

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate January 31, 2024

**KELLY:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the nineteenth day of the One Hundred Eighth Legislature, Second Session. Our chaplain for today, from Senator Meyers' district, is Kyle Campise, Bethel Baptist Church, Ord, Nebraska. Please rise.

**KYLE CAMPISE:** Let's pray. God, I thank you for our great state. God, I thank you for allowing us the privilege of being able to, to live here. God, I pray for these men and women, God, that have, have-- chosen in God. And we have put them in these places to serve. God, we thank you for them. God, I pray especially for their families, God, as they wade back home. Lord, pray for their spouses, their children, their grandkids, God. Pray that you would put a special blessing on them as they, as they, as they just serve alongside of their representative, Lord. So we just pray for this time, pray for this session, pray that you would be glorified and you would lead, God, these, these great, fine men and women to the decisions that need to be made for our future. It's in Jesus' name we pray these things. Amen.

**KELLY:** I recognize Senator Kauth for the Pledge of Allegiance.

**KAUTH:** Colleagues, please join me in the pledge. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

**KELLY:** I call to order the nineteenth day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**CLERK:** There's a quorum present, Mr. President.

**KELLY:** Are there any corrections for the Journal?

**CLERK:** I have no corrections this morning.

**KELLY:** Are there any messages, reports, or announcements?

**CLERK:** There are, Mr. President: communication from the Governor concerning an appointment to the State Board of Health. Additionally, notice of committee hearings from the Revenue and Nat-- and Natural Resources Committee. That's all I have at this time, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Senator Moser would like to recognize our doctor of the day: Dr. Kip Anderson of Columbus, Nebraska. Please

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stand and be recognized by your Nebraska Legislature. Senator Meyer announces a guest under the north balcony: Art Duvall of Ord, Nebraska. Please stand and be recognized by your Nebraska Legislature. Senator Jacobson's wife, Julie, is under the north balcony. Please stand and be recognized by your Nebraska Legislature. Please proceed to the first item on the agenda, Mr. Clerk.

**CLERK:** Mr. President: LB31, introduced by Senator Jacobson. It's a bill for an act relating to railroads; requires a train crew of at least two individuals as prescribed; provides fines; provides duties for the Public Service Commission. The bill was read for the first time on January 5 of last year and referred to the Tele--Transportation and Telecommunications Committee. That committee placed the bill on General File with committee amendments, Mr. President.

**KELLY:** Senator Jacobson, you're recognized to open.

**JACOBSON:** Thank you, Mr. President. Colleagues, LB31 is a bill that is important to thousands of railroad workers in my district and the safety of all Nebraskans. LB31 prohibits any train or light engine used in connection with the movement of freight from being operated unless it has a crew consisting of at least two individuals. Two-person crews can play a major role in helping to prevent potential accidents or derailments, as well as allowing potential problems to be addressed while an individual remains in the cab. The recent rash of rail devail-- derail-- train derailments highlight the need for this bill. 11 other states currently require two-person crews: New York, Kansas, Ohio, California, Wisconsin, Arizona, West Virginia, Minnesota, Washington, Nevada, and Colorado. Several other states are considering passing a two-person crew-- crew bill to enhance safety. Nebraska needs to be number 12. Potential federal regulations have proven unreliable and subject to electoral changes in the executive branch. We delayed this bill until this session to give them a chance. But as of today, the Biden administration has not acted. A single-employee operation is inherently unsafe and dangerous for both the public and employees. Would you be comfortable flying without a copilot? Engineers must stay in the cab under all circumstances and often must be there up to 12 hours with no breaks and no cell phones. Alone, these long hours lead to increased stress levels and middle-- mental fatigue, which can result in lower effective decision-making in an emergency situation. Conductors are essential for safety. Here are several reasons why. Number one, conductors often act as the first responder and leave the train to help those injured in an accident, particularly at a rail crossing.

They provide assistance and information when first responders arrive. They help if the engineer had a health emergency, such as a heart attack. They cut crossings for emergency responders if they can't get to the other side for emergencies. They provide an extra set of eyes to notice something on the track, a train derailment, or can detect something wrong before it leads to an accident. The conductor ensures all safety regulations are followed on board and when-- and with the train records, including proper placement for hazmat materials. They de-- decouple cars and change train directions. They make repairs when the train is stopped. The committee amendment, AM2019, accomplishes the following. It defines a utility employee pursuant to 49 CFR 218.5 as a railroad employee assigned to and functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew in the assembly of classifications of railcars or operations of trains. It also modi-- modifies the, the, the exclusion for loading or unloading a freight or grain by eliminating the 10-mile per hour max speed. And number three, it adds new language excluding from the bill Class III railroads. A Class III railroad is a rail carrier in which it generates less than \$40.4 million in revenue. A, a, a clad-- there are no Class II railroads operating in Nebraska today, but they would be generating less than \$900 million in, in revenue. But there are none of those in Nebraska. Conductors are a necessity for the safe, efficient operation of the railroad, which demonstrates the necessity for LB31. The federal gover-- government has promised but not delivered on promises. It is time for our Nebraska Legislature to act to protect both railroad crews and citizens of Nebraska. And for that, I ask for your support. I do want to add a couple of other pieces to my open and maybe explain some of the issues that are out there. I know there are a lot of people are going to say that this is a collective bargaining issue. Well, I would argue that who is collective-- collectively bargaining for the public? Because I can tell you that labor and management, they collective bargain, but they're not bargaining for me. So when we go to a point to where we look at the makeup of the Class I railroads today-- and the Class I railroads are largely con-- controlled by major investors that are looking for stronger, better returns. And as a result of that, we're seeing safety issues that are entering the problem. This past year in Bailey Yard alone, the FRA came in and did a surprise inspection. Found well north of double the normal safety violations occurring in Bailey Yard. There was also a fire that occurred last summer in Bailey Yard. And it was-- perchloric acid was being shipped on a railcar. This perchloric acid was stored in a container that was on top of wood pallets. Perchlorate acid, if it comes into contact with wood, implodes.

That's what happened in the yard. It somehow got loaded-- and it's continued to be loaded on trains across Nebraska. It was in the yard at the time. An explosion occurred. I spoke with an individual who was there. Rail yard workers saw this train, saw some steam coming from this particular car, drove closer to it, saw that it was leaking, immediately backed up to get out of the way about the time this car exploded. Intense fire, perchloric acid fumes into the air. That part of town was shut down. These two individuals, luckily, were only injured and not killed. But had they gone to the car itself, they clearly would have been killed. These are the kinds of safety issues that although the two-person crew bill is not going to fix the safety violations, I will tell you that the safety violations are what are leading to the derailments. Leading cause of the derailments are hot bearings in railcars in their wheels. There are detectors along the way that are heat detectors along the track. But all too often, these heat detectors are ignored and the, and the crew is told to keep running the train. They come into Bailey Yard and they don't have enough people there to fix the, the problems. They want to keep the train moving, fix the worst problems. Send it to Denver. Hopefully they can fix it. Hopefully it'll make it to Denver. If this practice continues, we're going to continue to see more derailments. And when we have derailments, the public is at risk. So that en-- that conductor can get off the train, meet with the hazmat people, let them know what's loaded in these cars to be able to let them-- let the public know how far they need to be away, how much at risk they are. There are a lot of hazardous materials that get run down the railroads. They're very efficient in what they do. But unless it's done safely, we're going to continue to see derailments. Keep in mind that the engineer cannot leave the train. So the conductor is the only one who can get out. Imagine if there's a collision at an interchange, at an, at an intersection or at a crossing and a car gets hit. The engineer cannot get out of the train to provide-- work as a first responder. The conductor could. So they're going to stand there and watch the people down below either burn or die, and they could do nothing about it. There was a situation in Hershey, Nebraska here a few years ago where the, the engineer and the conductor are coming from the west, coming back to Bailey Yard, coming through Hershey. The conductor saw something on the track moving, alerted the engineer. Did you see that? He immediately started slowing the train. They got there about 20 yards from a toddler who had wandered onto the track. What if the conductor hadn't seen that? What if that extra set of eyes wasn't there?

**KELLY:** One minute.

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**JACOBSON:** Those are the concerns. I mentioned in the opening-- think about an airline. Would you climb on a plane that didn't have two pilots? The other thing I just want to mention is regulation. People are saying, why do we want to force this regulation on a private business? When I get back up on the mic later, I'll talk to you about OSHA. Talk to anyone who's involved in the construction industry. Tell me all the regulations you're complying with: the banking industry, the, the, the hospital industry, on down the line. When it comes to public safety, there are times we need to act, and this is the time to do it. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. As stated, there are committee amendments. Senator Moser, you're recognized to open.

**MOSER:** Good morning, Mr. Lieutenant Governor. And good morning, colleagues and Nebraskans. We have a committee amendment that exempts Class III railroads from the two-person requirement. The Transportation and Telecommunications Committee heard LB31 on March 3 of last year. On Tuesday, January 23, the committee voted to advance LB31 to General File with AM2019 on vote of 6 ayes, 1 nay, and 1 present, not voting. The committee amendment does three things: it incorporates the federal definition of a utility worker, meaning a railroad employee assigned to and functioning as a temporary member of a train crew whose primary function is to assist the train or yard crew in the assembly or classification of railcars or operation of trains. It also modifies the exclusion for the loading and unloading of freight or grain by eliminating the 10-mile per hour maximum speed. And then the third thing it does: adds new language excluding Class III railroads from the two-person requirement. Class III railroads are rail carriers that have less than \$40.4 million in revenue. Thank you.

**KELLY:** Thank you, Senator Moser. Moving to the queue. Senator McDonnell, you are recognized to speak.

**McDONNELL:** Thank you, Mr. President. Good morning, colleagues. I'd like to thank Senator Jacobson for making LB31 his priority bill. This is about safety. It's about public safety. The idea of collective bargaining and going to the table and talking about wages and benefits. I believe in collective bargaining, but also I believe that the safety of the, the public is both sides of the table, management and labor. That should be their, their highest priority. And as, as a state senate, we should have our highest priority is the safety of our, our citizens that we're here to represent. Now, Senator Jacobson has a handout. I know we all get a lot of handouts

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that start piling up on, on our desk. But please take a look at that handout and how a two-person crew can affect you. And we start thinking about ourselves, of course, our family, our friends, our neighbors and what they-- what could happen in one of these situations. And, and even if this, this actually improves the safety-- because you have all this data. You know, we know it dramatically improves the safety for the citizens and those, those people that are, that are riding on those-- on that train-- based on the idea of the two-person crew working together. And Senator Jacobson gave you all those-- all that information. And the idea that we can today, because of that data, because of that past experience around the country-- and most of the time it comes from a tragedy. So we find out how to improve public safety out of tragedies. So we can take a step forward by taking all that information and those tragedies from around the country and what's happened here in our own state and say, you know, we're going to-- we're going to improve on that. Again, I believe that's what Senator Jacobson's doing today. And I will-- remainder of my time, Senator Jacobson, if you would like-- Senator Jacobson.

**KELLY:** Thank you, Senator McDonnell. Senator Jacobson, you have 3 minutes.

**JACOBSON:** Thank you, Senator McDonnell. Well, I'd like to just again talk to you a little bit about regulations, unfunded mandates, mandates on business. Welcome to the club. I'm a banker. I can tell you all of the regulations we deal with. And yeah, they cost us money, but it's making sure that the public understands what we're doing, the disclosures that we're required to give. And I will tell you, in many cases, in banking-- try to open an account today and look at the information we have to ask for. Look at all the disclosures we have to provide to you that all cost us money. But it's a requirement. And I would argue in most cases we give you all the disclosures, you don't read them, and you throw it in the trash. But it's a, it's a requirement. If you look at our hospital system today-- privately owned operations. But did you know that, with a hospital, if you have a patient that you must admit-- OK. You must admit whether they're insured or not-- into your ER and they become a patient in the hospital. And they might be on Medicare or Medicaid, maybe they're-- but in many cases, you look at a Medicare or Medicaid patient, they've been treated. They're ready to be released. When they're ready to be released, Medicare and Medicaid no longer pays. But if the hospital can't find a safe place for these people to leave the hospital to, they're required to keep them. Currently in North Platte, we have a patient that's been there for over, over, over 60

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days. And by the way, you keep him there at hospital standards, and the hospital eats the cost. That's a mandate. Look at the construction industry.

**KELLY:** One minute.

**JACOBSON:** I see Senator von Gillern's in the queue, and, and he's had-- very experienced in construction. Look at OSHA. Look at all the requirements that OSHA puts on businesses. Why do they do that? Worker safety, public safety. Public safety isn't anything new. Worker safety isn't anything new. I did ask a question of a testifier yesterday-- probably inappropriately-- in the Banking Committee about to tell me-- they were testifying on why they thought they ought to be regulated. I agree. There are times when we need to be regulated. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Mr. Clerk for some items.

**CLERK:** Mr. President, just an announcement: the Banking, Commerce and Insurance Committee will meet in Executive Session under the south balcony now. Exec Session, Banking, Commerce and Insurance, now under the south balcony.

