probably hide.

SENATOR AGUILAR: I'd just make mention of the fact that from time to time here in the Capitol, we'll get a flier, a warning if you will, that there might have been a suspicious person around. And if we see this suspicious person, we're supposed to report it to security. No different than what they're asking you to do.

SPENCER MORRISSEY: Yeah.

SENATOR AGUILAR: I, for one, wouldn't want to do anything on my own.

SPENCER MORRISSEY: Yeah, and I don't either. I mean, especially a lot of the people that are trespassered (sic) on a railroad right of way have guns and dogs because they're hunting. Now, you know, you see two people with shotguns and a bird dog, you know what they're doing, you

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don't think they're out there, you know, going to hijack a train. And quite frankly, anything like this was going to happen is probably not going to happen during the day.

SENATOR BAKER: Any other questions? I have one. You've provided some very thorough testimony here. But maybe on the federal level, concerns of parked trains in rather remote areas. Is that, and maybe we'll hear from someone behind you here on that, what they're doing on that to secure that train or...

SPENCER MORRISSEY: You know, and I'm not sure...

SENATOR BAKER: How do you handle that?

SPENCER MORRISSEY: Yeah, and I'm not sure if that even, that story gets told necessarily until this survey was done and the workers were telling. You know, it seems like we see it so often, it's just like, well, this is normal. But then I started talking to my deputy sheriff and my ambulance people and my volunteer firemen. And I said, do you know that this siding between point A and point B is like almost

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a permanent storage point in one time or another for all kinds of trains? As a matter of fact, on that siding two weeks ago, I came through. In the ditch I was inspecting, in a ditch was banding and blocking, an excessive amount of banding and blocking. I got out, I went down in the ditch. All of that banding had been torch cut and all that blocking had been thrown off into the ditch. Somebody had stole something off of a train sitting there. I called the special agents, reported it, they won't know for two or three days until someone in Los Angeles or someone in New Orleans says, hey, we had a shipment of X and it never showed up. Someone pulled up to that train in the middle of the night and, from all appearances, they cut the banding and stole the cargo, which appeared to be a tank because a four by four with wedges on the outside with the blocking. So it appeared like a tank set into it. Could have been anything, could have been anyone that took anything off of that train. And if I hadn't have found the material in the ditch, they'd have had no clue when that shipment showed up, that shipment of hazardous chemicals showed up in Los Angeles, or didn't show up, and they're going, somewhere between New Orleans and Los Angeles, this item was stolen.

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You know, and I talk to my local first responders about that and I ask them, you know, did they tell you about that? Like the car loads in Senator Foley's district last Thursday, you know, six car loads of chlorine sitting there unprotected for 12 hours.

SENATOR BAKER: Okay.

SPENCER MORRISSEY: They haven't been trained, the first responders.

SENATOR BAKER: Senator Aguilar.

SENATOR AGUILAR: Thank you. What in this bill would prevent that scenario from happening that you just described?

SPENCER MORRISSEY: You can, Senator, you can never prevent it. But you can take steps. When this happened, when these cars were sitting there last Thursday, I found out from my wife, by talking to her on a cell phone in Tecumseh, what had happened. I immediately got in my car, left this

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building, and went out to where I know that they park trains, just to see what was happening and there they were. So I figured it out, I found out about it randomly. Went, confirmed the fact, within 30 minutes I confirmed the fact that there was a potential for a problem out there. The question you need to ask the railroads is, did they inform the city police of Lincoln, Nebraska? Did they inform the deputy sheriffs of Lancaster County? Did they inform anyone? Because they knew as well as I knew that they were going to be there for at least 12 hours. The normal service interruption time for a derailment is 24 hours. This was a small one, it was 12 hours. They knew they were going to be there. I knew it when I saw it, they knew it. Did they tell anyone? I don't know. That's what we're getting at. No, we cannot prevent this stuff from happening but we can be prepared for it to happen. We can eliminate the opportunities and have our response ready to go.

SENATOR AGUILAR: I have to say, that bothers me a little bit when you keep saying you don't know if they reported it. By the same token, you were talking about, are the agencies talking to each other. You don't know.

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SPENCER MORRISSEY: You don't know. And I think they should be. I mean, this miscommunication has been a problem since 2001 and prior, obviously. And that's what we're asking. Let's look at it, let's find out.

SENATOR AGUILAR: I guess I don't necessarily agree that I should know that. You know, if somebody is doing security, that's their job. You know, I don't necessarily want to know about, just make sure it gets done.

SPENCER MORRISSEY: Yeah, and that's true, you shouldn't. But, I mean, someone has to make sure it's getting done. It's being said it's being done, but those of us on the ground don't see it being done.

SENATOR BAKER: Senator Brown.

SENATOR BROWN: As a follow-on to that question, what do you envision somebody doing? What would you do differently if this bill were in place, in the situation that you were just

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talking about? If you had seen somebody there that was a stranger when you went out there, what is the current way of responding and how would it be different under this bill?