**KELLY:** Thank you, Mr. Clerk. Senator DeKay, you're recognized to speak.

**DeKAY:** Thank you, Mr. President. I would ask if Senator Jacobson would yield to a couple questions.

**KELLY:** Senator Jacobson, would you yield to some questions?

**JACOBSON:** Yes, I would.

**DeKAY:** Thank you. I would have you tell us more where this proposal is at at the federal level and the timeline when it will come forward.

**JACOBSON:** Well, thank you for the question. I think the question is is that there are two paths forward in order to make certain that this safety feature stays in place. Number one, it could be a rule issued by the FRA, Federal Railway Administration-- who's also the regulator for the railroads-- or it could come from Congress passing a law that would require this as well. The problem with that FRA rule-- and we've been promised-- we were-- we've been told-- and I think many of you probably have been lobbied-- that FRA is just this close, they're just this close to making a ruling. Well, you

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know what? A year ago at this time, they were this close to making a ruling, and they didn't. Congress, I don't think it's on their radar right now. Meanwhile, there are 11 other states that have passed this very rule. So I'm going to tell you that that here-- therein lies the problem. And, and I would also add to that there's this issue of, what about technology? Don't we have technology in place? And I'm certainly willing to respond to people want to ask more about technology. There's technology in place today. The problem is it doesn't work good enough. Over time, the technology will improve. Over time, we could probably get to the point to where you don't need two-crew members. You may not need any. But that time certainly is not today, and it's not going to be in the next few years. We're a long ways off from getting there, in my judgment. So I would tell you that I waited a year ago to now for the FRA and Congress to act, and they failed to do so. And I'm concerned that we need to keep this rule in place until we can see technology get to the level to where we can rely, rely on it safely.

**DeKAY:** Thank you. If you would yield to one more question. You alluded too that there are 11 states that have already passed this law. Do you know if there is any legislation like this being debated in the state of Wyoming?

**JACOBSON:** I'm not sure about the status of Wyoming, but Colorado and Kansas. Kansas was the most recent state. They passed it last year. And, and Colorado's had it for a few years. So two of our border states have that rule today. Wyoming would be key because, obviously, if Wyoming has it, then you're not going to move a train from Nebraska to the Powder River Basin in Wyoming without having two persons. So I would expect that they could get there. But at this point, they've not. And I don't know where the status is of that.

**DeKAY:** So if Nebraska be-- would be a one-person train, when it got to the border of Colorado or Kansas, it would have to switch from a one-person train to a two-person train at that point?

**JACOBSON:** Correct.

**DeKAY:** OK. Thank you. I yield back the rest of my time.

**KELLY:** Thank you, Senators Jacobson and DeKay. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President. Please excuse my voice. Fellow senators, friends all. I stand in enthusiastic support of both the

amendment and the underlying bill. And I want to talk briefly and build a bit on what both Senator McDonnell and Senator Jacobson has have-- has said, and I want to add a little more to the picture. They are spot on when they describe the concerns in reference to preventing train derailments and making sure that you know that we're not just talking about the folks and the items on the trains. We're talking about the communities and how it affects the communities when we have train derail-- derailments. We want to reduce those risks and protect the public. And we want to make sure that the workers that are working so hard are also protected from fatigue because we know that fatigue is one of the number one reasons that we have issues with the train derailments. But the issues that I haven't heard discussed yet is that trains have gotten longer and riskier to operate. And why is that? Because it's about profit. And when it's about profit, what often happens is we forget to take care of the workers who are putting in the efforts to generate that profit. So as these trains have gotten longer and riskier to operate, they've become more dangerous when it comes to train derailments. You heard about several situations in Nebraska, but one of the big situations that caused investigations and caused the effort of the two-man crew to go to the federal level was what happened on February 3, 2023 in East Palestine, Ohio. A Norfolk Southern train derailed and 11 tank cars carrying hazardous materials left the tracks and eventually ignited. Hazardous materials went into the air and into the groundwater. And so who are the victims when that happens? It's the communities where the train derailment happens. It highlighted a lot of the known reasons and the deficiencies when it comes to safety practices in the freight rail industry and transportation of hazardous materials. And so if you haven't had a opportunity, if you are on the fence about this bill, I encourage you to look at the research after that train derailment because it speaks clearly as to why it is important to have a two-man crew. I do not fault these companies from wanting to make a profit. And I am thrilled that they had the business that they have to have longer trains. But again, that makes them riskier to operate. And a two-man crew, as you heard explained so appropriately by Senator Jacobson, is one of the ways that we protect the public and the workers. And let's face it: sometimes it can't be profit over people. And this is one of the instances where it has been, for many, many years, profit over people. We have the people with the boots on the ground that are risking their lives, that are working long hours, that are dealing with fatigue, that often are dealing with illness, that don't have the backup that they need, and expectations are set high that they will do their job and do it well. And they have been. But where does

it stop? It's not fair to their families. It's not fair to our communities. It's not fair to public safety. We've got to decide what's more important. Is it the people or the profits? And in this case, it's got to be the people. And the profits will still come. That's not going to stop. So again, we don't fault people for wanting to make a profit, but they can't do it on the backs of the workers and continue to endanger their lives, potentially take them away from their families, potentially hurt our communities and our environment, by the way.

**KELLY:** One minute.

**BLOOD:** And we can help prevent that with this one simple act, and that's passing this bill. This bill has been brought forward in the Legislature over and over and over again. And today is the day that we step up to the plate and we put on our big boy pants and we put on our big girl pants and we decide what's best for Nebraska's communities and what's best for the railroad workers, and this is it. Thank you, Mr. President.

**KELLY:** Thank you, Senator Blood. Senator von Gillern, you're recognized to speak.

**von GILLERN:** Thank you, Mr. President. I rise opposed to LB31 and AM2019. And forgive me, I'm-- I've been kind of taking fractured notes as the testimony has been going on this morning just to, to try and respond to some of the questions and some of the issues that were raised. And Senator Jacobson and Senator Blood mentioned some, some things that are, are sup-- are, are critically important-- Senator McDonnell did too. Safety, obviously, has to be the number one priority in everything. But at what point do we find that we are safe enough? I mean, we, we could possibly consider mandating that we have two drivers in semi-tractor-trailers, but we don't do that. We do have two pilots in a commercial airliner. But the, technology on that is moving towards self-landing airplanes, and that may-- that technology may allow some day for that to, to change. But some of the incidents that were mentioned in-- particularly Senator Jacobson's opening comments, I struggled to find where a two-man crew would have changed any of the outcomes that he mentioned. The, the fire in the Bailey Yard had nothing to do with a two-man crew situation. That obviously was an improper storage of something that the, that the train was hauling and was stored in the yard improperly. And, and Senator Jacob [SIC] mentioned other safety issues in the Bailey Yard, and I think that, that is maybe a bigger issue than, than maybe even the two-man crew issue that maybe should, should draw even a greater

amount of attention in-- if, if that-- if they're-- the, the Bailey Yard is struggling to keep things safe when they're in a stationary position, maybe that's a, that's a bigger concern than, than when things are mobile. Senator Jacobson mentioned the leading cause of derailments are hot bearings which are not recognized by the crew or not recognized or ignored by management. Again, I don't believe that that's a two-man crew issue. The-- if the bearings, the-- they have detectors on there, they're setting off alarms. Someone is saying, let's override those alarms or it's not dramatic enough to address and we're going to, to, to move on. That's a decision that's being made by somebody in the chain of command. I don't know who it is, but obviously if that's leading-- if that's the number one cause of derailment, then that's of grave concern. And that is what are the policies and procedures that are in place to, to understand that, to receive that information, disseminate that information, and make sure that those critical decisions are being made properly. Senator Blood commented that fatigue was the number one cause of derailment. So I, I'm-- I, I'm-- that's a, a point of confusion between me, whether bearings are the number one cause of derailment or fatigue is, or maybe some-- possibly some combination of the two. I don't think that's probably a contradiction. Maybe it's an-- it's-- the, the two senators are leading towards the, the two of those working together are a dangerous combination. Again, I mentioned the, you know, airplanes. Trains run on a track. Obviously, they're self-steering. They don't ever leave the ground. They-- we're not talking about passenger trains. They don't have passengers. They even have a self-stopping ability if the engineer or the conductor becomes disabled. So a dramatically different situation than, than flying. Senator Jacobson mentioned, mentioned if there's a collision at a crossing, what happens there? And what he mentioned was the fact that the second person on the train could render aid, and that's, and that's a, a valuable asset. But again, I don't believe that the two-man crew would have changed the outcome of a collision at a crossing. Generally, collisions at crossings are the fault of the car driver, not anything to do with the train. So I'm not sure a two-man crew is going to, to change any of those outcomes. The-- I think those are the--

**KELLY:** One minute.

**von GILLERN:** --just-- again, some of the-- thank you, Mr. President-- some of the random notes that I had down. Would Senator Jacobson yield to a few questions?

**KELLY:** Senator Jacobson, would you yield to some questions?

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**JACOBSON:** Yes.

**von GILLERN:** Thank you, Senator Jacobson. A year or more ago-- and forgive me. I'm going off memory. I did not take the time to, to research this in depth-- but there was a, there was a potential of a rail strike, national rail strike. And it was my understanding that this issue was worked out at the federal level through collective bargaining at that point. You probably know more about that, that than I do. Can you, can you shed some light on that for me, please?

**JACOBSON:** I'm not aware of the specifics there. I do know that there has been collective bargaining. And I think the Burlington is, is considering and, and is no longer obligated to do the two, two persons on the crew. There, there was a negotiation with SMART-TD and the Union Pacific to extend it further, but that's, that's-- there's no guarantee that that will continue, so. But I could--

**KELLY:** That's your time, Senators.

**von GILLERN:** Thank you.

**KELLY:** Thank you, Senator von Gillern and Senator Jacobson. Senator Erdman, you are recognized to speak.

**ERDMAN:** Thank you, Mr. President. And good morning. I was just visiting with Senator Clements. He's been here almost as long as I have. He's 29 days less. The question was, have we ever voted on two-man crew or has it ever come to the floor before? And I think the answer is no. Those who have a better memory than I may be able to answer that better, but. Senator Jacobson, I think this is the first time that we've had an opportunity to discuss this on the floor and vote on it and, I hope, pass this legislation. I can appreciate Senator Jacobson's explanation of the safety issues. And in my district, it's kind of sparsely populated, as you may have all figured out. And if we need to break a train or there's issues like Senator Jacobson described and we're going to have someone that's on the ground arrive there, it may take several minutes, maybe an hour for someone to show up. And if you have a one-person crew and that engineer cannot leave the train, it makes it a very difficult situation. And these trains are getting longer. And those first responders, when they show up, they possibly don't know how to disconnect or, or break a train or the other things that normally would be done by a conductor. So I'm in support of what Senator Jacobson is trying to do. We've been talking about this as long as I've been a senator or longer and-- but we've never had an

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opportunity to vote on it. I think it's a situation-- we talked about the helmet law for 30 years before we passed that, and I sure hope it doesn't take 30 years to get this passed. So I'm in support of what Senator Jacobson's trying to do. And I'll be voting for LB31. Thank you.

**KELLY:** Thank you, Senator Erdman. Senator Linehan, you're recognized to speak.

**LINEHAN:** Good morning, Mr. President. And good morning, colleagues. I have-- Union Pacific obviously has a very, very long history in the state of Nebraska. And I've always been a great admirer of theirs. They have over 6,000 employees in Nebraska. They have probably-- I'm not certain. I could-- I don't think we can actually ask this question-- but I'm pretty sure they're one of the largest property taxpayers in the state. They are definitely one of the largest corporate income taxpayers in the state. They played a part back in the late '80s with the fact that we had to have a big incentive package because they literally were going to move their headquarters to Texas. I remember this all because, as you all know, I've been involved in some level of government and politics for a very long time. They are one of our most important businesses in the whole state. Now, on this particular issue, it's my understanding they just finished negotiations with their union. And part of the negotiation was they're going to have two-man crews. And they've been negotiating that for-- how old is Union-- Pacific Union-- decades. So I don't understand why we're interject-- interjecting ourselves into a subject that is negotiation between the unions and management. They have, as the map shows here, they have passed laws in several states. So they're not going to stop at the line and take a man off or woman off the train as they go across Nebraska. So I'm not on the Revenue-- excuse me-- I'm not on the Trans-- I am on the Revenue Committee-- I'm not on the Transportation Committee. So I would ask if Senator Bosn would yield to a question.

**KELLY:** Senator Bosn, would you yield to some questions?

**BOSN:** Yes.

**LINEHAN:** Senator Bosn, you are on the Transportation Committee, right?

**BOSN:** I'm the newest member of the Transportation and Telecommunications Committee.

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**LINEHAN:** OK. Thank you. Is-- what is your understanding of what's going on at the national level with this?

**BOSN:** My understanding of the national level of this-- and I understand what Senator Jacobs is-- Jacobson is saying as it relates to-- this is a long-time promise that's never been delivered on. I think that is, is and was true, but I, I think things have changed at this point for a variety of reasons. But certainly that, this year, they-- FRA has issued an order that there will be a ruling on this in January-- or, excuse me-- in March. They indicated that through the unified regulatory agenda that they intend to publish a final crew size ruling in March of this year. And that is a new development that they had not promised previously. And so that is the result of why some of us have said we-- I-- understanding that that was in the works for a long time. That is a change. That is new. And that was never a promise that was made before January of this year.

**LINEHAN:** So the railroads are regulated heavily by the federal government, are they not?

**BOSN:** Yes.

**LINEHAN:** Thank you. I-- airlines regulated by-- excuse me, Senator Bosn. I'm sorry. How much time do we have?

**KELLY:** One minute.

**LINEHAN:** Railroads, airlines, all that commerce that goes over many state lines in a day all year long, they're not generally regulated by the states, right?

**BOSN:** Correct. They will tell you in your first year of law school that things that cross state lines should be regulated by the federal government. Things that take place inside of the state lines are more often regulated within their states.

**LINEHAN:** So-- OK. Thank you, Senator Bosn. And thank you. I'll yield back the rest of my time.

**KELLY:** Thank you, Senators Linehan and Bosn. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President. Good morning, colleagues. I do rise today in support of both AM2019 and LB31. It's, it's been an interesting conversation we've had thus far. And I've had a lot of time over the interim and last session to talk to Senator Jacobson

about this bill. Also talked with a number of representatives within the industry. And colleagues, to me, this is just common sense. There's not a lot of bills or issues that we debate that I can go talk to people in the community about and they just seem to have one opinion on. But when I talk to my friends and people who are outside of the political world about this issue, it just makes sense to them. They're, they're actually shocked that we don't currently have trains that always have two people on the crew. When I talk to folks about what the current state of this is and some of the issues that come up with a lack of two-person crew, they just say, yeah, this is, this-- why would we not pass this legislation? And I think it's rare that we find an issue like that where we're able to just say, this just makes sense. A lot of the issues that have-- that are important about this have been brought up, so I don't want to take too much time echoing those. But I wanted to absolutely voice my support and say it's a safety issue. I think that Senator McDonnell is absolutely correct. This is a community safety issue. When we have trains that are traveling through our communities, through our intersections, through our towns, through our cities with one person on it and an emergency happens, that's simply not enough. I've talked to train conductors about the issues that they run into when emergencies hit. And the idea that they're alone is frankly very frightening to me. It's not just a safety issue. It's also a maintenance issue. I know that-- you know, if a train-- and I'm not an expert on trains-- but if a train breaks down or there's an issue on this train and it comes to a stop, if you only have one person on there, they're going to have to hop out and walk all the way down to go address the issue as opposed to maybe one person hopping off and then the other person can drive the train a little bit further down the track and, and move it along so they can reach the issue sooner. So it's a maintenance issue. It's a safety issue. And the people in my community, when I talk to my neighbors about this, absolutely think this is important. So colleagues, I would encourage your vote on LB31 and on the amendment. Happy to have conversations with colleagues about this off the mic as well. But again, this is just common sense. And I think we should frankly just vote for this and move on. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank you, Mr. President. I also rise in support of AM2019 and LB31. And I could echo a lot of the comments that Senator Dungan just said, which is it is a safety issue. And I would just point out that it would be great if the federal government would take action and establish a standard for a two-man crew, which Senator

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Jacobson said he only ended up bringing in this bill because the federal government has taken no action. And I would point out that, in absence of federal action, the state is allowed to create a standard. So that's what we're asking to do here today, is to create a standard of two-man crew in the interest of safety for the folks who work on these trains but also for the safety of the communities these trains run through, which most everybody here is within-- their district is very close to a rail line in the state of Nebraska. So I would encourage your green vote on AM2019 and LB31. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. My great grandfather, when he came to the United States back in the 1800s, arrived in America at the age of 16. He went to work for the railroads as a telegraph operator. And it served him well. I had my last business, a little bar in Kearney, across the street from the railroad tracks. And it had a beer garden where, where we would have bands out there on certain nights of the week. Sorry, Senator Hardin. I never allowed you to play there. And every time a train would go by, we would raise a toast to the railroad because it brings us everything. It's the iron horse of America. It's great. And thank you to all those who work for the railroads and for all the transportation companies that bring us these things. But I don't think this is the place where we need to decide whether it's a two-man crew, a one-man crew, a six-man crew, a ten-man crew that are on the trains. I think that's with the bargaining power between you and your unions and, and the, and the companies. As far as safety, having one man on the train is not safe. Well then, have two. Well, is two really safe? Why shouldn't we have three? And is three safe? Because you just can't get out and jack up a train and change the wheels on a train. Maybe we ought to have 25. And whatever happened to the caboose? I miss the caboose. The little red light as the train left the town. You could see it for miles. Technology. We speak of vehicles, cars and trucks that drive down our roads autonomously. And yet we go back and say we need to have crews on trains that have tracks that close down the roads when we cross them. If a car pulls out on an-- on a, a crossing that isn't protected, that train's not going to stop anyway, is it? And chances are, the technology on a train will notify law enforcement long before a man can do it anyway. I believe in people running our instruments. I truly do. But it seems like technology is pulling us away from that. And it's working. I really don't want to see a semi driving down the interstate without at least an operator in it to

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make sure that the technology is running it right. I'm not going to demand that here. The railroad has spent more than \$5 billion on positive train control. It automatically stops the trains to prevent certain train-to-train collisions. It also causes the gates to come down. And there is hazardous material traveling down our interstates every minute of the day. And you see them as they travel down the interstate because they have the little placard on the side that says "explosives" on it or "hazardous material" or--

**KELLY:** One minute.

**LOWE:** --something else. Thank you, Lieutenant Governor. So to have one mode of transportation where we demand that they have a two-man crew instead of a one-man crew when the technology is there to already handle it. Thank you, Lieutenant Governor.

**KELLY:** Thank you, Senator Lowe. Senator Albrecht, you're recognized to speak.

**ALBRECHT:** Thank you, Mr. President. Good morning, colleagues. I rise in opposition of LB31 and AM2019. I did serve for several years on Transportation before I moved to Revenue and Education. And every hearing, we did hear from the, the folks that they wanted a change. But I had always thought, and as I do today, that this is a union negotiation tool and it's for them to be working with their companies. I don't think it's right for us to have to go in and change anything other companies are doing because they can't seem to work it out with their contract negotiations. I think about, you know, what these railroads have done, you know, for our country. Everything that moves, you know, from one rail yard, yard to another, especially in the farming industry, is very important. Yes, the safety of all of our people is the utmost importance, but that is being taken care of between the companies and their employees. And I really believe that, in Nebraska, every time we've had a flood, we've had derailments, I've never seen any company work as quickly as a railroad to get those, those trains back on, on the tracks. When we had the, the floods, it was just amazing to me. And anything that I have up in northeast Nebraska, I have not had an issue trying to work with BSNF. They're always there for us. I know that-- again, if this is the most federally regulated at the, at the, at the-- you know, up in Washington-- let, let them decide and work with their folks. Because this can't be a hodgepodge across the states. If Wyoming, you know, requires a certain number and somebody else doesn't, allow it to happen at a federal level. If they want to make a change of this magnitude, I believe it has to be throughout our whole country, not

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just state by state. So for that reason, I am opposed to LB31. Thank you, Mr. President.

**KELLY:** Thank you, Senator Albrecht. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. I figured I'd get to the point to where I could start responding to some of the issues that were raised and, and kind of clar-- bring some clarity. Make no mistake about it that safety issues are separate from a two-person crew. I understand that the two-person crew isn't going to fix the safety violations. The two-person crew is there to react to the effects of the safety violations. When a train derails because it's got a hot bearing due to maintenance, lack of maintenance, and that train derails-- we were fortunate in Gothenburg last year when that derailment happened right on the edge of town because it was a coal train. What if that train was hauling anhydrous ammonia? What if that train was hauling some other toxic material? Keep in mind, when you're on the Class I railroads, you're going border to border across the country. You're moving all kinds of freight. And thank God they do. But if you have a derailment, the first responders need to know what's in those cars. The conductor will have the manifest and will know what's involved in every one of those cars to give to the first responders. And they're going to let them know what kind of material it is. Think about in North Platte at Bailey Yard, perchloric acid. OK. Anybody know what perchloric acid is? OK. In itself, it's not, it's not necessarily unsafe. But when combined with, with wood in particular, it's highly explosive. So if you see that there's an acid in a car, I'd like to know what kind of acid it is. The conductor will have the manifest that will tell you that. So my whole point on the two-person is they're there to provide that first responder safety to the public. And they're also there to make certain that the engineer has a separate set of eyes and that the engineer doesn't have any health events-- under which time, they can allow the train to be stopped. We talk about the technology, the positive train control. Sounds wonderful, if it worked. Heavily unreliable. Highly unreliable. We talked about eliminating the cabooses. Well, the caboose became the FRED. OK? And so when you look at a caboose and what's happened there, the FRED is the flashing rear-end device, also known as an ETD, which is an end-of-train device. The FRED is that flashing light that also emits a, an X band cell signal to the engineer. And it tells the engineer that the back of the train is still there. Senator Blood brought up a great point earlier that I wanted to mention. Trains used to be less than a mile long. Hence we have our mile-long sections. The train could stop in between those sections and you

would not block crossings. Trains are now as long as three miles. The train stops, I'll guarantee you we're blocking crossings. If there's a fire or an emergency, that train has to move. And if the train is, is stopped for a problem, you need to be able to figure out how to break that train, and only the conductor can do that. You also-- there are-- you, you can have an air hose that could come loose while the train's going down the tracks. That train can be stopped. The conductor can go repair that air hose, rehook it, go again. There are all kinds of things that the conductor can do because the engineer is not allowed to leave--

**KELLY:** One minute.

**JACOBSON:** --the cabin. Thank you. So the point is the technology is not there yet. It's not there in automobiles. It's getting closer, but it's not there. I'm going to go back again to the airlines. When you look at airlines, I can assure you that, in North Platte, for example, we have SkyWest that serves our airport. They-- you have to have a certain level of a copilot in that plane, or that plane doesn't fly. We got a huge pilot shortage today; and I can tell you that unless they have a certain level of training, you can't just be a pilot. You have to be the same level of pilots, or those planes don't fly. They will allow them on smaller planes but not on the larger planes. So with that, I'm probably out of time. I'll stop. I'll be back on the mic again later. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Hardin has some guests in the north balcony: members of the Scotts Bluff County Leadership, Scottsbluff, Nebraska. Please stand and be recognized by your Nebraska Legislature. Senator Machaela Cavanaugh, you are recognized to speak.

**M. CAVANAUGH:** Thank you, Mr. President. Good morning, colleagues. I rise in support of LB31 and AM2019. This has been a long com-- time in the making. And Senator Erdman, I believe you're correct. I don't think this ever has come to the floor before. I understand-- I've heard it for almost six years now-- about the pre-- federal preemption and why we, we can't federally-- the federal government preempts us, et cetera, et cetera. We have a responsibility to our workforce, to our citizens to ensure that intercommerce is safe and regulated. And yes, the federal government may do something, but we've been being told that for a very long time now. And until the federal government takes action, it is our responsibility to ensure the safety of our rail workers and the safety of our citizens across the state. I'm very excited to have this on the floor today. I'm very

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excited to have the opportunity to vote for this. I think this is an excellent bill and it's a long time coming. I would like to yield the remainder of my time to Senator Carol Blood.

**KELLY:** Thank you, Senator Cavanaugh. Senator Blood, you have 3 minutes, 45 seconds.

**BLOOD:** Thank you, Mr. President. And thank you, Senator Machaela Cavanaugh. I just want to respond to a couple things I've heard on the floor. Senator von Gillern said that I said fatigue was the number one cause. That is not what I said. I said fatigue is a consideration, though, that we have to, to really address because it leads to impairment. And it's actually similar in nature to being intoxicated by alcohol. So if we don't make that as one of our reasons when we talk about safety, then we aren't really talking about what the issue is at hand, and that is public safety. And I think it's interesting when people start talking about autonomous vehicles, especially certain people who can't even get their head wrapped around blockchain that I've been talking about for seven, eight years. So let's talk a little bit about autonomous vehicles. So when it comes to the trains, it's a very complex interaction of the various subsystems when a train is running. And they've got to monitor the status of the track, the position of the other trains, the physical integrity of the train, and space required to break safely. And yes, AI and technology can do that, but it's not going to be there for a very long time and may never be there because it is so complex. Yes, you may have autonomous planes, but they're still going to de-ice them and they're still going to do physical reviews of the outside of the plane. I find it impossible to believe that we wouldn't want to do that to make sure that the passengers in the planes or the pilot in the planes that are taking cargo are not safe. We want to make sure they're safe. So yeah, they exist already, but they do require supervision. And to say that that's going to be what's next and why we don't need two people on a train is kind of silly. And then I love it when-- people flip-flop when it comes to talking about hodgepodge laws. Hodgepodge laws. You mean like the gun bills that we've passed in Nebraska and the abortion bills that we've passed in Nebraska? You can't pick and choose. Either you have to decide that it matters or it doesn't matter. You don't get to decide from issue to issue. And frankly, even as dysfunctional as we were last year or appeared to be last year, we still passed, I think, like, 270 bills last year. Well, the federal government didn't even pass 30 bills-- the Congress didn't. And so now we're saying, hey. Let's wait for the federal government to take action and handle this. Do you really believe anything's going to happen? Because I don't.

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And that's why this bill's been brought forward over and over and over and over and over and over again.