SPENCER MORRISSEY: The current way of responding for me personally, if I were a track inspector out there, would be to, if I saw a trespasser, I would confront them and ask them to leave the property. Then they're walking away from the property, the question is, how long are you going to sit there and watch them walk? Until they go over the hill a mile away or what? But I, we just get them on the other side of the fence and then we go, you know, and then we move on. So if I...

SENATOR BROWN: So under this bill, how would that be different?

SPENCER MORRISSEY: That would, if the railroad actually provided me training, I'm sure they would tell me to do something above and beyond getting the guy on the other side of the right of way fence. Their training, I would hope, would be...you need to, if, you know, when you see the

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normal trespasser, the hunter, you know it's a hunter. Their training should be, if we're in, have this situation, if hazardous chemicals are involved, if there's a trespasser approaching a train, hazardous chemicals involved, you should take these actions. And that's, I'm not getting anything like that.

SENATOR BAKER: Any other questions from the committee? Don't see any, thank you very much.

SPENCER MORRISSEY: Thank you.

SENATOR BAKER: (Exhibit 2) How many other testifiers in support? We've had some very thorough testimony here. If there's someone else could add something new, fine. But anyone else here to testify for it? I don't see any. Opposition testimony? I'm sorry, we have a letter to read in support of LB 1152 from Nebraska Emergency Medical Service Association from Bruce Beins, the president, read that into the record, support. Opposition testimony? Come on up. We have lot's of bills today so I anticipate taking a break somewhere around three o'clock, just to let you know

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what our schedule may be. How many testifiers do we have in opposition, so we kind of get an idea? Okay, we have a total of three, okay.

SCOTT HINCKLEY: (Exhibits 3, 4, 5, and 6) My name is Scott Hinckley, H-i-n-c-k-l-e-y. And I work in the safety and security department of Union Pacific Railroad. The events of 9-11 and subsequent events around the world have changed our lives. We're anxious to know that we're safe in our homes and in our work. We're in an information age where we expect to be able to click on a button and know everything that there is out there to be known and feel secure that that information will protect us. We get frustrated when we can't find the information that we want. But when it comes to the issue of security, that information frequently isn't available. When the bill was introduced, it was introduced as a safety bill. Yet all the testimony so far has been that of security. It referred to a survey that was just taken from members, asking them what they thought. In response to that, I do come to this building frequently. I don't know the security plan of this building. I don't know if it's been changed, but I bet there's a a security plan

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for this building. And I bet you the State Patrol have one and they know what to do and how to respond. And so if a survey of me was, is there a security plan here, I'd have to say, I don't know because I don't. Because they don't share it with everyone, as to what it is that they do. Since we are discussing security, I can only give general comments in an open session. However, Union Pacific would be willing to give senators more detail in a closed meeting or individually about specific, more specific security issues. Nation's railroads do have nationwide and local security plans. They're required by federal law and they are under the jurisdiction of federal agencies. Some of the key items that this committee may not be aware of is there are approximately 2,000 fully commissioned police officers assigned full time to protect the nation's railroads, infrastructure, and cargo that they haul. In addition, there's several thousand security personnel that assist the 2,000 commissioned police officers. Many of the police officers are cross-trained to respond to hazardous material incidents with proper equipment and training. And one of the things I hope to talk about today, and be brief in it, is that our first responders are our police department. Our

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first responders that we work with are the local community fire and police departments. And these are the ones that should be trained. And we don't expect our rank-and-file employees to be first responders, to be able to put out the fire, to be able to take on an armed conflict, to be able to arm and train them. So we don't give them that training. We work with the Department of Homeland Security, the FBI, and the CIA on intelligence gathering, communication, and response. We employ, in the state of Nebraska, the railroad's 9-11 center, which is manned 24/7, which receives thousands of calls a month on security issues and interacts constantly with local first responders. We are members of the National Joint Terrorism Task Force and the U.S. Attorneys Anti-Terrorism Committee. There is one in the state of Nebraska and the Lieutenant Governor's office sits on that with our police department's representatives for that. So there are, there is an agency in the state that is in charge of homeland security that meets with others. There are several protective security divisions at work and I can't advise further as to what they do because, as we've said, we don't want to get into those scenarios. But sabotage and terrorism are federal crimes. They're under

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the jurisdiction of the FBI when it involves railroads in the United States. For 20 years, we have a national emergency response center training at Pueblo. Twenty-one different fire departments, police departments, and health organizations from Nebraska have been to the training center. In one of the handouts that I gave you, it refers to that training center. Oh, it kind of looks like this, it's kind of a detailed one that you can read later. But it refers to things that are trained at that training center. Lincoln Police Department, fire department, State Patrol, North Platte, Hastings, Kearney, all of those are people that have been trained at that particular center. And other people talk about training within the state. Another sheet I handed out is the Department of Homeland Security has made funds available to first responders, included in the state of Nebraska, to attend weapons of mass destruction field training. This is training that we do not give our employees to respond to weapons of mass destruction. What we do train them to do is to be our eyes and ears and to evacuate, because that's the appropriate thing for rank-and-file people. For your legal counsel, we would direct them to 49 CFR part 172, specifically 701 and 804, as