**KELLY:** One minute.

**BLOOD:** And this isn't a bargaining issue. Bargaining is about benefits and hours and retirement. Public safety is our job in the Legislature. That is part of what we do, is to make sure that public safety is in the forefront. And that is what we are talking about today. We're not trying to take away about how much property tax some of our railroads contribute to Nebraska. They are allowed to make a profit. And I respect that. We're talking about people, safety, and preventing some really bad things from happening when it comes to these very long trains, many carrying some very dangerous chemicals. Thank you, Mr. President.

**KELLY:** Thank you, Senator Blood. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. I rise in opposition to LB31. I am glad to see the committee was exempting the smaller operations, and I think that was a good thing to do. But overall, yeah, it's the principle of the thing that I don't support. I do agree that safety is very important on the railroad. And negotiating with a railroad, especially the Union Pacific, is very hard. I've been working for seven years to get a new crossing in Louisville, Nebraska across a dead-end track that goes to one business, and it goes maybe five miles an hour. They've required us to close three crossings to get a new one. And worked and worked and work, and it isn't there yet. I'm-- I have this year and two more years; and in 2026, when I'm done, I think it's going to finally happen after ten years working with, with-- or against-- the railroad. So I'm not a great fan of the railroads, but I do oppose this mandate on individual freedom principles. I do have many mandates in my business because of bad actors and other businesses like mine. But I don't believe these mandates make my customers any more safe. And it does increase my expense. I would keep my customers safe without mandates, and I urge the railroad to make sure they're doing it also. I looked it up: the golden spike was driven in 1869, 155 years ago. And I'm not aware that safety record of trains is a major problem in recent years. The accident in Ohio was mentioned, but I see on the map that Iowa-- Ohio has two-men crew. That didn't prevent a problem situation with hazardous materials. Collective bargaining governs-- governs other railroad operations, and I'd leave it to that process as well. Or, as has been said, the federal government. They're, they're a federally,

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federally regulated business, as mine is also. And I'll leave it to that process. I do urge the railroads to promote safety without mandates. And I hope they are listening, that-- the-- there are-- have been some good points made for having two men in a crew, and I hope they consider that, especially public safety. But I do oppose this because of, of a mandate, which I have a lot of mandates in my business, which costs me money and it raises the price to my customers. And I appreciate Senator Jacobson bringing this bill, but I am not going to support it. Thank you, Mr. President.

**KELLY:** Thank you, Senator Clements. Senator Bosn, you're recognized to speak.

**BOSN:** Thank you, Mr. President. I just want to rise to point out a few things that I think are worth consideration for those of you that are on the fence on this bill that I think are important. I voted this bill out of committee PNV. The reason for that was that there-- I, I do believe there's a federal mandate that's coming. And as the one of the few attorneys in the room, I think the legal ramifications of having state law and federal law results in nothing other than ongoing litigation and legal challenges. And without a doubt, this will do the same should the feds rule on this. So my position on this will be greatly influenced by what takes place on the federal level. And again, although others disagree with me, I think that ruling is coming and it's coming sooner than I think some of the people in this room think. The other points that I think are worth consideration: currently, there is a two-year contract in place between the unions and the, the railroads in the state of Nebraska requiring a two-man crew. So for all the talk of the feds have had time to rule on this and our time is now, we have a two-year contract that requires two men on those crews. I think that's something you should take into consideration regardless of which end-- where you end up on this bill. The federal rules govern regulation of trains. That is also a federal issue. And while there are certainly parts of this that are attractive and makes sense-- and I understand Senator Jacobson's passion-- his analogy when he started this was, would you get on a plane with only one pilot? And your answer is no. You wouldn't get on a plane with one pilot. But you know who told you that there isn't one plane on the pilot? It isn't the state of Nebraska. It's the feds. Federal regulations rule how many pilots are on the plane because they don't stop at the state line between here and Iowa and get one pilot on or off. They fly across state-- interstate lines all the time, and they regulate that. And that was the best analogy I could come up with. Thank you, Mr. President.

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**KELLY:** Thank you, Senator Bosn. Senator Var-- Vargas, you are recognized to speak.

**VARGAS:** Thank you very much, President. I rise in support of the underlying amendment and the underlying bill, LB31. Thanks, Senator Jacobson, for his work on this, not only on behalf of his constituents but workers across the state. For me, this is about a little bit more on the pragmatic side of-- you know, I've been on the record in the past supporting some of the corporate tax cuts and some of the, the incentive programs for, for businesses. And I've done it largely because I believe that these are job-creators, these are individuals that are creating opportunities in all of our communities, and they're providing higher wages and, and, and support. But ultimately, the reason behind that is for economic development and for the American dream. Everybody that has a job that is able to be supported and, and more jobs that are available for our constituents is a good thing, which is the reason why we've-- I've supported, you know, our tax incentive packages that have come in front of us, expansions of those programs, more funds to them because I think it's the way that we can grow our state, by growing jobs and making sure that businesses are more competitive. Simultaneously, I've also been on the record here in the past working on legislation that has helped worker safety. And I, I, I don't think it is anti-business. I think it actually is pro-business when we're talking about worker safety and making sure that we have some commonsense regulations that, that do so. And when I say common sense is, you know, if we're an outlier and we're one of the few that have a regulation, then maybe it isn't commonsense. But when we have other states that do have a version of a regulation just like the two-person crew bill in this form, I think it's a worthy cause on behalf of, of workers and worker safety. In the past, I've introduced legislation that helped to protect meatpacking plant workers amidst the pandemic and making sure we're improving worker safety. It fell short a few votes, but it-- what it did do is make sure that we were starting the conversation and advancing what we talk about with worker safety. This is not a new issue to our state. This is a longstanding issue that we've been dealing with. And I think the opportunity here is to do something not only for some of us that have been here for years that have been dealing with this, with this actual issue, but to listen on behalf of workers, to be responsive not only to the data points that have been shared by Senator Jacobson's and others regarding derailments, but to make sure that we are saying we care about businesses, we care about making sure we are supporting them and, and, and the jobs that they're creating and

their success. We simultaneously also care about workers. We care about their safety. We're going to prioritize that. And it's going to be in a balanced, measured approach. So again, this is not something that's new in other states. This is not something that's new in terms of the conversation. This is not a bill that's for the first year and we're discussing it and we're debating it. This is about whether or not we believe that a commonsense approach to worker safety is seeing what's working in other states that is not, not detrimentally going to change the impact of what is possible for those businesses but is going to take a step in the right direction for worker safety and for Nebraskans. And again, looking at this map, seeing both Colorado, Kansas, Nevada, California, Arizona, Minnesota, Wisconsin-- it is encouraging to me because oftentimes we debate, is this-- if this is something new, should we be doing it? Is it not happening in other--

**KELLY:** One minute.

**VARGAS:** --states? It is something that is on the books in other states in some way, shape, or form in a regulation. The question isn't whether or not it works or if it's so detrimental that it is, it is going to affect a business. It is working. It is good for workers. It's a good step in the right direction. And most importantly, these are the people that are ensuring that business, economy is continually being driven and is working successfully across our country and across-- in this state. That's what this bill-- that's why I support it. It's why I support what Senator Jacobson's doing on behalf of his constituents. I know there are people here before, and I think some people are still here, that will be directly impacted by this. That's the reason why I support it. It's possible to both be support of the businesses and be in support of the worker safety. And I think that this is a good measure that we have debated before, but this is a year that we can actually get it to the finish line. So with that, I--

**KELLY:** That's your time, Senator.

**VARGAS:** --support-- thank you very much.

**KELLY:** Thank you, Senator Vargas. Senator Bostelman, you're recognized to speak.

**BOSTELMAN:** Thank you, Mr. President. Good morning, Nebraska. I stand in support of AM2019 and LB31. And I'd like to ask Senator Jacobson a question. But while he's coming to the mic, I've got a few things I want to talk about. I've heard on the mic about autonomous vehicles.

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I heard about hazmat. We heard about the billions of dollars that our railroads have. We ha-- we hear about the opposition. The opposition only wants one person in the engine and not two. I've heard we need to, we need to wait until the federal government does what they're going to do. Well, I've been here seven years, going on eight. And every biennium this bill comes up. And every biennium, I hear the same, same argument. We have to wait. We have to wait. We have to wait. I'm done waiting. I'm done waiting. If we're going to wait for our federal government to pass every law that we like or don't like, I think that's-- I-- that's wrong. If we're going to wait till the federal government passes laws before we do any action on anything, I think that's wrong. This is a safety issue. It's a huge safety issue. Autonomous vehicles? I read where autonomous vehicles go off the road, run into semis. They're-- they get blinded. So they're not 100% safe all the time. They do have safety measures built into the, to the railroad system, and I acknowledge that and I appreciate that. But it takes two people. I believe the engineer is on a-- maybe a deadmans switch is what it's called-- so if they fall asleep or they move from there, the train stops. So if you only have one person in the engine and something happens to that person, that train stops in the middle of wherever it's at. How do-- how much other rail traffic does that stop? What problems does that raise? I talked about the other day in Mead where the train set on the tracks and wasn't broke for 25.5 hours. And if EMS needed to respond to Highway 92 or a fire in that city, it took them three to five miles instead of going across the tracks from where they're at to go around to get to that emergency. And if you have that second person in that engine, that person go down, break that train, and open that up. Highway 14 in Superior, Nebraska has been blocked for days. It's the only highway going from Nebraska into Kansas, Highway 14. This addresses that issue. We talked about hazmat. We talked about accidents. Are we really saying that we don't want someone on that train when a situation arises, can go out and determine what the issue is, what the problem is, what help needs to be rendered to direct our first responders to the appropriate location? I don't think so. Senator Jacobson, would you yield to a question?

**KELLY:** Senator Jacobson, would you yield to a question?

**JACOBSON:** Yes, I will.

**BOSTELMAN:** Senator Jacobson, there seems to be opposition, and the opposition to this-- to your bill right now is just, well, the feds are going to take action next month. The feds are going to take action. There's going to be a ruling come down-- once again, we hear

this-- there's going to be a ruling come down in February, in March, whenever that might happen. If we move this bill to Final Reading, would you work with the Speaker to hold that bill, in a sense-- not bring that back up on the agenda until we have that reading in March? And if that reading doesn't come about, if once again the federal government doesn't act, that we go ahead and move on the bill and then we can have the vote on this?

**JACOBSON:** That's, that's my plan, is that. Let's move the-- if we move the bill to Final, I'll hold that bill through March. Has to be scheduled right after. So if, if we believe that the FRA's going to act, great. They have till the end of March.

**BOSTELMAN:** OK. Thank you. So colleagues, there's a path forward. Let's move this bill. Let's let Senator Jacobson work with the Speaker. Let's get the response from the feds of, once again, they kick the ball down the road and don't do anything. Then let's bring the bill up, and then, then let's finish the debate and then let's vote. So I would ask that you vote on LB2019 and LB31 and move it to Select. Thank you, Mr. President.

**KELLY:** Thank you, Senator Bostelman and Senator Jacobson. Senator von Gillern, you're recognized to speak.

**von GILLERN:** Thank you, Mr. President. Again, I rise this morning in opposition to LB31 and AM2019. And Senator Jacobson was gracious. He mentioned a couple things about OSHA and, and the fact that that was a, a big part of the business that I operated for-- over three decades. And about 20 years ago in that business, we decided that we were going to change the mindset about safety dramatically. And we had-- it had always been important to us, but what we decided at that point was that we were going to make a, a larger commitment both ver-- you know, basically putting our money where your mouth is and being more verbally aware of safety issues and, and putting budgets behind that in order to make sure that we were doing everything that we could as a commercial building contractor to keep our people safe. And, and it was-- it became a corporate culture issue for us. And I know it's a corporate culture issue for the railroads also. I've-- in years past, I have met with railroad officials regarding building work for them. And, and actually, most of those meetings started out with a safety briefing. And we, we were sitting in a corporate committee room or meeting room, conference room, but yet they still would start off with a safety briefing about where the exits were and if there, if there was an emergency, what happens? So I know that, that the major railroad operators in the state have a strong

commitment and a strong mindset towards safety, just as we did in, in my business. I was-- I'm-- one of the things I'm most proud of is that we, year over year, we won corporate safety awards from different organizations: Nebraska Safety Council and, and other organizations that are experts in those fields. We had, we had other companies that came to us and said, can we, can we model our safety program after yours? Would you-- will you give us the, the information? And so we provided that information. We figured-- we thought it was a, a good-- being a good corporate citizen to do everything that we could to help keep other workers safe. So I'm, I'm absolutely of the same mindset about keeping workers safe. And I, and I hope nothing that I say today or otherwise indicates anything different than that. The issue becomes, with everything related to safety, is there becomes a diminishing point of return on the dollars invested towards safety. If you, if you have a worker that in, in the building condition is working at a high, high elevation, they're required to wear a lanyard and, and safety gear. Should we have them wear two lanyards? Should we have two sets of, of safety gear on them? You know, they're required to wear hard hats in, in situations. Now we wear safety glasses. At that-- at some point, there becomes a diminishing return on the dollars and the efforts that you spend towards safety. And there-- years and years, there's been a cartoon that floated around construction company offices, and it was, it was what a swing set would look like if OSHA had their way around designing the swing set. And it had so many safety guards around it that it was no longer functioning as a swing set. So I, I just want to make sure that we're being aware of, of that diminishing return conversation. So to that comment, I, I'm aware that the railroads over the number-- over the years have reduced their crew sizes from five to three to two. And every one of those changes has been pursuant to a collective bargaining agreement. So in the process where labor was present, collective bargaining only happens when labor is present and they have a seat at the table to talk about what it is that they should be doing in conjunction with management. And together, they agreed to reduce crew sizes, and they've reduced it down to two. You know, is, is, is two less safe than three? Possibly. Is three less safe than four? Possibly. Is four less safe than five? Possibly. But together, they agreed that there was a diminishing return on the value of those additional crew members and, and agreed to, to eliminate--

**ARCH:** One minute.

**von GILLERN:** --those. Thank you, Mr. President. Senator Jacobson mentioned that Nebraska would be the 16th state to adopt this

regulation, and I hope I heard him correctly. I'm curious then-- when Senator Jacobson gets back on the mic, I'll let him address this if he chooses to. I'm curious if there's evidence that the 34 other states have a higher incidence of accidents than the 16 that have invoked this rule. And, and I, I, I am possibly leading or making an assumption in, in that thought because, again, as Senator Bosn and Senator Linehan and others have mentioned, these are interstate commerce businesses. They travel over state lines. So I, I don't imagine that they're loading and unloading crew members at state lines as they come and go. So if Senator Jacobson could address that when he's on the mic next, that would be terrific. Thank you, Mr. President.

**ARCH:** Senator Dorn, you are recognized to speak.

**DORN:** Thank you, Mr. Speaker. Stand in support of LB31 and LB-- AM2019. Thank you all for the conversation again this morning. Sit here and I listen to, I call it, the safety aspect of this, also the federal delegation, what's happening in Washington, D.C. Do we have confidence in them or not? I don't know. I think if you asked most of the people in the country, we don't have a real high confidence in what will happen in Washington, D.C. But I wanted to talk a little bit about the safety and the safety aspect of this. Many of you know, I'm-- I've been an EMT for a long time, over 35 years. Lived down in Adams. We have a Burlington track that goes from Lincoln off to the southeast corner of Nebraska. Don't know how many of you have ever responded to a train wreck, how many of you ever been on one of those types of calls. A year and a half ago, we had-- just outside of Adams, we had a car-- pickup-train wreck. And as we arrived with ambulances, many of us responded to that patient. But at the same time, some of our rescue squad went down to the train engine, which had stopped about a half mile farther on down. The crops were harvested so they could drive out there. That engineer would not get out of that train until, I call it, the Burlington enforcement people were there. He would not even get out of the train and let us check him. We could not do-- we could not get in the train to check his vitals. We could not do anything because their law enforcement trumps our county law enforcement. It trumps our state law enforcement, state of Nebraska. They trump our State Patrol. They have the authority and the power to control that whole scene. So we could not even go down there and have-- we could have all kinds of discussion with him. We could see that he was fine. We could see that everything looked OK. But it was a one-man crew that day because of the Burlington train. He could not get out of that train for us to evaluate him at all. So I-- in our area, we've also had other wrecks.

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We've also-- I don't know how many of you have ever responded to a train vehicle-- we had a train-combine wreck in our area last fall where a person perished. When we talk about safety, there are more things involved here than-- Senator von Gillern just called it return on investment. He made that comment, and that stuck with me. We went from five to four to three to two because of a diminishing return on investment. We also have a responsibility for safety. When people drive across the interstate-- in the last month, I don't know, they had a thing where over a hundred people got-- we have a speed limit of 75 miles an hour. And yet we-- the State Patrol arrested over a hundred people in the last month or two going over a hundred miles an hour. Well, if we don't care about safety, let them go. Why did we stop them? Because it's the safety of the other people. It's the safety of everybody else involved. At some point in time, Senator Bostelman talked about the cars and all those that are driving without people-- at some point in time, that's what our society will be or could be. We won't have nobody on the trains, we won't have nobody in the cars driving it. You'll just sit in the back seat and go to wherever you want to go. I don't know if that's what we want because with a risk of that comes safety. And I think part of this discussion and part of why Senator--

**ARCH:** One minute.

**DORN:** --Jacobson brought this bill is, yes, they can negotiate it. They can negotiate it with their union and all of that. But also, what responsibility does this body have to making sure that the people of Nebraska are as safe as we can make them? Thank you.

**ARCH:** Senator Kauth, you are recognized to speak.

**KAUTH:** Thank you, Mr. President. First, I would like to take a second to commend Senator Myron Dorn for serving as a first responder. That's truly wonderful. Thank you. I rise in opposition to LB31 and AM2019. There's no data showing that a two-man crew will actually prevent derailments. And I think we need to look at this less from the emotional side and more from the, will this actually make a change? Right now, they have two-man crews. All the Class I railroads in Nebraska are using two-man crews. That's something that's used as a, a negotiating tactic. And it's an internal discussion between the-- labor and the railroads. Senator Bosn mentioned about the federal regulations would actually override it. And I have concerns about what happens if we say you have to have a two-man crew. But again, do you get off at Iowa? Do you jump on at Wyoming? How exactly does that work? It's in the railroad's best interest to keep their

ro-- railroad-- railways safe. The lawsuits that they will have are far, far greater than staffing those people. So if they truly don't think that those two people are necessary-- which, I haven't seen evi-- any evidence saying that they want to get rid of two-man crews. This is something that is a labor negotiating tactic. And I think, as a state, we need to be very, very hesitant about getting involved with the inner workings of a private company. It sounds as if policies regarding how the engineer should respond would actually be a better place to start because I've heard quite a little bit that the engineer cannot leave that cab. That, to me, sounds like something that we should be looking at instead or encouraging the railroads to look at instead. Because if notification of emergency responders about what's on the train is the issue, there should be a technological fix for that. There are so many new technologies. In 1980, they had four-person crew. They moved it down to two-person crew, and they've had an 80% drop in safety accidents. That's not because they went from four to two. That's because as we keep going, we get better and better technology. So I would, I would like everyone to think about the precedent it sets for the state to start saying to private companies, we're going to get in the middle of this labor negotiation with you. And where does that actually end? Thank you, Mr. President.

**ARCH:** Senator Linehan, you are recognized to speak.

**LINEHAN:** Thank you, Mr. President. Good morning again, colleagues. I'm, I'm not going to share widely-- I just had a conversation-- one, of one of our media people that harkened back to late 1980s when he helped me remember we passed LB775. LB775 was the first big incentive package, which then got replaced by Nebraska Advantage, I think. And then the ImagiNE Act. And I might be missing one in there. And the reason those bills were brought forth is we had three companies in Omaha who were leaving because our corporate tax rate was so high. Now, we've done a lot of work on that because, last year, we lowered-- we're working for both business and individual income tax rates. We're going to be competitive for the first time in-- well, since the late '80s, which is another reason we'll be talking in the Revenue Committee this week about, since we did that, maybe there's some things we have to do, which is on the agenda for the committee this afternoon. But again, I'm going to-- I don't think people-- and maybe it's just because I've always like trains, I don't know. I don't think people understand how important Union Pacific is to the state of Nebraska. 6,000 jobs. And these are not minimum wage jobs. The people we're talking about on the trains make a very good living wage. We are-- again, they're the largest property taxpayer in the

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state. This Legislature-- actually, from the time railroads became integral to the United States and heading us from the East Coast to the West Coast, where they met in Utah, government and the railroads have always worked hand in hand. And this Legislature has always-- I remember early, early days, probably in the early '80s-- Union Pacific always had somebody in the, in the Chamber that worked at Union Pacific. And that wasn't unusual. The telephone companies had a state senator that worked for the telephone companies. There's other industries that still usually have somebody in the body to represent them, and that's what a citizen Legislature does. I just-- I'm going to hearken back to what several people have said here. They just negotiated a contract. It says they're going to have two-man crews. That contract's going to be in effect for two years. So there's no urgency in this. This is already settled for the next two years. We also know-- and people aren't on the floor that I could ask some questions to-- we also know that almost foregone conclusion that the federal government-- the president is not going to not sign a regulation that benefits the unions in an election year. Like, this is going to be taken care of at the federal level, where it should be taken care of. Because just like the airlines, the railroads, you're interfering with interstate commerce here. We can't do that. As Senator Bosn said when I asked her earlier, it's one of the first things you learn in law school. You cannot-- well, I see somebody who's a new-minted lawyer right in front of me. Senator Slama, would you yield for a question?

**SLAMA:** Yes.

**LINEHAN:** Senator Slama, do they talk about interstate commerce your first year of law school?

**SLAMA:** I think they talk about it in the first--

**ARCH:** One minute.

**SLAMA:** --month of the first year of law school.

**LINEHAN:** The first month of the first year of law school.

**SLAMA:** Yes.

**LINEHAN:** And who regulates the railroads?

**SLAMA:** The federal government.

**LINEHAN:** Because they go from sea to sea, right?

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**SLAMA:** Yes, sea to sea, through different states. That interstate commerce approach of the federal government taking the reins for those regulations is important because if you have a patchwork of different regulations between states, like you could have here, where you have 11 states with two-man crew laws in place, you have different standards for different states. And it just simply doesn't make sense. It doesn't make sense for the railroads. It doesn't make sense for the government. Doesn't make sense for enforcement. Which is why these 11 states that have two-man crew statutes in place really aren't enforcing them. And when they have tried to enforce them, they've ended up in court over it because it's really not enforceable because it is a violation of the federal duty--

**ARCH:** Time, Senator.

**SLAMA:** --to regulate. Thank you, Mr. President.

**LINEHAN:** Thank you.

**ARCH:** Senator Riepe, you are recognized to speak.

**RIEPE:** Thank you. Thank you, Mr. President. My voice is a bit diminished. I think someone's prayer has been answered to shut me up [INAUDIBLE] the loss of my voice. My big point is I feel very strongly about this. This is a management union issue and not that of the government. Thank you, Mr. President.

**ARCH:** Senator Jacobson, you are recognized to speak.

**JACOBSON:** Thank you, Mr. President. Let me again come back and maybe answer some of the questions that have been raised. First, let's talk about this federal regulation issue. So if I'm a national bank, does that mean I don't have to comply with any laws of the state of Nebraska? Because I'm regulated by the OCC, national charter? Now, I'm not today. But does that-- what does that-- is that what that means? It means that anybody that's regulated by the federal government, we can't pass state laws? And they can't-- and not going to be forced to abide by them? Those-- there's 11 other states that have passed this. How'd they do that? I think it's pretty clear that, that yesterday in the Banking, Commerce and Insurance Committee, we had a biometric bill that was brought that would deal with anyone dealing in biometrics. It would include Microsoft, other companies from outside the state of Nebraska, in how to handle biometric data. And we're probably going to pass a law in Nebraska to regulate them. And they're going to be doing interstate commerce. How does that

work? So I would just submit to you that the federal government can preempt the state, but the state certainly can allow-- can create laws that are-- that everyone's going to be required to abide by. OK. I'm not an attorney. Let me make clear of that. But I paid enough for attorneys over the years that I feel like I've kind of got some expertise in that area, even though I'm not an attorney. Let's talk about the improvements that the railroads have collectively made on safety. Well, if the improvements have been so great, then why is it that, last year, UP had a 32% increase year over year nationwide in accidents? And why did-- was the Burlington Northern up 11% if we're improving on our safety? The data does not reflect that. Let's talk about the second house. The second house spoke very, very strongly in the committee hearing last year. But I've got a survey I'd like to give you some information on. First question was-- we have a few questions about railroads here in Nebraska. First off, how many people do you think operate a freight train that travels through Nebraska? 6% people said one crew member; 22% said two crew members; 17% said three; and 33% said four or more; and 23% didn't know. So the highest percentage said they thought there were four or more crew members, and only 6% thought there was only one crew member. They also asked a question. There have been, there have been several past events in Nebraska to require a crew of two, two on all freight trains, all of which have failed in the Nebraska Legislature. Suppose you could vote on whether or not to require a crew of two on all freight trains in Nebraska. Would you vote yes to require a crew of two or would you vote no? Answer: 77% said yes, I would vote for that rule; 9% said no; 13% said they were unsure. That's what we're-- that's what the second house is telling us. That's what the second house is telling us. As far as other information, I want to just say, again, I've continued to hear that two-person crew is not going to reduce accidents. For the most part, that is true. They're not going to stop the accident, but they're going to deal with the accident. Several years ago-- and it's been many years ago now-- there was a derailment--

**KELLY:** One minute.

**JACOBSON:** --in Crete, Nebraska. And it had anhydrous ammonia. And the tank-- the, the tank ruptured. Several people were killed in Crete. Years ago, we had-- Julie and I were farming. We had a landlord that lived there. They knew enough about anhydrous ammonia to get in their bathtub, fill it with water, and they, they saved their lives. I'm just telling you that when derailments occur, somebody's got to be there to explain what is in that cargo. That's how you save lives. That's why the public has an interest here. This is a public safety

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issue, and I would encourage everyone to keep that in mind. Thank you.