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those federal regulations govern security and HAZMAT training on the railroads and what's to be involved. One of those sections has a federal/state interaction and states that, a state may impose more stringent training only for motor vehicle drivers domiciled in that state. It also has an area that improves the plans that the railroads have. In addition, the railroad plans are covered under federal safety and security, and I've given you a handout of what is stamped on this plans, which is basically a need to know. You have to come under the provisions of the federal need to know to be able to review those plans in detail. On an individual level, I handed out a one-page sheet, it's in red, that we mail to every employee. And, in addition, we have follow-up videos and tests that tell you, what do you do in the event of criminal or terrorist attacks? And it refers to armed threats, chemical, biological, and it's the extent of what we can do in talking to our employees. Again, we expect them to be our eyes and ears and not get into actual police enforcement of that. I'm sure, as I said, in this building similar procedures are in place. You ask your staff to be eyes and ears and to report to the State Patrol and then they take over when an incident

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happens. As we read the bill, we read the bill maybe a little more differently than others who have testified. It's because it refers to rail employees being equipped and trained to prevent and respond to sabotage and terrorism. And we don't think that that is appropriate for rank-and-file employees to be equipped, to be armed, to be in such a way as to respond to prevent terrorism and sabotage. We don't know what expertise the Public Service Commission has and what authority it would have over national training standards in response to hazardous material that have already been developed by the makers of those hazardous material. We question whether it's the intent of the bill to replace the Lieutenant Governor with the Public Service Commission as the homeland security representative. And we question why you would pull railroads off of joint terrorism task forces and antiterrorism committees in this state. Because the plans we draw up are jointly with those particular agencies. And we would not take those plans and make them public, open to hearings, and subject to change by regulation and fines if, in fact, we have made them jointly with these other counterterrorism organizations. We understand the

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anxiousness of people. We understand the anxiousness of our employees. When events happen, no matter where in the world, they affect us and impact us. But that doesn't mean that our police departments and security agencies don't have security plans in place, that they're not observing things, that they're not watching, that they haven't got joint plans in patrols. Because we don't see them doesn't mean they're not there. When you go home and you don't always see the police department, it doesn't mean that they're not there and they're not able to respond and that things aren't happening. It's the same way on the railroad today with our security. And we encourage you to not pass this bill as we think that it would impact greatly the ability to provide security with those federal agencies that are involved in this. Thank you.

SENATOR BAKER: Thank you, Mr. Hinckley. Questions?
Senator Foley.

SENATOR FOLEY: Thank you for your testimony. My legislative district is very compact. You can walk end to end in 30 minutes. It's densely populated, residential,

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schools, shopping, homes, and so forth, apartment buildings. A previous testifier said that just a few nights ago, there was several railroad cars filled with chlorine gas sitting in my district. Do you suspect that that testimony was accurate?

SCOTT HINCKLEY: It could happen. Do I suspect it's accurate...

SENATOR FOLEY: When that happens because of a track maintenance issue or for whatever reason then, railroad cars filled with chlorine gas are in close proximity to residential areas, who should know?

SCOTT HINCKLEY: Union Pacific, and I speak just for Union Pacific at this time because I know of our policy. That information is called in to our command and control center who notifies police, who, depending on the commodity and if it's a load rather than an empty, for surveillance and observation.

SENATOR FOLEY: So Union Pacific obviously knows...

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SCOTT HINCKLEY: Without going into more detail...

SENATOR FOLEY: ...you know where your trains are.

SCOTT HINCKLEY: ...without going into more detail, we know where our toxic inhalation hazardous material cars are and we track them and we monitor them.

SENATOR FOLEY: Would it be standard procedure then for the rail company to notify local law enforcement? By the way, because of a track maintenance issue, we've got some chlorine gas sitting out there and just want to let you know that that's where it is.

SCOTT HINCKLEY: Not in all cases, depending upon what the railroad's response would be with its own people.

SENATOR FOLEY: So generally you would not notify law enforcement?

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SCOTT HINCKLEY: I wouldn't say generally. I would say, and it's in a case by case basis as to whether or not we would notify them. But we do have our own people and we do have plans that deal with the proper observation and monitoring of certain toxic inhalation hazardous material. It's called TIH is what it's referred to. And if you referred to plans and saw plans, you would see specific sections for TIH to be monitored.

SENATOR FOLEY: Are there trains that are left on sidings with chlorine gas completely unattended, say overnight for example?

SCOTT HINCKLEY: There are trains without train crews on them that are left, whether or not with chlorine gas, I don't know of a personal experience with that. Again, we can tell you in private as to some of our detail about how we handle specific things. Could it happen if there's a derailment and all trains have to stop behind it, then those trains are stopped behind it and we have procedures for that. But could there be cars out there with TIH? Yes.