**KELLY:** Thank you, Senator Jacobson. Senator Albrecht, you're recognized to speak.

**ALBRECHT:** Thank you, Mr. President. Colleagues, I'd like to talk about the AM2019 that they have amended to this bill, LB31. It talks about how AM2019 accomplishes the following-- and I'm reading this right off of the committee's report. It defines a utility employee pursuant to 49 CFR 2018.5 [SIC] as a railroad employee assigned to a [SIC] functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew in the assembly or classification of railcars or operating of trains. Modifies the exclusion for the loading or unloading of freight or grain by eliminating the 10-mile an hour speed, maximum speed. Adds new language excluding from the bill Class III railroad [SIC] carriers. A Class III rail carrier is one which generates less than \$40.4 million in revenue. And a Class I carrier is \$900 million or more in revenue. A Class II carrier is less than \$900 million and more than \$40.4 million in revenue. So my question to the body would be, why would we not include all rail? I mean, does Amtrak operate with only one person in the cab? Yes, they do. They're on routes for over six hours. If you were really concerned about safety, shouldn't we be requiring the passenger trains to operate with two-- a two-man crew? If Amtrak is operating with one in the cab-- at least a Class III railroad is operating with one in the cab. And the railroads have a contract with unions requiring two people in-- on the train. But we need to pass your bill to make Nebraska safer. You know, I just wanted the body to be aware that I have sent a letter to our Attorney General, Mike Hilgers. I write to request an opinion on the preemption of LB31 that requires train crews of at least two individuals as prescribed. Should the Nebraska Legislature go forward at the state level with LB31 or should we wait on the federal ruling in March? I wanted all of my colleagues to know that I've done this. Again, I don't believe that, that the state of Nebraska, if we make our own laws of what we're going to do for the railroads, we're not going to be in sync with the other states throughout the country. So again, this I do believe needs to be a ruling from the federal government. And I appreciate your time. Thank you.

**KELLY:** Thank you, Senator Albrecht. Senator Day, you're recognized to speak.

**DAY:** Question.

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**KELLY:** Question has been called. Do I see five hands? I do. There's been a request for a call of the house. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 16 ayes, 5 nays to place the house under call.

**KELLY:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Arch, please check in and record your presence. All unexcused members are present. The question is, shall debate cease? All those in fa-- favor vote aye; all those opposed vote nay. Has everyone voted who wishes to vote? Record, Mr. Clerk.

**CLERK:** 26 ayes, 18 nays to cease debate, Mr. President.

**KELLY:** Debate does cease. Senator Moser, you're recognized to close on the amendment.

**MOSER:** Thank you, Mr. President. So the amendment makes a few changes. It eliminates some of the smaller railroads, some of the short lines in my district. There's a short line railroad that goes up to Norfolk to pick up some commodities and deliver some commodities there. And then they collect some things in the Columbus area and group those cars together to ship on the UP. And this amendment will allow those really small short line railroads to operate as they have because they're independent from the big railroads. And it, it could cause them more expense. And they typically run every couple days-- low speeds, primarily. They only have one track, so they have to use the same track coming and going. So it gives them exemptions so that they're not subject to the-- LB31. So I'm going to be voting for AM2019. And I would appreciate your support, at least for that amendment. Thank you.

**KELLY:** Thank you, Senator Moser. Members, the question is the adoption of AM21-- AM2019. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 35 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

**KELLY:** The amendment is adopted. I raise the call. Mr. Clerk.

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**CLERK:** Mr. President, floor amendment from Senator Slama: FA208. Senator Slama would move to amend LB31 by striking the enacting clause.

**KELLY:** Senator Slama, you're recognized to open.

**SLAMA:** Thank you, Mr. President. And good morning, colleagues. I am very grateful for the discussion that we've had on the floor today. I think Senator Jacobson, Senator McDonnell, Senator Linehan have all raised some really great points. I haven't been invol-- as involved because I have been listening, especially to those members of the Transportation and Telecommunications Committee, as they've heard this bill year after year. Along with Senator Albrecht, who I'm not sure whether or not she's still on the Tele-- Transportation and Telecommunications Committee, but she had been for several years and has really been at the forefront of this issue. I absolutely do appreciate Senator Jacobson's work on this bill. This is one of those examples of somebody going to bat really for their district. And I appreciate not only his efforts here but also his efforts in working with him as my esteemed-- and I will say esteemed-- Vice Chairman of the Banking, Commerce and Insurance Committee. But I do rise in opposition to LB31. And I filed the floor amendment so we could take a little bit more time to work through some of the issues here because Senator Jacobson did raise some very meaty points that need to be worked through here. And I'm going to start first with going through some of the legal challenges that have been faced by states that have decided to move past the feds and enact their own two-man crew legislation. And then I'm going to get a little bit into the history of the Interstate Commerce Act of 1887 because the Commerce Clause really is rooted with a deep history in the railroads. So when we're talking about, well, what's the difference between banking or digital advertising or whatever compared to the railroads? It's because there are very few things in our country's history that have as deep of a history of being solely regulated by the federal government than the rail industry. So the first one I'm going to read through is an article over Ohio's two-man crew bill, which faced a lawsuit. The state of Ohio is currently in a lawsuit with the Association of American Railroads over their two-crew-- two-person train crew law that was passed and signed by Governor DeWine on March 20-- 31 of 2020-- 2023. So the article is "AAR Sues Ohio Over 2-Person Train Crew Law." Existing federal law trumps Ohio's law, argues the Association of American Railroads. The associate-- this is written by Joanna Marsh on Friday, July 7, 2023. The Association of American Railroads, AAR, has filed a lawsuit against the state of Ohio, saying federal law preempts a new state law that dictates a

minimum crew size for freight rail operations. Ohio's law, signed by Governor Mike DeWine on March 31, requires at least two individuals to be involved in moving a freight train in Ohio. The state may issue civil penalties for violations. A number of federal laws preempt Ohio's law, argued AAR in a petition filed June 29 of 2023 with the U.S. District Court for the Southern District of Ohio. These include the Regional Rail Reorganization Act of 1973, or 3R Act, which came out of freight rail service disruptions in the Northeast and Midwest; the ICC Termination Act, which grants the Surface Transportation Board authority to regulate certain matters; and the Federal Rail Safety Act. The only Class I railroads that operate in the state are Canadian railway CN, CSX, and Norfolk Southern. CSX and NS currently use single-person crews for certain yard operations, including remote control switching operations, AAR said. Ohio law is also more restrictive than a proposed regulation currently before the Federal Railroad Administration on train crew size because FRA's rule would exempt particular types of trains or trains under specified conditions and has a special approval process for existing one person crew operations, acc-- according to the AAR in their filings. But Ohio's law applies to every train or light engine used in connection with the movement of freight, with limited exceptions, AAR said. AAR also cited two studies from consulting firms, Oliver Wyman and ICF International, which determined that available safety data and accident rates show no adverse safety impacts resulting from one-person crews versus two-person crews. And I want to repeat that paragraph again because I, I understand why safety in the wake of a number of very well-publicized derailments has been at the forefront of this discussion. But the statistics don't lie. We have two highly regarded studies from Oliver Wyman and ICF International which determined that available safety data and accident rates show no adverse safety impacts resulting from one-person crews versus two-person crews. So even though we do have these high-profile incidents, they're not related to the one-person versus two-person crew debate. That's a strawman argument that just doesn't hold water when you look at the facts of those derailments, what's happened, and the statistics over the last several decades when it comes to train derailments that's found in the-- this research. AAR's members will, quote, suffer harm to their rights to collectively bargain over crew size. The carriers that operate in Ohio have the right to bargain for system-wide changes in crew size. The crew size law will interfere with the railroad's ability to expand their rights to operate with one-person crews in Ohio through collective bargaining, attorneys for AAR said in the court filing. California, Wisconsin, West Virginia, Arizona, Minnesota, Washington, Nevada, and Colorado also have state

laws requiring freight train crews to have at least two people on board, according to the International Association of Sheet Metal, Air, Rail, and Transportation Workers-- Transportation Division, SMART-TD. States that have or have had legislation that calls for two-person crews include Illinois, New York, and Pennsylvania, SMART-TD said. So this article on the Ohio lawsuit really gets to the core of what we're talking about here, in that as much as a state can want to force our railroads to have two-man crews, they can't. Federal law preempts that. And if they try to do that, they're going to end up in expensive litigation. That's why I'm so grateful for Senator Albrecht's Attorney General's Opinion request. Because there are so many things that, on a state level, might sound like a good idea. It might sound like they're deli-- directly related to something we see in the news or have traditionally been something we fought for in our districts. And I-- again, I know that the two-man crew bill has a long, proud history of being introduced, normally by some representative from the North Platte area or the Alliance area. I have family members that work on their railroads that obviously have passionate feelings about this as well. But at the end of the day, we can't supersede the federal government here. We're messing with collective bargaining. That, again, is going to be cited in lawsuits. The feds are already coming through the rulemaking process for this. Even if you do support this two-man crew issue, it needs to be a federal issue, much like with the daylight savings time versus daylight standard time debate that we're having. It, it doesn't make sense to have a patchwork of different states doing different things. I think one of the biggest arguments against daylight standard time on LB143-- Senator Erdman's amendment to now Senator Conrad's bill-- is that we would be our own island. We don't want to be our own island when it comes to the rail industry in Nebraska, either. Like LB143 and the debate between daylight savings time or daylight standards time-- it's daylight saving time, not savings time. I'm sorry. I misspoke.

**KELLY:** One minute.

**SLAMA:** Thank you. Nebraska can't stand alone here. And we can't stand on an island. We can't stand on an island when we're going to be facing litigation over this issue, especially when the two-man crew debate doesn't actually solve any of the high-profile derailment issues that we've been talking about. So while I really do appreciate the discussion we've been having today, I think there are incredibly thoughtful and experienced people on both sides of this issue whom I respect and appreciate dearly. Again, nothing against you, Senator Jacobson, of course. I do stand in firm opposition to LB31, and I've

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consistently had that position since taking office now almost six years ago. So thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator von Gillern, you're recognized to speak.

**von GILLERN:** Thank you, Mr. President. I rise in support of FA208 and, again, opposed to LB31. And this is not the conversation I thought I was going to have when I got in the queue 15 minutes ago following a call, call of the question and a vote to cease debate. And when-- you know, a procedural move to end debate on an important issue after less than two hours. We came to session at 9 a.m. this morning after check-in. I didn't check-- I, I didn't check exactly. I'm guessing the debate started about 9:20 and the question was called around 10:50. I, I guess I just want to know, is that the new policy that we're under, is an hour and a half, an hour and 50 minutes, is that sufficient debate? Is that where we're going to be for the rest of the session? Because just a week or so ago when we were debating rules, the question was called after four hours and the left in this room lost their ever-loving minds. And the comments were made about how it's going to destroy the institution and it's going to bring down the institution and it's ignoring the will of the second house. How dare we end debate after four hours of filibuster? This is just comical. Look who doesn't like a filibuster. What a change. And, and I don't even have-- I looked all over through my desk and, and my notes. I don't have any cheesy potato recipes. I do have a coffee cup here I kind of like. I guess I could talk about that. But this is just ironic to me, that what the, the rule was last year and what the rule was just a week ago is no longer good policy for this body. We can now ask to end debate after an hour and 50 minutes. I, I, I'm, I'm, I just want us to remember that because we're going to get into some important discussions about some important matters in the next few weeks. And let, let's remember that, that, yeah, after two hours, if we don't like the way this is going, we'll just call the question. And I guess the folks that are in opposition to that really can't say anything because they have now set the standard. So we'll just have to step into it. And I guess I'll have to-- when I get home this evening-- if I get to go home this evening-- I'll ask my wife to go through the recipe box and we'll dig some stuff out and we'll share some favorites from my house, I guess. We've got 41 days of debate left. I don't think this is the standard that we want to live by. And I guess the presumption is that there's less resolve from those on the right for issues that we find passionate than there is from those on the left, and I think that's, that's a big mistake. I, I said when I stood up I'm opposed

to this bill, but I'm not nearly as opposed to this bill as I am opposed to what just happened. The complete hypocrisy from the people that pulled that stunt, called the question. And then most of them left the room after the vote. So they came in, showed up for work-- I don't know, mid-morning-- came in, called the question. I thought they were going to derail things, but I don't know. I guess we're working off of their playbook from last year about how to stall debate. And that's what we need to do, that's what we'll do. If I had done this or anybody on the right had done this, we'd be hearing gnashing of teeth and, again, what a disaster this is for the institution. We're going to have to close the doors. George Norris is spinning in his grave. I mean, all the things that we've heard over the weeks-- over the issues in the past. But when it's convenient for the left, it's not a problem. So let's just understand that's where we're going.

**KELLY:** One minute.

**von GILLERN:** Thank you, Mr. President. I actually had some cogent questions regarding the matter at hand. And I think after I collect my thoughts and get back in the queue, I'll address those to Senator Jacobson when mind's a little bit clearer. And, and again, matters that actually matter to railroad workers and matter to the railroad businesses and matter to the people in Senator Jacobs-- Jacobson's district and matter to people in my district. There's 3,500 people that work for the railroads in Omaha. And many of those are crew people. You know, the UP headquarters is there. I think everybody's aware of that. But many of those people are crew people that are based out of Omaha, hardworking individuals that make a good wage. And if there's any assumption that, that we're not here believing that we want to do the right things for all of those people, then that's a wrong assumption. So, quick refresher: hour and 50 minutes of debate, all we need to do for the rest of the year. Tuck that in your minds, friends. Thank you.