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SENATOR FOLEY: Are there locomotives that are left unlocked?

SCOTT HINCKLEY: Yes.

SENATOR FOLEY: And could someone with a little bit of know-how activate the train?

SCOTT HINCKLEY: Well, we believe that it takes more than a little bit of know-how, that it takes a lot of know-how. Engineers go through at least six months of training to learn how to do that. I would say, with the extent of that has been testimony out there, we haven't, we don't talk about in here. People didn't come forth and say, last week, someone got on a train and took it last month. They haven't come up and said, last year there were 72 incidents of people getting on trains and running off with them. In other words, there isn't a history of that, which would indicate it's a lot harder than people would want to think it is.

SENATOR FOLEY: Um-hum, thank you.

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SENATOR BAKER: Other questions from the committee? Senator Brown.

SENATOR BROWN: Are you aware of, it's the same question I've asked some other of the testifiers. Are you aware of any state-level regulation of any other terrorism target industries?

SCOTT HINCKLEY: I know that this bill is being pushed by the teamsters' organization and they have had it introduced in various forms in several states. I'm not aware of any that would, say, cover the truckers, all the trucks that are parked with chlorine gas in the Sapp Brothers truck stop while they go in to eat, you know, of who's guarding them or requirements that they be guarded or such things as that. I'm not aware of anything that covers the transportation, whether by airline, by truck, by barge, or by rail in states over those commodities.

SENATOR BROWN: So why won't you share more details with

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your employees? Why won't you share more details with us about the plan?

SCOTT HINCKLEY: In a closed session, we would be willing to give examples and go through some scenarios. The plans that we have, first of all, are based on intelligence that we receive and that we give with other federal agencies. We try to look at what are targets, what aren't targets, what's the chatter out there on the Internet.

SENATOR BROWN: So you're monitoring... SCOTT

HINCKLEY: And as you know, you have... SENATOR

BROWN: You're monitoring communications.

SCOTT HINCKLEY: As you know right now, we have the domestic spying issue that is out there that the President is trying to deal with about who's listening to who. And I think it's safe to say everybody knows that everybody is listening to everybody out there and you pick up chatter. We have alert levels within the rail industry. Each alert level means

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something different. But to get into those details of plans, they would no longer be security plans if we sat here in public and told you everything that we were going to do and how we were coordinated with other agencies, with the FBI, with the Coast Guard, and with other agencies. If we told you those things, then everyone would know and wouldn't we just call it the plan. It wouldn't be the security plan anymore.

SENATOR BAKER: Senator Aguilar.

SENATOR AGUILAR: Thank you, thanks for being here today. Let me give you a little scenario and have you comment on it. Say for instance there was a tanker car of chlorine gas parked somewhere in an isolated location here in Lincoln. Would it be safer if more people knew about that or fewer people knew about the location?

SCOTT HINCKLEY: We believe it would be safer if people did not know all of the commodities and the schedules of them and how many of them and where they're at. Okay, we think once you know schedules, you have the opportunity to create

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a target. And this bill requires us to tell you, this is everything that's being hauled, this is when, this is where it's stored. And you put that out and then you are able to create a target by knowing. And by not having all of that public makes it less of a target.

SENATOR AGUILAR: Thank you.

SENATOR BAKER: Senator Brown.

SENATOR BROWN: Is there a security system for chlorine gas? I mean, is there a different, is there different...

SCOTT HINCKLEY: There's different levels of security depending on the commodity about how you would respond to it and what you do with it. And I can't go into any more detail than that as to what levels of security or what it is.

SENATOR BAKER: We're an inquisitive bunch. Senator Stuthman had his hand up next, I think.

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SENATOR STUTHMAN: Thank you, Senator Baker. Scott, on all of the materials transported, there is a placard on the car as to what it is, right? As to what's in, as far as...

SCOTT HINCKLEY: There is a...

SENATOR STUTHMAN: And what I'm getting to is...

SCOTT HINCKLEY: There is a hazardous material specialist here that will talk to you that would be better to answer that question about the placard system and such.

SENATOR STUTHMAN: Okay.

SCOTT HINCKLEY: My expertise comes, I sit on the security side of the Union Pacific, not the hazardous material side. So if you'll defer it...

SENATOR STUTHMAN: Thank you, yeah.

SENATOR BAKER: Senator Pedersen.

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SENATOR Dw. PEDERSEN: Thank you, Senator Baker. The crews that are on the trains, they already know what's on the train, isn't that true?

SCOTT HINCKLEY: Yes, the conductors, the employees are trained on hazardous material, what to do if there's an incident or a derailment. They know where it is in the train. They are to place it in certain positions in the train. And they have a COMMSYS that tells them what's loaded and what's empty.

SENATOR Dw. PEDERSEN: You bring out a crew to replace a crew that just went off, that crew has already looked at the manifest and they know...

SCOTT HINCKLEY: Yes.

SENATOR Dw. PEDERSEN: ...where it's at and what's going on.