**KELLY:** Thank you, Senator von Gillern. Senator Armendariz, you're recognized to speak.

**ARMENDARIZ:** Thank you, Mr. President. For LB31, I don't believe two-man crews in and of themselves are addressing the issue. It sounds like the issue is more about safety than how many people are actually on the train. I believe if we're going to pass legislation to improve safety, then we be-- we need to be more specific about the safety issues and how those are addressed, not just throw people without giving specifics of how that's going to address the

underlying problem. So if safety is the issue, I'm not sure that this bill is going to address that. And, and Senator Jacobson has even reiterated that two-man crews do not reduce safety incidences, but they are there to respond to them. So many of the incidents talked about today already had two-men crews on them. And like Senator Jacobson said, incidents of safety are going up. Violations of safety are going up, not down. So I have a friend that I know that's been on a train his entire career. He's in his 60s. And I did pull him aside about ten days ago and asked him his opinion on this very issue. He didn't mention anything about two-men crews in particular, more about things they could do being management to address what they go through while they're on the train and in the field. He was on a train during the subzero temperatures recently. And there were-- they were trying to switch tracks and some of the switching gear was frozen to the tracks. And he had to get out in subzero 30, 40 below wind chills trying to chip away at inches of ice to get the train to switch. He would like that addressed. And having heaters on all of those switching points to make sure that doesn't happen in the weather that we get here in Nebraska. He talks about trains that get abandoned for one reason or another on the tracks and they're unable to move and they are over their time and need to sleep. Maybe we need to have some regulation on actually removing the men from the train. Management needs to go out and retrieve them so they can go get enough rest, not have them nap on the train. Maybe we need to have some regulation on response times if trains are stuck on tracks for 24 hours. I believe Senator Bostelman talked about that, dividing their town in half, preventing emergency vehicles from getting from one side to the other. These are all safety issues that should be addressed. None of these are addressed in the bill, so I won't be supporting this bill, LB31. And I'd like to yield the rest of my time to Senator Slama. Thank you.

**KELLY:** Senator-- thank you, Senator. Senator Slama, you have 1 minute, 35 seconds.

**SLAMA:** Thank you, Mr. President. And thank you, Senator Armendariz. I, I do feel the need-- I, I've been trying not to be quite as fiery as in years past. I like thinking being an old sage veteran of this place of, like, 27 years of age kind of quieted some of my fires a little bit. But I am fired up just as much as Senator von Gillern is at the question being called after an hour and 50 minutes. We're talking about a major policy change in the state of Nebraska right after a session where we, we spent and literally wasted an entire session talking about recipes. And look, this is still a very substantive discussion. I'm not going to get up here and read recipes

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because I am-- like, Ask Andrew. I'm god-awful in the kitchen. It is offensive for me to, like-- the people who argue on Twitter that I should be barefoot and pregnant in a kitchen have never seen my cooking. Like, it is horrifyingly bad. So we're going to talk about the substantive issues I have with LB31. And I-- would Senator Lowe mind yielding for a question? I, I promise it's not a gotcha. And I did not discuss this with him beforehand.

**KELLY:** Senator Lowe, would you yield to a question?

**LOWE:** Yes.

**SLAMA:** Thank you, Senator Lowe. So if I'm remembering right, I saw an article a few weeks ago about the State Gaming Commission buying, like, ten semiautomatic rifles. Is that correct?

**LOWE:** That's, that's correct.

**SLAMA:** OK. I think that's all I have for you right now, but stay tuned. I might have a follow-up question. So when--

**KELLY:** That's your, that's your time, Senator.

**SLAMA:** Oh.

**KELLY:** Thank you, Senator Lowe and Slama. Senator Wayne, you're recognized to speak.

**WAYNE:** Thank you, Mr. President. I love Republican-on-Republican issues. It's great. And Senator von Gillern, the left doesn't have 25 votes. So the question actually required Republicans to move it. So just a reminder. We did do call of the question quite a bit on the rules. I think every time Senator Erdman pushed to talk, he called the question. So this is how a filibuster should be. Like, what happened last year is we didn't call the question, and it kind of ran off the rails. This is how the body keeps it in check. And filibusters should be hard. You should have amendments. You should have actual amendments to make it work, not just file priority motions. We got too comfortable with certain individuals just pro-- using priority motions to, to filibuster. When I filibuster, I like to make you vote on things that are make-- uncomfortable. So I would say, like, a two-man crew only applies to Lancaster County and make everybody vote on it. Like, things like that, just to have-- make the day go. But there's questions about Dormant Commerce Clause. And just so you guys know, I used to work for the railroad. I did some negotiations nationally. I'm very familiar with this issue. Sat in a

room on the management side when we talked quite a bit about it on-- and so I'm, I'm very comfortable with talking about it. So if you have questions, I'll give you straight answers. And not, not one way or another because, at the end of the day, this bill will eventually take care of itself. Problem is the feds are dragging their feet. But what's happening in courts I want you guys to hear is the Ninth Circuit already said states can do this. Washington did this, and the Ninth Circuit said, yes, you can already do it. What'll happen-- what'll have to happen is other circuits will have to get involved, and then it'll go to the Supreme Court, or the FRA will have to come out with a ruling. But just because the FRA comes out with a ruling saying, let's just say it's a one-man crew-- states can still object to that. And states can still pass laws saying that we want two-man crews. And again, it'll end up in court. And it'll go to Supreme Court. And there'll be a argument over the Dormant, Dormant Commerce Clause. This is not really a Commerce Clause issue. It's a Dormant Commerce Clause issue. For those who don't know what that is, it's, it's a fancy term to mean, if states have multiple inconsistent burdens on the flow of commerce-- i.e., a product; i.e., a train-- if it's multiple inconsistent, then the federal government has to preempt that area to make it consistent because it, it affects inter-- inter-- interstate commerce. The classic example was back in the 1900s, early 19-- or, I guess, mid-1900s-- of mud flaps on, on trucks. Some states said they had to be this big, some states said that we didn't want them. And so courts that didn't said, Dormant Commerce Clause. And to all you super conservatives, that's kind of the only thing that Scalia believed that we should be doing at the Supreme Court level, is Dormant Commerce Clause when it comes to multiple inconsistent burdens. So nevertheless, I didn't want to spend too much time on that. I just wanted you to know that there is a split authority on whether the feds do this or whether the states do this. And so, ask questions. Have a real conversation about it. I will tell you, if you never had a, a train ride, you should probably get on one. Multiple times, I went from California back to Omaha. There's this place called the Feather River Basin. It is the most beautiful thing ever. I can tell them now because I no longer work for UP, but I used to stand outside on the end of the caboose and take pictures of all this. You should not be outside when you're moving on the train. That is a no-no. Don't practice that at home. But I did do that because it is absolutely gorgeous. And some of those locations, not so much in Nebra-- there is some, actually, in Nebraska where there isn't people around for a significant amount of time. But outside of Nebraska, especially Colorado, Wyoming, Utah, you are truly on the edge of a mountain by yourself. And when there's

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a, a, a rock collapse or some kind of emergency, it takes a long time. So the crews that I used to oversee were the people who--

**KELLY:** One minute.

**WAYNE:** --would go in and dig out and fix their train-- or, the railroad after the, the derailment. So I oversaw what was called maintenance of way, which are pretty much tracks down, and the signalman-- so all the signal lines. It's not a easy job to get out in remote locations and figure that out. So there's vla-- validity on both sides is what I'm saying. So if you want more education, I'll, I'll be happy to be a resource. But more importantly, call of the question should happen more often when we filibuster. Keeps people engaged. And just remember, left versus right. Left only has, like, 15, 16, sometimes 17 on a good day. So we can't pass anything without the help of the right. And so, love everybody. Have a great day. And I love Republican-on-Republican issues.

**KELLY:** Thank you, Senator Wayne. Senator Linehan, you're recognized to speak.

**LINEHAN:** I was-- thought I was two more down. So thank you, Mr. President. So Senator Slama, would you yield to some questions?

**KELLY:** Senator Slama, would you yield to some questions?

**SLAMA:** Absolutely.

**LINEHAN:** So Senator Wayne just suggested that we have some real amendments. So-- what have we got here? We've got another half an hour to go till noon. There's-- how many people in the queue? Can you count from there?

**SLAMA:** I-- since I've had the baby, my eyesight's just gone straight into the garbage. There's like--

**LINEHAN:** Nine. Nine.

**SLAMA:** Senator Kauth says nine.

**LINEHAN:** Kauth-- that's very good, Senator Kauth. You have such good eyesight. I can't even see the big names up there on the board. I have to squeeze my eyes. You were right before Senator Wayne and you were in a conversation with Senator Lowe. And you had something you wanted to say because when they said your time was up, you were

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frustrated. Do you want to go ahead and say what you were going to say then?

**SLAMA:** Yes. Thank you very much, Senator Linehan. I, I do appreciate that. And I apologize to Senator Armendariz for not properly tracking that I had only 1 minute, 50 left and not five minutes because I wanted to make a point when it came to LB31 in terms of safety. When we look at the size and scope of the tragedies of derailments like that happened in Crete, like that happened in East Palestine, what I thought about-- and I promise I will make this connection unless our esteemed Lieutenant Governor cuts me off again-- is that I, I read a few weeks ago that the State Gaming Commission had purchased ten semiautomatic rifles. And that, that struck me. I'm a very pro-Second Amendment person. I, I just didn't know the scope of the law enforcement authority of the Gaming Commission. And the more I looked into this, the more I found that the Gaming Commission is more tasked with responding to crimes of the white collar nature, like embezzlement, fraud. That sort of thing. So my question-- and it still hasn't really adequately been answered-- why does the State Race-- Gaming-- Racing and Gaming Commission have guys walking around toting semiautomatic rifles to deal with cases of embezzlement and fraud? And I see that as related to LB31 because if you look at just how tragic-- tragic and the size of the tragedies we've seen of train derailments-- especially in the last few years, the ones that have been widely reported on-- whether it's one person or two people responding to this, there's-- it's not going to make a difference. One person, two person-- we, we've already determined the data doesn't show that it prevents train derailments. So now we're shifting our argument to go to, well, you can minimize the damage that's done. I mean, at a certain point when we're talking about harsh chemicals being released into the air, it's like putting a very ineffective Band-Aid on a bullet wound. It doesn't really make a difference at the end of the day and-- as to the outcome whether you've got one person or two person responding to a harmful chemical deluge coming from a derailed train. So I thought of the State Gaming and Racing Commission because the argument for them toting around semiautomatic rifles-- again, I'm pro-Second Amendment. Go, guns. Hooray. But their argument was that they wanted to prevent shootings that happened in casinos.

**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President. And my immediate thought was, my God. We have so many more layers of people that are more competently trained that will respond quickly in a situation like that. What are

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the odds that some guy from the Gaming Commission that's investigating, what, embezzlement or fraud is just going to happen to be in a casino when a shooting happens? We, we have the State Patrol for that. We have local law enforcement, just like we have other agencies on the state level and the federal level to respond to derailments. We don't have to put it on the one-person or the two-person crew that's involved in this derailment to clean up a mass spill of ammonia or whatever it is that's caused by this derailment. So that's, that's the example I was trying to make with Senator Lowe. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Kauth, you're recognized to speak.

**KAUTH:** Thank you, Mr. President. So I wanted to talk a little bit about some of the technology. It's amazing what we can do. I have a kiddo who is a computer engineer for IBM. He knows more and can talk more about technology than I will ever completely comprehend. The way technology is developing is happening faster and faster. Since the 1980s, the technology that has been introduced into the railway industry: remote monitoring, wayside detectors, ultrasonic inspections, thermal detectors for those hot bearings, ground penetrating radar, geometry cars-- I don't even know what those are-- unmanned aerial vehicles using cameras that can take 40,000 images per second. So when you think about that compared to one person in a cab or two people in a cab, that's four eyes watching. 40,000 images per second, and analyzing that data. Combined with a strong capital improvement program, we've made railroads safer. In the 1950s, a train crew actually consisted of six people: the engineer, fireman, the head brakeman, the conductor, the rear brakeman, and a swing brakeman who was stationed in the caboose. As Senator Lowe said, we don't even have cabooses anymore. And I do miss those little red cabooses. The technological advances have made crew reductions possible. There has been a lot of talk about research. The few studies on the issue actually support the position that two-man crew does not make things necessarily safer. In 2010, Metrolink, which is a com-- the commuter rail system serving the Los Angeles area-- concluded after a 16-month pilot project to use two-person crews on only 13% of its train starts did not result in improved safety. Metrolink cited studies by the FRA, the NTSB and California Public Utilities Commission that said two-crew members in the cab can actually have the unintended contrary effect on safety due to the potential for distraction, which I actually thought that was pretty interesting. So if you're in there with someone, you will not be completely focused 100% of the time on what's in front of you, what's

around you. You're gonna talk a little bit. In 2009 report, the California PUC concluded a second set of eyes provides only minimal safety improvement and should be employed only on a temporary basis given the fact it could aggravate engineer distraction and, consequently, engineer error. With the exception of the Lac-Megantic accident in July of 2013, virtually every other train accident in North America over the last three years has involved at least two crew members. Human error is what causes most rail accidents, crew fatigue-- which Senator Armendariz pointed out. We're not stopping trains and pulling people off to give them a break or telling them that only one person can be in the cab at one time, the other person must be asleep. Medical conditions and use of personal electronic devices are responsible for the vast majority of all rail accidents. The FRA looked at crew size and instead moved to address these issues by banning the use of electronic devices and taking action to ensure rest periods are undisturbed. So it's been evaluated. The NTSB is exploring the option of requiring railroads to install inward-facing cameras in the cabs of all locomotives. Courts have upheld the use of such cameras in a variety of workplaces nationwide, and I imagine that's to make sure that people are not--

**KELLY:** One minute.

**KAUTH:** --getting distracted. Thank you, Mr. President. As we talk about this, I think it's really important that we keep in mind that this is something-- currently, our biggest railroads have two-person crew. This is a negotiating point between a private business and the unions. And I think that it's a valid point. And they should be the ones to make those decisions, and they should be the ones who have to live with the ramifications. Thank you very much.