SCOTT HINCKLEY: Yes.

SENATOR Dw. PEDERSEN: Thank you.

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SENATOR BAKER: Any other questions? Seeing none, thank you very much.

SCOTT HINCKLEY: Thank you.

SENATOR BAKER: Next testifier in opposition?

ROBERTO MUNGUIA: (Exhibit 7) Good afternoon, Senator Baker, members of the committee. My name is Roberto Munguia, spelled M-u-n-g-u-i-a. I'm the director of government affairs for the BNSF Railway here in Lincoln. I've got a prepared statement that I'll read and want to make part of the record. But I'll just comment on a few things that were said a little earlier. Testimony was given that there's a lot of tonnage out there and almost gives you the impression that the tracks are falling apart and that's not the case. We've, here in this last year, we've hired over 3,000 people on the BNSF system. We're going to hire approximately 1,000 people here by the end of March. And so a lot of those employees will be in the maintenance of way

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department. Because of the factor is an increase in traffic and we have to keep our infrastructure in good repair. There was a few comments made about this High Alert report. As you read that, and I think you all have a copy of it, understand this, that that was prepared by the teamsters, given to the teamsters. It is not a scientific analysis of any sort. If anything, it's a one-sided false characterization of the nation's rail system. I think you'll find that the movement by rail is the safest, safer than truck and water barge here in the United States. With that, I'll go ahead and, well, before I get into the actual statement, on the BNSF railway system, we have a 1-800 number that is posted on all our signal shanties across our system, that you'll find them on a number of crossings. It's an 800 number that, in the event of an emergency, anyone can call that. It's 1-800-832-5452 and that is shared with all first responders throughout our system, not just here in Nebraska. Now I'll begin with my testimony. BNSF Railway opposes LB 1152 because of its redundancy, as many of its elements are already carried out on federal level and because it will place critical railroad infrastructure in harm's way. Following the events of

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September 11, the BNSF, along with other major railroads, developed a comprehensive security plan developed by the railway industry with the assistance of counterterrorism experts. This plan includes the assessment and prioritization of all railroad assets, vulnerabilities, and threats. Based on this assessment, the railroad industry identified appropriate countermeasures to reduce the risk and restricted access to information about facilities and information. The handout that I gave you is the Association of American Railroads Freight Rail Security Briefing. This outlines the measure the railroads developed to ensure that the country's essential rail services and those people potentially put at risk are reasonably protected against terrorist threats. BNSF works with local emergency responders on the types of material that move through their jurisdiction. In furtherance of this effort, the industry has recently developed a policy to inform emergency responders of the top-25 hazardous material commodities that move through their community. And behind me, a fellow by the name of Pat Brady is our assistant director of hazardous material who will go into detail on what we share with communities in regard to hazardous material. We believe

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that this policy best balances the needs of security and emergency responses. As information railroads transport 98 percent of the ammunition used by the U.S. in the Iraq War. Obviously the content and location of these shipments should continue to be held in strict confidence on a need-to-know basis. Security experts agree that safety can be compromised as the exposure increases. This logic is contrary to this legislation that require information on assessment, sensitive cargo, and security plans designed to mitigate risk be made available to a wide array of sources. Under the definition of an emergency response provider, the bill would require that an emergency room nurse have the knowledge, the location, and the risk assessment of BNSF's critical infrastructure to include their points of vulnerability. From my reading of the bill, there are no measures to safeguard the sensitive information. My understanding of the state's privacy policy is that any information which is collected by a state agency is considered a matter of public record, which is available for public review. In the wrong hands, sensitive information could impact the continuous flow of interstate commerce, which includes vital shipments of military readiness

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equipment and supplies. BNSF continues to work with federal agencies, including the Department of Transportation, Federal Railroad Administration, Transportation Security Administration, and others in an effort to continuously improve the security and safety of railways in a manner consistent with the safety and security of all stakeholders throughout the transportation cycle. Additionally, BNSF participates with agencies as well as the Department of Homeland Security, Department of Defense on other intelligent matters. A railroad police officer and knowledgeable railroad analyst are working literally side by side with government intelligence analysis at the FBI's National Joint Terrorism Task Force, and two intelligence offices with NDHS. Rather than increase the security and safety of the public, LB 1152 provides a template for any who may wish to do us harm by identifying targets and the necessary information to bypass those railway security measures intended to safeguard your communities. Additionally, the release of this information may put the communities and the nation as a whole at risk. And I thank you for your time.

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SENATOR BAKER: Thank you. Questions from the committee? I have one and I think maybe it should be directed to the next testifier I think you pointed out. But to get him ready, are there different requirements on an Amtrak line, for instance, where you're transporting passengers, as far set-backs and things from mainline track? Or as far as hazardous materials being located next to a track or anything like that? I bet you the next person can answer that question. I'm assuming there's some different federal guidelines for something that's transporting passengers as opposed to just a freight line, an Amtrak line.

ROBERTO MUNGUIA: I couldn't answer that for you, Senator, I don't know.

SENATOR BAKER: He'll take care of it, I bet you.
(Laughter) Any other questions? I don't see any. Thank you very much.

ROBERTO MUNGUIA: Yeah, thank you.

PATRICK BRADY: (Exhibit 8) Good afternoon. I want to

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thank the chairman and the committee for allowing me to testify in opposition to LB 1152. My name is Patrick Brady, B-r-a-d-y. I am the assistant director of hazardous materials for BNSF Railway. My primary responsibility is HAZMAT emergency preparedness and HAZMAT emergency response. My testimony is going to be really in three basic categories. One is HAZMAT emergency response plans, HAZMAT training, and hazard communications. BNSF does maintain two different type of HAZMAT emergency response plans. One is a system emergency response plan which really deals with identification, notification, response and recovery for derailments that happen on the main line. Our other plan is a local preparedness plan which also deals with identification, notification, response and recovery for HAZMAT incidents that occur in a yard complex. A good example would be a yard complex is our rail yard here in Lincoln, Nebraska. Those plans are maintained. They're live, living documents that are maintained on a daily basis to ensure that all the information is updated and accurate. HAZMAT training, we do three basic types of HAZMAT training. One is for community responders, the other one is for BNSF HAZMAT employees, and the final one is for the BNSF

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emergency response teams community training. We provide training to communities and this training is, in essence, a four-hour class, two hours of classroom, two hours of field, where the responders get hands-on training with equipment, tank cars, locomotives, other type of moving stock for the railroads. Over the last six years, we've trained over 1,450 responders here in the great state of Nebraska. In addition, we have participated in the Grand Island, Nebraska, fire school for the last five years. We've also conducted joint response training drills between BNSF employees, responders, and community responders in both McCook and Lincoln, Nebraska. BNSF HAZMAT employees are considered anybody that has any function to do with HAZMAT safety in transportation. So we provide to our operations, meaning train crews, mechanical, maintenance way, signal employees with HAZMAT awareness and HAZMAT function-specific training on an annual basis. They get this training during their annual rules and safety certification training. Our final piece of HAZMAT training is for our HAZMAT responders. BNSF has over 160 HAZMAT responders located throughout our system with 9 in Nebraska. These Nebraska-based responders are in Alliance, Lincoln, McCook, and Omaha. Each one of

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the BNSF HAZMAT responders has over 80 hours of initial training and over 24 hours of refresher training. And that team is augmented by BNSF preapproved contractors who approve emergency response services and community fire departments and police departments. Each one of our responders has been trained in the national instant management system. Hazard communication, what I mean by that is how do we communicate the hazards of transportation of hazardous materials through our communities and our employees? The first one that has been brought up throughout this testimony today is placards and shipping papers. Department of Transportation regulates when hazardous materials have to be placarded. All bulk shipments, i.e. tank cars, hopper cars of hazardous material, must have placards on each side and each end. Those placards must be maintained during the transportation route. If those placards are lost, stolen, or missing, they have to be replaced. Shipping papers and train contents federal requirements deem that we must have a document in the possession of the train crew that shows the location of all the hazardous materials in the train and the hazard communication information which is the proper shipping name,

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hazard class, packing group, and emergency contact telephone number for each and every hazardous material in the train, regardless of quantity. This emergency response information is there for our train crews and responding civil responders, being the fire departments and police departments, for any reason, whether this was lost or destroyed, that information is available on our computers and can be faxed, e-mailed, or brought out manually to a location of an incident. HAZMAT traffic flows, for the past 15 years, BNSF has provided communities with analysis of the hazardous materials that are transported through their community. These are provided upon written request from the communities. We require them to be on the letterhead of the community that requests them, and this could be anywhere from a city, county, or state governmental agency or local emergency planning committee. I have provided you with a copy or an example of our annual traffic flow. This is all the hazardous material that has been transported through Lincoln, Nebraska, in the last 12 months. If you look, there is, it's based in columns. The first column is the properly shipping name of the material along with the DOT hazard class and there's a column for HAZMAT loads, HAZMAT

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residues, which is a tank car or another rail equipment that has been unloaded but still maintains a residue of hazardous material. And then intermodal load, intermodal residue which are smaller package, things that are in trailers or containers on a flat car. Clearly, there is a concern about providing this information because once we send it in to a city, county, or state, or federal government, that we, it is, or could be available through the Freedom of Information Act to anybody that would want it for good or other than good reasons. But we feel that it's important for emergency responders to understand what materials are going through their community so they can put together preplans in the event of an emergency. The final hazard communication piece is what's called the Operation Respond Institute. The Operation Respond Institute, or OREIS, is a not-for-profit group that provides real-time hazardous material emergency response information for every car, every HAZMAT car on any railroad in the United States. People that sign up with OREIS, being fire departments and police departments, can actually tap in to the railroad's computer and provide real-time information about cars that could be sitting on a siding, cars that could be sitting in the yard, or cars that

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could be involved in an incident. Again, that's an Internet-based real-time access to rail companies' computer systems on hazardous materials. I want to thank you for the opportunity to testify to oppose LB 1152.