**KELLY:** Thank you, Senator Kauth. Senator Lou-- Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. Trains. Trains are important to us. It starts at an early age. My two-year-old grandson in California, that's his favorite toy, is trains. We spend hours when I go to visit with him with his little wooden tracks and his little wooden trains, playing with the trains. Matter of fact, my wife even bought a large set for our boys, and now he plays with them when he comes to our house to visit. It starts in an early age. We're all enamored by the trains and, and what they can do and what they can get accomplished across our country in a short period of time. My office is across the street from a train track in Kearney. It used to be one of the busiest lines in the country, while coal still

dominated our energy. Over 200 trains would path through-- pass through Kearney every day. Figure that out. That's ten an hour or more. And they didn't run as often during the evening. We had one of the automatic train whistles installed on Central Avenue so the trains wouldn't have to blow their horns going through town anymore. The safety feature, it worked. We didn't have any accidents at that crossing anymore. Safety features that are automatic. It was annoying, constantly blowing every hour, about 10 minutes to 15 minutes apart. But it worked. Technology, remote monitoring, wayside detectors, ultrasound inspection, thermal detectors for hot bearings, ground penetrating radar, geometry cars, unmanned aerial vehicles using cameras that can take 40,000 images per second combined with a strong capital improvement program that has led the way in making the railroad safer. Technology is making the railroad safer. We are improving everything we do, even our planes. They used to have a flight crew up in the cabin of four. They're not all there now. We used to have the caboose with somebody in the caboose. It's not there now. Technology's taking over. And yet, we don't hear for-- hear many rear-end train crashes anymore from train to train. I'm sure it happens occasionally. But that's probably human error, not because of technology. We've exempted the smaller railroad companies from this bill. Why? Because they're safe. They don't need a two-man crew. This does not belong on the floor of the Legislature. This belongs in negotiations with the company and the people. This is not our job to do this. It shouldn't be--

**KELLY:** One minute.

**LOWE:** --state by state. Thank you. It shouldn't be state by state. These trains run across our country as a whole, from one end to the other and back again. We need to have this done federally, not piecemeal. This lobbying effect that's taking a place right here today should be in Washington. And I do appreciate the railroads and all the people that work for them. I have many friends who work for the railroad. My youngest son, male-- married into a railroad company family. Great people. Great people. And I, I love them all. Thank you, Lieutenant Governor.

**KELLY:** Thank you, Senator Lowe. Senator Walz, you're recognized to speak.

**WALZ:** Thank you, Mr. President. Good morning, colleagues. I stand in absolute support of LB31. I don't know if many of you have ever played a record on a record player, but sometimes there's a scratch on the record and it kind of-- it, it goes back and it goes back and

it's dun-dun, dun-dun, dun-dun. And I kind of feel like that's where we're at. Like, we have just been replaying and replaying and replaying the same tune over and over again. This has been the number one issue in my district. The number one reason I hear from my constituents is railroad safety, blocked crossings, the length of trains, the inability for our first responders to get to emergency situations, the accidents, and the deaths. The most correspondence from my constituents over the last seven years has been about railroads. I have listened to the debate again, and today I've heard several arguments, including how a two-man crew couldn't possibly make a difference in everyday problems we as Nebraskans incur due to trains, colleagues. Now, I am not a railroad expert. And I'm kind of looking around the room, and I, I don't see anybody on the floor who has spent a lot of time running a train. Maybe I missed somebody. And if I did, I apologize. However, I do know-- I do know that trains are long. And I mean they are very long. Two to three miles long. You could drive down the highway in my district and cross several areas where you should be able to cross and you can't; miles where you can't get across a highway. I've had constituents who are stuck in a housing development for 10, 11, 12 hours and not be able to get on the highway. So again, I know I'm no expert when it comes to running a train, but I do ask questions. And one of the questions I had after I heard that, you know, two-man crew is, is probably not a reason for delays, is that it takes nearly three hours-- nearly three hours for a crew member to get from one end of the train to another end of the train during an inspection. Nearly three hours. So to say that a two-man crew isn't needed for that reason alone doesn't make sense to me. Colleagues, this has been an issue that has been discussed for over 20 years. In fact, in 2004, Senator Ray Janssen from my district in 2004 signed on to a two-man crew bill. We have introduced bills regarding two-man crew, blocked crossings, reporting, the length of trains, crossing arms. In fact, I'm holding a, a two-page listing of introduced bills over the past 20 years. And for 20 years at least, we've continued to deal with hundreds of blocked crossings, accidents, and deaths that are directly, directly, directly related to the railroad. So is the two-man crew the only fix? Will that alone deter every accident, every derailment, every death? Nope. In fact, colleagues, there are several policies that need to be in place or strengthened to alleviate blocked crossings--

**KELLY:** One minute.

**WALZ:** --derailments, accidents, deaths. There are several policies and changes that should be made to alleviate these problems. The bottom line is this: my constituents in Dodge County and in Valley

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and my constituents across Nebraska want to be safe. They want to be able to travel across their community. They want to be able to get to work on time. They want to be able to get to school on time. They want to be able to conduct their business. And most important-- and I know this for sure because I've heard it loud and clear for seven years-- my constituents want and deserve to be heard and they deserve to be respected and they would like to see a change.

**KELLY:** That's your time, Senator.

**WALZ:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Walz. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. I kind of want to revert back a little bit to my opening because I don't think I've shifted my argument since my opening. So to be very clear, I didn't say derailments would go down because of the two-person crew. I said that that second crew member who has the manifest would be able to get out and be a first responder in the event of a collision at an intersection when the engineer, as Senator Dorn pointed out, cannot leave his station at the, at-- and the engine. And I also said that that conductor can get off the train in the event of a derailment with the manifest and let first responders know what that cargo was and how they need to treat it, whether that be fire department, what do you treat it with. Let them know what it is, they know how to treat it. The additional piece of it is that that second crew member provides that second set of eyes so they can see what's ahead on the track. We've heard about technology. Well, if the technology's so great, why are we having derailments? The derailments are occurring largely because of hot bearings. And yes, we do have detectors along the rail track. We got that. They're either failing or they're being ignored by the people who are receiving the signal because they don't want the train to stop because time is money. That's reality. Technology isn't where it needs to be. The FRED. The FRED fails more than it operates safely. Why? Because these trains have gone to three miles long. And that signal won't make it from the, from the back of the train to the engineer. So what are they told to do? Ignore it and keep going. That's what technology's done for us. When we had a caboose, we had a person in the caboose and they stayed in contact with the engine to let the engineer know what was going on. But now the FRED's doing it. How's the FRED doing? Not real good. When we have an engineer on a train going these long distances, they have a stroke, they have a heart attack, they have some allergic reaction--

they're dead. They're dead. There's nobody there. If there's a collision at an intersection, train hits a bus, school bus, we're saying that's OK. I guess that's just on the railroad companies. Now you've got an engineer that's on that train who's probably gonna need counseling because of that accident. That's the position we put them in. Senator Armendariz accurately described a situation during the snowstorm in terms of the frozen areas to be able to switch cars. Well, I will also tell you that because of the snowstorm, you had engineers and conductors, instead of working 12 hours, were working 30-hour shifts. And they were ordered to do so. Had there been an accident, there'd have been huge liability back to the, to the, to the owners of the railroad. But they were willing to take that risk. Time is money. This bill is about public safety. This bill is about worker safety. I can't negotiate in collective bargaining for public safety.

**KELLY:** One minute.

**JACOBSON:** Thank you. I can't neg-- I'm not a part of that negotiation, nor are any of you. 11 other states have passed this legislation. Senator Wayne, I provided him with the article with regard to the Seattle Times in terms of what the, the circuit court ruling has been in terms of allowing these, these rules to go into place. So again, I'm willing to wait till March for Final Reading to see if the FRA's going to go, going to, going to pass a rule. But I am willing to make a wager with anybody in this body that we're going to hear nothing from them. So if anybody wants to talk to me about that off mic, I'd be happy to sit down with you. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. I again still do not support LB31, but I wanted to make some comments about it. There have been mention of train, trains blocking across tracks, across crossings. And places like Mead, there's-- that happens in my district also, where crossings have been blocked. But it's been also stated that we have two-man crews on trains in Nebraska now. And so they're still blocking tracks. And I think this bill isn't going to change that. They're still going to be having some problems with crossings being blocked. AM2019-- I didn't vote for it-- but if this does pass, I'm glad that it was proposed because it does help the bill somewhat. It exempts the smaller railroads, which usually are going shorter distances, and likely they're slower moving trains with less risk.

One, one that I know about is this, this bill-- or, the amendment also exempts loading and unloading of freight. The co-op, Farmer's Co-op in my district, has a unit train load out in Syracuse, which is about 18 miles from where I live. And it cost around \$24 million to build that. But it can hold a unit train, which is over a hundred cars. And that-- becau-- they built that so they could ship more corn, mainly. And they pay a premium for corn if you'll-- if the farmers will haul it down there to them. And that has increased the price for our local farmers and helps our economy. And the-- this amendment exempted a two-man crew on those tracks. And on that circular track, there's no really need to have two men and-- but it-- if they had to do that, it would increase the cost and would reduce the premium that is paid to the local farmers. So AM2019 did help in that situation. I wanted to discuss-- I see that Ohio is on the list of states that have approved this. And I have an article from July of 2023. And a publication called FreightWaves says "AAR Sues Ohio Over a 2-Person Train Crew." The existing federal laws preempt Ohio's law, argues the Association of American Railroads. The Association of American Railroads has filed a lawsuit against the state of Ohio, saying federal law preempts a new state law that dictates the minimum crew size for freight rail operations. Ohio's law, signed by the governor on March 31, requires at least two individuals to be involved in moving a freight train in Ohio. The state may issue civil penalties for violations. A number of federal laws preempt Ohio's law, argued AAR in a petition filed June 29 with the U.S. District Court. These include the Regional Rail Reorganization Act of 1973, which came out of freight rail service disruptions in the Northeast and Midwest; the ICC Termination Act, which grants the Surface Transportation Board authority to regulate certain matters; and the Federal Railroad Safety Act. The only Class I--

**KELLY:** One minute.

**CLEMENTS:** Thank you. The Ohio law is more restrictive than a proposed regulation currently before the Federal Railroad Administration on train crew size because the FRA's rule would exempt particular types of trains or trains under specified conditions and has special approval process for existing one-person crew operations, according to AAR. But Ohio's law applies to every train or light engine. The AAR also cited two studies from consulting firms, which determined that available safety data and accident rates show no adverse safety impacts resulting from one-person crews versus two-person crews. So I'm concerned that Nebraska may be buying a lawsuit and ending up with-- in court and, and spending money where we could just wait for the feds to act. Thank you, Mr. President.

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Floor Debate January 31, 2024

**KELLY:** Thank you, Senator Clements. Mr. Clerk for items.

**CLERK:** Mr. President, some items. Your committee on Enrollment and Review reports LB1 and LB151 is correctly engrossed and placed on Final Reading. Additionally, your committee on Enrollment and Review reports LB184, LB102, LB102A, LB83, LB4-- LB541, and LB307 to Select File, some having E&R amendments. Notice of committee hearings from the Business and Labor Committee, the Judiciary Committee, and the Health and Human Services Committee. Amendments to be printed: Senator Erdman to LB844; Senator Sanders to LB771; Senator Slama to LB31; Senator Erdman amendments to LB102. Name adds: Senator Blood to LB126; Senator Conrad to LB826 and LB840; Senator Blood, LB853; Conrad, LB857, LB861, LB905, LB913, LB916, LB922, LB935, LB971, LB973, LB1036, LB1040, LB1046, LB1053, LB1086, LB1106, LB1107, LB1109, LB1115, LB1116, LB1117, LB1121, LB1124, LB1125, LB1126, LB1128, LB1131, LB1139, LB1160; Senator Ibach name added to LR287CA. Finally, Mr. President, a priority motion: Senator Riepe would move to adjourn the body until Thursday, February 1, 2024, at 9:00 a.m.

**KELLY:** Members, you've heard the motion to adjourn. All those in favor say aye. Those opposed, nay. We are adjourned.