SENATOR BAKER: Thank you. Senator Pedersen?

SENATOR Dw. PEDERSEN: Thanks, Senator Baker. Mr. Brady, when you mention those, just on the end there, the ones that are sitting on the side, how long do they have to be sitting on the side before you notify people that they're there? There was one of the things in the other testimony in support that they pull these trains off to the side and they would have that hazardous material on them and how long do we know if it's been sitting there?

PATRICK BRADY: It is obvious that railroads get moved from moving freight. We don't get paid for having cars sitting on sidings for a long period of time. Currently there is no regulations that require us to provide notification of cars that are sitting in a location for a period of time. The gentleman from the UP mentioned the security levels. When

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the levels of threat increase, there are things that are done to prohibit unguarded storage or unguarded placement of hazardous materials. The only requirement is that we must forward all hazardous material, regardless of hazard class, within 48 hours. They cannot sit for longer than 48 hours. But there's no notification requirement.

SENATOR Dw. PEDERSEN: Is there, do they carry any materials at all that have to have armed guards on board the train with them? Do you do that at all anymore?

PATRICK BRADY: The only armed guards that are currently used are some military shipments and also some of the earlier testimony mentioned spent nuclear fuel. There was an error in the testimony. The WIPP, Waste Isolation Pilot Program is actually in New Mexico, that's for low-level transuranic waste. The other is a propose storage facility for high-level nuclear waste that is in Nevada. We, none of the railroads are currently moving any of the spent nuclear fuel going to Nevada, but the feeling is, and it has not been decided, that the material going to Nevada will have armed guards associated with it. So when we start moving

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that product in 5, 10, or 15 years from now, depending on the Department of Energy starts, will get that facility licensed. Those will have armed guards, according to the DOE.

SENATOR Dw. PEDERSEN: Thank you, sir.

SENATOR BAKER: Any other questions? Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Baker. Mr. Brady, you did mention the placards that are on both sides of the cars. Those placards have, you know, the color, two numbers on them. I think that's sufficient. Because I serve on the fire department and we're trained that before you go to one of those, look at the placard, get the number off it, see what's in it, and see what the type of response you have to do. But stay clear is what we're told until you can read that placard and see what's on there. I don't think that there has to be notification of when hazardous material is travelling through all the time. I mean, that would be information that would be by the hour or by the day, of information that is coming through these small towns or

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communities. You know, if there is no problem, there's no need to create the awareness of it. Sure, everybody knows there is material going on there. But do you feel that that's enough information of having the placard on there? Because, you know, responders are trained to just look at the placard. Is that enough information?

PATRICK BRADY: I agree with you, Senator. Each placard has a color symbol and number that represents the hazard of the material. Also it has a 4-digit number that any responder can look up on the DOT emergency response guide book and find out the type of hazardous material that it is. If that isn't sufficient, at each grade crossing where our tracks cross a road, we have posted a emergency contact telephone number for BNSF. It's 1-800-832-5452. Any responder could call that number, tell us their problem, that they have a HAZMAT car that they're concerned about. We can look up that car in our computer, find out the information. Also OREIS that I talked about. They could look it up if they want. The prenotification of hazardous materials going through a community, it is somewhat akin to crying wolf. If you have 365 shipments of propane that goes through a

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community in Nebraska, one per day, doesn't make any sense calling up and tying up a switchboard saying, today, sometime today, a car of propane will be going through your community. Is it not better to provide and obtain an annual traffic flow that shows all the materials that go through your community so you can preplan for those materials. If you look, 90 percent of them are probably only 10 or 15 different products, so you can preplan for those 10 or 15 products. So you're prepared for them, you understand the hazards associated with them, and you can respond quickly, efficiently, and effectively for those 15 materials.

SENATOR STUTHMAN: Thank you.

SENATOR BAKER: Senator Aguilar.

SENATOR AGUILAR: Thank you. Thanks for being here today. You commented that some of your high-level nuclear waste would have armed guards and transportation. And my comment is that I would suggest that the low-level nuclear waste have armed guards, too. Because we here in Nebraska know how much that costs. (Laughter)

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PATRICK BRADY: And I appreciate that, Senator. One other thing that needs to be told is that we talked a little bit about prenotification. Federal law requires that any time high-level nuclear waste go through a state, that the governor of the state is provided with notification, I believe it's 48 hours before the movement of that material through the state. And we do not participate in the low-level nuclear waste to the WIPP site. All of that material goes by a truck.

SENATOR AGUILAR: Thank you.

PATRICK BRADY: I appreciate it.

SENATOR BAKER: Any other questions? A couple, sitting on a main line, BNSF main line, you furnish this annually to the various departments, I think, do you?

PATRICK BRADY: Upon request, Senator.

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SENATOR BAKER: Upon request?

PATRICK BRADY: Yes, sir.

SENATOR BAKER: I know we have it. I didn't know whether it was a requirement or you just simply do it, as far as...

PATRICK BRADY: We provide it upon request.

SENATOR BAKER: I see.

PATRICK BRADY: Upon written request.

SENATOR BAKER: And we just assume, as Senator Stuthman does, that any train could have any one of these products on it...well, if it's a coal train, obviously it's not going to. But our assumption is that it could be any of these products.

PATRICK BRADY: Yes, any merchandise train could have any one of those products.

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SENATOR BAKER: And back to my question, a couple questions. We've heard from Class I railroads, when you set this off, say for a short line, do they have to follow the same policies and procedures, a short line?

PATRICK BRADY: They are bound by federal law like the Class I's are, yes, sir.

SENATOR BAKER: Okay, as far as hazardous material transport...

PATRICK BRADY: Yes, sir.

SENATOR BAKER: Okay. The other question I had was, an Amtrak line, does it, are there different setbacks for hazardous materials, say loading facilities or storage on that? Is that a factor?

PATRICK BRADY: There are, there's really two answers of that question, Senator. One is that Amtrak can move hazardous material on an Amtrak train. Department of Transportation tells them which materials can move. And

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typically they're small package consumer commodities, things that need to get from one location to another very quickly. U.S. mail, it moves some hazardous material in U.S. mail, FedEx, UPS, but it's highly regulated. Some of that material can move on Amtrak trains but again it's very highly regulated. Not very much, no placarded quantity, just of hazardous material. Setback requirements, most of the setback requirements are not associated with Amtrak, they're more associated with the probability or if there was a derailment that a unloading facility would not be affected by a derailment. But they're not really based on the movement of Amtrak. Because the setback requirements are the same whether you're moving Amtrak on that route or not moving Amtrak on that route.

SENATOR BAKER: Back to the placards, is there a weight requirement there before it has to be placarded? Is it 1,000 pounds?

PATRICK BRADY: It's 1,001 pounds, Senator. The, for nonbulk shipments, things that are under 119 gallons, any package under 119 gallons is considered nonbulk. And there

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are two tables, not to get too technical, but there's two tables within regulations. Table one, a good example of that would be a poisonous gas, chlorine. Any amount of table one commodities, explosive 1.1 through 1.2, those materials require placards at any amounts. Things in table two, nonbulk, only require placards when you meet or exceed 1,001 pounds.

SENATOR BAKER: Okay. Any other questions? I don't see any. Thank you very much.

PATRICK BRADY: Thank you.

SENATOR BAKER: Any other testifiers in opposition? Neutral? I don't see any. Senator Connealy to close.

SENATOR CONNEALY: Thank you, Senator Baker, and members. And I appreciate all the time you gave this this afternoon. It's a very important topic. You know, we hear, well, we work with the feds, we work with the FBI, we're federally exempt. Nebraska has a responsibility to protect its state. We are a railroad state. The railroads are very, very

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important to us. But the safety of our communities is also. Why did he give it to the PSC instead of the homeland security? Well, the PSC has staff. You know, we can stretch out and do that with a staff that has some responsibility. There's other railroad regulation there, too. Maybe we've stretched a little far and maybe we need to tweak it back to make sure that records are kept secure that need to be secured, things like that. But I think it's also our responsibility to look at this and to not let something happen in our state that we could have prevented. The majority of what the federal government is doing on safety is on air safety. And you'd expect that, after the tragedy of 9-11. We know that we need to do more in this area also and maybe it needs to be driven by a state like Nebraska, that's so dominate in our economy and in the actions that we do by railroads.

SENATOR BAKER: Okay, thank you, Senator Connealy. Questions? Senator Smith.

SENATOR SMITH: I see that there's no fiscal note and yet, I mean, there's pretty strong language here. The Public

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Service Commission shall review the infrastructure protection program and shall have the authority to order a rail operator to improve, modify, or change its program to comply with requirements of the Local Community Rail Security Act. Commission shall have the authority to fine the rail operator \$50,000 per day for failure to comply its orders or the act. So there's no additional personnel necessary?

SENATOR CONNEALY: We put the bill, we didn't write the fiscal note. But I think, yeah, I think there would be some costs, but I don't know whether they would be huge.

SENATOR SMITH: Okay, thank you.

SENATOR BAKER: Any other... Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Baker. Senator Connealy, knowing that our fiscal note is only what it costs the government, has there been any estimate at all of what it might cost the railroads to have to implement this?

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SENATOR CONNEALY: No, they haven't shared with me. And I'd be willing to work with that, too.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BAKER: Any other questions? Thank you, Senator Connealy.

SENATOR CONNEALY: Thank you.

SENATOR BAKER: That would conclude the hearing on LB 1152. We're going to take a short break. Chairs are hard out there and it's going to be, let's, 20 after 3 we'll be started again. And after this hearing, those other bills are kind of pale. But we see, no offense, but we're going to take a 10-minute break and start promptly 20 after 3.